

Sports Betting:

Legal, Commercial and Integrity issues





FOREWORD

The relationship between the betting and sporting sectors continues to raise a number of issues which need to be addressed properly. These issues tend to be associated with calls for increased funding from the sporting sector and concerns about the threats that betting may pose to the integrity of sporting events. It had perhaps been the case that the licensed gambling industry had been dealing with these matters in piecemeal fashion and, within the RGA, we took the decision to try and adopt a more coherent and co-ordinated approach.

We have frequently called on regulators and government departments around Europe and elsewhere to base their approach on evidence-based policy making. It was clear therefore that in developing our own policies in this area we should do exactly that. This report, which looks at the situation in the EU as a whole, is the culmination of that process and provides what we believe to be an excellent analysis of all of the available information, the vast majority of which has been derived from data that is in the public arena.

Given the interest in these subjects it was decided that the report should be published even though it was originally intended solely to be a report to the RGA. Aside from the report, a number of recommendations that flow from it have been made to the RGA. For what should be understandable reasons they are purely for internal consideration and have not been published.

From the outset we acknowledged that the report should be an objective one that did not contain any pre-existing views held by the RGA or its members. It followed that the author should come from outside of our organisation. In the circumstances we were extremely fortunate to agree with the UK Department for Culture, Media & Sport (DCMS) that we could take one of its officials, Jason Foley-Train, on secondment for a limited period to undertake this project. Jason has a decade of experience of sporting and betting issues within government in relation to domestic and wider European policy, and so no learning curve was required which might have been necessary had the work gone elsewhere.

Both personally and on behalf of our members I would like to thank him for producing this report. Secondments from the public to the private sector are fairly commonplace, but we must also thank DCMS for what I understand is the first such placement into the gambling industry. In relation to this we are anxious to stress that any views expressed in the report are solely those of the author and cannot be taken as a reflection of the position of DCMS or HM Government in general. In addition, I would like to express our gratitude to all those who responded substantively to the consultation exercise that formed an early part of this project.

Finally, we hope and believe that this report will serve to inform any wider debates about these matters and we commend it to anyone who seeks to look at the issues fairly and objectively.

CLIVE HAWKSWOOD
RGA Chief Executive



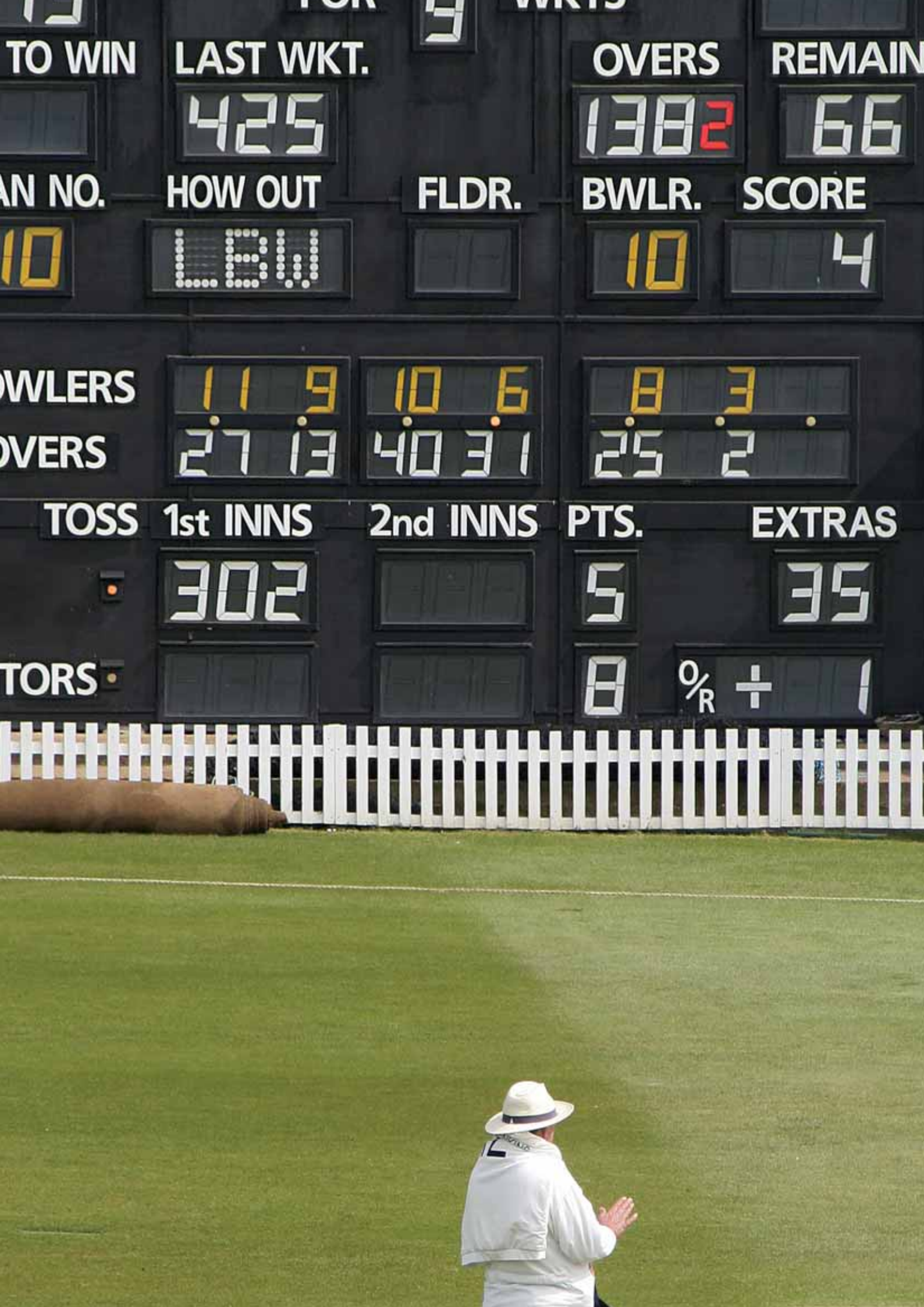
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Chapter 1:

EXECUTIVE SUMMARY

1.1 The development and evolution of new technologies has made a considerable impact on the operation of every sector of the global economy. The affect upon the licensed gambling industry has been no different in that regard, opening new product platforms and access to a wider consumer base.

1.2 It has also created a highly competitive gambling market which has considerably benefited consumers, but which has created new challenges for legislators and regulators who have previously exercised complete control over gambling products within their jurisdictions.

1.3 This has raised concerns amongst sporting bodies who perceive that the increased availability of betting on sport opens up new threats to the integrity of sporting events. International and national sporting bodies seek to control the betting product and to obtain increased revenues from licensed gambling operators that offer betting on sporting events.

1.4 To this end, many sporting groups continue to lobby Member States and European institutions for some form of statutory reform that would provide them with new rights to improve their already favourable fiscal position, which includes State aids and taxation benefits.

1.5 In general, they would also like those reforms to give them control over the types of bets that can be offered, believing that certain bets are more likely to lead to corruption than others. In some jurisdictions there are fears that the introduction of new betting licensing regimes will serve to reduce the income that sports currently receive from state gambling monopolies.

1.6 The aim of this report has been to assess these matters objectively, within the wider context set out above, in order to help the Remote Gambling Association (RGA) to develop a cohesive strategy for addressing these complex and often inter-related issues, notably within the legal and economic framework of the European Union (EU).

1.7 Indeed, these sports betting issues have permeated into the political debate at both national and international levels. The professional sporting movement has been particularly proactive in pressing its case through various forums where the focus has been on the promotion of sport.

1.8 However, neither the RGA nor the wider licensed gambling industry has been invited to participate in the detailed discussions that have taken place. As such, there must be a serious risk that the policy considerations of these issues have not been balanced or properly informed.

1.9 To assess fully the validity of the opinions that have been advanced in relation to sports betting, the RGA determined to engage in discussions with sports betting stakeholders with a view to collating the principal points into a central resource (this report) and to strengthening the dialogue and relationship between the betting and sporting industries.

1.10 The subsequent written consultation invited 239 stakeholders to respond to a range of commercial and integrity questions aimed at: sports; governments; gambling operators; and other interested parties. The consultation sought to obtain information regarding the basis of the commercial arguments present by sports and to consider the existing integrity mechanisms.

1.11 Overall, the response was limited both in number and in the information advanced, notably in relation to the professional sporting sector. There is, however, considerable material within the public domain that provided more than sufficient information for a detailed assessment of the legal, commercial and integrity aspects surround the sports betting debate.

1.12 The European Commission has rightly determined that sport is subject to EU competition law and internal market provisions in so far as it constitutes an economic activity (with the specificity of sport being assessed on a case-by-case basis), and has rejected a general exemption as proposed by the Independent European Sport Review, funded by UEFA.

1.13 EU case law provides that gambling is a service and subject to the application of the Treaty, notably Articles 49 and 56 TFEU (ex Art. 43 and 49 TEC). The Database Directive and judgements surrounding its application to sporting data such as fixtures lists, determined that this data amounts to creation and not investment, which does not fall within the scope of the protection of the Directive. This means that this potential source of revenue for professional sports can be nowhere near as high as they would like, or in some cases, had expected prior to the ECJ's ruling in *BHB v. William Hill*.

1.14 The concept of a 'fair return' as presented by sports is a misnomer, as it determines from the outset that sports are not receiving the appropriate level of fiscal benefits from the licensed gambling industry. It is worth noting that the latter provides €3.4bn per annum to EU sport alone, with €2.1bn (62%) contributed by private gambling companies.

1.15 This is by no means an inconsequential amount, and while it may not be as much as sports would like - no robust evidence or figures to support its claims for additional revenues from the gambling industry has been provided by the sporting sector - it clearly counters any suggestion that the licensed gambling industry puts nothing back into sport.

1.16 The gambling industry's financial commitment to sport manifests itself in numerous income streams and commercial deals. The assertion that licensed gambling operators exploit the sporting product and should pay additional revenues as a result does not recognize that many other products also seek to associate themselves and exploit sports to profit.

1.17 However, those businesses are not pursued for a greater contribution to the sporting sector, or control over their commercial products or trading practices. It must be underlined that the licensed gambling sector pays everything it is legally obliged to pay to sport and invests substantial funding over and above that amount, primarily in the form of sponsorship and joint ventures with sporting bodies.

1.18 In 2008 FIFA, UEFA and the IOC had combined revenue streams that amounted to over €4bn (effectively tax free) with the five major European football leagues accounting for another €7.6bn. In addition to this, sport and its participants receive numerous fiscal advantages through State aid and taxation measures, and use, or are located in, offshore tax havens.

1.19 This is not a criticism of any tax efficient policies or preferential tax treatments that are employed or enjoyed by sporting organisations, but it does bring into question the public attacks that have been made by some sporting representatives on online gambling companies who choose to base themselves in jurisdictions providing comparable taxation regimes.

1.20 The argument presented by sports that a new EU-wide statutory mechanism is required to permit sports greater control over the betting product and to enforce additional payments from licensed gambling operators does not appear to be valid, necessary or proportionate.

1.21 There is ample income within the professional sporting sector, which is markedly more affluent than the betting industry, to fund both integrity and grassroots sport. Whether or not that sporting income is currently being distributed in a fair manner through its various solidarity mechanisms is an issue for each sport to determine and not for this report to examine.

1.22 With regard to the integrity of sport, again professional sporting bodies seek control over the operation of the commercial betting product. Sport has determined that sports betting, or more specifically certain types of bets, make it more susceptible to corrupt activities and a result that sports should have control of betting and, as a minimum, receive integrity payments from licensed gambling operators that offer betting products on sporting events.

1.23 Unfortunately, corrupt activities do occur in sport (betting and non-betting related). To combat betting corruption, licensed gambling operators have encouraged professional sporting bodies to agree information sharing agreements and to put in place specific betting and/or corruption rules. Those operators have also invested considerable resources in establishing integrity mechanisms that seek to detect and deter corruption in sport linked to betting.

1.24 All of these are important ingredients in a joint effort by both industries to protect the sporting and betting products, but which have been principally promoted by licensed gambling operators. Indeed, licensed gambling operators have a particular commercial interest in ensuring that the sporting product, and by association, the betting product are not corrupted. It is fundamental to understand that the European licensed gambling industry is the likely victim of any fraud that is perpetrated and in no sense can it fairly be described as the 'polluter'.

1.25 This protection is, however, predicated on the establishment and enforcement of suitable rules by sports and their ability to act promptly when receiving information from gambling operators. There are some good examples within sport, but the vast majority declined to provide their betting rules as part of this study; the overall position is therefore unclear.

1.26 Some sporting bodies have publicly encouraged the enhancement of information sharing arrangements (MoUs) with licensed gambling operators, noting the benefits that such joint agreements provide to both industries. The establishment of such information sharing arrangements with the RGA formed a particular aspect of this report's consultation, yet of the 161 sporting bodies invited to discuss establishing an MoU, only 2 responded positively.

1.27 With regard to suggestions that the commercial sporting sector should have control of the betting product, again it has to be determined if the argument presented is valid and the action necessary and proportionate. The evidence strongly demonstrates that it is not.

1.28 As the British Gambling Commission has rightly pointed out, there would need to be a very strong evidence-based justification to introduce and enforce statutory licensing regulations that would essentially be a restriction on trade.

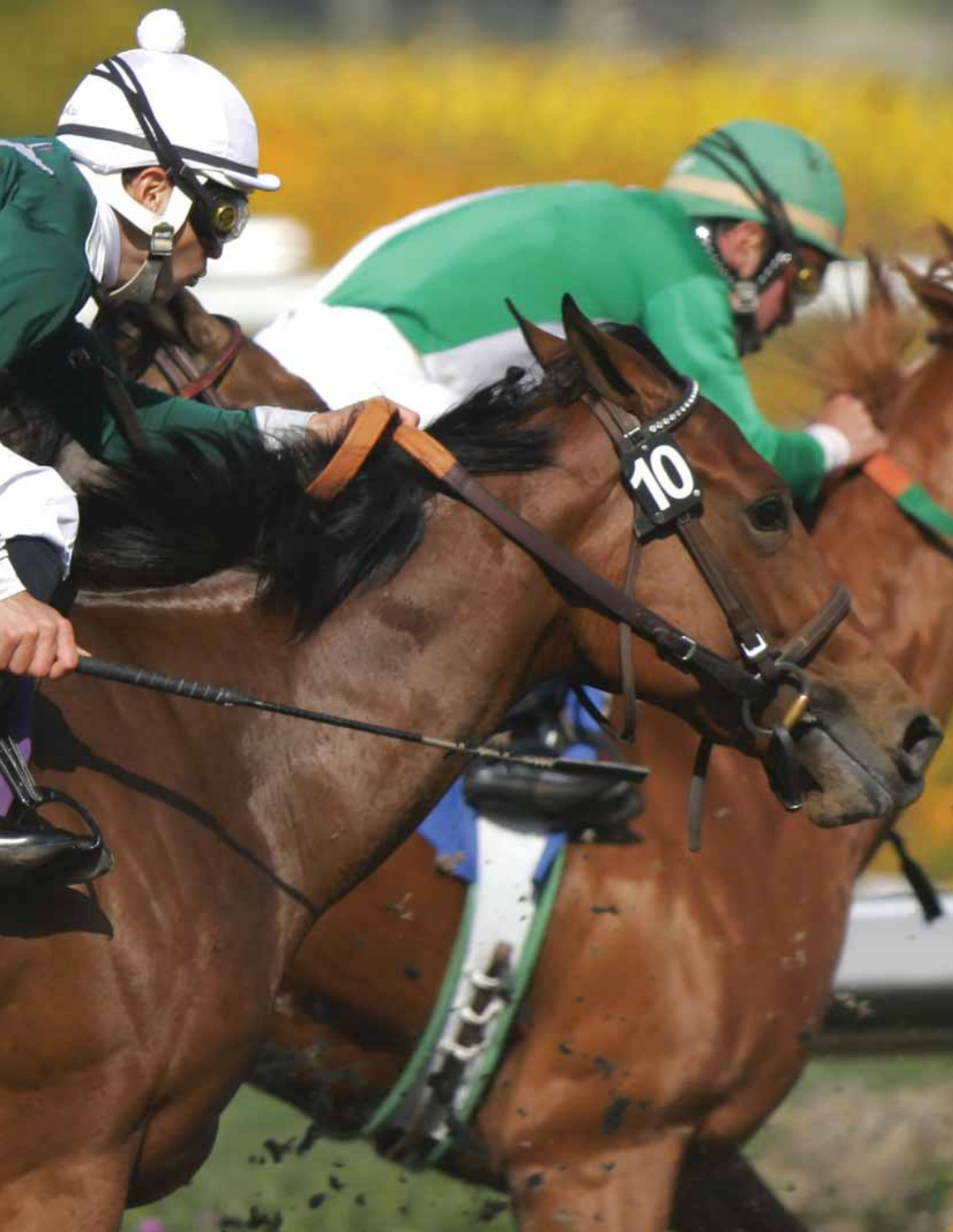
1.29 There is no available evidence to suggest that restricting bet types would prove an effective mechanism to ensuring a significantly increased level of protection for sport in a global market when the very people that constitute the threat are the very ones that would not be bound by such licensing or contractual restrictions.

1.30 What is self evident is that both the sporting and the licensed gambling industries have a common objective in safeguarding the integrity of sporting events, especially when the examples of serious corruption tend to point to the activities of organised crime groups and unlicensed betting operations which are commonly based outside of Europe.

1.31 Given the €3.4bn per annum that the gambling industry contributes towards the EU sports sector alone, it appears reasonable to suggest that sufficient integrity income is available and that, if issues surrounding integrity costs are of paramount importance, then they should be taken into account when agreeing commercial deals with gambling operators.

1.32 In the light of these many issues that are of interest to both parties there is an important need for them to engage in regular structured dialogue surrounding sporting integrity and the continued development of protective measures.

1.33 Following on from the analysis contained in this report, a number of confidential recommendations have been provided for the RGA to consider. As they are confidential they do not form part of this publicly available report.



Chapter 2: INTRODUCTION

2.1 The aim of this report is to analyse objectively the many legal, commercial and integrity issues associated with sports betting, and the relationship between the sporting and betting sectors. In doing so, the views of the principal stakeholders have been taken into account.

2.2 This introductory chapter will outline: the processes that have been employed in obtaining the information provided in this document; the evolution of digital platforms; the increasing use of those technologies to gamble on sport; and the stated opinions and concerns regarding sports betting that have been advanced by some stakeholders in recent years.

2.3 The remaining chapters will then consider the legal, commercial and integrity issues affecting sports betting, principally within the European Union (EU), but with reference to wider international influences and relevant evidence-based material.

2.4 This report has been produced for the Remote Gambling Association (RGA), within the broad terms of reference provided (see Figure 2.1).

2.5 It has been completed without a prejudged position and the process has sought to engage openly with all of the relevant sectors and to invite evidence-based material from those stakeholders. As such, it has been completed with a large degree of independence and without any bias.

The Remote Gambling Association

2.6 The Remote Gambling Association (RGA) is the largest trade association for online gambling operators in the world, representing nearly 30 companies¹ involved in the provision of gambling services, and the software and technology to deliver those services. As such, they represent many of the preeminent organisations in the field of global online gambling.

2.7 The RGA was formed in August 2005 following the merger of the Association of Remote Gambling Operators (ARGO) and the Interactive Gaming, Gambling and Betting Association (IGGBA). It is a condition of membership that all operators be licensed for gambling in Europe.

2.8 The organisation's members provide a range of online gambling services such as poker, casino games and bingo; depending on the licensing and legislative structure in operation, there is potentially an immeasurable variety of gambling products that can be offered.

2.9 Nevertheless, a significant focus of many RGA members' operations remains directed towards the provision of online sports betting services, through well-regulated and properly-licensed gambling regulatory frameworks, and the consequent promotion of sport and sporting events. Some members also provide other interactive betting channels, notably via the telephone, and extensive and multi-jurisdiction retail gaming and betting services.

2.10 With regard to the latter, RGA members make up a large part of the retail betting markets in the United Kingdom (UK) and Ireland, and a number of outlets throughout mainland Europe (in jurisdictions that license such operations). RGA membership also includes the largest betting exchange in the world and the leading global providers of gambling software amongst its stock market listed and privately owned companies.

2.11 The organisation's members consequently represent many of the foremost global and multi-platform licensed gambling businesses. The RGA, and its membership, is therefore an important stakeholder in the international gambling market and has a significant interest in the development of relevant commercial and regulatory policies in these areas.

2.12 These policies can have profound affects on the financial position of large multi-national corporations and the continued employment of an international workforce numbering tens of thousands. That in turn can also have financial affects on related markets, such as the sports sector, the financial outlay that operators attribute, and the promotion of sporting events.

¹ Bet365; Betfair; Chartwell Games; Cryptologic; Danoptra; Extrabet; Globet; JAXX, Ladbrokes; Microgaming; Paddy Power; PartyGaming; PKR, Playtech; Rank Group; SBObet; Skybet; Sportingbet; Sportech; Stan James; Stanleybet; Talaris; Totesport; Unibet; Victor Chandler; Virgin; William Hill; and 888.com.

Scope and Nature of the Report

2.13 Issues surrounding the availability of betting on sport have been gathering apace in recent years, both in a commercial and integrity sense. The debate has permeated into political mechanisms at all levels: state; national; and international. The professional sports movement has been particularly proactive in pressing the debate and promoting its views in these areas.

2.14 However, neither the RGA, nor the wider licensed gambling industry, has been invited to participate in many of the detailed discussions that have taken place, notably those that have increasingly been undertaken in sporting forums and discussions with policymakers. As such, it could be argued that these debates have been somewhat incomplete in content and nature.

2.15 This report has been produced in order to inform the consideration of the issues by the RGA and its members. In doing so it has taken account of the comments, notably from sporting organisations and representatives of some national and state governments within the EU, regarding the impact of sports betting and the contribution made by licensed gambling operators towards the integrity and the financing of professional sport.

2.16 In endeavouring to respond in a constructive manner, it was determined that this study should seek to engage with all of the key stakeholders and to explore the opinions and concerns advanced. The validity of those opinions and the establishment of additional mechanisms, noting the industry's existing legal, commercial and integrity responsibilities, could then be addressed in relation to the issues surrounding betting on sports.

2.17 This report has been completed on that basis and in line with the Terms of Reference (see Figure 2.1), as devised and overseen by the RGA Executive Committee and Secretariat.

Figure 2.1: Project Terms of Reference

1. To explore the principal challenges arising from the availability of betting on sport;
2. Engage with key stakeholders to elicit views and consider the validity of those opinions;
3. Produce a report detailing the key issues, notably, but not exclusively, within the European Union (EU);
4. Provide recommendations on how best to meet any issues and challenges; and
5. Complete this work within a six month period (mid-June to mid-December 2009).

2.18 In seeking to meet all of the Terms of Reference, this report focuses on the key areas of the legal, commercial and integrity issues affecting betting on sport. There is particular coverage of related EU issues, although references and comparisons are made within this document to the wider international landscape.

2.19 Noting the above, the project was split into four distinct phases: development of approach; written consultation; oral consultation; and production of the report (see Figure 2.2 below) within the allotted six-month timeframe specified in the Terms of Reference.

Figure 2.2: Project Timetable

Phase 1 (mid to end of June)	Consideration and development of approach
Phase 2 (July to end of August)	Written consultation and collation of relevant source material
Phase 3 (September to mid-October)	Consideration of written response and oral consultation
Phase 4 (mid-October to mid-December)	Production and delivery of report

2.20 It had been the intention to invite as many stakeholders to participate in this process as possible; to that end, and noting the vast array of interested parties, a written consultation process was determined to be the most effective course of action to meet this objective. The results of that consultation process are provided in the following chapter.

2.21 To that end, selected organisations with an interest in the issues under discussion were contacted and invited to respond to one of four questionnaires tailored to specific sectors. However, the consultation was open to any party that wished to engage in this process and the questionnaires were freely available from the RGA's website.²

2.22 The consultation was publicised via a number of sports and gambling related online media channels. The written consultation, along with existing publicly available source material, formed the basis of subsequent oral discussions. Those discussions were held with a broad range of stakeholders, and where those organisations were willing to participate.

2.23 All detailed responses to the written and oral consultations, and the contribution of those sources, have been gratefully received. The information gleaned from those exercises has made a significant contribution to the contents of this report, and ultimately to the scope and nature of the conclusions (see Chapter 7) and proposed recommendations to the RGA.

2.24 The remarks attributed to licensed gambling operators are not confined to the activities of RGA members; the report considers and references the impact of the wider online and retail licensed gambling sectors and the industry's interrelationship with the professional sporting sector, notably within Europe, but also to a lesser degree at a global level.

2.25 It should also be noted that a wide range of source material has contributed to the content and findings of this report, and citations are contained in the footnotes. Particular emphasis has been placed on the publicly available documentation produced by European institutions and sporting organisations in recent years.

2.26 The report has been produced with the principal aim of providing the RGA with an evidence-based resource from which to consider its future approach to sports betting issues. However, it is hoped that it will also make a useful contribution towards the wider sports betting debate and any subsequent policy discussions.

2.27 As this report has been written during the latter half of 2009, figures for that year have been calculated using the average for the first ten months of the year. All figures prior to and including 2008, have been calculated using the average exchange rate for that year, and all estimated figures for and after 2009, at the 2009 rate.

2.28 This has principally involved: US dollars; pounds sterling; and euros. It should also be noted that different jurisdictions have different financial years and that the figures have been used in relation to annual reports may vary accordingly. The exchange rates for 2008 and 2009 have been calculated as follows:

- 2008 at \$1 = €0.683 (US Embassy figure) and £1 = €1.259 (Bank of England figure);
- 2009 at \$1 = €0.73 (x-rates.com) and £1 = €1.13 (x-rates.com).

2.29 Some of the figures contained in this document have been rounded (up when 0.5 or more, and down in all other instances) and as a result may show slight variations and not therefore tally as precisely as might otherwise be the case. In addition, where figures were already available or had been re-calculated in euros by the authors' of other documentation, the figures have been accepted at those rates and may again show a slight variation to the rates listed above. All reasonable efforts have been made to ensure the accuracy of all of the figures.

² www.rga.eu.com

The Global Gambling Market: Sports Betting

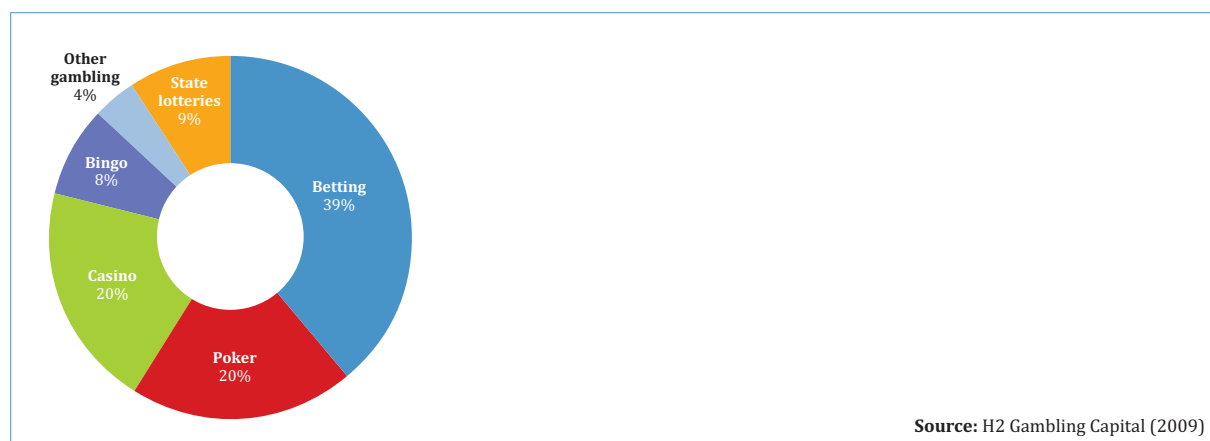
2.30 The development and evolution of new technologies has made a considerable impact in the operation of, and interaction between, every sector of the global economy. The impact upon the gambling industry has been no different in that regard, opening new product platforms and access to a wider consumer base - a fuller account of the growth of those new technologies is contained in the Appendices section of this document.

2.31 Telephone betting has been in place for some considerable time; however widespread availability of computers and mobile phones has seen increasing global internet access and broadband penetration. Through these technologies, e-commerce has become ever-present and a routine modern-day activity.

2.32 It has also created a highly competitive market place, both between other interactive gambling companies, the long unchallenged pre-eminence of the retail sector, and fiscal measures between jurisdictions, all of which has considerably benefited consumers but which has also challenged the viability of national laws primarily based on physical boundaries.

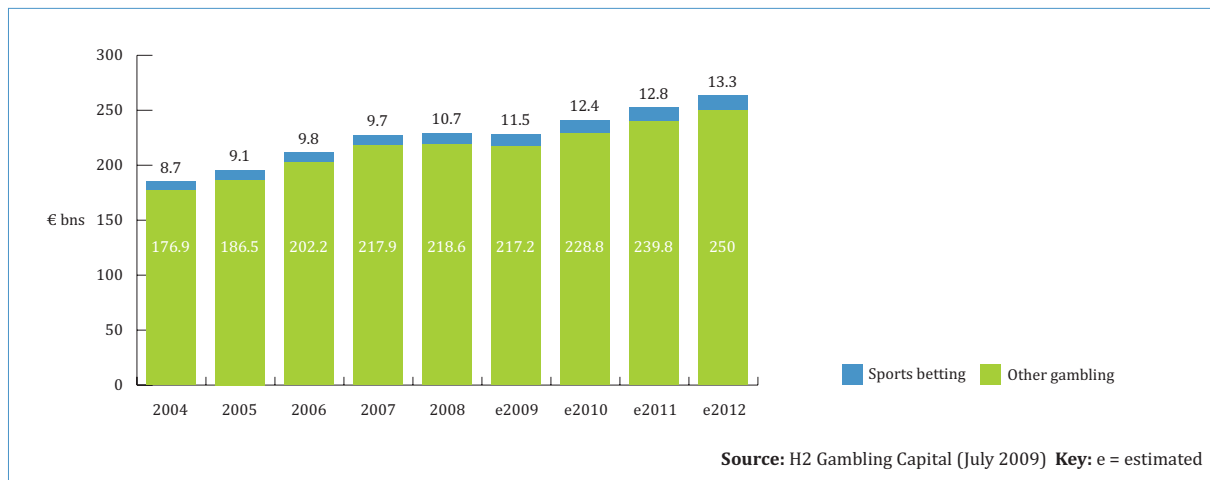
2.33 The sports betting market is but one of numerous products that licensed gambling operators can provide. Some seek to offer a variety of these products, whilst others seek to focus on offering a particular gambling service. Figure 2.3 (below) shows that betting is an important, but by no means the principal part of the market.

Figure 2.3: Predicted global eGaming gross gambling yield (GGY) by product percentage (2009)



2.34 Indeed, the global online gaming market is considerably larger and more profitable than sports betting, at €218.6bn and €10.7bn in 2008. This is expected to continue in the future, with gross gambling yield rising to €250bn and €13.3bn respectively in 2012 (Figure 2.4).

Figure 2.4: Global sports betting v other gambling gross win in €bns (2004-2012)

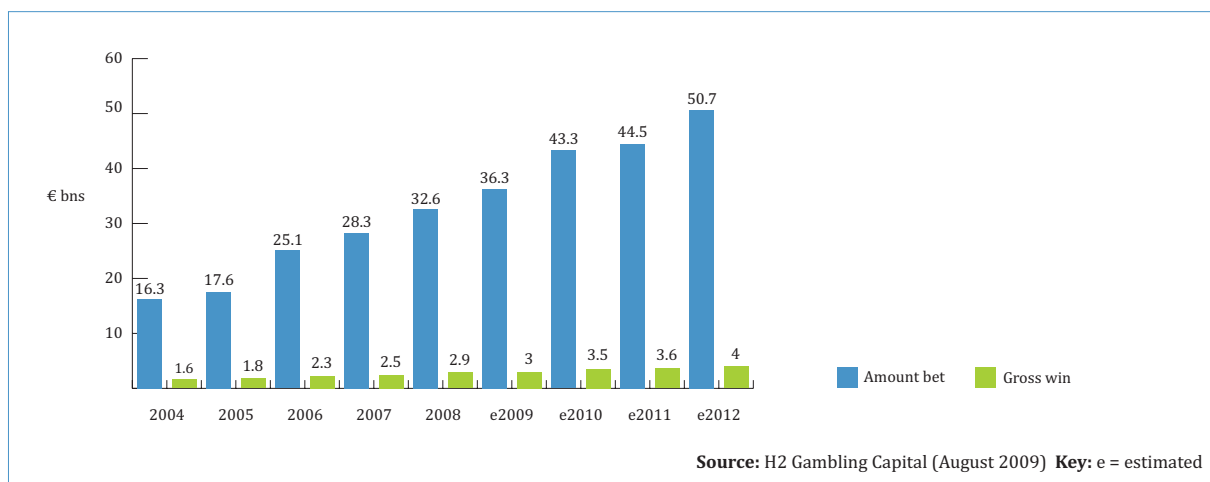


2.35 Nevertheless, betting on sporting events appeals greatly to consumers and it is therefore a product that is in demand; with experienced and knowledgeable employees constructing suitable markets, responding to sports-based information and consumer investments, this can prove a profitable product for licensed gambling operators, albeit within tight margins.

2.36 Indeed, consumer demand has added to increasing competition in the sports betting market place across all platforms (on and offline), and has put further pressure on the odds offered by operators and as a consequence has greatly benefited consumer choice and value.

2.37 Figure 2.5 shows that of the amount bet globally in 2004 (€16.4bn), gross win equated to around 10% (€1.6bn). By 2012, it is estimated that whilst the amount bet will have increased significantly to over €50bn per annum, gross win will have fallen to 8% (€4bn).

Figure 2.5: Global online sports betting in €bns (2004-12)



2.38 This sports betting product demand has had comparable knock-on affects to the already considerable commercial investment by licensed gambling operators in sport itself as operators seek to associate their products with successful sporting products on which they offer bets.

Sports Betting: Concerns and Relevant Documentation

2.39 A short overview, to provide some context to the scope of interest in issues surrounding the growth of sports betting, and a summary of the opinions and actions of leading sporting organisations and European-based institutions has been provided in the following paragraphs (this is not meant to be an exhaustive list).

2.40 Issues and views contained in this section will be expanded upon, where appropriate, with reference to specific topics in later chapters. The following paragraphs will outline the recent comments and involvement of the following organisations with regard to betting on sport:

- FIFA;
- UEFA;
- European Non-Governmental Sports Organisations (ENGSO);
- Sports Right Owners Coalition (SROC);
- Independent European Sport Review (IESR);
- European Commission White Paper on Sport;
- European Parliament; and
- Council of Europe.

FIFA

“Modern technology, and especially the opportunities for sports betting via the internet, represents an insidious danger to the integrity of the game.”

J S Blatter, FIFA President (May 2008)

2.41 In June 2005, concerned at the growth of sports betting and potential adverse impacts, FIFA stated that with “regard to betting in football, the [FIFA] Executive Committee ratified that the proposal for a suitable early warning system be tested,” and that its “Code of Ethics will be amended so as to prohibit anyone directly involved in a match from betting on that match.”³

2.42 The Code of Ethics, which came into force in September 2006, has a specific reference to betting (Article 15), precluding officials, players and players’ agents from gambling on football matches with which they are connected. In addition, FIFA’s 55th Ordinary Congress in Marrakech on 11 and 12 September 2005, concluded that a “special task force be set up to consider these issues in more detail and determine appropriate actions and solutions.”

2.43 The FIFA Task Force ‘For the Good of the Game’ began work in November 2005 with a view to formulating proposals in readiness for a meeting in early 2006, which included a separate event specifically on illegal betting. Lord Faulkner, a member of the British House of Lords and author of a report about betting on sport, was enlisted as a specialist.⁴

2.44 In March 2006, a Task Force directive determined that “every player, official and match official would be required to sign a declaration before the World Cup, pledging not to take part in betting of any kind in connection with the 2006 FIFA World Cup matches.”⁵

³ fifa.com ‘European television rights for 2010 FIFA World Cup to be marketed by FIFA and EBU’ (June 2005) ⁴ fifa.com ‘Transparency and good governance at heart of debates (February 2006) ⁵ fifa.com ‘Deadline for submitting list of 23 players remains 15 May 2006’ (March 2006)

2.45 It was also determined that an Ethics Committee should be established. Chaired by Lord Sebastian Coe, it met for the first time in October 2006, with the objective of “protecting and promoting the integrity and transparency of world football.”⁶ The sports betting monitoring tool was established in July 2007, following a pilot exercise during the 2006 World Cup, and conducted by Early Warning System GmbH, a company founded specifically for this purpose.

2.46 In promoting this new monitoring tool, FIFA stated that it would “immediately sign contracts via the company [EWS GmbH] with bookmakers and betting organisations, under which the latter will be required to report any irregular betting activities.”⁷ FIFA also reported that betting represented a potentially huge threat, “an insidious danger to the integrity of the game”⁸ and that it was reacting to that challenge.

2.47 At FIFA’s ‘Sports Betting – Mutual Dependence and Dangers’ conference, held in November 2008 and with attendance from sports and betting organisations, the FIFA President stated that “FIFA cannot prevent abuse due to sports betting” and that football “is a victim, and we want to take action against people who abuse the platform that football provides.”⁹

2.48 In March 2009, FIFA announced that it was “committed to doing all it can to protect the integrity of national and international football competitions from the influence of sports betting.” Furthermore, that to this end, “FIFA offers its member associations specific measures for the protection of football through its subsidiary Early Warning System GmbH (EWS).”¹⁰

UEFA

“Betting is a source of funding but also a risk for football, especially the integrity of competitions. It is only right football obtains its fair share of income from betting.”

UEFA’s 11 Guiding Principles – Sporting Integrity and Betting (2009)

2.49 The increased focus and public commentary on the impact of sports betting from UEFA has been markedly evident since the election of Michel Platini as President in January 2007, and which followed the publication, in November 2006, of the Independent European Sports Review and its betting proposals (see later paragraphs), as commissioned by UEFA.

2.50 This followed a number of betting related incidents, such as the Hoyzer case, and prompted Mr Platini to remark early in his Presidency that the “battle against doping, corruption and illegal betting in football goes on unabated.”¹¹ He also reinforced the message to the EU of the need for an “adapted legal framework”¹² to respond to sports’ specificity.

2.51 Like FIFA, UEFA also has an early warning system which works with licensed gambling operators to detect suspicious betting patterns. At a meeting in Nyon in February 2008, UEFA acknowledged the importance of working with gambling companies to protect the sport.¹³

2.52 UEFA also announced later in 2008, that it in “order to do more to protect the integrity of football, we believe that we need to set up a special investigations unit to assist us in looking more deeply in to cases of betting or corruption,” and to establish a Europe-wide network.¹⁴

2.53 Like other SROC members (see later paragraphs), UEFA supports the European Parliament’s Report on the ‘Integrity of Online Gambling’ and for measures providing “stronger protection of the integrity of sport and a fair financial return from sports betting,” noting that “irregular betting activities represents a major cross-border threat for sports bodies”.¹⁵

2.54 These messages were delivered at a meeting of over twenty SROC representatives in Brussels in December 2008, and which were reinforced by Mr Platini during a keynote address to the meeting of the Council of Europe’s Sports Ministers the same month. The latter agreed an Ethics Resolution to consider, amongst other issues: match-fixing; corruption; and illegal betting.

⁶ fifa.com ‘Ethics Committee vows to defend integrity of football at inaugural meeting’ (October 2006) ⁷ fifa.com ‘FIFA extends early warning system for monitoring sports betting’ (August 2007) ⁸ fifa.com ‘Joseph S. Blatter: Drawing the line’ (May 2008) ⁹ fifa.com ‘FIFA fighting for the integrity of football’ (November 2008) ¹⁰ fifa.com ‘FIFA supports member associations in monitoring sports betting’ (March 2009) ¹¹ uefa.com ‘2007-to date: A new era begins’ ¹² uefa.com ‘Platini’s message of unity and respect’ (January 2008) ¹³ uefa.com ‘Talks on illegal betting’ (February 2008) ¹⁴ uefa.com ‘Special Unit to tackle corruption’ (September 2008) ¹⁵ uefa.com ‘Online betting and match-fixing talks in Brussels’ (December 2008)

2.55 The UEFA President outlined his eleven guiding principles at the Ordinary Congress in March 2009, which he determined would “represent a basis for our future discussions with the political, economic, social and sporting worlds.”¹⁶ That includes a specific betting related principle focused on protecting the sport’s integrity and obtaining a ‘fair return’ from betting.

European Non-Governmental Sports Organisations (ENGSO)

“The common aim.....is to protect the national lotteries and gambling systems”

ENGSO mid-term Strategy Overview (2007-2011)

2.56 The European Non-Governmental Sports Organisations (ENGSO) is the “European umbrella body for the National Sports Confederations and National Olympic Committees”.¹⁷ Its Strategic Plan (2007-2011) is designed to “influence sports political agenda...within the sports policy-making area within Europe”, notably the various sports forums.¹⁸

2.57 To that end, ENGSO states that it attended all of the meetings related to sport, including the Directors’ Sports Forum and Ministerial meetings during the French Presidency of the EU (July-Dec 2008). The organisation also participated in the Governing Board of the Council of Europe’s Enlarged Partial Agreement on Sport and the Council’s Sports Ministerial Conference in December 2008, notably on ethics which includes betting revenue and integrity issues.

2.58 In its lobbying of European institutions, ENGSO produced a pamphlet for prospective MEPs entering the European Parliament as a result of the EU-wide elections in mid-2009. The document identifies and seeks support from policymakers for eight key policies and which includes securing continued “contributions from state-run lotteries and state-licensed gambling bodies” for sport and that “the EU will not interfere with national funding schemes”.

2.59 In addition, the pamphlet also asks that European policy-makers “recognise that the integrity of sport is threatened by suspect betting practices and promote the prospect of betting operators providing a fair return for sports to ensure integrity”.¹⁹

2.60 In reinforcing this message, ENGSO has reached a cooperation agreement with the European Lotteries and Toto Association to “strengthen the link between voluntary non-profit sports organisations and national lottery providers” with a view to “protecting national lotteries and gambling systems”.²⁰

Sports Rights Owners Coalition (SROC)

2.61 The Sports Rights Owners Coalition (SROC) was established in 2006 as an “informal group of representatives of international and national sports bodies with a particular focus on rights issues.” To that end the body shares best practice, raises awareness of issues affecting sports, and encourages sports to “take joint action to protect and promote their rights.”²¹

2.62 As such it seeks “recognition from Governments across the world, and effective protection for their rights under law.” That includes, the creation of a “regime for sports betting that enables sport to protect its integrity, and establishes a fair return to sports for the use of their events by betting operators.”²²

2.63 The organisation presently has around 40 members across a range of sports. It has strongly supported the European Parliament’s Report on the ‘Integrity of Online Gambling’, which recommended the protection of sporting events from unauthorised commercial use, and the French draft law proposals to require an agreement between a sporting event organiser and a French licensed online betting operator before betting can take place on that event.

2.64 SROC continues to lobby European institutions and Member States to establish additional statutory mechanisms to deliver what it determines to be a ‘fair return’ for use of the sporting product by gambling operators.

¹⁶ uefa.com ‘UEFA Direct’ (May 2009) ¹⁷ ENGSO ‘Sport for an Active and Competitive Europe’ pamphlet ¹⁸ ENGSO midterm overview ¹⁹ ENGSO ‘Sport for an Active and Competitive Europe’ pamphlet ²⁰ engso.com ²¹ sroc.info ²² Ibid.

Independent European Sport Review

“There is a strong need to issue a directive on betting in order to control betting on sports.”

Independent European Sport Review (October 2006)

2.65 Whilst not an exercise formally enacted by a European institution, the Independent European Sports Review (IESR)²³ was initiated by the Sports Ministers of France, Germany, Italy, Spain and the UK, following discussions at the Informal EU Sports Ministers’ meeting during the UK Presidency of the EU (July to December 2005).

2.66 The review process was instigated in response to the uncertainty surrounding the EU Constitution Treaty (and its article on sport), and was led by Jose Luis Arnaut (previously Portuguese Deputy Prime Minister and Minister for Sport). As such, the report can be said to have a degree of credibility both within sport and various European political mechanisms.

2.67 It was initially devised to assess issues affecting the modern football environment within Europe, particularly the EU, and the implementation of the principles of the European Council’s Nice Declaration of 2000 regarding the special nature of sport (see Chapter 3).

2.68 Whilst still principally focused on football, the contents and recommendations of the final document (published in October 2006) were deemed to encapsulate the general issues facing European sport. Many sports have, however, still been critical of the report as a football-centric document that is not applicable across the sports sector.²⁴

2.69 With wide-ranging terms of reference, principally encompassing corporate and social governance, the report attempts to address issues such as the protection of the European sports model, collective selling, intellectual property, solidarity mechanisms and meeting the challenges provided by issues such as doping and “illegal gambling”.²⁵

2.70 To that end, it makes a range of recommendations regarding these issues, and in particular that EU institutions should “provide legal security [for sport] by means of the most appropriate legal instruments, for example, directives, block exemption regulations, guidelines or other national or European legislative instruments.”²⁶

2.71 With regard to the latter approach, there is specific reference to “corrective mechanisms to secure the financing of sport in general and football in particular in the event of a liberalised betting market, e.g. though the payment of a tax” and to securing “the protection of intellectual property rights for sports and football fixture lists.”

2.72 The report lists a range of bodies (FIFA, UEFA, FIFPro, Football Supporters Federation and the European Commission, amongst others) that contributed to the review, which also received the “support of the European Team Sports Federations”²⁷, but no representative or spokesperson for the licensed gambling industry is apparent.

2.73 The process, “independent of the football authorities, but commissioned by UEFA”, was intended to produce a report that would “consider and provide tangible recommendations for possible implementation during future [EU] Presidencies.”²⁸ In that respect, the report could be viewed as the platform for recent activity by professional sporting bodies in this area.

European Commission

“Competition law and Internal Market provisions apply to sport in so far as it constitutes an economic activity... the specificity of sport will continue to be recognised, but it cannot be construed as to justify a general exemption from the application of EU law.”

European Commission White Paper on Sport (July 2007)

²³ Independent European Football Review ²⁴ euractiv.com “Sports is not only about football” (October 2006) & asser.nl ‘Sport Governance in Europe: White paper consultation by Commissioner Jan Figel with European Sport Federations’ (September 2006) ²⁵ Independent European Football Review ‘Context and Terms of Reference’ ²⁶ Independent European Sports Review – Chapter 7, Recommendations ²⁷ Independent European Sports Review – acknowledgements, pages 3-5 ²⁸ Independent European Football Review ‘Context and Terms of Reference’

2.74 The European Commission White Paper on Sport, published in July 2007, contains 53 recommendations (to be implemented 2007-12) across a range of sports-related issues in three main sections: the societal role of sport; economic dimension; and the organisation of sport.

2.75 The document does not contain any specific sports betting actions, but notes that in “many Member States sport is partly financed through a tax or levy on state-run or state licensed gambling or lottery services.” It also invited Member States “to reflect upon how best to maintain and develop a sustainable financing model for giving long-term support to sports organisations,”²⁹ and committed to a study on the financing sport (including gambling income).

2.76 The White Paper also notes that a “growing part of the economic value of sports is linked to intellectual property rights”, but again there is no specific action in this area. Some sports and Member States expressed some disappointment with the White Paper, notably its conclusion surrounding the specificity of sport (see Chapter 4), namely that sport is subject to the application of EU law, and that a general exemption for sport from law was not justified.³⁰

2.77 Sports betting has increasingly been an issue for discussion between Member States and sporting organisations, both within and outside of European sports forums. The Biarritz Declaration agreed by Sports Ministers during the French Presidency of the EU committed the European Commission to regular dialogue with the international sports movement, and betting (both the integrity and the ‘fair return’ argument) has been an issue during those deliberations.

2.78 Discussion regarding sports betting appears to be gathering momentum in this sports forum and, with a competence for sport (albeit supporting) and the associated dedicated funding and more formal role for sport in Commission policies with ratification of the Lisbon Treaty, there is good reason to suppose that sports will heighten their activity via this platform.

European Parliament

2.79 The European Parliament Report on the ‘Integrity of Online Gambling’ (aka the ‘Schaldemose Report’) was adopted in February 2009. The report supports the principle of subsidiarity and the maintenance of national gambling laws through which Member States may control their gambling markets and protect finances to sporting activities.

2.80 It further comments that online gambling poses a potential threat to sport and highlights that it believes that “sports bets are a form of commercial exploitation of sporting competitions,” recommending that a sports organisers right be established to provide a ‘fair return’ to both amateur and professional sport.

2.81 A ‘Minority Opinion’ was critical of the document, stating that the report had gone beyond its remit and undermined some of the principles of the ‘single market’. In addition, it noted the practical and legal limitations of proposed methods to block online service provision, and that the report does not adequately reflect the position in all Member States.

Council of Europe

2.82 The Council of Europe has also entered the integrity discussion. The 11th Council of Europe Conference of Ministers responsible for Sport, held in Athens in December 2008, agreed a resolution that invites the Council, through its Enlarged Partial Agreement on Sport (EPAS), to consider: match-fixing; corruption; and illegal betting.

2.83 The resolution proposes that the Council’s EPAS “draw up a new draft recommendation to [Member] States on corruption, match fixing and illegal betting which could form the basis of a possible new convention on these subjects to help achieve integrity controls and a ‘fair return’ to sport for grassroots funding as regards betting.”³¹

²⁹ European Commission White Paper on Sport (July 2007) ³⁰ European Commission White Paper on Sport (July 2007) ³¹ Council of Europe Sports Ministerial Ethics Resolution (December 2008)



Chapter 3: CONSULTATION PROCESS

3.1 As the remarks in Chapter 2 clearly demonstrate, there has been considerable commentary (much of it negative) surrounding the growth, availability and impact of betting on sporting events in recent years, most notably via the sports betting platforms provided by remote gambling companies operating from what have been termed ‘offshore’ locations. The latter has become a catch-all phrase to describe any operator licensed in a different jurisdiction.

3.2 The acceptance of bets by operators licensed within these offshore locations, and therefore outside of the direct legal and fiscal control of jurisdictions from which bets are placed by consumers resident therein, has caused concern with regard to the impact on national gambling markets and the funding and integrity of sports within the EU in particular.

3.3 The availability of gambling, its position within society and association with sport can vary greatly from jurisdiction to jurisdiction. The RGA, recognising the increasing focus on sports betting through a number of national and international political and sporting forums, therefore determined to explore the relationship between betting and sport in more detail.

3.4 To assess fully the validity of the opinions that have been advanced in relation to sports betting, the RGA decided to engage in discussions with sports betting stakeholders with a view to collating the principal aspects of this information into a central resource (this report) and to strengthening the dialogue and relationship between the betting and sporting industries.

3.5 As the previous chapter stated, this report has been produced with the primary aim of providing the RGA with an evidence-based resource from which to consider its future approach to sports betting. To that end, this consultation also provided an important opportunity for sports betting stakeholders to advance their views and influence the findings of this report.

3.6 For a full and productive debate to take place regarding any issue there must be an opportunity for all principal parties associated with that issue to express their views and opinions, preferably with supporting evidence, so they can be properly considered. To date, there has been a lack of regular detailed discussions of that nature, notably at an international level, concerning the growth of sports betting, the associated risks and potential solutions.

3.7 It was hoped that this process would, in addition to influencing the RGA's future policy considerations, provide a platform for the gambling and sporting industries to engage in more proactive and meaningful debate to address sports betting issues. To that end, and in seeking to meet the objectives of the project's Terms of Reference, two central areas of contention were identified in relation to the growth and availability of sports betting: commercial; and integrity.

3.8 These two principal issues consequently formed the basis of the consultation and subsequent discussions with a variety of stakeholders, and ultimately the conclusions provided within this document and separate recommendations for the RGA and its membership to consider in relation to future policies and approaches regarding sports betting issues.

The Approach

3.9 It was determined that the most effective and inclusive approach to exploring the wide range of interests and opinions surrounding sports betting would be to conduct a written consultation aimed at sports betting stakeholders, and then from that evidence base to have further discussions with selected parties to explore the responses to that exercise.

3.10 As the project plan timetable in Chapter 2 outlines (see Figure 2.2), the consultation process consisted of two principal stages, within the project's overall four stage plan:

- firstly, the written stage (principally conducted from 1 July to 14 August); and
- secondly, the oral stage (principally conducted from mid-August to mid-October).

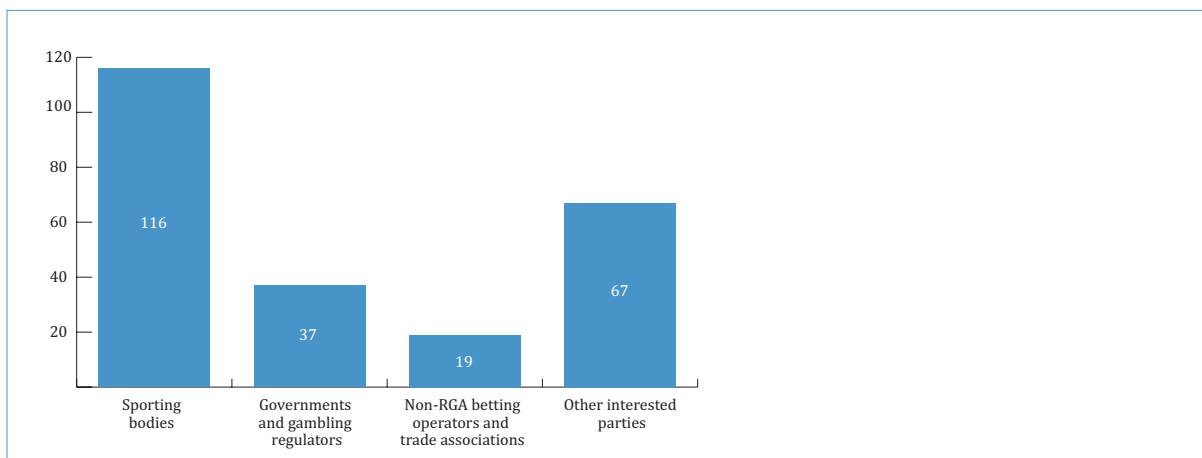
3.11 Given the widespread interest in this issue, clearly evident from the comments outlined in Chapter 2, it was hoped that those interested parties would fully engage in this process and provide detailed evidence to justify those positions. As a consequence (and as stated above), a considered debate could then take place, notably between the betting and sporting industries, rather than through governments or the media, which has principally been the case to date.

3.12 With the intention of inviting as many stakeholders as possible to participate in this process, and noting the vast array of interested parties, the consultation was open to any individual or organisation to respond and publicised accordingly. In addition, a number of parties were specifically identified and contacted as organisations that had either expressed a view on sports betting issues, or which were considered as organisations that might wish to contribute. This constituted some 239 organisations, split into 4 distinction categories:

- sporting organisations;
- governments and gambling regulators;
- non-RGA betting organisations and trade associations; and
- other interested parties.

3.13 Figure 3.1 (below) details the division of invitations by the four principal categories. Unsurprisingly, sporting bodies represented by far the largest sector consulted. It should be noted that additional sub-categories were also identified; these will be expanded upon in the specific paragraphs relating to each principal category later in this chapter.

Figure 3.1: Organisations invited to respond to the consultation



3.14 Whilst this process was primarily EU focused, it was also the intention to ensure that an international perspective was achieved. Invitations were, therefore, sent to a range of parties reflecting the four principal categories across the major continents.

3.15 Engagement in the consultation process was conducted on the basis that the evidence provided (both written and oral) would not be made publicly available by the RGA nor directly quoted in the report unless the responding organisation determined to place it in the public domain, or it was otherwise freely available.

3.16 To help focus the discussion, a range of questions were devised and copies attached to the invitation letters, with associated emails providing links to the downloadable versions of these documents on the RGA's website (available for any party to access). Where possible, both an email and a letter was sent to each of the invited parties to ensure receipt.

3.17 The invitations specifically requested *individual* responses, to fully represent stakeholders' varying opinions and positions, and thereby allowing a comprehensive picture surrounding sports betting issues to be compiled and assessed, notably concerning integrity.

3.18 A full list of those parties invited to respond to this consultation, and identification of those who responded, is contained in the Appendices to this document.

The Questionnaires

3.19 The central list of questions, reflecting the principal issues under discussion, was developed and then employed to produce a separate questionnaire for each of the four stakeholder categories. The scope of the questionnaires, whilst varying slightly for each category, primarily covers the same issues: commercial and integrity aspects of sports betting.

3.20 The range of questions: 16 for other interested parties; 22 for governments and regulators; and 24 for both non-RGA betting organisations and sporting bodies, presented some challenging, although not unreasonable, questions for stakeholders to consider and respond, notably in relation to recent opinions promoted by some sporting bodies and governments.

3.21 The initial commercial section of the questionnaires sought to explore the scope and nature of the existing intellectual property (IP) arrangements affecting sports, and invites responding parties to suggest what alternative mechanisms (if the existing arrangements aren't sufficient) should be in place.

3.22 It was hoped that this would encourage stakeholders to provide a thorough explanation of the existing position regarding IP, any deficiencies inherent in that arrangement, and a comprehensive justification of the necessity for any alternative IP arrangements specifically for sports and sporting events both at a national, EU and wider international levels.

3.23 The IP ownership and relationship between national and international sporting bodies was also posed, again with a view to clarifying the existing and potential future applications of IP legislation surrounding sporting events, and the division of ownership rights.

3.24 The scope and nature of existing commercial relationships between sports and licensed gambling operators, along with the value of betting in the promotion of the sporting product, the potential impact of restrictions upon the ability of licensed operators to offer sporting bets, and the application of EU laws to sport (e.g. should it have an exemption), were also posed.

3.25 The integrity section similarly sought to explore the scope of existing arrangements, their effectiveness, and to provide an opportunity for stakeholders to advance examples of alternative arrangements that could be established to improve integrity systems.

3.26 Emphasis was also placed on establishing the level of suspicious betting reportedly affecting each sport, the cost of any integrity measures that may be employed, and the extent to which that betting-related integrity expense might be accounted for via existing commercial revenue streams with licensed gambling operators (all of these will vary from sport to sport).

3.27 The questionnaires further enquired what integrity arrangements sports had with licensed betting operators, if they would be prepared to have discussions with the RGA regarding the establishment of an integrity memorandum of understanding (MoU), if one did not already exist, and the provision of associated training and development programmes.

3.28 Finally, the questionnaires sought views from stakeholders on the media reaction to suspicious betting patterns relating to sporting events and the subsequent impact of this reporting on sports and their participants (e.g. the reputations of players and officials).

3.29 The questionnaires are reproduced in their entirety in the Appendices to this document.

Promotion of the Consultation

3.30 In addition to sending out the invitation letters and emails to selected parties, a press release was also issued on the launch of the consultation on 1 July 2009.

3.31 The press release outlined the process, advising stakeholders that the aim of the review was “to provide the RGA’s members with a thorough and objective assessment in order to enable them to take informed decisions” and that it was hoped that the review would also “identify ways in which the relationship between betting and sports can be usefully developed.”

3.32 The RGA website carried a prominently positioned section on its home page devoted to the consultation, which also provided all of the questionnaires (available to download as Word documents), a link to the press release and relevant contact information.

Written Consultation Responses

3.33 The written aspect of the consultation officially ran from 1 July to 14 August 2009. A number of responses were received after this period, in some cases up to 4 months afterwards, but all of the information provided has been considered in the completion of this study and the participation of all responding parties and the provision of evidence has been appreciated.

3.34 As has been highlighted, the consultation requested individual responses from stakeholders so that a comprehensive analysis of the opinions, and the development of integrity mechanisms in particular, could be considered and recommendations provided to the RGA on how best to engage with stakeholders regarding sports betting issues.

3.35 Unfortunately, many sporting organisations determined to respond as a single group under the banner of the Sports Rights Owners Coalition (SROC). Whilst one central response was provided in that particular instance, each member of that organisation which was invited to participate in this study has been attributed as responding in this report’s statistical analysis.

3.36 The appropriateness of allocating a return to all of the SROC bodies invited to engage in this study (as opposed to just SROC) was given careful consideration. Ultimately, the wishes of these sporting bodies to respond via this approach were accepted and, rather than just a single response under SROC, each of those members was attributed as responding.

3.37 The overall consultation response level equated to 47 (or 20%) from 239 invitations; that represents a reasonable statistical return.

3.38 Some organisations chose not to use the questionnaire template in their responses, which was not essential, but it was noticeable that in those instances the responding party often failed to answer many of the questions posed to them either at all or to any meaningful degree. Whilst the questionnaire asked some admittedly challenging questions, this was disappointing.

3.39 Again, this was particularly the case for sporting organisations, notably surrounding the state of their integrity operations, the rules and regulations that sports have (or do not have) in place relating to betting, and any fiscal impacts from the operation of those mechanisms. It was exactly to establish information of that nature, that individual responses were requested.

3.40 That does not serve to invalidate this study or the responses, but in some cases limits the capacity to fully evaluate stakeholders’ positions on commercial and integrity matters with regard to each individual sport and sporting body, especially where additional information surrounding these matters is not easily obtainable. The impact of this will be discussed in more detail in relation to each category in the sections below and in later chapters of this report.

3.41 The lack of individual responses had less impact in relation to commercial matters, where the issues are more polarised, where organisations have reached a general consensus (e.g. SROC), and which are not therefore subject to different risks or levels of internal regulatory actions as can be the case surrounding integrity matters involving sporting bodies.

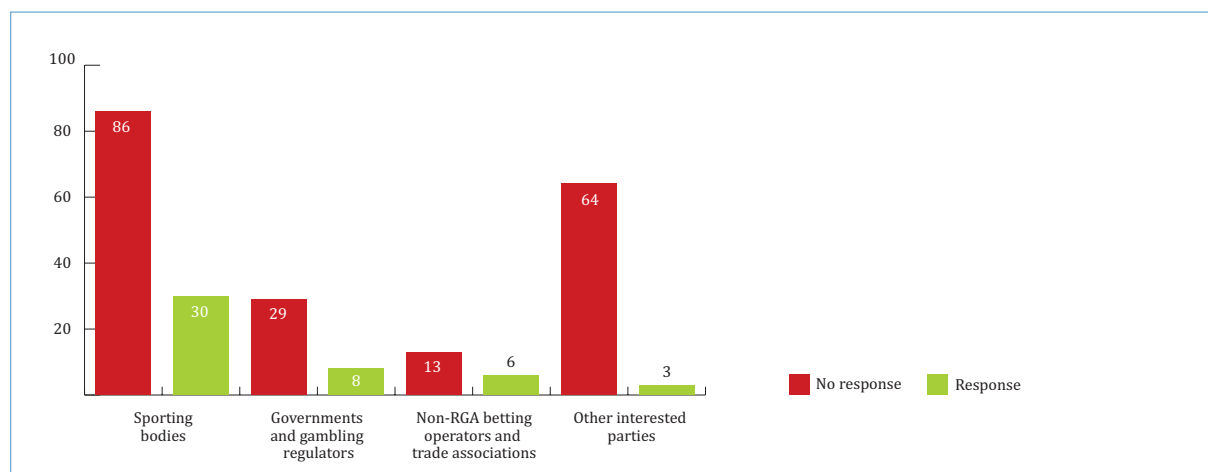
3.42 From a global perspective (Figure 3.2), the consultation and responses demonstrated a clear delineation of interest within Europe. This may be explained by a number of factors including: the nature of the regulatory gambling regimes and financial association with sport; the number of parties invited to respond; and the commercial levels and professional sporting infrastructure within these locations.

Figure 3.2: Geographical spread of consultation invitations and responses

Geographical location	Organisations invited to respond	Responses received	% returns
Europe	112	29	26%
North America	12	0	0%
South America	4	0	0%
Africa	6	0	0%
Asia	17	1	6%
Australia (& New Zealand)	13	3	23%
Other (International)	75	14	19%

3.43 An evaluation of each of the four principal categories (Figure 3.3) shows that there were reasonable responses in all but the fourth category covering 'Other Interested Parties', which registered a mere 3 responses (or 4%) from 67 invitations. A low response was expected in this area given the diverse range of parties to which the invitations were addressed. Nevertheless, it was hoped that a higher response rate would be forthcoming from certain sectors (e.g. media).

Figure 3.3: Overall responses by category



3.44 If this fourth section (Other Interested Parties) is removed from the equation, and the analysis is subsequently focused on three primary stakeholders in this discussion, then the statistical return subsequently increases to 44 (or 26%) from 172 invitations. This represents returns from just over a quarter of those invited to respond to the consultation.

3.45 However, whilst this return (26%) can be viewed as positive from a purely statistical standpoint, the consultation and the responses should also be assessed according to the level of information provided by, and engagement from, stakeholders surrounding sports betting. This will also provide an important pointer towards the willingness of sporting bodies and other interested parties to fully engage on these important matters with licensed gambling operators.

3.46 The following sections therefore provide a more detailed breakdown of each of the four principal category areas: sporting bodies; governments and gambling regulators; non-RGA betting organisations and trade associations; and other interested parties, and their sub-categories. These sections also comment on the level of information provided by those parties.

3.47 A full list of the responding parties (by principal category and sub-category) to the written aspect of this consultation can be found in the Appendices to this document.

Sporting Bodies

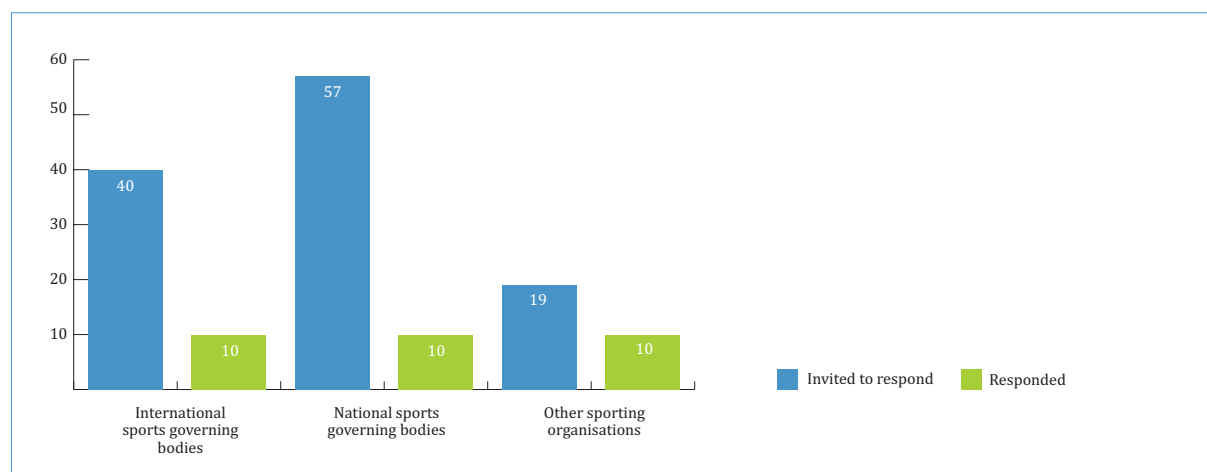
3.48 A total of 116 national and international sporting organisations were approached to respond to the consultation. This included governing bodies representing a wide range of sporting disciplines. Whilst this remained principally EU-focused, a wide geographical spread was built into the invitation list to allow representations from all continents and in recognition that, with regard to integrity in particular, betting on sport presents global issues.

3.49 This elicited 30 responses (or 26%) from 116 invitations to sporting bodies across the globe. In line with the geographical responses (Figure 3.2), these came primarily from three sources: International; European; and Australian sporting organisations.

3.50 Of the three sub-categories that were identified (see Figure 3.4 below) within this section, the third sub-category (Other Sporting Organisations) was particularly well-represented in percentage terms with more than half (56%) returning written responses.

3.51 This sub-category included bodies such as SROC, members of that organisation, along with other sports lobbying groups (i.e. CCPR), and thus provides a possible motivation behind their willingness to respond to the consultation and the higher return rate relative to the two other sub-categories (achieving 24% and 18% respectively).

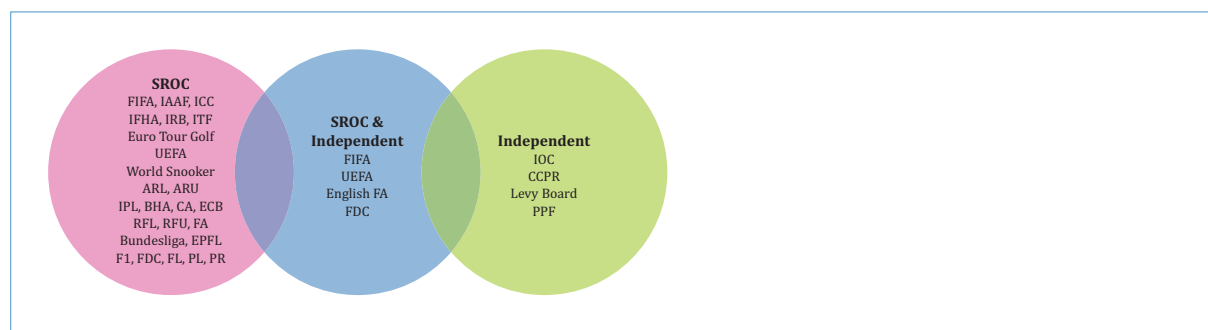
Figure 3.4: Responses from sporting organisations (by sub-category)



3.52 The SROC responses are listed separately in the response tables in the Appendices. However, for ease of reference, Figure 3.5 below provides a breakdown of those sporting bodies who responded to the consultation, identifying those that replied via the following groups:

- SROC;
- SROC and a separate additional independent response; and
- an independent response only (and therefore not members of SROC).

Figure 3.5: Responses from sports by responding organisation



3.53 The SROC response provided a useful outline of the commercial and integrity position of its members, but as might be expected from a reply that covered a broad range of sporting bodies, there was no detailed information on individual sports, notably surrounding integrity. SROC's written response, therefore, did not allow for a comprehensive exploration of the views and integrity mechanisms that these sporting bodies may (may or may not) have in place.

3.54 This also adversely affected the provision of other important information sought through this exercise, such as the level of the existing commercial association between individual sports and betting operators, nor was the central issue of whether sport should have exemptions from law addressed. SROC chose not to use the questionnaire template provided.

3.55 Football DataCo also provided some additional information to the SROC document, as did the England and Wales Cricket Board (ECB) and the English Football Association (FA). All provided a summary of their concerns and views, most notably with regard to integrity and the ability of sports to obtain information, control related betting activity and its impact on sporting events.

3.56 The UK Central Council of Physical Recreation (CCPR), which also includes some SROC members such as the FA and the ECB, but which is not a formal SROC member itself, also responded on behalf of a range of UK sporting bodies. Again, as a result of the organisation's remit, the reply was broad-based but nevertheless provided some interesting observations and suggestions reflecting the scope of concern for CCPR members regarding integrity.

3.57 Support for a 'fair return' from betting was prominent in the majority of the returns from sporting bodies. The replacement of what is seen as ineffective existing IP arrangements for sports was one option; although securing the principle and a suitable mechanism for a such a financial return did not appear to be inexorably linked to IP.

3.58 However, the views amongst sports were not unanimous, with one sporting body supporting the present IP laws, with apparently no commercial interest in obtaining betting revenue, as its objective was simply to secure effective integrity relationships and mechanisms.

3.59 There was, however, a lack of detailed individual information provided by many of the returns, notably surrounding the scope and effectiveness of sporting organisations integrity mechanisms. This was particularly unfortunate, as the consultation gave sporting organisations an opportunity to present clear evidence to support their arguments in this area, the reported costs associated with those arrangements, and progress their policy positions accordingly.

3.60 A number of the responses from sporting organisations made reference to the use of additional betting revenues for grassroots activities; this issue will be discussed, in relation to sports' present commitment to this area, in later chapters. None of the bodies above chose to use the template provided, and as with SROC's reply, many questions were left unanswered.

3.61 To its credit, the International Olympic Committee (IOC) provided a particularly comprehensive response. The quality of the information in its reply was noticeably stronger than that received from any other sporting organisation. Relevant rules and regulations were well-documented, and the effectiveness of the IP arrangement and integrity MoUs discussed.

3.62 The return from the Professional Players' Federation (PPF) also provided useful information from the perspective of the participants in sporting events. Both the IOC and the PPF used the questionnaire template and appeared to answer those questions relevant to their respective bodies, which represented the vast majority, in a full and comprehensive manner.

3.63 These two replies, in particular, provided a welcome platform for further discussions as part of this process, and and more importantly with regard to their future engagement with the licensed gambling industry. This noticeably more specific and collaborative approach towards the questions posed, notably integrity, may partly be as a result of these organisations having limited engagement in the wider ongoing commercial discussions surrounding betting on sport.

3.64 Support for a closer working relationship between sporting bodies and gambling operators was a general theme throughout the responses. As such, and if both industries are committed, enhanced dialogue should be the minimum expected from this exercise.

Governments and Gambling Regulators

3.65 Invitations to engage in this study were sent to all 27 Member States of the European Union (EU). In addition, a further 10 invitations were sent to other countries selected either due to their general global economic sporting (e.g. USA, China, South Africa and Russia) or gambling (Alderney, Gibraltar and the Isle of Man) relevance to this study.

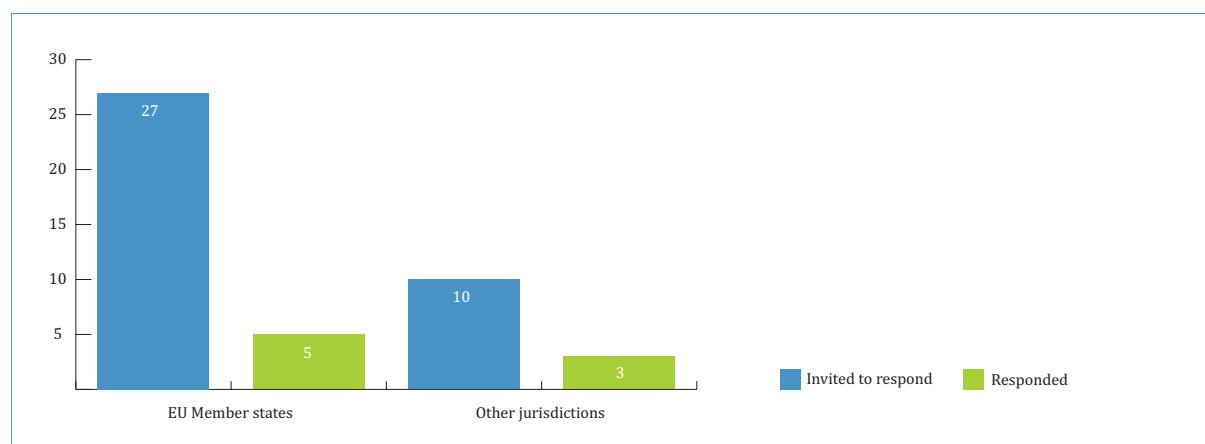
3.66 It was anticipated that Ministers for Sport were the most appropriate contact points to coordinate responses to sports betting issues e.g. with gambling regulators or other relevant government departments. To that end, the letters and emails were sent to these individuals (or equivalent) to act on behalf of their national governments and gambling regulators.

3.67 Invitations were also sent to some organisations representing blocks of countries e.g. African Union, European Commission and the Council of Europe. Due to the lack of direct legislative control over national sporting and gambling policies attributed to these organisations, these invitations have been placed under the 'Other Interested Parties' category.

3.68 In total, 37 invitations were sent to specific governments around the world (although principally EU-focused), noting the global interest in sports betting issues.

3.69 The 8 responses (or 22%) received from these 37 invitations is consistent with the level of returns from sporting bodies (at 26%) and the overall figure for the consultation (20-26%). The two sub-categories (see Figure 3.6 below) covering EU Member States and Other Jurisdictions are represented by 5 (19%) and 3 (30%) returns respectively.

Figure 3.6: Responses from Governments (by sub-category)



3.70 On the face of it, this therefore appears to be a reasonably passable response; and these are individual as oppose to block responses (as was generally the case with sports). However, this figure was achieved from a much lower representation (37 invitations as opposed to the 116 sent to sporting bodies) and also to a much more selective group than the sports category.

3.71 Moreover, at the time of writing, the gambling regimes in a number of EU countries are under review, notably following legal challenges to state monopoly operations. Given these various legal, legislative and political processes associated with this document's subject matter, the lack of response from the majority of EU Member States was particularly disappointing.

3.72 For example, no response was received from the French Government, which as has been well publicised (at the time of writing), has been developing new national gambling laws with specific aspects focused on fiscal and integrity issues surrounding sports betting and the availability and advertising of online betting operations. Indeed, the RGA has been party to discussions with the relevant French authority on the operation of these measures.

3.73 The German Government informed that the relevant information sought via the questionnaire was not held centrally and that it would be too costly to compile, suggesting that the state governments be contacted. Of the 16 German Federal States, only the State of Hessen replied, with a short synopsis of the legislation (Interstate Treaty) in operation since January 2008, essentially precluding private sports betting operations.

3.74 Like France, the Republic of Ireland is also involved in modernising its gambling laws at the time of writing and also failed to respond; again the RGA has been involved in discussions with Irish government officials regarding this legislative review. Spain, Sweden, Denmark, Czech Republic and the Netherlands are EU countries also worth mentioning as not responding.

3.75 As the lead public sector authority on betting integrity, with statutory powers to protect sports since September 2007, the British Gambling Commission's lack of a detailed response was similarly disappointing. This followed a positive meeting at the behest of the Commission early in the project's process, and at which it gave a strong indication that it would be replying substantively.

3.76 Whilst no written response was received from the United Kingdom (UK) Government, a constructive meeting with the UK Minister for Sport to discuss the RGA process took place in late October 2009, complementing regular dialogue with sport and gambling officials at the Department for Culture, Media and Sport (DCMS) during the six month period of this study.

3.77 In addition, useful written responses were received from the following EU Member States: Austria; Italy; Latvia; Malta; and Poland. These provided summaries of the legislation and the delineation of licensing arrangements between state and private gambling operators; the licensing position within the major EU Member States will be covered in Chapter 4 (Legal) of this document.

3.78 Contributors also helpfully included the potential criminal sanctions available. There was no overriding focus on integrity (see Chapter 6) as an area of significant concern apparent from the responses; MoUs were supported and put in place and no recent instances of suspicious, and therefore by default proven, corrupt betting activities identified in these replies.

3.79 On the latter, it should be noted that clear information regarding instances of suspicions sports betting practices does not appear easily available to all of these authorities. As a consequence this aspect of the responses should be treated with caution, in the same way as any claims of corruption which are not demonstrated via transparent information channels should.

3.80 Of these EU Member States, Italy has most recently modernised its gambling laws (following ECJ judgements) permitting private operators for retail and online activities; its contribution is therefore particularly relevant to this study. For that reason, it is a shame that so many other EU countries that are presently, or have recently, reviewed their gambling laws did not engage in this exercise. Chapter 4 will provide an outline of the EU legislative position.

3.81 The 'Other Jurisdictions' category included responses from: Alderney; the Isle of Man; and Gibraltar. The latter became part of the EU (with certain exemptions) when the UK joined in 1973. However, it is a self-governing British overseas territory, and as such has been placed in this category recognising that it has its own gambling regime – it is not subject to the British Gambling Commission's regulations – and should not be confused with the UK response above.

3.82 The Isle of Man and Alderney are British Crown dependencies that operate outside of the EU. Both the Isle of Man and Alderney were placed on the UK's White List of gambling jurisdictions, allowing their licensed gambling operators to advertise in the UK, albeit in line with UK advertising regulations. At the time of writing, due to a number of reasons, including the failure of other Member States to open their markets to UK licensed operators (whilst those countries' licensed operators have been free to operate within the UK market) the UK's policy towards overseas remote operators is under review, with a consultation expected during 2010.

3.83 The responses from these three licensing jurisdictions presented a situation where there was no widespread or deep concern expressed regarding sport betting integrity; each regulator has sanctions to investigate their licensees operations to ensure high levels of probity and supported the establishment of non-statutory information sharing agreements (MoUs). Again, dialogue between the gambling and sporting industries was suggested as the way forward.

3.84 Whilst the 30% return (3 from 10 invitations) for this sub-category is greater than the overall return, the figure may also be considered against the respective size, and political and sporting importance of each country. Whereas in the sports section, responses were received from what are generally perceived to be the principal international sporting bodies (IOC, FIFA and UEFA), no response was received from what might be determined as equivalent nations e.g. there was no engagement from major economic and sporting nations such as the USA and China.

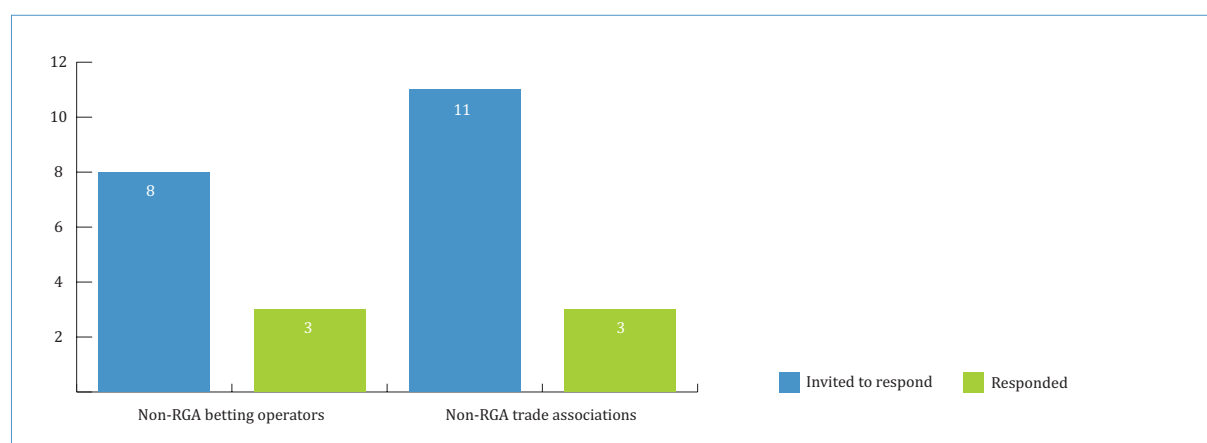
3.85 However, the economic impact of remote gambling, unlike retail, is not restricted to the size of the indigenous population for potential consumers or the numbers of retail outlets offering gambling services. Consequently, smaller jurisdictions can potentially have a disproportionate economic and regulatory impact on a global scale. Indeed, in terms of modern global regulatory gambling regimes (remote and retail), the consultation is well represented.

Non-RGA Betting Operators and Trade Associations

3.86 The RGA represents the majority of the foremost online gambling operators licensed in European jurisdictions, and as such the scope of invitations to non-RGA organisations were always going to be limited in number. The rate of responses, 6 (or 32%) from 19 invitations is above the overall average (20-26% depending on the categories used).

3.87 Again it was possible to split this principle category into sub-categories ('Betting Operators' and 'Trade Associations'). These two sub-categories each elicited 3 responses (see Figure 3.7 below), although the percentage return rate for each sub-category varies due to the differing invitation levels at 38% and 27% respectively.

Figure 3.7: Responses from non-RGA betting organisations (by sub category)



3.88 For the 'Non-RGA Betting Operators' sub-category, gambling operator bwin did not directly respond to the consultation, but is a member of the European Gaming and Betting Association (EGBA), which did respond, and in line with the approach taken with SROC members in the sports category, bwin has been attributed as responding accordingly.

3.89 The replies demonstrated a clear opinion on the commercial sports right issue, supporting the legal judgements that have already been made on this matter. In line with the responses from governments and regulators, there was no evidence of widespread sports betting corruption, and all pointed to extensive internal integrity arrangements protecting their commercial activities and that of sports, supplied at significant cost to gambling organisations.

3.90 The replies from the 'Non-RGA Trade Associations' sub-category, mirror the comments above, with attention being drawn to the extensive commercial investment made by licensed gambling operators in the sporting product via a range of channels, and some voluntary payments that are made to certain sports (e.g. UK football and British greyhound racing).

3.91 It was noticeable that the responses from these bodies were far more comprehensive in content than those from any other stakeholder category; all used the template provided and clearly sought to present detailed information regarding their commercial positions and the scope and effectiveness of the integrity arrangements in place with sporting bodies.

3.92 Neither the state lottery nor pool betting associations contacted as part of this study determined to promote their views on the issues surrounding the availability of sports betting. Likewise, neither the Australian nor Irish betting organisations that were contacted responded.

3.93 Nevertheless, the overall spread of responses, covering traditional betting operators (Gala Coral), national and international trade associations (ABB and EGBA), spread betting (Sporting Index) and sports betting integrity focused organisations (ESSA), represents a wide catchment of stakeholder views and opinions. Aligned to the quality of responses, this provided an informative and gambling industry-wide resource to draw upon, in addition to the RGA itself.

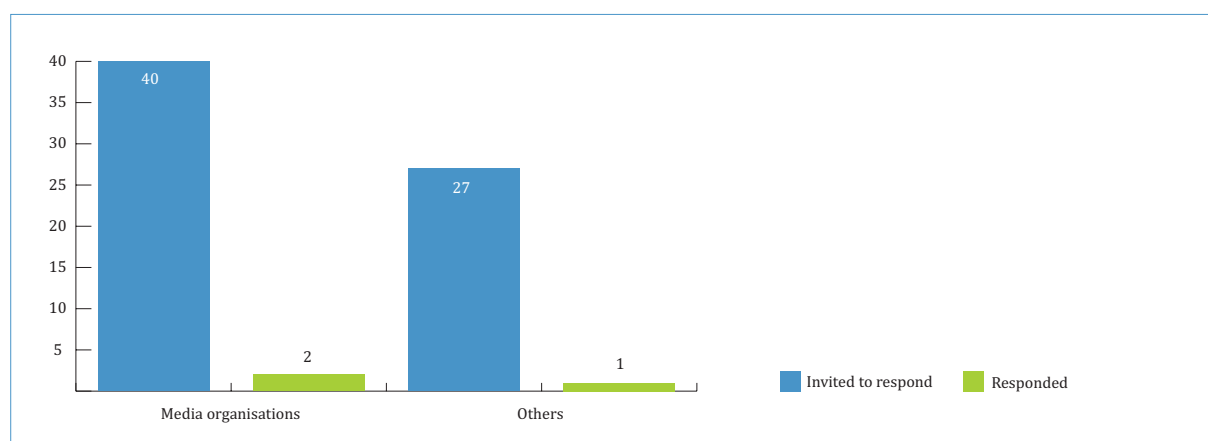
Other Interested Parties

3.94 This represented by far the most limited category in terms of returns, 3 (or 4%) from 67 invitations. However, what was restricting in terms of numbers was made up to some degree by the position of these organisations within their respective industries: BSkyB (Sky); the Press Association (PA); and Harris Hagan (a legal firm specialising in gambling law).

3.95 The most prominent group of organisations within this category was the media sector (print and broadcast), including organisations that operate on a national and international scale, many of which have close links with the sporting product, and some with gambling (e.g. Skybet).

3.96 It was therefore possible to extricate that sector from the other organisations (a broad mix of IP and law enforcement bodies, amongst others) to produce Figure 3.8 below, showing returns of 2 (or 5%) from the 40 invitations sent to media bodies, and 1 (or 4%) return from 27 invitations sent to the remaining organisations.

Figure 3.8: Responses from other interested parties (by sub category)



3.97 The European Commission, in the form of its Sports Unit, declined to formally respond to the written consultation, leaving this to Member States. However, the Commission expressed an interest in the findings in relation to its own discussions with stakeholders on these matters. The Council for Europe (CoE) did not respond, nor did the African Union.

3.98 A number of law enforcement bodies were also contacted to engage in this process (e.g. Interpol, Europol, ASEANAPOL, FBI and SOCA), but none responded. Neither did any of the bodies interested in IP. It was also particularly disappointing that the World Anti-Doping Agency (WADA) did not provide a response given its work in another area of sporting integrity and calls from certain quarters for a corresponding arrangement for betting.

Oral Discussions

3.99 The written consultation was instituted to help develop an information base from which to allow stakeholders to present their views (held in confidence by the RGA) and to explore sports betting issues in more detail via subsequent oral discussions.

3.100 Figure 3.9 provides a break down of the major discussions that took place as part of this study. This does not include additional dialogue with stakeholders at various industry events during the period of this project.

Figure 3.9: Oral Discussions Table

Organisation	Meeting dates
British Gambling Commission	20/07
European Commission Sport Unit	23/07
Tennis Integrity Unit (TIU)	29/07
News Media Coalition (NMC)	26/08
International Olympic Committee (IOC)	15/09 & 16/12
UK Department for Culture, Media and Sport (DCMS)	14/08 & 15/09
Association of British Bookmakers (ABB)	17/09
UK Minister for Sport	21/09
Football Data Co	06/10
European Sports Security Association (ESSA)	15/10
Central Council of Physical Recreation (CCPR)	22/10
Sports Rights Owners Coalition (SROC)	2/11
Professional Players' Federation (PPF)	10/11



Chapter 4:

LEGAL

The European Union (EU)

4.1 The Treaty of Lisbon (as signed in Lisbon on 13 December 2007), entered force on 1 December 2009. It amends the European Union's (EU) two core treaties: the Treaty on European Union (TEU); and the Treaty establishing the European Community (TEC or EC). The latter has been renamed the Treaty on the Functioning of the European Union (TFEU).

4.2 The European Union (EU) establishes a single market, presently consisting of 27 Member States, focused on "bringing down barriers and simplifying existing rules to enable everyone in the EU - individuals, consumers and businesses - to make the most of the opportunities offered to them by having direct access to 27 countries and 480 million people."³²

4.3 The cornerstones of the single market are the 'four freedoms' - the free movement of people, goods, services and capital, which are enshrined in the Treaty on the Functioning of the European Union (formerly EC Treaty) and form the basis of the single market framework. This is also supplemented by additional laws ('Directives') that bring down barriers in specific areas and are implemented at national level by Member States.

EU Gambling Laws

4.4 Gambling laws have not been harmonized within the EU. National governments therefore have control over the scope and nature of the gambling market within their respective jurisdictions. However, whilst there are no specific EU gambling laws, national governments are required to conform to the legal framework laid down in the Treaty.

4.5 Indeed, the EU was established to encourage and promote trade within that economic area. With regard to gambling and the EU, the following are of particular interest:

- The EU Treaties do not distinguish gambling from other services and require that all services must be dealt with in the same way;
- Article 3 (formerly Article 2) of the TEU promotes an internal market characterised by economic growth, a highly competitive social market place, along with economic, social and territorial cohesion, and solidarity among Member States;
- Article 49 (formerly 43 EC) of the TFEU provides that, in the absence of certain allowable justifications, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited;
- Article 56 (formerly 49 EC) of the TFEU prohibits restrictions on freedom to provide services within the Community for nationals of Member States who are established in a Member State other than that of the person for whom the services are intended;
- Article 57 (formerly 50 EC) of the TFEU defines what is meant by a service and the ECJ has indicated that gambling is a service within the meaning that Article;
- Article 169 (formerly 153 EC) of the TFEU deals with consumer protection, stating that the EU will contribute to protecting the health, safety, and economic interests of consumers and take consumer protection into account when defining and implementing other policies and activities; and
- Under Article 258 (formerly 226 EC) of the TFEU the Commission can take action against Member States whose laws are in breach of the Treaty.

³² European Commission

4.6 The gambling laws in Member States vary, and in many cases are predicated on the enforcement of outdated regulatory mechanisms that have not been able to respond to the emergence of new remote technologies (see Chapter 2 and Appendices) which increasingly determine and facilitate the operation of not just the internal market of the European Union, but also the global economy.

4.7 The legislative, cultural and social backgrounds that have determined national gambling laws have been principally based on retail outlets and physical boundaries, and no longer provide a fully effective regulatory or fiscal mechanism in the digital age. Governments, both within and outside of the EU, have found that the gambling market place has evolved, as with all sectors, to encompass this technology and to develop new products and services accordingly.

4.8 The new cross-border and multi-platform competition that has occurred as a result has greatly benefited consumers from a choice and value perspective. It has also encouraged greater innovation and investment from licensed gambling operators in those products, and to the associated promotion of those services through increased sponsorship and advertising expenditure; with regard to betting, that has mainly been directed towards professional sports.

4.9 In addition, many EU governments are also attempting to come to terms with the changing social face of gambling, which is increasingly seen as a legitimate leisure activity, well-regulated in a number of jurisdictions and enjoyed in a responsible fashion by the vast majority.

4.10 Balancing the rights of citizens, mitigating potential adverse social impacts, and assessing the effectiveness, appropriateness and proportionality of traditional restrictive responses to gambling is proving a challenging exercise for many in the modern digital age.

4.11 Some Member States have determined to introduce legislation that provides for a proper well-regulated gambling framework that protects consumers and which also attempts to encourage the growth of the sector e.g. the British Gambling Act 2005, which specifically caters for remote forms of gambling and cross-border trade in that service.

4.12 Others have attempted to take a more draconian approach, instigating legal action against gambling operators with licences elsewhere in the EU for encouraging or permitting consumers within those jurisdictions to gamble with them.

4.13 The availability of gambling via remote platforms has also challenged the previously exclusive role afforded by some Member States to monopoly gambling operators, who have provided a steady stream of income for those governments (through taxation) and also income which has in some cases been allocated to good causes and the sporting sector.

4.14 This has also led to a number of infringement proceedings being launched by the European Commission against market restrictions established in various Member States. Whilst some Member States have reluctantly proceeded to a limited opening of their markets following European Commission intervention and ECJ judgments e.g. Italy, a number of infringement proceedings remain unresolved, and which go back some years, as outlined (Figure 4.1 below).

4.15 At the time of writing, the new Commission designate (2009-2014), delayed by the ratification of Lisbon Treaty, has been announced and is expected to be in place in February 2010, subject to the agreement of the European Parliament on 26 January 2010. Of most interest in the area of sports betting is the candidature of Androulla Vassiliou as Commissioner for Education, Culture and Youth (which covers sport) and Michel Barnier as Commissioner for the Internal Market and Services (which covers gambling).

Figure 4.1: Unresolved infringements against EU member states (2009)

(Latest step reached in the procedure)

Greece:	reasoned opinion (28/02/08)
Netherlands:	reasoned opinion (28/02/08)
France:	reasoned opinion (27/06/07)
Sweden:	reasoned opinion (27/06/07)
Denmark:	reasoned opinion (21/03/07)
Finland:	reasoned opinion (21/03/07)
Hungary:	reasoned opinion (21/03/07)
Germany:	letter of formal notice (31/01/08)
Sweden:	letter of formal (31/01/08)
Italy:	letter of formal notice (02/04/08)

4.16 Due to various policy discussions within a number of Member States (e.g. France, Denmark and Poland, to name but a few) at the time of writing, the overall EU gambling market place is very likely show a significant change in the foreseeable future. Most notable in that regard is the French draft gambling law which will provide a ‘controlled opening’ of that country’s online market; the retail sector will remain the preserve of monopoly operators.

4.17 The French proposals have been championed by sports groups, notably the Sports Rights Owners Coalition (SROC), which has referred to it as “a ground breaking move”³³ that will establish a sports event organiser’s right that sports see as a model for the rest of the EU. That will effectively mean that online operators licensed in France will need to seek (a financial) agreement with French sports before being able to offer agreed types of bets on those events.

4.18 However, far from being the establishment of a new right as many suggest, it is more an extension, or strengthening, of the existing French Sports Code, emanating from Law No. 84-610 of 16 July 1984 concerning the organisation and promotion of physical and sporting activities. Nevertheless, the European Commission has been keen to reinforce the Treaty, notably former Article 49 EC (now 56 TFEU), in its correspondence with the French Government concerning this new law.

4.19 In addition, the draft law has been amended to exclude betting exchanges. The UK determined that regulation, not prohibition, of that type of betting was the most appropriate course of action when developing its Gambling Act. The French prohibition of exchanges will need to stand up to close scrutiny as a necessary and proportionate response in discriminating against that type of betting, whilst allowing traditional forms, and appears open to challenge.

4.20 In the explanatory notes for its own national legislation, and with its particular Sports Code in mind, the French Government also states that it hopes other countries will adopt a similar legislative proposal. It is difficult to determine how realistic that might be in other jurisdictions, or why the French Government decided that there was a need to advise other countries, and those countries will also wish to consider whether it is in any way effective.

4.21 Indeed, the explanatory note may indicate a fundamental flaw in this legislation; it does not preclude licensed gambling operators in other jurisdictions offering products on French sports, and it will also be incumbent on the French Government, financial services and ISPs to allocate resources to stop French citizens from accessing offshore licensed gambling operators.

4.22 Given the additional fiscal burdens being placed upon licensed operators through a manufactured and enforced agreement between licensed gambling operators and French sports, in addition to direct taxation, it will be interesting to assess if it is successful in attracting significant numbers of online gambling operators; the early indications are that many operators are seriously questioning the economic viability of this market and the sports right principle.

³³ Europolitics SROC article ‘The case for sport – from, broadcasting to betting’ (May 2009)

4.23 ISP and financial transaction blocking has been instigated some EU Member States. The American approach to the latter, via Unlawful Internet Gaming Enforcement Act (2006), has had very limited success in stopping its citizens from accessing offshore gambling companies, and has yet to be seen if such approaches in the EU are in reality necessary, proportionate and in line with the principles of the Treaty e.g. Article 56 TFEU.

4.24 Elsewhere in Europe's prohibitive online markets, developments in Germany appear to suggest that the alliance of states, via the Interstate Gambling Treaty, is under serious threat. The German Treaty came into force in January 2008, following the Federal Constitutional Court of Germany's judgement that the existing state betting monopoly was unconstitutional, giving the states a choice to either sign the Interstate Treaty or open the market to private operators.³⁴

4.25 The Interstate Treaty was duly agreed by all sixteen German states and introduced new regulations across the sports betting and lottery markets, and which thereby remain under the exclusive control of the federal states, and preclude private operators. In order to justify this restriction of competition, stricter public protection measures have been introduced.³⁵

4.26 The latter includes a provision that bans all internet gambling (except horseracing), state or private, and precludes the advertising of such services. As in France, this has involved legal action against commercial agreements reached between licensed gambling operators and Germany sports clubs (see Sponsorship and Advertising – Chapter 5), deemed to breach this law.

4.27 The Interstate Treaty also authorises German federal state authorities to enforce ISP and financial transaction blocking. However, as reported in October 2009, a new coalition government in the German state of Schleswig-Holstein has pledged to re-evaluate the Interstate Gambling Treaty when it expires at the end of 2011 and instil a new state-level licensing for private operators unless there is a wider, and presumably comparable, approach across Germany.³⁶

ECJ Case Law: Gambling Judgements

4.28 Without harmonized or specific EU gambling laws, the position of gambling as a service and its availability to EU citizens has been determined via a number of judgements from gambling related cases brought before the Court of Justice of the European Union (traditionally known as the European Court of Justice or ECJ).

4.29 The principal judgements which this chapter will consider include:

Case C – 275/92	Schindler
Case C – 124/97	Laara
Case C – 67/98	Zenatti
Case C – 243/01	Gambelli
Case C – 42/02	Lindman
Case C – 46/02	Oy Veikkaus Ab
Case C – 203/02	William Hill Organisation Ltd
Case C – 338/02	Svenska Spel AB
Case C – 444/02	Organismos prognostikon agonon podofairou (OPAP)
Case C – 338/04	Placanica
Case C – 42/07	Santa Casa

³⁴ Casino City Global Gaming Almanac 2009-10 ³⁵ Gambling Compliance 'German Gambling Treaty – Key Points' (January 2008) ³⁶ Ibid.

4.30 The references to the EC Treaty in the following paragraphs of this section have been superseded by the TFEU, but the only difference is in the numbering.

4.31 As has been commented earlier, the expansion of gambling products and services through remote platforms has presented particular challenges to existing, and sometimes insufficient, legislative mechanisms. This gave rise to a number of court cases being referred to the ECJ surrounding the operation and availability of such gambling services within the EU.

4.32 The case of *Her Majesty's Customs and Excise v. Gerhart Schindler and Jorg Schindler* involved the promotion and importation of lottery tickets enabling a resident in one jurisdiction (UK) to participate in a lottery in another (Netherlands), and the restriction of that service.

4.33 The definition of a service was deemed to cover this activity, and to that end, restrictions imposed by one Member State adversely affecting services in another Member State (in this case precluding the promotion and sale of lottery tickets) violated the principle of the freedom to provide services.

4.34 However, such national restrictions may be justified when they do not discriminate on grounds of nationality and are aimed at consumer protection and social order. "In essence, a series of cases commences with *Schindler*, erring on the side of national regulations and justifications for restrictive practices and even state monopolies in the field of sport betting."³⁷

4.35 Nevertheless, ECJ Jurisprudence determines that for such restrictive measures to be justified, they must be proportionate and enforced by the least restrictive means possible.

4.36 In *Markku Juhani Laara, Cotswold Microsystems Ltd and Oy Transatlantic Software Ltd v. Kihlakunnansyyttaja (Jyväskylä) and Suomen valtio (Finnish State)* the issue at hand concerned national legislation that reserved the operation of slot machines to a public body.

4.37 Again, the ECJ determined that such activity, precluding other Member States from offering similar products and services, constitutes an impediment to the provisions of the Treaty, but restrictions may be justified by reasons of consumer protection and public order.

4.38 The judgement states that "the sums thus received by the State for public interest purposes could equally be obtained by other means, such as taxation of the activities of the various operators authorised to pursue them within the framework of rules of a non-exclusive nature".³⁸

4.39 However, it goes on to say that "the obligation imposed on the licensed public body, requiring it to pay over the proceeds of its operations, constitutes a measure which, given the risk of crime and fraud, is certainly more effective in ensuring that strict limits are set to the lucrative nature of such activities." The exclusive right to the public body was not therefore deemed disproportionate in this particular case.³⁹

4.40 As a result, the ECJ concluded that "the answer to be given to the national court must be that the Treaty provisions relating to [the] freedom to provide services do not preclude national legislation such as the Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives which justify it."⁴⁰

4.41 The case of *Questore di Verona v. Deigo Zanetti* involved a preliminary reference by the Italian State requiring the ECJ to answer whether "the Court's interpretation in *Schindler* of the Treaty rules on freedom to provide services in the context of national restrictions on the sale of lottery tickets is equally applicable to national legislation regulating the taking of bets."⁴¹

4.42 Zanetti, acting as an agent for a UK betting operator, was passing on bets from Italian nationals to that UK operator. At that time, Italian licensing for betting was reserved for the National Olympic Committee (CONI) and the National Equine Organisation (UNIRE); foreign sports betting operators were not allowed to provide their services unless they had an Italian licence, for which as has been stated, were reserved for the CONI and UNIRE.

4.43 The Advocate General stated in his opinion that this case is different to *Schindler* as there is no total prohibition. The Italian system allowed this service through “an exception to a general prohibition” and appears “to be, in substance, a restriction imposed on the provision of organised betting services under the guise of the grant of special or exclusive rights [to CONI and UNIRE]”.⁴²

4.44 The advocate further comments that as the restriction “of activities directly affects access to the Italian betting market, it is evidently one which falls within the prohibition in the first paragraph of Article 49 EC.” However, he then clarifies that a restriction can be justified “by overriding reasons to the public interest” and advises that any “national rules must not go beyond that which is necessary in order to achieve that objective” as in *Schindler*.⁴³

4.45 Those reasons are listed as: “the prevention of crime and the protection of consumers against fraud; avoidance of the stimulation of demand for gambling and of the consequent moral and financial harm to participants and to society in general; and the interest in ensuring that gambling activity is not organised for personal or commercial profit but solely for charitable, sporting or other good causes.”⁴⁴

4.46 In this case, the Advocate General recommended that national rules which “grant special or exclusive rights to certain undertakings to take bets on sporting events and consequently restrict the freedom to provide bookmaking services are not incompatible with the Treaty provisions on the provision of services if they are imposed as part of a consistent and proportionate national policy of curbing the harmful individual and social effects of betting.”⁴⁵

4.47 The Advocate therefore recognised Article 49 and the freedom to provide services in relation to the provision of cross-border sports betting services in *Zanetti*, but that restrictions can be permitted where they are necessary and there are overriding reasons of public interest, for which he lists three areas that he deems compatible with those interests.

4.48 The next, and seen as a pivotal judgement, involved another Italian case: *reference for a preliminary ruling from the Tribunale di Ascoli Piceno: Piergiorgio Gambelli and Others*. Criminal proceedings were brought against Mr Gambelli and 137 other defendants accused of “unlawfully organising clandestine bets and of being the proprietors of centres carrying on the activity of collecting and transmitting betting data,” constituting an offence.⁴⁶

4.49 As with *Zanetti*, the bets were being collected and transmitted to a UK licensed operator; and as in that case, such activities were reserved for the Italian CONI and UNIRE. In this instance, the defendants not only argued the restriction of the freedom to provide services (Article 49) but also that the restriction violated the freedom of establishment (Article 43).

4.50 The latter was advanced as a response to the Italian Government’s effective creation of a local sports betting monopoly, and in this regard Article 43 had not been considered in previous cases. It was argued that the Italian Government’s policy was inconsistent, in that it created barriers to entry on one hand, under the guise of social order, consumer protection and moral objectives, whilst on the other it promoted and facilitated its own gambling activities.⁴⁷

4.51 With regards to cross-border activities of sports betting operators, the defendants argued that as a legal and properly regulated company in the UK, that same company should not be viewed as an operator which organises clandestine gaming in Italian legislation, especially when all public interest concerns are met through the UK legislation.

4.52 In addition, that such a “situation, which falls within the scope of freedom of establishment, contravenes the principles of mutual recognition in sectors which have not yet been harmonised.” It was also deemed contrary to the principles of proportionality, in imposing criminal sanctions when other adequate measures and instruments were available.⁴⁸

4.53 The European Commission advised that restrictions could be justified on the grounds of social policy as in *Schindler*, *Zanetti* and *Laara*. However, the Commission also informed the hearing that it had initiated a procedure against the Italian Government for its failure to fulfil obligations in regard to the liberalisation of betting and the obligations under the EC Treaty.

4.54 The ECJ decision firstly determined that the restrictions imposed by the Italian Government were obstacles to the freedom of establishment, in that betting licences were only available to monopoly operators, and thus violated Article 43.

4.55 The ECJ then moved to its consideration on the freedom to provide services (Article 49). Firstly, it advised that “the activity of enabling nationals of one Member State to engage in betting activities organised in another Member State, even if they concern sporting events taking place in the first Member State, relates to a service within the meaning of Article 50 EC.”

4.56 Article 49 was deemed to cover services provided by telephone and the internet. As such, the Italian Government’s approach was considered a restriction and the court then proceeded to consider if that restriction could be acceptable under Articles 45 and 46, or justified in accordance with ECJ case law for reasons of overriding general interest.

4.57 The Court firstly rejected Greek and Portuguese arguments with regard to the reduction of tax revenue as not a grounds listed in Article 46 and which did not “constitute a matter of overriding general interest which may be relied on to justify a restriction on the freedom of establishment or the freedom to provide services.”⁴⁹

4.58 With regard to justifiably reasons for restrictions, and as pointed out by the European Commission, the court referred to the judgements in *Schindler*, *Zenatti and Laara*, noting that such restrictions (on consumer protection, fraud etc) should be applied in “a consistent and systematic manner.”⁵⁰

4.59 The Court then returned to the consistency of the Italian Government of “pursuing a policy of substantially expanding betting and gaming at national level with a view to obtaining funds, while also protecting CONI licensees.” The Court determined that a Member State cannot invoke public consumer concerns to justify restrictions against measures it also encourages.⁵¹

4.60 Furthermore, that the national court should consider if Italian licences are being treated more favourable (which would be against the Treaty) than foreign operators. It was also posed to the national court “whether the criminal penalty imposed on any person who from his home connects by internet to a bookmaker established in another Member State is not disproportionate in the light of the ECJ case law” and when encouraged by national operators.

4.61 In addition, the national court was also directed to consider whether restrictions accompanied by criminal sanctions on intermediaries of a licensed and regulated betting operator in another Member State are necessary and proportionate to combat fraud.

4.62 In its summary, the ECJ determines that “National legislation that prohibits on pain of criminal penalties the pursuit of the activities of collecting, taking, booking and forwarding of bets, in particular on sporting events, without a licence or authorisation from the Member State concern constitutes a restriction on freedom of establishment and the freedom to provide services provide for in Articles 43 EC and 49 EC respectively”.

4.63 The ECJ determined that restrictions would need to be on general interest objectives and be proportionate, applied without discrimination, and that it is for national courts to determine whether such legislation, taking account of the detailed rules, are justified. A summary of the *Gambelli* judgement is contained in the Appendices to this document.

4.64 The issues in *Gambelli* were quickly revisited in *Diana Elisabeth Lindman v. Skatterattlsenamnde*. Ms Lindman, a Finnish national, had won Swedish lottery monies during a stay in that country. Finnish lottery winnings were not, by law, subject to tax, however, as the winnings were from a Swedish lottery this rule was not applicable.

4.65 The case was referred to the ECJ requesting if Article 49 precluded the enforcement of a rule that distinguished between Member States’ lotteries. The Finnish Government argued “the reason for the taxation of winnings from games of chance organised outside of Finland is the impossibility of taxing, in that Member State, foreign undertakings who offer gambling activities abroad.”⁵²

4.66 The Finnish Government admitted that its legalisation was discriminatory, but contended that it was justified by overriding reasons of public interest.

⁴⁹ ECJ Case C-243/01 ⁵⁰ Ibid. ⁵¹ Ibid. ⁵² ECJ case C42/02

4.67 The ECJ noted that “Article 49 EC prohibits not only any discrimination, on grounds of nationality, against a provider of services established in another Member State, but also any restriction on or obstacle to freedom to provide services, even if they apply to national providers of services and to those established in other Member States alike.”⁵³

4.68 The ECJ held that justification for discriminatory or restrictive practices “must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure” but that no evidence had been provided that enabled any conclusion as to the gravity of the risks connected to playing games of chance or such risks and participation by nationals of the Member State concerned in lotteries organised in other Member States.

4.69 “The reply, therefore, to the question referred must be that Article 49 EC prohibits a Member State's legislation under which winnings from games of chance organised in other Member States are treated as income of the winner chargeable to income tax, whereas winnings from games of chance conducted in the Member State in question are not taxable.”

4.70 In November 2004, the ECJ presided over another pivotal judgement in the case of *The British Horseracing Board Ltd and Others v. William Hill Organisation Ltd* and which also directed the judgements in *Fixtures Marketing Ltd v. Svenska Spel AB*, *Fixtures Marketing Ltd v. Oy Veikkaus Ab* and *Fixtures Marketing Ltd v. Organismos prognostikon agonon podosfairou*.

4.71 These cases centred on the scope of database rights in relations to information compiled by the British horseracing industry about races, and in the *Fixtures Marketing* cases, football fixture lists, used by other parties without agreement or payment for that information.

4.72 In the British horseracing case, a company (Weatherbys) maintained and developed a database on behalf of the sports governing authority, the British Horseracing Board (now the British Horseracing Authority or BHA), which was constantly updated. This cost around €5m per annum and contained the details of over one million horses, with an additional 800,000 changes or new records added each year

4.73 The content of the database was made available in various ways, including circulation of extracts to the racing industry and the BHB's own journal. There was also an electronic feed which contained lists of races, declared runners, jockeys, distances and so on for each race. This information was made available to subscribers.

4.74 The BHB objected to the use of this data by William Hill Ltd, a UK licensed gambling operator, which provided internet betting on horseracing and had a licence for some information but received additional information for which it was not licensed.

4.75 The BHB claimed that this amounted to a daily extraction or reutilisation of a substantial part of the database and was contrary to Article 7 (1) of the Database Directive – this harmonised the protection of databases across the EU, and was introduced in 1998.

4.76 Article 1 of the Database Directive states that “Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.”⁵⁴

4.77 On Article 7 (1), “William Hill argued that (1) that it had not used a part, in a relevant sense, of the BHB's database; (2) even if it had used a part, it was not a substantial part; (3) the use did not amount to an extraction from the database; (4) it was not a reutilisation of the database.”⁵⁵

4.78 The British High Court found in favour of the BHB on all points, but William Hill contended to the Court of Appeal that the High Court judge had given a wide meaning to the database right which had affected the judgement. The Court of Appeal subsequently referred the case to the ECJ with a number of questions, most notably:

- an interpretation of the concept of investment in the obtaining and verification of the contents of a database within the meaning of Article 7(1) of the Directive;
- clarification of the concept of investment in the obtaining and verification of the contents of a database within the meaning of Article 7(1) of the Directive; and

⁵³ Ibid. ⁵⁴ ECJ case C-203/02 ⁵⁵ Internet Law and Regulation

- Whether use such as that made by William Hill of a database constitutes extraction and/or re-utilisation within the meaning of Article 7 of the Directive.

4.79 The ECJ determined that the “expression ‘investment in ... the obtaining ... of the contents’ of a database in Article 7(1) of Directive 96/9 on the legal protection of databases must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database.”⁵⁶

4.80 The Court viewed that the resources invested by the BHB in selecting horses related to the creation of the data and therefore could not be taken into account. In addition, William Hill had not taken a quantitatively or qualitatively substantial part of the database, because the data taken had not been the subject of relevant investment, and that repeated acts would not result in reconstitution of the whole or a substantial part of the database.

4.81 On return to the Court of Appeal, it found in favour of William Hill Ltd. A summary of the ECJ judgement is contained in the Appendices to this document.

4.82 In the *Fixtures Marketing* cases, that company granted licences for use of fixture lists on behalf of the top English and Scottish football leagues. Pool betting companies in Finland, Sweden and Greece used data in relation to matches in those leagues without a licence. As with the *BHB v. William Hill* case, the central issue was whether the fixture lists entailed a substantial investment required for protection under Article 7 (1) of the Database Directive.

4.83 The *Fixtures Marketing* cases therefore similarly related to the use of fixture lists, and the ECJ delivered a simultaneous judgement in these cases as with the William Hill case, and which came to the same conclusions in relation to those lists; it amounted to creation, not investment, and did not fall within the scope of the protections of the Database Directive.

4.84 Another important decision, again involving the Italian State and surrounding national policies on sports betting in relation to Articles 43 EC and 49 EC, occurred in *Procuratore della Repubblica v. Massimiliano Placanica, Christian Palazzese and Angelo Sorricho*. Again, this involved a UK licensed betting operator, which could not obtain a licence in Italy as it was a company quoted on the stock market, and its Italian agents. The ECJ was asked to consider:

“The District Court [of Teramo] needs to know, in particular, whether [the first paragraph of Article 43 EC and the first paragraph of Article 49 EC] may be interpreted as allowing the Member States to derogate temporarily (for 6 to 12 years) from the freedom of establishment and the freedom to provide services within the European Union, and to legislate as follows, without undermining those Community principles:

- allocating to certain persons licences for the pursuit of certain activities involving provision of services, valid for 6 or 12 years, on the basis of a body of rules which excluded from the tender procedure certain kinds of (non-Italian) competitors;
- amending that system, after subsequently noting that it was not compatible with the principles enshrined in Articles 43 [EC] and 49 [EC], so as to allow in future the participation of those persons who had been excluded;
- not revoking the licences granted on the basis of the earlier system which, as stated, infringed the principles of freedom of establishment and of free movement of services or setting up a new tender procedure pursuant to the new rules which now comply with the abovementioned principles;
- continuing, on the other hand, to bring criminal proceedings against anyone carrying on a business via a link with operators who, [despite] being entitled to pursue such an activity in the Member State of origin, were nevertheless unable to seek an operating licence precisely because of the restrictions contained in the earlier licensing rules, later repealed?”⁵⁷

4.85 As in previous cases, the ECJ determined that national legislation that prohibits the pursuit of activities surrounding sports betting operations (e.g. the collection and forwarding of bets) without a licence from the Member State concerned equates to a restriction of the freedom of establishment and the freedom to provide services (Articles 43 and 49).

4.86 However, as in previous cases, the ECJ stated that restrictive measures can be imposed, on grounds that they prevent criminal or fraudulent activities, but must be proportionate (as laid down in case-law) and that it was for

“national courts to ascertain whether those restrictions are suitable for achieving the objective pursued, do not go beyond what is necessary in order to achieve those objectives, and are applied without discrimination.”⁵⁸

4.87 “Articles 43 EC and 49 EC must be interpreted as precluding national legislation which excludes from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets” and that such a “blanket exclusion” goes beyond what is necessary to achieve the objective of preventing gambling sector operators from being involved in criminal or fraudulent activities.⁵⁹

4.88 Furthermore, that Articles 43 and 49 preclude imposing criminal sanction on parties who determine to operate sports betting without a licence when they were unable to obtain a licence, as that Member State, “in breach of Community law, refused to grant licences”.⁶⁰ A copy of the summary of this case can be found in the Appendices section.

4.89 The most recent case, and celebrated by some EU monopoly gambling operators, involved *Liga Portuguesa de Futebol Profissional (CA/LPFP) and Bwin International Limited v. Departamento de Jogos da Santa Casa da Misericórdia de Lisboa*.

4.90 This case, concluded in September 2009, revolved around the exclusive right conferred on Santa Casa (a centuries-old, non-profit making organisation operating under the control of the Portuguese Government) to organise and operate lotteries and sports bets via the internet.

4.91 Bwin (an internet gambling operator) and the Portuguese football league had established a commercial agreement whereby Bwin sponsored the league; as a result both Bwin and the league were subsequently fined (€75K and €74K) for offering and promoting games of chance via the internet.

4.92 However, the Portuguese court referred to the ECJ questions pertaining to the compatibility of the Portuguese legislation with the freedom of establishment, the free movement of capital and the free movement of services.

4.93 The ECJ firstly determined that freedom of establishment and free movement of capital did not apply in this particular dispute. With regards to the freedom to provide services, the Court found that the “legislation constitutes a restriction on the freedom to provide services.”⁶¹

4.94 However, as with previous cases, that “restrictions on the freedom to provide services may be justified by overriding reasons relating to public interest.” As gambling law is not harmonised in the EU, Member States are free to set their own policy objectives and define the levels of protection. Such measures must, however, as in previous cases, be suitable and not go beyond what is necessary to achieve those objectives, applied without discrimination.

4.95 However, the judgement goes further in noting that the policy objective of the fight against crime may constitute an overriding public interest justification for restrictions and stated that gambling involved a “high risk of criminal activity or fraud, in view of the scale of the earnings and the potential winnings on offer to players.”

4.96 As such, the Court viewed that restricting the operation of games of chance via the internet to strict control through the exclusively licensed Santa Casa operation may “be regarded as appropriate for the purpose of protecting consumers against fraud on the part of operators.”

4.97 As to whether such an approach was necessary, the Court (unlike earlier judgements) determined that the mere fact that an internet operator is licensed in another Member State “cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime,” nor in assessing the integrity of that operator.

4.98 It went on to say that, “because of the lack of direct contact between consumer and operator, the Court considers that games of chance accessible via the internet involve different and more substantial risk of fraud compared with the traditional markets for such games. The Court also considers it possible that an operator which sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence the outcome directly or indirectly and thus increase its profits.”

4.99 On what substantive grounds these important observations were made is unclear; the *Lindman* judgement stated that the ECJ held that justification for discriminatory or restrictive practices “must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure”.

⁵⁸ ECJ Case C-338/04 ⁵⁹ Ibid. ⁶⁰ Ibid. ⁶¹ ECJ Case C-42/07 press release

4.100 Where no analysis had been supplied in that case, the ECJ determined that “no evidence had been provided that enabled any conclusion as to the gravity of the risks connected to playing games of chance or such risks and participation by nationals of the Member State concerned in lotteries organised in other Member States.”

4.101 Ultimately, the Portuguese football league and its clubs lost considerable investment, and whilst private licensed gambling operators cannot sponsor or advertise their services in Portugal, that country’s citizens may still gamble online with licensed gambling operators.

4.102 Indeed, as with other monopoly-based jurisdictions that prohibit private licensed gambling operators, the latter’s service is still advertised via the widespread broadcasting of sporting competitions, involving other sporting clubs in other Member States, and where such sponsorship and advertising is permitted and regulated.

4.103 The Santa Casa ruling does not substantially change the ECJ case-law in the field of State-run gambling monopolies, although it makes it easier for Member States to invoke the fight against crime and fraud (rather than gambling addiction) as a ground to restrict the free provision of services. However, it should also be remembered that the Portuguese situation concerns a truly closed market, where the State strictly controls all gambling activities.

4.104 The Santa Casa ruling accepts a restriction to the free provision of services mainly on the basis that the Member State of establishment is liable to encounter difficulties in assessing the professional qualities and integrity of online operators.

4.105 Nevertheless, the ECJ could reach a different conclusion if a Member State considers that it can assess the professional qualities and integrity of private operators and thus provides for some kind of licensing system (even one with a single licensee).

4.106 In such a situation, it would be difficult for that Member State to argue that other Member States are incapable of assessing those requirements, as it would amount to asserting its capacity to regulate and control an economic sector while at the same time refusing to recognise other Member States’ capacity to do so.

4.107 Whilst restrictions may be justified (if necessary and proportionate) under the Treaty, whether the continuation of monopoly gambling operations in many Member States is in reality principally a measure to combat criminality or to maintain fiscal mechanisms is open to question.

4.108 Restricting gambling markets places considerable additional resource and cost burdens upon that Member State’s economy, in addition to the loss of investment from private licensed gambling operations, which is redirected to other Member States. The effectiveness and proportionality of such an approach, within a globalised sporting and gambling market, is also highly debatable.

EU Directives: The Exclusion of Gambling

4.109 In the Advocate General’s conclusion concerning *Placanica* (see ECJ Case law above) he encouraged the inclusion of the gambling sector within the European Union’s Services Directive, which was under development at the time.

4.110 It is stated that the Services Directive’s objective is to “release the untapped growth potential of services markets in Europe by removing legal and administrative barriers to trade in the services sector.”⁶²

4.111 The freedom of establishment and the freedom to provide services were the two main targets for the Directive; both issues of particular consideration with regard to the ECJ case-law outlined in the previous section in relation to gambling.

4.112 The “Directive requires the Member States to simplify procedures and formalities that service providers need to comply with. In particular, it requires Member States to remove unjustified and disproportionate burdens and to substantially facilitate:

- The establishment of a business, i.e. cases in which a natural or legal person wants to set up a permanent establishment in a Member State, and

⁶² European Commission website: Services Directive

- The cross-border provision of services, i.e. cases in which a business wants to supply services across borders in another Member State, without setting up an establishment there.”⁶³

4.113 Adopted by the European Parliament and the Council on 12 December 2006, the Directive was required to be fully transposed by Member States into their national systems by 28 December 2009. However, whilst the Services Directive applies to the provision of a wide range of services – to private individuals and businesses – gambling is specifically excluded.

4.114 As paragraph 25 of the Directive details, “Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the specific nature of these activities, which entail implementation by Member States of policies relating to public policy and consumer protection.”

4.115 A similar situation had occurred with regard to the E-Commerce Directive, adopted in 2000, and which “sets up an Internal Market framework for electronic commerce, which provides legal certainty for business and consumers alike. It establishes harmonised rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers.”

4.116 Examples of services covered by the Directive include online information services (such as online newspapers), online selling of products and services (books, financial services and travel services), online advertising, professional services (lawyers, doctors, estate agents), entertainment services and basic intermediary services (access to the internet and transmission and hosting of information). This includes services provided free of charge to the recipient and funded, for example, by advertising or sponsorship.

4.117 Given the growth of internet gambling, it seemed a suitable service for inclusion within this Directive. However, it informs of the “exclusion of gambling activities from the scope of application of this Directive covers only games of chance, lotteries and betting transactions, which involve wagering a stake with monetary value; this does not cover promotional competitions or games where the purpose is to encourage the sale of goods or services and where payments, if they arise, serve only to acquire the promoted goods or services.”

The Specificity of Sport

4.118 The European Commission’s White Paper on Sport, published in July 2007, stated its position on the application of EU law to sport, namely that “Competition law and Internal Market provisions apply to sport in so far as it constitutes and economic activity.”⁶⁴

4.119 At the same time, the White Paper accepts that sport does have special characteristics (the specificity of sport), but that this had been taken in account in the case law of the European courts and decisions of the European Commission, which provide a guide for sporting bodies.

4.120 The Commission’s document is clear that “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.”⁶⁵ Furthermore, that whether a particular sporting rule is compatible with EU competition law can only be made on a case-by-case basis and in a proportionate manner.

4.121 This position greatly disappointed some sporting bodies and Member States; the Independent European Sport Review (IESR), published a year earlier, had proposed an exception for sport from EU law, and sporting bodies had hoped to at least gain greater clarity (e.g. Commission guidelines) regarding the impact of EU law on the sporting sector.

4.122 Whilst appearing to relent somewhat regarding the prospect of sport being exempt from EU law, sporting bodies have continued to press for greater clarity regarding the specificity of sport with the Commission, notably guidelines on the law’s application to sport.

4.123 Through the White Paper, and the Commission’s dialogue mechanism with sport, it has been clear in informing that the particular aspects of each individual case “does not allow for the formulation of general guidelines on the application of competition law to the sport sector.”⁶⁶

⁶³ Ibid. ⁶⁴ European Commission White Paper on Sport (July 2007) ⁶⁵ Ibid. ⁶⁶ Ibid.



Chapter 5: COMMERCIAL

State Aids, Taxation and Offshore Locations

5.1 This section will focus on the State aid and taxation measures adopted by governments and EU institutions towards the sporting (principally professional) and gambling industries, and associated business practices employed by those two commercial sectors. This will establish a clearer picture of the fiscal landscape within which both businesses operate.

5.2 This examination is intended to contribute towards the discussion and evaluation of the arguments put forward by some professional sporting bodies and EU governments that licensed gambling operators should pay professional sporting bodies what has been termed a 'fair return' from the income those operators achieve as a result of their sports betting activities.

5.3 To that end, there will be a particular attention focused on the fiscal measures affecting both industries, the reasons behind those arrangements, and an assessment of whether the continuation of those measures are warranted for both modern-day professional sport, its progression to a fully commercially focused agenda, and recent technological advances which are challenging the long-held gambling and fiscal arrangements of governments worldwide.

State Aids

5.4 The Treaties of the European Union, in establishing an internal market (Article 3 TEU), includes rules to safeguard competition; the latter being viewed by western economies as the most effective way of promoting efficiency and innovation, ultimately benefiting consumers. In achieving that, those competition rules are applicable to both private undertakings and Member States.⁶⁷

5.5 Articles 107, 108 and 109 TFEU (ex Art 87, 88 and 89 EC) directly address State aid; the former "in general terms provides that in principle, any State aid which can distort competition in the Community is incompatible with the Common [now Internal] Market and is (implicitly) prohibited."⁶⁸ The full text of the relevant Treaty Articles is provided in the Appendices to this document.

5.6 The following paragraphs refer to documentation that was produced prior to the ratification of the Lisbon Treaty, which entered into force on 1 December 2009, and which amends the EU and EC Treaties. As a result, the references to the EC Treaty in the following paragraphs have been superseded by the Treaty on the Functioning of the European Union (TFEU); the main difference is in the numbering and the text remains relatively the same.

5.7 The European Commission's White Paper on Sport (2007) informs that the "granting of State aid to undertakings is in principle prohibited," however there are certain types of supporting measures provided by Member States to sports which can be compatible. These principally fall within the scope of existing block exemptions such as:

- de minimis aid: aid of up to €200K distributed over 3 fiscal years to a single undertaking;
- rescue and restructuring aid: aid to clubs facing financial difficulties, provided that such aid is limited in time, followed by a restructuring plan, and reimbursed in the 12 months after payment;
- aid to SMEs: under certain conditions, aid for investments by small and medium-sized enterprises can be considered compatible; and
- training aid: state support accorded to the training of young athletes is generally compatible with EU law if it fulfils the condition laid down in the block exemption regulation on training aid. Alternatively, it is not covered by the State aid rules if it falls within the competence of the State in the area of education.

5.8 As the Independent European Sport Review (2006) identified, "Sport is a field of activity where State aids are commonly used. Typical State aids in sport can be summarised as follows:

- (i) special tax rates;
- (ii) loans with lower interest rates;

⁶⁷ EU Sport, Law and Policy: Chapter 18 ⁶⁸ Ibid.

- (iii) guarantees with lower commissions;
- (iv) direct subsidies;
- (v) public financing of sport facilities through clubs or any public administration;
- (vi) acquisition of a public-municipal stadium by private club or institution at a symbolic price;
- (vii) municipal stadia construction or renovation paid by the local council;
- (viii) public works in private sports facilities;
- (ix) public acquisition of publicity spaces in the stadia; and
- (x) land sale or donation or an exchange of one piece of land for sport facilities.”⁶⁹

“It is accepted that aid granted in the area of professional sport might give rise to some distortions”

Independent European Sport Review

5.9 As the IESR acknowledged, “it is accepted that aid granted in the area of professional sport might give rise to some distortions,” however, the document attempts to justify this by saying that “it is particularly complex to apply the rules in this sector”.⁷⁰ It then recommends that sport be exempt from the application of certain categories of State aid rules. The European Commission’s response (White Paper 2007) was clear in rejecting this as “contrary to the Treaty itself, under which all economic undertakings fall under the application of Article 87(1) EC.”⁷¹

5.10 Exemption from State aid and the wider application of Treaty rules are favoured by some sporting bodies and Member States. The European Commission, however, has highlighted that a block exemption regulation is only possible where clear evidence and case law determines such action as appropriate. Neither has been provided in the area of sport and there is no compelling reason to exempt professional sport.

5.11 In 2002, the European Commission (DG Competition) reportedly wrote to Dutch representatives in response to that government’s view (and permission of activities) that financial aid granted by Dutch municipalities to professional football associations, to prevent clubs from financial collapse, did not constitute State aid that required notification to the Commission. The Commission’s view was reportedly somewhat different, as outlined above.⁷²

5.12 Two years later (in 2004), Toine Manders, a Dutch MEP, former lawyer and member of the Internal Market and Consumer Protection Committee of the European Parliament, suggested that around 700 European football clubs were suspected of receiving State aid.

5.13 Manders stated that “the Commission and national authorities treat football with kid gloves because it is so politically sensitive and they don’t want to make themselves unpopular with EU citizens. The Commission [doesn’t] dare start infringement procedures because they don’t know what might happen next...there is a danger that football clubs would collapse like a pack of cards” if a formal investigation was launched into the extent of these measures.”⁷³

“Since professional sport clubs are engaged in economic activities, there is no compelling argument why they should be exemption from the State aid rules.”

European Commission White Paper on Sport

5.14 Manders also informed that “some have argued that EU money that has undoubtedly benefited the Euro 2004 football championships and the Olympics amounts to a form of State aid. Portugal has received around €600m and Greece has received around €1.4bn.”⁷⁴

⁶⁹ Independent European Football Review - Page 111 ⁷⁰ Ibid. - Page 112 ⁷¹ European Commission White Paper on Sport: Background and Content p28

⁷² EU, Sport, Law and Policy ⁷³ euractive.com Toine Manders - interview (August 2004) ⁷⁴ Ibid.

5.15 The Commission's website (DG Competition) states that it has had to deal with an increasing number of State aid cases involving sport which have either led to formal decisions (there are only 3 listed) or which have been resolved informally through settlements (these are not listed and it is therefore presumed that this 'informal' approach is generally employed).

5.16 Of most interest regarding the formal State aid cases is the Commission's judgement regarding the activities of Italian football clubs' accounting systems, following Italian legislation ('salvacalcio' or 'Save Football' law), which the Commission viewed as a potential State aid and also of breaching EU accounting rules.⁷⁵

5.17 The Italian Government's legislative measures (adopted in 2002) modified the accounting rules for professional sports clubs, giving them certain tax advantages, thereby allowing clubs to offset losses suffered in the past against future profits for a longer period of time than normally allowed, reducing the clubs' tax obligations. These tax advantages were subsequently removed in 2005.

5.18 The present extent of potential State aid to sport in the EU is not known. The Commission's White Paper does not include a specific commitment to assessing or addressing this matter. However, the Commission is committed to a study on the financing of sport; this includes the impact of gambling income and is expected to be completed in late 2010/early 2011. This study appears to provide an appropriate vehicle to obtain such State aid information concerning professional sport.

5.19 The issue of State aid, and the distortion of markets, is of particular significance for licensed gambling operators who are presently prevented from accessing a number of EU markets. Whilst there are special arrangements in place for state monopoly gambling operators, often established in part for the benefit of sport (amateur and professional), there are no comparable aids for the benefit of licensed private betting operators in open markets.

5.20 It is also interesting to note that, in the context of the appropriateness of potential State aid provided to professional sport, publicly funded organisations such as members of the European Non-Governmental Sports Organisation (ENGSO), have increasingly lobbied on behalf of wealthy professional sporting bodies commercial activities surrounding betting.⁷⁶

5.21 This lobbying activity has rallied against the opening up of gambling markets within the EU, promoted the retention of state gambling monopolies, and pressured Member States and European Institutions to establish mechanisms that increase the commercial benefits received by professional sporting bodies, all at the expense of licensed private gambling operators.⁷⁷

5.22 The justifications of such actions may well be that these public bodies promote grassroots participation with subsequent health and other social benefits, and that this additional revenue is used accordingly. However, as later sections will demonstrate, the foundation of this argument is not as robust as some would suggest; the amount attributable to grassroots from professional sport appears to represent a small percentage of its income.

5.23 Nevertheless, it is still difficult to see an overriding justification for the use of public funds to promote arguments that restrict market access to licensed betting operators, decrease consumer choice and benefit wealthy professional sporting bodies' income streams, especially when no commensurate arrangement is in place for licensed gambling operators.

5.24 Indeed, there are numerous existing examples of State aids provided for the benefit of the sports sector throughout the EU, and which are principally predicated on enforcing payments either from the licensed gambling sector or the maintenance of state monopoly operations. These aids distort the commercial market and are used as arguments to restrict private operators' access to those EU markets, reducing value and choice to the consumer.

5.25 In these instances, it is often argued that there is a close historical relationship between the growth of sport and gambling income, most notably seen in the horseracing sector, and also to varying degrees, a social importance to maintaining these aids where funds are channelled to grassroots and community sports-related activities.

5.26 Figure 5.1 provides the estimated overall contribution from these levies (State aids) to sport within the EU in 2009. It is calculated that of this €1,626m contribution around €1,015m (or 62%) is provided by the private gambling sector.⁷⁸

⁷⁵ euractive.com 'State aid investigation into Italy's 'save football' law closed' (June 2005) ⁷⁶ ENGSO midterm overview ⁷⁷ ENGSO 'Sport for an Active and Competitive Europe' pamphlet ⁷⁸ Europe Economics Report (2009): The Funding of Sports in the EU by Private Sector Gambling Operators

Figure 5.1: Estimated levy contributions to sport within the EU (2008)⁷⁹

EU Member State	Levy (State Aid) Contribution
Denmark	€77m
France	€740m
Ireland	€98m
Italy	€395m
Netherlands	€60m
Sweden	€139m
UK	€117m
Total	€1,626m

5.27 Irish legislation includes specific measures that direct revenue from taxation on licensed betting operators to the Irish horse and greyhound racing industry. This legislation was enacted in 2001 and appears to have been passed the European Commission, although it is unclear how such measures can be viewed as compatible with State aid when principally relating to maintaining the industry's prize money levels through a tax on betting operations.

5.28 The tax, specifically for Irish racing, is levied on all sporting and non-sporting events (e.g. American football, French tennis or reality TV), although Irish racing only accounts for 15% of all stakes in Paddy Powers' Irish betting shops, for example. Unsurprisingly, the continuing justification for this tax framework has increasingly been questioned by Irish betting operators and will undoubtedly encourage operators to seek more fiscally balanced environments.⁸⁰

5.29 The British horseracing industry, a vocal advocate of the arguments put forward by the Sports Rights Owners Coalition and to extending this aid sports-wide, currently benefits from two longstanding State aid arrangements, both of which distort the application of a fully commercial market and benefit that sports sector accordingly.

5.30 The British racing industry has also, unsuccessfully in this instance, attempted to expand its aid to include revenues from other non-racing industry products provided by licensed betting operators. The basis for the argument present by the sport is that the majority of consumers enter betting premises to gamble on horseracing, and as result, some of the profits from the other products used by consumers (e.g. gaming machines) should also go to racing.⁸¹

5.31 British racing's relevance to the betting sector's customer base has been steadily declining with a wider range of products and technologies e.g. football is the principal online betting product. Moreover, the argument presented does not take account of consumers, again notably online, that principally seek other sporting and gaming products, but as a secondary action might bet on horseracing. As such, it appears to be a tenuous argument.

5.32 More so given that, whilst the racing industry continues to press for an increase to the 10% gross profits tax on British horseracing it currently receives, and to expand that principle to other racing and non-racing products, levy revenues rose from €70.5m to €145.2m 1999-2008 (Figure 5.2). That is a very substantial increase, equating to some 106% over ten years.

⁷⁹ Ibid. ⁸⁰ timesonline.co.uk 'Paddy Power takes half its profits from the UK' (March 2009) ⁸¹ British Horseracing Submission: Determination of the 47th Horserace Betting Levy Scheme

Figure 5.2: British horserace betting levy revenues 1999 -2009

5.33 Recent industry concerns regarding the fall in levy revenue to €115.3m in 2009 have focused on the move by some gambling operators to locate their online businesses outside of Britain.⁸² That will impact on levy revenues; however, such a fall (it is still 63% higher than in 1999) could also be partly explained by consumers preferring other products, and hence the sport's attempt to expand the remit of the existing aid into other non-racing related areas.

5.34 It is clear that the British horseracing industry's growth has, to a large degree, been predicated on its position as a betting product and the betting levy revenues accrued as result, but that does not mean that such an arrangement should remain in perpetuity, nor that it should be extended or replaced by new aid due to perceived challenges to that sport's State aid income.

5.35 As with other sectors and sports, no industry can guarantee continued growth or the maintenance of its revenue levels, be it via commercial activities or non-commercial aid. Furthermore, this should also be viewed with regard to the positive impact of new fully commercial activities that have contributed to overall income; some racecourses race less than 20 times a year, and accrue substantial revenues through non-racing commercial activities.

5.36 Indeed, the UK Government, after considerable examination of the existence of its aid measures for horseracing, has sought to abolish the existing betting levy and sell the Tote gambling operation (passing appropriate legislation in 2004)⁸³ on the basis that the continuation of these statutory mechanisms are an anachronism in the modern commercial age.

5.37 Whilst the levy abolition has been delayed as a secure comparable commercial replacement is identified, it nevertheless remains the UK's policy to remove the state from the funding of professional sport. Commercial developments such as Turf UK, whereby racecourses have joined together to sell their broadcast rights, offers the potential for this to become reality, in the same way that many other sports secure the bulk of their income via broadcast sales.

5.38 In France, statutory mechanisms deliver money to the equestrian sector via the Pari Mutuel Urbain (PMU) for horseracing, and the La Française des Jeux which runs the lottery and non-equestrian sports betting. At the time of writing, France is intending to enact legislation allowing private companies to apply for remote only licences for sports betting (see Chapter 4).

5.39 As stated, the French draft gambling law is intended to provide a 'controlled opening' of that country's online market; the retail sector will remain the preserve of monopoly operators. The law also includes specific fiscal aid measures to professional and amateur sports, and excludes betting exchange operations. If the law retains its present form, it is likely that a number of legal challenges will be launched which will test its compatibility with EU law.

⁸² UK Guardian newspaper 'Ladbrokes confirms Gibraltar move for online gambling' (August 2009) ⁸³ Horserace Betting and Olympic Lottery Act 2004

5.40 Other sports (notably in the UK) have lobbied for the establishment of sports-wide levies; as a UK Treasury note for a meeting with the English Premier League from September 2007 states, and as that body and other sports have been consistently advised, that would be likely to “be illegal under EU law”.⁸⁴ However, that has not deterred sports from continuing to pursue this policy and seek such a market distorting measure being introduced for the sector.

5.41 It is important to note that many State aids benefiting sports within Member States, such as the British horserace betting levy, were enacted prior to that country’s accession to what has evolved into the present day European Union. However, that does not preclude a complaint against those aids, nor does it protect those mechanisms from the application of EU law.

Taxation and Offshore Locations

5.42 There have been criticisms of licensed gambling operators locating their online betting activities in jurisdictions that offer a more favourable economic base from which to conduct their business. Adverse comments regarding this approach principally relate to two issues: a) the disadvantages in being able to enforce payments (to governments and sports) from offshore licensed gambling operators; and b) a perceived reduction in the effectiveness of sporting integrity mechanisms if licensed gambling operators are located in those offshore jurisdictions.

5.43 This section will focus on the former issue, the latter integrity matter being considered in Chapter 6. In doing so, this section will also seek to describe the taxation burdens affecting both gambling operators and professional sporting bodies, and their respective business approaches. That will include consideration of the relative fiscal frameworks within which both operate the position of national governments towards the delivery of these two forms of leisure and entertain products and services and the impact on consumers of those policy positions.

5.44 As is widely recognised, whilst obtaining increasing social acceptance around the world, gambling is subject to high levels of taxation and restricted availability of the product. As the report “Taxation and Regulation of Smoking, Drinking and Gambling in the European Union (2009)” produced by the CPB Netherland Bureau for Economic Analysis advises, restrictions can be justified to protect vulnerable individuals. However, “a practical effect from supply restriction is to create a stream of monopoly profit which can be captured by the state”.⁸⁵ Sport is a direct financial beneficiary of this action (or aid) in many Member States.

5.45 Whilst this action may benefit government finances and that of recipient parties such as sporting bodies (professional and amateur), “measures to force up price by taxation or restrictions on supply will make ‘responsible’ consumers worse off”⁸⁶ and of course also increase the financial burdens upon private gambling businesses licensed in that jurisdiction relative to other operators and other parts of the entertainment and leisure sectors.

5.46 State owned gambling monopolies “commonly protected from foreign competition,”⁸⁷ with high gambling taxation, is a distinctive feature of many EU jurisdictions, and as has been outlined in Chapter 3, are subject to a number of legal actions at the European Court of Justice. These market restrictions ensure that consumers face high prices and stifle innovation and competition, and are justified by some on the basis that sport would be negatively impacted from opening such markets (arguments for this appear subjective rather than evidence based).

5.47 It should be noted that betting taxation is generally lower than many other forms of gambling, notably lotteries. However, this should be assessed in light of: a) the monopoly provision of national lottery products and the effective lack of competition; b) the globally competitive nature of remote betting and gaming products benefiting consumer choice; and c) the taxation advantages of certain non-EEA jurisdictions for remote gambling generally.

5.48 Competition between private licensed gambling operators is consequently far greater than monopoly lottery operations, indeed any monopoly gambling product. This creates additional cost burdens for these businesses if they are to remain viable in such a competitive global market, and which also contributes additional indirect taxation revenues.

5.49 For example, there is often a greater need for advertising and sponsorship commitments for private licensed operators than monopoly providers, as well as the provision of the latest technological advances for both remote and retail ventures if those operators are to maintain and expand their customer base in the face of fierce competition (all services incur taxation).

⁸⁴ UK HM Treasury Briefing Note with the Premier League (September 2007) ⁸⁵ Taxation and Regulation of Smoking, Drinking and Gambling in the European Union (2009) – p.70 ⁸⁶ Ibid. – p.71 ⁸⁷ Ibid. – p.73

5.50 Measures such as the proposal in the draft French law that, in addition to the direct taxation to that government, payments from online betting operators are required to grassroots sport, and forced agreements with professional sport, add to this financial outlay. Thus there are often greater financial burdens upon operators than in other areas of business.

5.51 It will, therefore, be interesting to note the number of gambling companies that determine to operate in jurisdictions that attempt to implement such adverse fiscal arrangements for licensed remote private betting operations. In particular, whether gambling operators seeking licenses in jurisdictions that operate under such conditions are companies with long-term businesses models relating to that market place, or are principally interested in establishing a short-term portfolio of a variety of potential markets to attract investors.

5.52 It must surely be the objective of governments to attract the former; for the latter must cause significant concern for policymakers regarding the stability of the market (if private operators form a significant part) within that jurisdiction and, as result of the fiscal measures imposed, of the stability of revenue directed through this mechanism to government and sports.

5.53 The Taxation Report also comments on the findings of the Swiss Institute of Comparative Law (2006), in which it “reported a strong consensus that players are highly sensitive to value-for-money”.⁸⁸ This is an important factor when assessing the viability of a restrictive or prohibitionist regime in the longer term, and the business reasons for remote licensed gambling operators locating to the most effective regulatory and fiscal environments.

5.54 Regulations imposing the blocking of bank payments and requirements upon internet service providers (ISPs) have been implemented in some jurisdictions, but with limited success. Allied to the direct public sector costs of overseeing these restrictions is the additional cost to other business sectors and the general economy of implementing such measures.

5.55 Indeed, the German state of Schleswig-Holstein announced in October 2009 that it intends to contest the online gambling ban, agreed as part of the Interstate Treaty (which lapses in 2012), and which has precluded a number of commercial deals between German sports and licensed gambling operators. The ban, which only allows monopoly operators in each state and limits online betting to horseracing, is said to have led to a 30% reduction in gambling taxes.⁸⁹

5.56 Furthermore, with regard to governments employing taxation as a way of tackling harm from gambling, “for the policy to be justified, it would have to be clear that taxation reduced the incidence of problems associated with gambling. This is in fact unclear.”⁹⁰ Indeed, proportionate “regulation offers an alternative route to achieving the same goals as taxation”.⁹¹

5.57 It is understandable that governments are concerned about lost revenue through cross-border activities, but gambling is merely one of a number of commercial products and services that are available through this new technology. For example, consumers can acquire hard copies and downloads of books, music and software from outside of their jurisdiction and to which revenues are lost, but no restrictive fiscal measures are placed on those activities.

5.58 Such is the scope and availability of remote technologies, that gambling through that medium will invariably have an impact on the existing markets of jurisdictions (whether or not operators are licensed or not within that area). However, as free access to entertainment via television has not eliminated the cinema industry, land-based gambling will survive and be subject to direct taxation.⁹²

5.59 In addition, whilst a growing sector, online gambling is the minority activity in the overall market context; the betting market remains dominated by retail operations. Figures 2.4 and 2.5 show that, in 2008, the online business equated to 27% of global sports betting gross win, with it estimated to reach 30% by 2012. It should be remembered that public operators will also make up part of the growing online market and distribute revenues accordingly.

5.60 Importantly, this market evolution should also be considered in light of the considerable additional jurisdictional taxable revenues provided by remote operations in other sectors of the economy, such as the significant sponsorship and advertising that is required to establish and maintain such business activities in a highly competitive global market.

⁸⁸ Ibid. – p.80 ⁸⁹ Tax-news.com ⁹⁰ Taxation and Regulation of Smoking, Drinking and Gambling in the European Union (2009) – p.83 ⁹¹ Ibid. – p.70 ⁹² Ibid.

5.61 The Taxation Report draws attention to actions taken by some EU governments to agree minimum rates of duty on tobacco, to limit competition and revenue loss, but states that this would be hard to reproduce for gambling, citing the negatives of widespread state ownership and the ability of consumers to shop via various electronic technologies for value-for-money.⁹³

5.62 The Report also notes that the ability of governments to force consumers to accept poor value will inevitably weaken over time as a result of new remote technologies. However, given “the relatively low dependence of national governments on tax revenue from gambling (compared with alcohol and tobacco taxation), this is perhaps not too serious a policy issue.”⁹⁴

5.63 As a consequence, the Report suggests that “European governments should perhaps be content to reach agreement on minimum levels of protection for problem gamblers, to be specified within their national frameworks of regulation of internet gambling.”⁹⁵ Furthermore, in addition to consumer price benefits, “the level of technology within the [remote] industry offers innovative ways to regulate this industry in the interest of player protection.”⁹⁶

5.64 The latter point does not, of course, reflect the concerns of sporting bodies at the lost gambling income from which many have been beneficiaries. The Commission’s White Paper notes that in “many Member States sport is partly financed through a tax or levy on state-run or state-licensed gambling” and “invites Member States to reflect on how best to maintain and develop a sustainable financing model for giving long-term support to sports organisations.”⁹⁷

5.65 As the Commission’s document points out, modern sports have many sources of income⁹⁸; it has to be questioned if, in an ever-evolving market, where broadcasting is now the principal income generator for sport and where many other products profit from sport, restrictive monopolistic or sports-specific gambling levies are economically or legally sustainable. This issue will be reflected upon throughout the commercial part of this document.

5.66 Indeed, the necessity for such arrangements, notably with regard to professional sport, should be considered with regard to the overall fiscal position. This document will therefore outline the comparable taxation impacting on the gambling (notably betting) and professional sporting products with a view to contributing towards that debate. As with the situation outlined in the earlier State aid section, it further highlights the favourable regime provided to professional sporting bodies and the global businesses they operate.

5.67 The Swiss Institute Study for the European Commission (2006) provided a comparison table of betting taxation rates within EU Member States (Figure 5.3). This does not include the additional taxation levied on these businesses such as corporation tax, nor does it include rates for gambling operators separate gaming products such as roulette, poker etc. There have been some betting rate and legislative changes since the study (e.g. Germany has prohibited private operators, and Italy has opened its market), but it nevertheless serves to assist this examination.

⁹³ Ibid. - p.92 ⁹⁴ Ibid. ⁹⁵ Ibid. ⁹⁶ Ibid. - p.93 ⁹⁷ European Commission White Paper on Sport (2007) p12 ⁹⁸ Ibid.

Figure 5.3: Swiss Institute study of tax rates for licensed betting operators (2006)⁹⁹

EU Member State	Rate of Taxation as a Percentage of Gross Revenue
Finland	Reserved to public sector and/or public interest objectives
France	Reserved to public sector and/or public interest objectives
Italy	Reserved to public sector and/or public interest objectives
Sweden	Reserved to public sector and/or public interest objectives
Austria	Up to 28.46% (6.8% of gross revenue, plus 32.5% of winnings depending on Land)
Netherlands	19.33% (29% of winnings)
Cyprus	18.5% (11% on horserace pool betting, 26% on other pool betting)
Germany	16.66% (NOTE: The present Interstate Treaty prohibits private operators, reserving gambling to the public sector)
Luxembourg	15%
Belgium	13%
Hungary	11% (30% of net revenue, plus up to 10% of profit from fixed odds betting on the results of horse racing)
United Kingdom	Up to 7.5% (15% of net revenue, plus up to 10% of profit from fixed-odds betting on the results of horse racing)
Spain	6.66% (10% of winnings)
Denmark	6.33% (19% of net revenue on average)
Poland	6%
Estonia	5%
Lithuania	5%
Slovakia	Up to approximately €12,900 per annum
Malta	4.42% (25% of net turnover on off-line betting and 0.5% of gross turnover on on-line betting)
Greece	4.33% (3% of net revenue and 5% of winnings)
Latvia	3.33% (10% of net revenue)
Czech Republic	3.25% (13% of profit)
Ireland	Up to 1.5%
Portugal	Insufficient information available
Slovenia	Insufficient information available

5.68 The Swiss Institute was clear that even “if the individual highest and lowest rates are left out of account, some Member States impose tax rates up to six times higher than those imposed by other Member States. It must be concluded that there is a high risk of market distortion due to divergences amongst Member States in their fiscal treatment of betting services.”

5.69 Gambling taxes are not harmonised; it is for each Member State to determine the appropriate level. Betting taxation rates in many offshore locations are much lower and many remote operators have sought to take advantage of that fiscal framework. This increased competition creates more value for consumers, who are price sensitive, and it should not be overlooked that such competition has economic advantages in other areas of those economies.

5.70 Indeed, many low-tax jurisdictions view the overall income generated for the economy from these licensed gambling operators rather than just the gambling tax itself. All governments have available measures outside of ineffectual policies of prohibition, over-focusing on the direct licensing of already properly licensed remote gambling operators, and to retaining a level of taxation income through retail markets as well as generating new taxation via sponsorship and advertising revenues from all licensed operators (public and private).

5.71 The introduction of Fixed Odds Betting Terminals (FOBTs), which are strictly limited in number and operation (e.g. size of wager and payout limits) and which allow casino games such as roulette in British betting shops, has significantly increased that retail sector’s viability in relation to the growth of online gambling. These machines provided some €1.4bn in gross profits, 15% (or €215m) of which was provided to the UK Government as tax during 2008.¹⁰⁰

⁹⁹ Swiss Institute Study p.1063 ¹⁰⁰ British Gambling Commission ‘Industry Statistics 2008/09’

5.72 EU retail betting markets remain intact and taxed in that jurisdiction, and whilst remote operations do impact on their economic viability, that is just one of many issues that affects retail businesses. Land-based retail betting operations therefore remain, and whilst their overall market share may be falling (overall income can still rise) with competition from remote operations, the retail market continues to be the dominant force in the UK, for example.

5.73 The presumption that all betting or gambling income will be, or is, channelled through remote, tax efficient, licensed operations is wrong. For example, remote betting operator bet365 remains licensed and taxed within the UK, when others have sought more advantageous fiscal jurisdictions for their online operations. Nor has Gala Coral, another UK-based but globally focused gambling company, moved its remote operation offshore at the time of writing. The decision to move is based on a number of issues, which may differ between operators.

5.74 Figure 5.4 below, shows the corporation tax paid by a selection of major licensed gambling operators offering remote betting facilities. Some operators also have retail gambling outlets in a number of jurisdictions, which are contained in these figures (and therefore provide direct gambling taxation revenues to a number governments) along with a range of taxes via advertising and sponsorship, which are not part of this figure (being paid by the leasing party).

Figure 5.4: International Licensed Gambling Operators' Fiscal Results (2008)

Gambling Operator	Revenue	Profit before tax	Corporation tax paid	Tax as % of profits	Tax as % of revenue
William Hill ¹⁰¹	€1,213m	€272m	€73.4m	26.9%	6%
Ladbrokes ¹⁰²	€1,475.7m	€315m	€48.8m	15.5%	3.3%
Paddy Power ¹⁰³	€283.7m	€78.9m	€12.6m	16%	4.4%
Betfair ¹⁰⁴	€301.7m	€47.8m	€10.4m	21.7%	3.5%
PartyGaming ¹⁰⁵	€322.9m	€56.3m	€3.1m	5.5%	1%

5.75 It should also be noted that the figures above do not cover the various other taxes on specific gambling products; these figures are not publicly available for many of these companies and so have not been incorporated within the table above.

5.76 However, figures are available for William Hill and show that the company also provided: €116m in gross profits tax (GPT); €35.5m in horserace levy (a hypothecated tax); and €57.8m for other taxes e.g. gaming machines.¹⁰⁶ With its corporation tax, William Hill alone paid some €282.7m (or over 23% of revenues), greater than its total profits (€272m) in 2008.

5.77 Ladbrokes has also released its overall taxation contribution for 2008 which details that the company paid: €126.4m in GPT; €50.8m in horserace levy; €86.2m in value added tax (VAT); €56.7m in local taxes;¹⁰⁷ and with corporation tax totalled some €368.9m. Again this is higher than the organisation's profits from its entire gambling business in 2008.

5.78 Figure 5.5 therefore provides a clearer fiscal overview of these two major international multi-platform gambling operators, and where their tax contribution represents around 25% of their revenue and more than their respective profit levels (138.6% and 142.3%).

¹⁰¹ William Hill PLC Consolidated Income Statement 2008 ¹⁰² Ladbrokes Annual Report and Accounts 2008: Consolidated Income Statement p.48

¹⁰³ Paddy Power PLC Annual Report 2008 p.38 ¹⁰⁴ Betfair Annual Review 2008 p.8 ¹⁰⁵ PartyGaming PLC Annual Report 2008 p.104 ¹⁰⁶ William Hill PLC Investors Package ¹⁰⁷ Ladbrokes PLC Press Release 'Ladbrokes launches 'Bet British' advertising campaign' (March 2009)

Figure 5.5: Overall taxation contribution of Ladbrokes and William Hill (2008)¹⁰⁸

Gambling Operator	Revenue	Profit after taxes	Total tax paid	Tax as % of profits	Tax as % of revenue
William Hill	€1,213m	€198.6m	€282.7m	142.3%	23.3%
Ladbrokes	€1,475.7m	€266.2m	€368.9m	138.6%	24.9%

5.79 These licensed private gambling businesses, operating in open but properly regulated markets (adding additional cost burdens) with intense competition, have high turnover, low margin businesses. This reflects the values of Article 3 TEU by promoting “a highly competitive social market economy” and consequently benefiting consumer choice, price and the promotion of innovative technologies.

5.80 This positive consumer product (from a price comparison perspective) has not, however, been permissible via private operators in a number of EU jurisdictions; that situation has been challenged through the availability of remote gambling services with even lower overheads and therefore even more value available to consumers through additional business efficiencies, and through a number of legal challenges by gambling operators (see Chapter 4).

5.81 International and national sporting bodies have increasingly lobbied national governments and European institutions to introduce legislative measures to force licensed gambling operators to pay those sports a proportion of their revenues from the betting activities operators offer in relation to their sporting product (above the significant amount already provided under existing legal and commercial arrangements negotiated by both parties).

5.82 In seeking to assess fully the validity of such claims from a commercial perspective, it is also appropriate to consider that issue in light of the overall fiscal environment affecting both industries. A broad overview of the situation affecting licensed gambling operators has been provided above. The remainder of this section will now focus on the professional sporting industry in relation to the taxation framework affecting professional and global commercially focused sporting bodies.

5.83 As the previous section highlighted, there appears to be a considerable (although not fully known) level of State aid provided for both amateur, and more questionably, professional sport. The financial advantages of this aid to professional sporting bodies, to which private licensed gambling operators do not have access (although monopoly gambling operators benefit from restricted markets and so could be deemed to benefit from such aid), also appears to be unknown. As has been previously suggested by a member of the EU Parliament’s Internal Market Committee, this aid could be widespread for sports (not notified and potentially illegal).

5.84 In addition to State aids benefiting professional sport, if a comparison of the tax contribution is also conducted regarding private licensed gambling operators (Figure 5.5 above) compared to the situation regarding the three major international sporting bodies (Figure 5.6 below), the result is again somewhat different. Whilst the total taxation liabilities for these licensed gambling operations is around 25% of their revenues and more than their total profits, it is negligible for the sports listed below.

Figure 5.6: International Sporting Bodies’ Fiscal Results (2008)

Sporting body	Revenue	Profit after solidarity payments	Tax paid	Tax as % of profit	Tax as % of revenue
FIFA ¹⁰⁹	€616.4m	€125.9m	€0.4m	0.3%	0.06%
IOC ¹¹⁰	€1,642m	€261.5m	€0m	0%	0%
UEFA ¹¹¹	€1,925.2m	€238.6m	€3m	1.2%	0.16%

¹⁰⁸ The figures reflect the publicly available information and may not include all taxes ¹⁰⁹ FIFA Financial Report 2008 p.59 ¹¹⁰ IOC Tax Exemption Return for 2008 and sportsbusinessjournal.com ‘IOC cashes in on Beijing’ (July 2009) ¹¹¹ UEFA Financial Report 2008 p.3

5.85 The reason for this situation resides in the provision of special taxation arrangements for sporting bodies (amateur and professional) in many jurisdictions. This of course has to be considered on a country-by-country basis; as with gambling, the approach to taxing commercial professional sport is not the same in each jurisdiction. However, as will be explained in more detail later, there have been some questionable approaches to tax by certain sporting bodies.

5.86 As with gambling (in fact long before gambling operators had the technological tools to take advantage of favourable fiscal environments provided by offshore jurisdictions), international sporting bodies have sought to base their operations in the most advantageous fiscal regimes to maximise their income streams and solidarity mechanisms. The latter will be considered later, notably its impact in terms of the funding of grassroots sport; this section merely seeks to reflect the taxation differentials for what are commercial operations.

5.87 When Ladbrokes and William Hill announced¹¹² in August 2009 that they were moving their internet betting operations (their gaming operations were already based outside of the UK) to an offshore jurisdiction so that they could compete with other global operators already benefiting from lower taxation levels, there was condemnation from sporting bodies.

5.88 Whilst professional sports, some EU Member States and MEPs have criticised commercial gambling operators for seeking to take advantage of favourable fiscal benefits (on the basis that this has the potential to reduce direct tax and sporting income), no such criticism has been attributed to what are clearly commercial sporting operations basing themselves in what are widely recognised as tax havens, with the principal purpose of avoiding tax liabilities.

5.89 As an article produced by Play the Game (an independent organisation funded by the Danish Ministry and sporting groups) in October 2009 advises, the principal location for international sporting bodies is Switzerland, where 30 international sports federations are based (see Figure 5.7). Switzerland has long been widely recognised as a tax haven.

Figure 5.7: Selection of international sporting bodies based in Switzerland

Sporting body	Sporting body
European Club Association	European Athletic Association
Fédération Internationale de Football Association	Fédération Internationale de Natation Amateur
Fédération Internationale de Gymnastique	Union Européenne de Gymnastique
Fédération Internationale de Motocyclisme	Fédération Internationale de Ski
International Canoe Federation	International Fencing Federation
International Cycling Union	European Golf Association
International Equestrian Federation	International Boxing Association
International Handball Federation	International Hockey Federation
International Olympic Committee	European Cycling Union
International Rowing Federation	International Baseball Federation
International Skating Union	International Ice Hockey Federation
International Table Tennis Federation	Fédération Internationale de Volleyball
Tennis Europe	European Professional Football Leagues
Union of European Football Associations	International Basketball Federation

5.90 As Play the Game also reported, the “International Olympic Committee headquarters in Switzerland where the owners of the Olympics are registered as members of a non-profit sports club and as such they do not have to pay 20 percent income tax on their billion dollar income.”¹¹³

5.91 The IOC operation includes 400 employees in three countries, and a marketing company that sells sponsorship deals and TV rights; Play the Game reports that for Vancouver 2010 and London 2012 TV rights worth €2.7bn have already been sold, a 30% increase on Turin and Beijing. Furthermore, that in “addition to this, the IOC can expect 900 million dollars [€657m] from global sponsors and so far the local partners in the next three Olympic cities; Vancouver, London and Sochi have invested 1.6 billion dollars [€1.2bn] in the Olympic rings.”¹¹⁴

¹¹² Reuters ‘William Hill to move online unit offshore’ (August 2009) and UK Guardian Newspaper ‘Ladbrokes confirms Gibraltar move for online gambling’ (August 2009) ¹¹³ playtheGame.org ‘As the IOC brand gets stronger so do the advantages of being situated in Switzerland’ (October 2009)

¹¹⁴ Ibid.

5.92 Indeed, as the IOC President's report to the 121st IOC Session in October 2009 stated, after noting that the IOC had faced two major financial and economic crises (dot.com bubble and September 2001 New York attacks), that the organisation is facing "the most severe crisis for decades." After informing the meeting that the IOC needed to "maximise its revenues", the President welcomed that "income from marketing and television has increased significantly".

5.93 The President also noted that its TOP programme (the main global sponsors) has increased as follows: "TOP V (2001-2004) generated a total of USD 663 million [€423m]. TOP VI (2005-2008) brought in 866 million dollars [€591m]. So far, TOP VII (2009-2012) is worth 883 million dollars [€645m], and negotiations are still under way to finalise the programme. TOP VIII (2013-2016) has already secured us 563 million dollars [€385m] from five sponsors."

5.94 In addition, he stated that the "IOC's reserve fund grew from USD 105 million [€71.7m] at 31 December 2001 to 422 million dollars [€288.2m] by 31 December 2008, and by 31 August 2009, our assets totalled 455 million dollars [€332.15m]."

5.95 The commercialisation of sport, and its business orientated approach (although it is clearly not taxed accordingly), is further demonstrated by the IOC's Marketing Committee Chairman's report (at the same October 2009 Session), "The Olympic brand is stronger than ever. Despite financial crisis, our earnings are really good. And after the election of Rio de Janeiro as host city of the Olympics in 2016, we also see great opportunities in South America."

5.96 The IOC is not alone, FIFA's 2008 profit before taxation is represented as €125.9m; however, it should be noted that this is after event related expenses (totalling some €301.5m), mostly in the form of €249m to the 2010 South African Organising Committee, leaving a figure of €341.9m from €616.4m in revenue. After additional payments to associations (€90.8m) and other expenses (e.g. €20.6m on Committees and Congress), FIFA was left with €125.9. As of "31 December 2008, FIFA's balance sheet totalled USD 1,631 million [€1.1bn]."¹¹⁵

5.97 FIFA also reported that it "did not suffer any damage from the financial crisis in 2008." Thanks to its "conservative investment policy and diversification of assets in good time FIFA did not lose any money and even recorded a positive financial result." Indeed, its strong annual results were attributed to a "successful strategy of hedging in foreign currencies, which boosted FIFA's equity by USD 75 million [€51.2m]" leading to a "very successful year."¹¹⁶

5.98 For UEFA, the "turbulence in the markets made this [2008] a particularly difficult year." However, it reported that "UEFA's policy to invest in top-rated and well-known banks and institutions seems to be paying off," along with its currency hedging operations. As of 30 June 2008, UEFA's balance sheet stood at €1.7bn; adding its 2008 profits of €235m, to its retained earnings, left it with equity of €508.4m.¹¹⁷

5.99 Put into context, the 2008 income streams of these three major sporting bodies, produced through highly advanced global commercial operations, reveal higher revenue streams than those achieved by the five gambling operators above, which are some of the leading businesses in their respective gambling sectors, in the same period; however, the international sporting organisations' taxation commitments are effectively zero.

5.100 In addition to this and an unknown level of State aids benefiting sports, these international commercially focused sporting bodies would like new legislative mechanisms introduced by EU Member States or the European Commission that effectively provide them with direct commercial control over licensed gambling operators' sports betting businesses.

5.101 These and other wealthy international sporting bodies have also pursued exemptions from EU law with Member States and EU institutions to allow them greater control over the operation of their commercial sporting product.¹¹⁸ These EU laws have curtailed their ability to introduce measures which potentially breach free movement principles and to cap players' salaries,¹¹⁹ amongst other EU Treaty measures promoting competition and free trade.

5.102 The foundation of such an exemption from law is supposedly predicated on the 'special nature' or 'specificity' of sport, which is a relatively undefined concept; the European Commission has rightly determined that sports' special nature should be assessed on a case-by case basis. As the Commission's White Paper states, "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."

¹¹⁵ FIFA Financial Report 2008 p.21 ¹¹⁶ FIFA Annual Report 2008 ¹¹⁷ UEFA Consolidated Financial Statements 2008 ¹¹⁸ UK Guardian newspaper 'Platini calls on European parliament to make sport a special case' (Feb 2009) ¹¹⁹ sl.com 'Will the global credit crunch force European leagues into salary caps?' (February 2009)

5.103 The calls from many of the supporters (e.g. certain Member States and MEPs) of professional sports for commercial control over licensed gambling operators' sports betting activities have also promoted the application of this 'special nature' and exemptions from EU law. They also tend to be jurisdictions that have restricted gambling markets with monopoly operations.

5.104 However, with the growing commercial scope and nature of professional sport, even the jurisdiction within which all three of these major international sporting bodies reside (Switzerland) has been reconsidering its special taxation regulations concerning those sporting operations.¹²⁰

5.105 Clearly a large proportion of these international sporting bodies' (untaxed) income is directed to sports at national and club level. It would, therefore, if considering this issue in its totality, be appropriate to also examine the taxation practices of sports at those levels. To that end, the following paragraphs will focus on the activities of a number of UK sports clubs, which represent some of the most commercially successful and strongest advocates of additional payments from licensed gambling operators to sporting bodies e.g. Premier League.

5.106 The UK also represents one of the most respected and open, but properly regulated, gambling environments in the world. As the following 'Advertising and Sponsorship' section will also reveal, there is a significant commercial stream of gambling income through those mediums to sporting bodies, which makes the UK particularly appropriate for this assessment.

5.107 As with the stream of income from international bodies to national equivalents, it would also be appropriate to examine the income channels to the clubs themselves, and their key fiscal results for the same period. Figure 5.8 therefore provides a fiscal perspective of the four largest sports clubs in England to consider in relation to the income they generate themselves and also receive from national and international bodies (the latter does not incur tax at that source).

Figure 5.8: Selected Premiership football clubs' fiscal results (2008)¹²¹

Football club	Revenue	Profit/(loss)	Tax paid	Total profit/(Loss) for financial year
Manchester United	€330m	(€26.5m)	€6.3m	(€32.6m)
Liverpool	€204m	(€51.5m)	€2m	(€53.5m)
Arsenal	€281m	€46.2m	€13.7m	€32.5m
Chelsea	€239m	(€88.1m)	€0m	(€88.5m)
Total	€1,054m	(€120m)	€22m	(€142m)

5.108 From annual revenues totalling over €1bn for these four Premiership clubs alone, only €22m was paid in taxation, which is equivalent to 2% of those clubs' annual revenues.

5.109 It has been reported in late 2009 that the UK's HM Customs and Revenue is concerned that UK sports clubs and players may be using their image rights as a means of tax evasion. The public body is currently investigating twelve Premiership rugby clubs, with cricket and rugby league also under examination, before the practices within football are scrutinised.¹²²

5.110 As the article explains, "clubs commonly pay players a percentage of their salaries for use of image rights, often as much as a fifth. If individuals gain advertising contracts, make public appearances or generally enhance their public profile the clubs benefit, which is why they pay for the rights."¹²³

5.111 The article further comments that what "concerns the [HM Customs and] Revenue is that money is apparently being paid to players who do not exploit their rights. Instead they put the money in offshore accounts, use it to pay agents' fees, and avoid tax on a large lump of their income. If HMRC decide tax is payable the sums could be backdated until 2006."¹²⁴

¹²⁰ playthegame.org 'As the IOC brand gets stronger so do the advantages of being situated in Switzerland' (October 2009) ¹²¹ Figures obtained from financial returns to Companies House ¹²² UK Guardian newspaper 'Clubs fear impact of investigation into image rights 'tax loophole' (September 2009)

¹²³ Ibid. ¹²⁴ Ibid.

5.112 One senior rugby official is reported as saying that it “is clear that the Revenue sees this area as a potential tax loophole. Some clubs face a potentially large bill if the Revenue finds instances of image rights being paid in lieu of salary, thus avoiding PAYE and National Insurance, but there is a feeling that it is using rugby and cricket to establish ground rules before moving on to the biggest football clubs where the potentially big money lies.”¹²⁵

5.113 Chris Caisley, a partner in law firm Walker Morris and a former chairman of Bradford Bulls rugby league club told the media that there are “examples where the image rights of a player are worth more to a club than his contribution on the field. I think there are instances where a player does not have any value to his image rights but still receives a payment.”¹²⁶

5.114 It is also interesting to note that, whereas English Premiership football clubs for example, cannot physically relocate to tax havens in the same way that international governing bodies have, many clubs are registered in offshore locations presumably to maximise their income and avoid taxation payments in their resident jurisdiction. The ultimate controlling party for more than a third of the twenty Premiership clubs in 2009 was based offshore.¹²⁷

Figure 5.9: Premiership Clubs’ Offshore Tax Efficiencies (2008 and 2009)¹²⁸

Football club	Ownership and location
Bolton Wanderers	95% owned by Edwin Davies, via Fildraw Private Trust, believed to be in the Isle of Man, a low-tax jurisdiction
Liverpool	Ultimately owned (via the low-tax jurisdiction of Grand Cayman) by Kop Investment LLC, registered in Delaware, a low tax US state, by Tom Hicks and George Gillett
Fulham	Mafco Holdings Limited, a Bermuda (a low-tax jurisdiction) company, which is owned by Mohamed Al Fayed and his family
Portsmouth	Miland Development (2004) Limited, a British Virgin Islands company, which is controlled by Alexandre Gaydamak
Blackburn Rovers	Trustees of the Jack Walker 1987 Settlement, a trust registered in Jersey (a low-tax jurisdiction)
Hull City	Isis Nominees, a company registered in Jersey, a low-tax jurisdiction
Manchester United	Malcolm Glazer and his family via Red Football Limited Partnership and Red Football General Partner Inc, both registered in the low tax State of Nevada, USA
Sunderland Athletic	Drumaville consortium, based in Jersey (a low-tax jurisdiction)
Tottenham Hotspur	Primarily owned by Enic International Limited, registered in the Bahamas, a low-tax jurisdiction
Everton	Robert Earl, the clubs’ largest single share holder, owns his equity in the club through BCR Sports in the British Virgin Islands

5.115 This is no doubt part of the general trend within the professional sporting industry to seek tax efficiencies. Indeed, it was noted in 2006 that UK professional sports clubs were at a disadvantage with their continental counterparts who are able to offer improved deals because their governments allowed the wealthy to pay less tax, and where more income could be held offshore, benefiting from cheaper tax rates in Jersey, Gibraltar or Liechtenstein.¹²⁹

5.116 Questions concerning professional sport and taxation are not confined to the UK. During 2009, Spain’s main political parties debated measures to “curb the abuse of taxation privileges of elite footballers.”¹³⁰ This would reverse the ‘Beckham law’ (Beckham was the first to benefit) which came into effect in 2005, and abolish the preferential 24% tax bracket for ‘foreign executives’, allowing them to pay nearly half as much as the 43% tax on Spanish citizens.¹³¹

¹²⁵ Ibid. ¹²⁶ Ibid. ¹²⁷ UK Guardian newspaper ‘Clubs no haven for super rich’ (April 2009) ¹²⁸ Ibid. and UK Guardian newspaper ‘Premier League clubs boast £3.1bn of debt’ (June 2009) ¹²⁹ UK Guardian newspaper ‘UK tax’ keeps top footballers out’ (January 2006) ¹³⁰ soccernews.com ‘Spain to keep ‘Beckham law’ on tax’ (June 2009) ¹³¹ SI.com CNN Network ‘Spain to debate reversing ‘Beckham Law’ tax rule’ (November 2009)

5.117 This includes footballers from abroad earning over €600,000 per annum and would mean that La Liga clubs would no longer have a competitive fiscal advantage over other European leagues. The removal of this tax break benefiting wealthy players, such as Cristiano Ronaldo who reportedly has an annual salary of €12m per annum¹³², has been widely attacked by sporting officials with Spanish clubs considering strike action to protect this fiscal advantage.

5.118 Barcelona President Joan Laporta condemned the move stating that the measure “damages Spanish soccer” and that it “would mean that talented players will think twice before coming to our league.”¹³³ Spanish Football League President, Jose Luis Astiazaran, stated that the body has “calculated that this reform would add €100m to the bill for Spanish football.”¹³⁴

5.119 The latter part of 2009 also saw the French Government moving towards the abolition of a tax break which benefits top football and rugby players in particular, and has recently attracted a number of foreign players such as Jonny Wilkinson. Again this has angered the clubs and caused a rift between the country’s Sports Minister, Rama Yade, who is against the proposal, and her cabinet colleagues who support the abolition of the tax break.

5.120 “Scrapping this benefit for professional sportsmen will threaten the competitiveness of French sports,” said the French Minister for Sport, as she attempted to defend a provision that exempts wealthy professional players of team sports from tax on 30% of their income. The measure benefits around 1,400 sportsmen and women; Yade has been publicly rebuked for her stance by ministerial colleagues.¹³⁵

5.121 French football players in Ligue 1 alone received wages of €703m in the 2007/08 season. That means that those players did not have to pay any tax on around €203m. With players in the other top leagues in Europe receiving even larger sums: €725m in Germany; €900m in Spain; €972m in Italy; and €1,511m in the English Premiership in the same season¹³⁶, issues surrounding tax evasion in sport are of considerable interest.

5.122 Add to this the significant advantageous tax regimes afforded by governments to major sporting events such as the Olympic Games, FIFA World Cup and European Football Championships¹³⁷, amongst many others, as a prerequisite to hosting such events, and the potential taxation benefits to professional and commercially successful sport runs into many millions of euros per annum within the EU alone.

5.123 The crucial point is not that professional sporting businesses should not seek to maximise their profits, but rather that collectively there is no firm foundation for sport and its supporters to criticise licensed gambling operators who follow sporting bodies in utilizing the most advantageous fiscal mechanisms. Indeed, the tax sums lost through the methods provided to, and employed by, sporting bodies outside of national regulatory controls may very well make the amounts lost by remote gambling operations moving offshore appear comparably small.

5.124 Whilst issues affecting different business sectors (and professional sport is clearly a business) should be considered on the merits of each individual case, is difficult to ascertain a viable argument as to why professional commercial sporting bodies and their employees are so special that they warrant particular fiscal advantages in an already wealthy sector. It appears that many governments, both within and outside of the EU, are coming to the same conclusion.

5.125 With the above in mind, the following sections of this report will consider the argument put forward that professional sport should have control over the betting product (a ‘right to bet’) and that such an artificial mechanism should be established by governments, instead of allowing the development of efficient and consumer beneficial partnerships to be formed through the operation of a commercial market place, within which both industries otherwise operate.

Sponsorship, Advertising and Other Commercial Betting Revenue

5.126 This section will seek to set out the existing position regarding the commercial interrelationship between the professional sporting sector and licensed gambling operators, thereby allowing a full consideration of the validity of the argument that licensed gambling operators should pay sports additional revenues for use of the sporting product.

¹³² soccernews.com ‘Spain to keep ‘Beckham law’ on tax’ (June 2009) ¹³³ UK Guardian newspaper ‘Anger grows over French government move to scrap tax break for footballers’ (November 2009) ¹³⁴ UK Daily Mail newspaper ‘Spanish big guns threaten La Liga strike a government looks to change ‘David Beckham law’ on tax’ (November 2009) ¹³⁵ UK Guardian newspaper ‘Anger grows over French government move to scrap tax break for footballers’ (November 2009) ¹³⁶ Deloitte analysis ‘Wage costs for the big Five European Leagues’ ¹³⁷ UK Telegraph newspaper ‘World Cup 2018: Gordon Brown makes £300m pledge to Fifa over England bid’ (December 2009), bbc.co.uk ‘Wembley to host 2011 Euro final’ ((January 2009) and chamber.ua ‘Amendments to Certain Laws of Ukraine Regarding Taxation During Euro 2012 Adopted’ (January 2009)

Sponsorship and Advertising

5.127 There is no doubt that professional sport is in high demand from a sponsorship and advertising perspective. Prior to the economic downturn, the annual PricewaterhouseCoopers (PWC) report 'Global Entertainment and Media Outlook: 2008-12' stated in June 2008 that worldwide "sports sponsorship is predicted to increase from \$42.7bn [€29.2bn] in 2007 to just under \$60bn [€40.1bn] in 2012, representing a 7% growth year on year in the sector."

5.128 In the UK, where there has been a particularly buoyant sporting sector in recent times, influences such as the continuing global commercial success of the Premier League, and the IOC's decision that the 2012 Olympic Games will take place in London, have made a significant additional contribution towards growth levels in this area of the economy.

5.129 Indeed, the PWC report predicted that "UK revenues from sports sponsorship - including merchandising, online, mobile and other revenue streams such as hospitality as well as gate receipts - will grow from \$10.2bn [€6.9bn] in 2007 to \$15.8bn [€10.8bn] in 2012, representing a 9.1% annual growth." Comparable projections predicted that the UK would out-grow its main EU competitors, with "France on 4.9%, Germany on 5.6%, Italy on 6.4% and Spain on 5.8%."

5.130 The latter may well be a positive response to the UK's general policy approach of properly regulating rather than prohibiting services, and to promoting free market principles (including gambling) within that regulated framework. As a consequence, it has commercially benefited both the sporting and gambling sectors, with no noticeable rise in addiction levels for the latter,¹³⁸ and consequently the wider economy and taxation to the UK Treasury.

5.131 Amongst that figure are a plethora of examples of the considerable level of sponsorship investment by licensed private gambling operators in the European sports market, where sporting rules and national legislation allows. This is most readily apparent via the level of sponsorship within the most globally commercially successful and recognisable sport: football.

5.132 The extent of the commercial relationship in this area is aptly demonstrated by the contractual arrangements that have been established with a number of preeminent European football clubs e.g. AC Milan and Real Madrid. The reported income provided to these clubs from these business arrangements often varies – details are not published and are likely to be subject to a range of commercial factors – but nevertheless highlight the investment levels (Figure 5.10).

Figure 5.10: Sponsorship from licensed gambling operators – UEFA Champions League and Europa League Football Clubs (2009/10)

Football club	League and country	European competition	Principle sponsor (on team shirts)	Reported cost of sponsorship
AC Milan	Serie A - Italy	Champions League	bwin	Up to €75m over 4 seasons from 2006/7 ¹³⁹
Genoa CFC	Serie A - Italy	Europa League	Eurobet (Gala Coral)	€1m per season since 2006/7 ¹⁴⁰
Real Madrid	La Liga - Spain	Champions League	bwin	Up to €45m over 3 years from 2007/08 ¹⁴¹
Valencia CF	La Liga - Spain	Europa League	Unibet	€7.5m for 2008/09 & 2009/10 seasons ¹⁴²
Sevilla FC	La Liga - Spain	Champions League	12bet	€Unknown for two season 2009/10 to 10/11 ¹⁴³

¹³⁸ British Gambling Commission Prevalence Survey 2007 ¹³⁹ ergmagazine.com 'Bwin becomes Real main sponsor for next three years' (June 2007)

¹⁴⁰ calcio.com 'Genoa: l'agenzia di scommesse Eurobet sulle maglie del Genoa' (October 2006) and scommesse.net 'Eurobet jersey sponsor del Genoa Cfc' (August 2007) ¹⁴¹ gamblingcompliance.com 'Bwin Facing Real Madrid Fine' (November 2007) and ergmagazine.com 'Bwin becomes Real main sponsor for next three years' (June 2007) ¹⁴² eufootball.biz 'Valencia signed shirt deal with Unibet' (October 2008) ¹⁴³ footballshirtculture.com 'Sevilla announce 12bet sponsor deal' (August 2009)

5.133 It is clear from this table that there has been a considerable commercial investment in these Italian and Spanish clubs engaged in the UEFA's premier club competitions (Champions League and Europa Cup) during the 2009/10 season. The reported annual income for AC Milan, Real Madrid, Genoa and Valencia alone totals up to €38.5m per annum.

5.134 As reported in April 2009, SportsPro Magazine's analysis of top-level (at least \$1m [€0.68m]) global sponsorship deals in 2008 determined that football shirt sponsorship equated to around €512m for the top leagues in England, Germany, Spain, Italy, France and the USA. The report's statistics show that sponsorship from gambling companies with football clubs in those leagues equated to more than €72m, or nearly 15% of the total; a figure even more notable when considering that around half of these markets are closed to private gambling operators.

5.135 This figure could, therefore, have been somewhat higher, had the legislative positions in France and German permitted (see Figure 5.11). In addition, the Santa Casa case, whilst championed by some, has principally served to deprive Portuguese football of significant investment from licensed gambling companies, in favour of maintaining a state monopoly and denying competition, increased revenue, value and choice for consumers in that jurisdiction.

5.136 The extent of that lost revenue from licensed gambling operators has undoubtedly cost these and other French and German clubs ten of millions of euros. The extent to which this has been employed to enforce one or more of: national laws designed to protect society in general; protection of monopoly gambling operations; or taxation revenues, is open to question.

5.137 The result, however, has been a reduction in consumer choice and value, and the reallocation of significant sponsorship and advertising revenues to other EU sports clubs. That has benefited those clubs' income streams and further strengthened their economic position and attractiveness to potential players and investors.

5.138 The ineffectiveness of this prohibitionist regime has again been underlined by a study in 2009 for Germany's Federal Association for Information Technology, Telecommunications and New Media (BITKOM). The study revealed that 2 million Germans gamble online and that attempts to protect state monopolies have not curtailed demand for internet gambling.¹⁴⁶

5.139 The figures are relatively unchanged from the 2008 study, which discovered that 500,000 Germans bet online on sports events, with 96% of those betting on Bundesliga matches and every sixth gambler gambling on large football events. The German gambling market is predicted grow from €2.2bn a year in 2009 to approximately €5bn in 2010.¹⁴⁷

5.140 However, due to the provisions of the German Interstate Gambling Treaty, licensed online companies continue to be prevented from forming commercial sponsorship or advertising partnerships with German sports and consequently reinvesting income in that market. Likewise in France, where a number of gambling sponsorships have been precluded.

¹⁴⁶ online-casinos.com 'German Study Reveals Little Change in Online Gambling Habits' (December 2009) ¹⁴⁷ online-casinos.com 'German Study Reveals Little Change in Online Gambling Habits' (December 2009)

Figure 5.11: Prohibited gambling sponsorship – German and French football clubs

Club	Banned sponsor	Comments
1860 Munich	bwin	Banned by German regional court in 2006/7 ¹⁴⁸
AS Monaco	bwin	Forced to remove logo from shirts following ban on gambling sponsorship in 2007/8 season ¹⁴⁹
FC Bayern Munich	bwin	German laws preclude advertising of bwin - circumvents restriction by agreeing advertisement for free online casino, from Nov 2008 to June 2010 ¹⁵⁰
FC Nantes	Gamebookers (PartyGaming)	Forced to remove logo from shirts following ban on gambling sponsorship in 2007/8 season ¹⁵¹
SV Werder Bremen	bwin	Forced to remove logo from shirts by German Hessen state authorities in 2006/7 season ¹⁵²
Toulouse	888.com	Forced to remove logo from shirts following ban on gambling sponsorship in 2007/8 season ¹⁵³
VFB Stuttgart	bwin	Deal cancelled in May 2007 following judgement of Administrative Court in Stuttgart banning gambling advert ¹⁵⁴
Olympique Lyonnaise	BetClic	The French Football League takes legal action to preclude Lyon playing in online gambling shirt sponsorship for the 2009/10 season ¹⁵⁵

5.141 Probably the most revealing example of the considerable potential income streams and the healthy commercial partnership that can be established between the two industries is demonstrated by the scope of the sponsorship arrangements within the English Premiership in the 2009/10 season, widely regarded as the most successful sporting league in the world.

5.142 Figure 5.12 below details the seven (or 35%) of the twenty Premiership teams that will be sponsored by a licensed gambling operator in the 2009/10 season, at a cost approaching €20m. The Premiership is screened in 200 countries, with an audience of 4.77bn¹⁵⁶. Up to 70% of each round of Premiership matches will involve at least one team displaying a gambling sponsor; the appeal to these international gambling companies is immediately clear.

¹⁴⁸ eufootball.biz 'Bookmaker Bwin under German fire' (August 2006) ¹⁴⁹ UK Guardian newspaper 'Battle over football shirt sponsorship' (June 2007)

¹⁵⁰ eufootball.biz 'Bayern and bwin work around advertising ban' (October 2008) and pokerplayerclub.com 'Bayern Munich Promote Bwin's Free Online Casino' (November 2008) ¹⁵¹ UK Guardian newspaper 'Battle over football shirt sponsorship' (June 2007) and egmagazine.com 'The French Connection' (November 2006) ¹⁵² gamblingcompliance.com 'New Season, New Sponsorship Row' (September 2007) ¹⁵³ UK Guardian newspaper 'Battle over football shirt sponsorship' (June 2007) ¹⁵⁴ gamblingcompliance.com 'New Season, New Sponsorship Row' (September 2007) ¹⁵⁵ eufootball.biz 'Olympique Lyonnais may take legal action against French league' (August 2009) and 'Betclic logo banned from Marseille shirts' (September 2009)

¹⁵⁶ dailymail.co.uk 'Put your shirt on it! Club-by-club guide to the sponsorship deals defying the recession as Liverpool sign £80m mega-deal

Figure 5.12: Premier clubs gambling sponsorship (2009/10 Season)¹⁵⁷

Football club	Shirt sponsor	Annual value
Tottenham Hotspurs	Mansion	€9.6m
Sunderland Athletic	Boylesports	€2.8m
West Ham United	SBObet	€1.9m
Bolton Wanderers	188Bet	€0.85m
Wigan Athletic	188Bet	€0.7m
Hull City	Totesport	€0.6m
Wolverhampton Wanderers	Sportingbet	€0.45m
Total		€16.9m

5.143 With examples of shirt sponsorship from licensed gambling operators with other Premiership clubs: Aston Villa (32Red); Fulham (Betfair); Middlesbrough (888 and 32Red); and Blackburn Rovers (Bet24) in recent years, along with a number of clubs in lower levels of the English football: Nottingham Forest (Victor Chandler); Cardiff (SBOBet); and Swansea City (32Red), for the 2009/10 season, and a clearer picture of this evolving partnership emerges.

5.144 Including these additional levels of sponsorship to that already calculated by SportsPro for 2008 (all of those deals remain in operation during 2009/10) and adjusting the Tottenham/Mansion figure, which SportsPro appeared to undervalue, and a figure of around €86m is revealed. Add William Hill's reported €1m sponsorship of Malaga¹⁵⁸ (in Spain's La Liga) and the total is around €87m for the 2009/10 season for the top European leagues.

5.145 Whilst sponsorship deals for Manchester United and Liverpool have bucked the overall downward economic trend in 2009, it is unlikely that SportsPro's overall figure of €512m from 2008 has risen significantly (if at all). Sponsorship from licensed gambling companies would, therefore, equate to a figure approaching 17% of the overall revenue for shirt sponsorship in the European top leagues (and noting the restrictions in some markets) for the 2009/10 season.

5.146 The economic downturn has seen a reduction in demand for sponsorship; sports consultancy Sport+Markt advised of a declined in Premiership sponsorship revenue in 2008/09 and that this would only rise slightly in 2009/10. It further noted that without the emergence of sponsorship revenue from gambling companies "many clubs would have serious problems."¹⁵⁹

5.147 Indeed, it is estimated that within the EU, football alone receives at least €160m per year from private gambling operators, the majority of which comes via sponsorship arrangements (equivalent to 63% of overall sports sponsorship from gambling operators).¹⁶⁰

5.148 The truth is that, far from being an industry that merely uses sport without supporting or contributing to its commercial wellbeing, licensed gambling companies are clearly investors (as with all sponsors) in the sporting product and will seek to balance their available financial resources to the returns that can be attained through the opportunities that sport offers. It is clear that a number of opportunities surrounding European football have arisen in recent years.

5.149 It should also not be overlooked that in the above, and many other cases (some are listed below and in the Appendices to this document), clubs have been willing partners with licensed gambling companies; both have derived mutual commercial benefits. This investment by gambling operators in European sport is not, however, confined to football; many other sports have also been beneficiaries of additional commercial income through such partnerships.

5.150 For example, in April 2009, World Snooker announced that Betfred would be the new four-year sponsor for the World Championships (following gambling operator 888.com), at an estimated cost of around €3m per year. Darts is also estimated to receive around €3m per year. Deals have been agreed with numerous other sports as well: cricket; rugby (union and league); tennis; golf; ice hockey; motor sport; show jumping; and ski-jumping, amongst others.¹⁶¹

5.151 Again, these include preeminent events and major national teams joining in commercial partnerships with licensed gambling operators. This also serves to refute any lingering myths that the growth in sports betting is principally predicted on the historically strong UK market. For example, there has been significant sponsorship investment in handball (see Figure 5.13) by licensed gambling operators, a principally mainland European sport.

Figure 5.13: Gambling sponsorship – Handball clubs and events (recent and present)

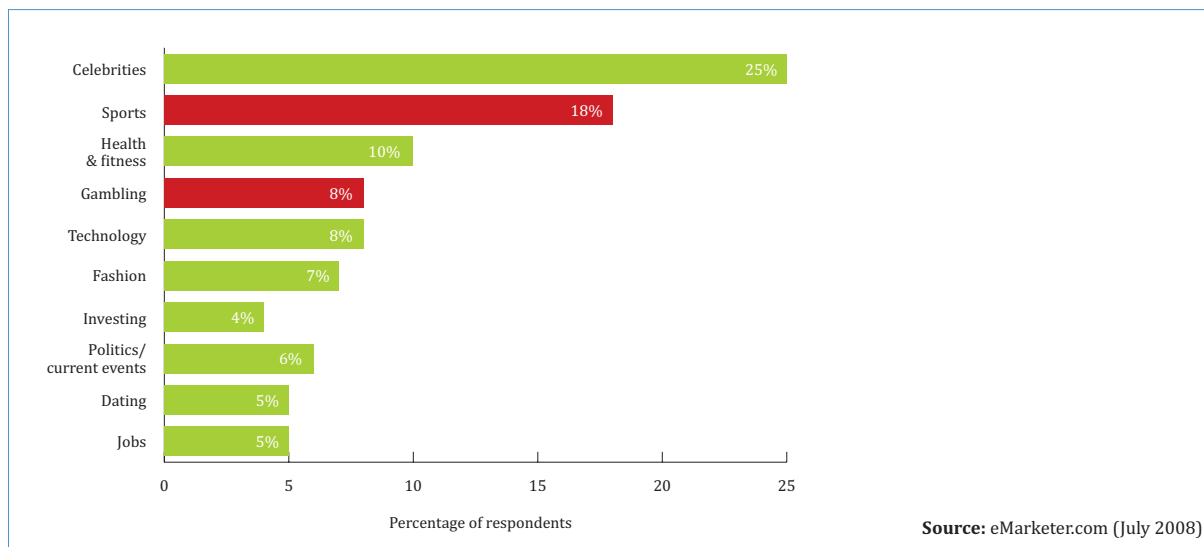
Club and/or Event	Gambling sponsor	Duration
Austrian National Team (Men and Women)	Interwetten	Beyond Euro 2010
21st World Handball Championship	bet-at-home.com	16th Jan - 1st Feb 2009 (Croatia)
EHF European Handball Championships (Women)	Interwetten	2 - 14 December 2008 (FYR Macedonia)
EHF European Handball Championships (Men)	Interwetten	19 - 31 January 2010 (Austria)
MGA Handball (Austrian Women's Team)	Interwetten	Present
UHC Interwetten Ganserndorf (Austrian Men's Handball Team)	Interwetten	Present
Romanian National Team (Men and Women)	bet-at-home.com	Present
Romanian National League (Men and Women)	bet-at-home.com	Present

5.152 Whilst a principal source of the recent commercial deals between sport and licensed gambling operators, sponsorship is but one of a number of channels of investment by operators in sport; new technologies have also offered other avenues. PWC's 'Global Entertainment and Media Outlook 2009-2013' reported that digital technologies will "become increasingly pervasive across all segments of entertainment and media over the next five years."

5.153 The "growing proportion of internet and mobile advertising in the overall global advertising mix will rise from around 12% in 2008 to 18% in 2013."¹⁶² The potential strength of both sports and gambling operators in this market is demonstrated by Figure 5.14 below, with both prominent in a survey of US advertising professionals' opinions of ad supported websites.

¹⁶¹ Europe Economics Report (2009): The Funding of Sports in the EU by Private Sector Gambling Operators ¹⁶² PricewaterhouseCoopers Global Entertainment and Media Outlook 2009-2013

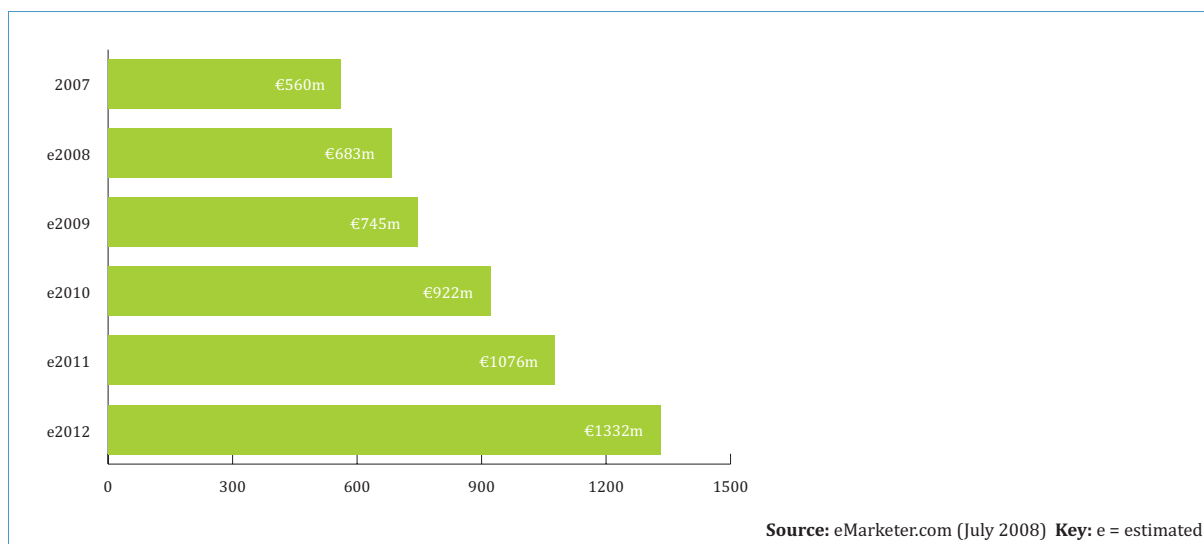
Figure 5.14: US Advertising professionals' opinions regarding the best subject matter for an ad-supported website (by %)



5.154 It is interesting to note that, in a country where retail gambling is only available in a few locations, and no online gambling is permitted (although many Americans gamble with offshore companies), that gambling is rated 4th in this list. This further highlights the development of the online gambling sector and the potential commercial linkages with sports in the online arena.

5.155 EMarketer has suggested that as a “percentage of overall sports advertising, the internet’s share will double to 10% by 2011, up from 4.9% in 2006.” Figure 5.15, detailing US sports’ advertising revenues, shows known US sports website ad revenues of €560m in 2007, with revenues also expected to more than double to €1332m by 2012.

Figure 5.15: US sports’ websites advertising revenues 2007-2012



5.156 Where legislative frameworks permit, licensed gambling companies will undoubtedly continue to seek to engage with sports in commercial activities of this nature and to also promote the sporting product. To highlight this (Figure 5.16), licensed gambling operator William Hill ranked 8th in the list of UK online advertisers for 2008 with an internet ad spend of €6m, rivalling a number of well-known international corporations (e.g. Microsoft, Orange, T-Mobile and BSkyB), and representing nearly 50% of its overall media ad spend (€12.6m).

Figure 5.16: Top 10 UK online advertisers in 2008

Business	Internet ad spend	Yr on Yr % diff.	% all media spend	All media ad spend	All media spend on Yr % diff.
O2	€15.6m	-0.95%	22.16%	€70.3m	-2.90%
BT	€11m	35.90%	13.70%	€80.5m	-14.14%
COI	€9m	-18.28%	3.85%	€233m	17.22%
BSkyB	€8.5m	-46.16%	6.90%	€123.2m	-22.49%
T- Mobile	€8.1m	287.77%	10.43%	€77.5m	42.82%
Orange	€7.7m	-43.79%	9.54%	€80.8m	-23.54%
Microsoft	€7m	-65.50%	21.25%	€33m	-11.73%
William Hill	€6m	29.29%	47.45%	€12.6m	20.85%
Gamesys	€5.1m	-0.95%	22.16%	€5.9m	97.99%
Dell	€3.7m	35.90%	13.70%	€30m	-31.15%

Source: Nielsen/Marketing Magazine (2009) ¹⁶³

5.157 Given that sports betting is a key part of many gambling operators' business models (both retail and remote platforms), it can be safely assumed that significant levels of this online ad spend will have been focused in that area accordingly. This ad spend not only promotes the operators' own sports betting product, but also the sporting events (usually televised) on which licensed operators are offering those betting opportunities to global consumers.

5.158 Again, those that lobby for new statutory rights for sports over the gambling industry fail to properly acknowledge this positive secondary impact from the promotion of betting on sporting events, the symbiotic relationship that exists between the two industries, and where commercial forces rightly serve to balance and reflect the needs and interests of both parties.

5.159 This promotion principally surrounds televised sporting events and lends to increased broadcast audiences, and knock-on affects to demand for sports-related subscriptions and to associated broadcast advertising space surrounding those events. The promotion of sporting events (and betting related facilities) can take place some considerable time before the sporting event e.g. the winner of 2010 World Cup, and thus further develops interest and interaction.

5.160 That in turn creates increased media demand for the commercial sporting product. In fact, gambling operators are also adding to the competition for broadcast and print media advertising space (in the UK and other jurisdictions that allow this form of advertising) by additionally seeking to advertise during these events through all available media platforms.

5.161 Indeed, the advertising space around sporting broadcasts is in high demand. Prices for a 30-second ad spot for the 2010 Super Bowl, which draw around 95 million US viewers, will cost around €2.2m. In 2009, broadcast advertising spend on this event totalled around €140m. Alcohol company Anheuser-Busch InBev is again expected to be the top Super Bowl advertiser.

¹⁶³ MarketingMagazine.co.uk (March 2009)

5.162 With that in mind, and before considering additional gambling-related revenue streams that benefit both industries, this section of the report will return to the policy of prohibiting gambling sponsorship by some Member States and major sporting bodies, in relation to their comparable response to other products, in particular alcohol and fast food/beverages.

5.163 Figure 5.17 below details the position regarding the ability of alcohol companies to sponsor professional football clubs in a selected number of European countries using data from the European Professional Football League's Alcohol and Marketing Survey (2009). Known national legislation regarding the ability of private licensed gambling operators to sponsor sports has been added to this information providing this comparison table.

Figure 5.17: Sponsorship of sporting events by private alcohol and gambling companies in selected EU countries (2009)

Country	Alcohol Sponsorship	Gambling Sponsorship
Germany	Permitted	Prohibited
France	Prohibited	Prohibited
Italy	Permitted	Permitted
Spain	Permitted	Permitted
Portugal	Permitted	Prohibited
United Kingdom	Permitted	Permitted
Netherlands	Prohibited	Prohibited

5.164 As the EPFL's figures principally relate to national regulations and legislation, the prohibition of alcohol sponsorship can be taken as the position for all sports in those countries. Figure 5.15 is therefore viewed as a sports-wide position in those Member States, although it should be noted that where sponsorship is legislatively permissible, sports may themselves enact their own rules regarding sponsorship which may preclude certain product categories.

5.165 Sport places great emphasis on its social and cultural benefits, including health related, and that position is not questioned in this report. Those benefits are a fundamental pillar of the special nature afforded sport and consequently the consideration of advantageous measures surrounding matters such as taxation and State aids, which as shown earlier in this document are substantial both in number and their positive economic impact for the sporting sector.

5.166 If Figure 5.17 suggests an inconsistency in the policy approach in certain Member States, then Figure 5.18 below clearly demonstrates an inconsistency in the sponsorship practices of FIFA, UEFA and the IOC, where alcohol and fast food/beverages are permissible as sponsors of major sporting events. Given the linkage between sport and health, and the widely accepted negative impact that these two products have in that area, it is difficult to understand the rationale for accepting these products as sponsors whilst denying licensed gambling operators.

Figure 5.18: Sponsorship of major sporting events by private gambling, alcohol and fast food companies

Sporting Event	Alcohol sponsorship	Fast food sponsorship	Gambling sponsorship ¹⁶⁴
UEFA European Championship	Permitted	Permitted	Prohibited
UEFA Champions League	Permitted	Permitted	Prohibited
UEFA Europa Cup	Permitted	Permitted	Prohibited
FIFA World Cup	Permitted	Permitted	Prohibited
Olympic Games	Permitted	Permitted	Prohibited

5.167 Put more starkly, these major international sporting bodies prohibit the promotion of regulated and licensed gambling, but permit the promotion of products which, in the case of alcohol, the World Health Organisation (WHO) states “causes 1.8m deaths (3.2% of total) and 58.3 million (4% of total) of Disability-Adjusted Life Years (DALYs)”¹⁶⁵ worldwide every year.

5.168 In the case of fast food, widely linked to the growth in obesity¹⁶⁶, the WHO stated that “approximately 1.6 billion adults (age 15+) were overweight; at least 400 million adults were obese” and that at least “20 million children under the age of 5 years [were] overweight globally in 2005.” It “projects that by 2015, approximately 2.3 billion adults will be overweight and more than 700 million will be obese,”¹⁶⁷ with an increase in cancers and other diseases linked to this.

5.169 It is important to emphasis at this point that this report does not seek to comment on the probity of these legitimate products, enjoyed responsibly by many, merely to compare inconsistent approaches by certain sporting bodies and governments in relation to their advertising and sponsorship policies towards licensed and well-regulated gambling operators.

5.170 It is acknowledged that there is a risk of addiction with the gambling product. This should not be overlooked, but as with responsible private alcohol and fast food companies, properly licensed and regulated private gambling operators have established various mechanisms to reduce this risk, including the funding of problem gambling organisations, provision of addiction documentation in retail premises and consumer self-exclusion policies.

5.171 Again, the UK is a useful barometer regarding the impact of gambling and alcohol on society. The UK has for some time allowed remote gambling operators licensed in the EEA or other well-regulated jurisdictions to promote their products with UK consumers (this is subject to review at the time of writing), and runs open but regulated markets for both products.

5.172 As with sporting integrity, a rise in gambling addiction harms the potential commercial aspirations of gambling operators. The British Gambling Commission’s Prevalence Survey in 2007 found that 68% of the population, that is about 32 million adults, had participated in some form of gambling activity within the past year and that approximately 0.6% of the adult population had problem gambling issues, the same percentage as in 1999.

5.173 In the UK, it is estimated that “one in thirteen people are dependant on alcohol”¹⁶⁸ (the UK’s population was 61m¹⁶⁹ in 2008) and is estimated to cost the UK National Health Service some €3bn a year. As reported in 2009, “the most recent figures show hospital admissions linked to alcohol use have more than doubled in England since 1995. Alcohol was the main or secondary cause of 207,800 NHS admissions in 2006/7, compared to 93,500 in 1995/96.”¹⁷⁰

5.174 It is therefore difficult to reconcile the differing policies of certain sporting bodies and Member States to these products from a commercial perspective (integrity issues are considered in the next chapter). The evidence suggests that gambling services, including remote cross-border, can be provided and advertised without overt harmful effects, providing increased choice and value for consumers and commercial investment in sports.

¹⁶⁴ This relates to private (non-State run operations) ¹⁶⁵ World Health Organisation – alcohol statistics. DALYs = sum of potential years lost due to premature mortality. ¹⁶⁶ World Health Organisation – Globesity and 2020 Ministerial Round Table, and IACFO submission amongst others ¹⁶⁷ World Health Organisation – overweight and obesity statistics ¹⁶⁸ UK National Health Service (NHS) ¹⁶⁹ Statistics.gov.uk ¹⁷⁰ bbc.co.uk

5.175 Alcohol “for which some 55 million adults are estimated to drink harmful levels in the EU, 23 million of whom are considered to be addicted”¹⁷¹ remains a key sponsorship sector for FIFA, UEFA and the IOC. This is also the case at many national levels: the Santa Casa case serves to ban licensed private gambling operators from sponsoring sport, whilst alcohol is allowed (Sagres Beers now sponsors the Portuguese League and also has a 12-year deal with Benfica);¹⁷² and the same legislative situation arises in Germany.

5.176 In this discussion, it is also interesting to note the comments from the President of FIFA in an interview in 2005¹⁷⁴, and in the lead-up to the 2006 World Cup, regarding the impact of gambling on the game. “You can’t prevent gambling,” Mr Blatter stated, and informing that he liked “a bet occasionally.” The FIFA President then advised that you “should only introduce bans you can realistically enforce, and that’s not possible with a gambling ban.”

5.177 In the same interview, he advised that before the last World Cup, “the FIFA Executive Committee resolved not to enter sponsorship agreements with betting companies.” He then reiterated that “you can’t ban betting. Betting is a huge part of our culture. It began with Toto in Italy before the Second World War. We need Toto and football to raise money for the sport.”

5.178 When asked about the involvement of ODDSET (a German State Lotto gambling company), which was an official sponsor of the 2006 World Cup (after the decision of FIFA not to enter agreements with gambling companies), the President replied that “ODDSET is an official state company. We had many offers from English private companies. If the German OC [Organising Committee] takes on a state-run operation as a supplier to the World Cup I don’t see it as inconsistent.”

5.179 It should also be noted, when considering this ban, that UEFA’s Intertoto Cup (abolished from 2009/10) was established to offer a gambling product, notably for state pools companies, during the gap between competitions in the summer months. Its founder (Ernst Thommen), who had established football pools in Switzerland, later became the vice president of FIFA.¹⁷⁵

5.180 It would appear therefore that the promotion of gambling is permitted by FIFA (and has been by UEFA), as long as it involves a state run organisation. Although there is no reason, or available evidence, to suggest that a state run company is any more effective in any aspect of its operation than a private gambling company that is properly licensed and regulated. The decision by FIFA in particular, apart from being wholly inconsistent, is clearly discriminatory.

5.181 Likewise in France, where the state horserace gambling operator Pari Mutuel Urbain (PMU) has agreed a sponsorship deal with the French Football Federation (FFF), the Coupe de France and French national team worth some €125.5m over 4 years.¹⁷⁶ This is intended to begin after the 2010 World Cup, now the anticipated start date of the online licensing regime, and will also see the PMU sponsor broadcaster TF1’s coverage of that global sporting event.

5.182 That is a sizeable level of sponsorship income for French football, although it could potentially have been somewhat higher in a truly competitive market place involving other on and offline licensed gambling operators, and seen deals agreed with a number of other French sporting bodies and clubs as has been precluded by prohibitionist legislation (see Figure 5.9).

5.183 In the meantime, gambling operators licensed in other European countries will continue to be denied access to sponsor and advertise in this closed market, which will only open to French licensed online operators (excluding betting exchanges) when the draft law is finally enacted, and is intended to include fiscal measures favouring commercial sporting bodies.

Other Commercial Betting Revenue

5.184 The English Premier League’s Fans Survey for 2007/08 provides further evidence of the scope of the commercial relationship, and hence the potential revenue flowing into that sport, that can be achieved with licensed gambling operators in an open but regulated market.

5.185 This document, which focuses on an array of match-day activities surrounding the sporting event, such as the sale of merchandising and refreshments, also provides useful information regarding the number of fans betting at Premiership grounds (Figure 5.19 below). The survey sample involved some 34,827 fans.

¹⁷¹ European Commission Health and Consumer Protection Fact Sheet ¹⁷² fourfourtwo.com ‘Benfica: Where does the money come from?’ (December 2009) ¹⁷⁴ FIFA.com ¹⁷⁵ UEFA.com ¹⁷⁶ prosportsmedia.com ‘FFF get sponsorship boost as PMU comes on board’ (December 2009)

Figure 5.19: Proportion of Premiership fans buying consumable items on match-days

Item	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Soft drinks	43%	43%	42%	44%	48%	48%
Other food	43%	42%	52%	45%	47%	46%
Alcohol	41%	36%	38%	41%	42%	42%
Confectionary	33%	34%	33%	36%	32%	36%
Betting	26%	25%	25%	26%	24%	23%

5.186 Figure 5.19 demonstrates a relatively established market with little statistical variation over the five-year period, and which shows that around 25% of the fans surveyed (only adults can legally bet) placed wagers with betting retail outlets at the ground on match-days. The Premier League Survey also provides the average spend for these items from 2002/03 to 2007/08 (see Figure 5.20), showing that betting spend has increased 45% during that period.

Figure 5.20: Premiership match-day spending for 2002/03 & 2007/08

Season	Soft Drinks	Other Food	Alcohol	Confectionary	Betting
2002/03	€2.26	€3.77	€5.98	€2.52	€5.03
2007/08	€3.23	€5.62	€7.37	€4.10	€7.30

5.187 The revenue from this widely available betting service at Premiership grounds shows that it is towards the top of fans' match-day spend, out-performing that of well-established items such as merchandise and refreshments; only alcohol is marginally higher. Using these figures and the Premier League's total attendance of 13.7m, it is possible to calculate that for 2007/08 around €25m in betting revenue took place at Premiership grounds on match-days.

5.188 This calculation does not include those fans that may have used other betting mediums, such as those available via Premiership clubs' own websites, which as with most major sporting clubs in the UK, all have online betting facilities, and from which they derive additional commercial revenue through joint ventures with licensed gambling companies. Indeed, 10% of surveyed fans stated that they gambled and watched matches via the internet.¹⁷⁷

5.189 Whilst this figure (€25m) will not necessarily be indicative of the income derived by English Premiership football clubs – the figure will depend on the terms of the contract negotiated in each instance and will also be predicated on additional factors such as the sports brand to which betting is accompanied – it is nevertheless a broad indicator of betting demand at Premiership grounds, which in relation to other match-day products is in high demand.

5.190 In the open, competitive, but properly regulated market within the UK, the sport is well placed to take advantage of that demand when negotiating its commercial betting arrangements. It is another example of the healthy commercial environment and the symbiotic relationship that exists between the two industries, and further questions the necessity (or validity) of establishing statutorily manufactured mechanisms that either grant sports control over betting products or distort market competition in favour of commercial sporting bodies.

5.191 Whilst admittedly an imprecise scientific evaluation, if this figure (€25m) is extrapolated for the rest of the English Football League and the Scottish Premiership (neither of which appears to provide this betting information in their own Fans Surveys), a broad match-day betting revenue figure can be attained for the major UK football leagues (Figure 5.21).

¹⁷⁷ The English Premier League's Fans Survey for 2007/08

Figure 5.21: Potential betting revenues at UK football match-days (2007/08)

UK football tournament	Total attendance	25% fans betting	Betting spend at €7.30
English Premier League ¹⁷⁸	13.7m	3.4m	€25m
English Football League ¹⁷⁹	16.2m	4.1m	€30m
Scottish Premier League ¹⁸⁰	3.5m	0.88m	€6.4m
Match-Day Totals	33.4m	8.4m	€61.4m

5.192 This does not include additional and potentially significant revenues from the FA, Carling or Scottish Cups, UEFA Champions League or Europa Cup, nor international matches.

5.193 Whilst income in this area does not reach the sizable levels of the present advertising and sponsorship deals within football, the potential total of €61m in betting revenue is a reasonable sum through establishments that are principally filled for a few hours once or twice a week for nine months of the year. It represents another income stream from licensed betting which UK sports do not, in their commercial or integrity payment lobbying, draw attention to.

5.194 Along with the major international football bodies (FIFA and UEFA), UK football bodies have also been particularly vocal in pressing claims that licensed gambling operators do not pay the sport sufficient levels of income for the use of the sporting product; although, it should be noted that all legal and commercial requirements are met by licensed gambling operators.

5.195 However, they are not alone, and other major international sporting bodies and UK sports have also presented this argument as part of SROC's lobbying at both national and international levels. Again, it is known that similar contractual arrangements are in place with those UK sports. Extrapolating the Premiership betting figure to those other major UK sports determines the potential stadium match-day betting revenues outlined in Figure 5.22 below.

Figure 5.22: Potential betting revenues at other UK sporting match-days (2007/08)

UK Sporting Tournament	Total Annual Attendance	25% Fans Betting	Betting Spend at €7.30
Domestic and International Cricket ¹⁸²	2.24m	0.56m	€4.1m
Rugby Super League ¹⁸³	1.67m	0.42m	€3.1m
English Premiership Rugby Union ¹⁸⁵	1.44m	0.36m	€2.6m
Magners Rugby Union League ¹⁸⁶	0.6m	0.15m	€1.1m
Wimbledon and Queens Tennis Tournaments ¹⁸⁷	0.53m	0.13m	€1m
Match-Day Totals	5.35m	1.34m	€10.8m

¹⁸² ECB Press Release: 'Attendances soar in 2008' (Jan 2009) ¹⁸³ sportindustry.biz 'Super League Breaks attendance record' (Sept 2008)

¹⁸⁵ guinnesspremierleague.com Attendance Table 2007-08 ¹⁸⁷ magnersleague.com 'Stats' - For the purposes of this table, the four Irish teams that play alongside the Welsh and Scottish rugby union teams in the Magners League have been assimilated into this figure.

5.196 Potential revenue levels, which as has been stated are not necessarily indicative of profits for either sports or gambling operators, merely an indication of turnover and product demand, are lower for these sports reflecting the lower attendance levels. Again, not all of the domestic and international competitions involving these sports are identified and potential revenues allocated. All are members of the Sports Rights Owners Coalition (SROC).

5.197 The assumption that 25% of fans bet at all sporting events, and the amount they bet, is of course open to question; the Premier League survey focused on adult fans which may serve to sway the results. Indeed, an argument can also be made that a sport such as cricket, where a single day's play can last up to 4-5 times longer than a football match, and includes longer breaks in play, potentially offers greater opportunities to promote the match-day betting service.

5.198 It is also acknowledged that there could be a stark variation (up or down) in the amount spent on betting at different sporting venues depending on a number of factors such as the level of availability of betting at the stadium and the established commercial linkages between the sectors. This is merely a guide to potential revenue and to acknowledging the income stream.

5.199 Indeed, the scope of the potential profits for sports from this and other joint ventures with licensed gambling operators will also vary depending upon the contractually agreed terms, which should be determined by market demand and any contractual issues that may impact upon the generation of income, such as restrictions on the types of bet allowed.

5.120 However, this is not intended to be a precise evaluation, but to provide a snapshot of another joint commercial enterprise involving sport and gambling operators which financially benefits both parties, using statistical information provided by another national sporting body, and noting that betting is known to be prevalent and widely available at a range such sporting events, justifying such an (if imprecise) evaluation for these UK sporting events.

5.121 Nevertheless, the figures help to highlight the potential scope and positive economic impact of betting for UK sports on match-days (based on English Premier League statistics) and the apparently healthy commercial and mutually beneficial financial relationship that is in place, which is not acknowledged by sporting bodies in their representations to national governments and EU institutions regarding the return to sport from licensed gambling operators.

5.202 Again, as with the other betting related agreements, it is for those sporting bodies under whose commercial remit these contractual arrangements are concluded (this can be clubs and/or governing bodies) to determine how any income is allocated within their scope of activities e.g. stadium reconstruction, grassroots/community, integrity activities or, as is generally the greatest financial outgoing for professional sports clubs, players' wages.

5.203 Purely for interest, and because this document is principally focused at the EU, the Premier League statistics have been applied to other major European Football Leagues (Figure 5.23).

Figure 5.23: Potential betting revenues at European football match-days (2007/08)

European Football League	Total annual attendance	25% fans betting	Annual betting spend at €7.30
English Premier League ¹⁸⁸	13.7m	3.3m	€25m
German Bundesliga 1 ¹⁸⁹	12.1m	3m	€21.9m
Spanish Primera Liga ¹⁹⁰	11m	2.8m	€20.1m
Italian Serie A ¹⁹¹	8.9m	2.2m	€16.1m
French la Lique 1 ¹⁹²	8.3m	2.1m	€15.3m
Dutch Division 1 ¹⁹³	5.7m	1.4m	€10.2m
Portuguese SuperLiga ¹⁹⁴	2.7m	0.7m	€5.1m
Total	62.4m	15.5m	€113.7mm

5.204 Clearly there are a number of restrictions within some of these jurisdictions that would, at present, preclude private licensed gambling operators from engaging with these and other sporting bodies in those jurisdictions to provide this service. However, it again provides a useful snapshot of potential betting revenues at events that have high attendance levels.

5.205 It is important to reiterate that potential spend (or revenue) does not necessarily equate to profits; as with all commercial negotiations, that will be subject to the contractual agreement determined between the two parties and the success of the betting operation.

5.206 Given the greater potential for legislative and cultural differences (with the exception of Ireland) outside of the UK sporting and gambling arenas, a wider international extrapolation using the Premier League figures has not been conducted. Nevertheless, it will provide other sports and governments with some indication of the potential income (and taxation) that can be attributed to this commercial platform, with high market competition and demand.

5.207 Indeed, identification of the potential level of revenue for sports via this medium might be an interesting area for future examination on a wider scale, along with a number of other betting and non-betting related financial benefits attained by professional sports that have been referenced earlier in this document, and thereby achieving an even clearer picture of the range of betting related income streams attributable to sports from licensed gambling operators.

5.208 This exercise principally seeks to underline the interest and extent of betting at UK football stadiums and the potential betting revenues at other sporting events on match-days. Given the widespread appeal of sports betting, and given suitable negotiation with licensed gambling companies, operating in a highly competitive market, commercial deals reflecting this demand and benefiting the wider sporting sector should follow.

5.209 Moreover, as this is a retail operation (although internet facilities could be provided if the contract with the club, sport and national legislation permitted), income streams are guaranteed to flow into national fiscal mechanisms as a direct result of this commercial relationship. In addition, the commercial revenue attained and the degree of control established by sports and governments via such relationships with properly licensed gambling operators is clearly more advisable than the increased risk with unlicensed gambling operations.

5.210 Prohibition is extremely difficult to enforce, either at a national level or by the sport itself; the global reality is that sports betting will, and does, take place (see Chapter 6 regarding integrity issues) on sporting events and at stadiums. Remote technologies such as mobile phones and the internet will increasingly allow spectators to gamble on, and at, sporting events; consumers are price sensitive and will seek choice and value outside of state monopoly services.

¹⁸⁸ Premier League Season Review 2007/08 & soccerstats.com ¹⁸⁹ Bundesliga.de 'General statistics 2007-08' & soccerstats.com ¹⁹⁰ Ibid.

¹⁹¹ soccerstats.com ¹⁹² Ibid. ¹⁹³ Ibid. ¹⁹⁴ european-football-statistics.co.uk

5.211 Indeed, most major UK, and where they are legally permissible, many European and global sporting clubs (see Figure 5.24) and some governing bodies, have joint arrangements with licensed gambling operators via their remote platforms.

Figure: 5.24: Website gambling partnerships of major European football clubs

Football Club	Club website gambling operator	Football club	Club website gambling operator
Manchester United	Betfair	Barcelona	Betfair
Celtic	Gala Coral	Juventus	BetClic
Arsenal	Paddy Power	Real Madrid	bwin
AC Milan	bwin	Chelsea	188bet
Liverpool	188bet	Tottenham	Mansion

5.212 As the PWC's Global Entertainment and Media Outlook 2008-2012 highlighted, there has been a healthy growth in sports sponsorship at both local and international levels, with revenue of €29.2bn in 2007 expected to rise to €40.1bn in 2012 partly as result of remote channels.¹⁹⁵

5.213 The PWC report further commented that the growth in this area is significantly aided by "the deployment of mobile and online channels" which has allowed it to reach new audiences. Highlighting the potential growth of mobile betting, Juniper Research's report 'Mobile Gambling: Casinos, Lotteries and Betting 2008-2013' states that "mobile betting will account for 75% of all gambling on mobile handsets in 2008" and will "more than double in 2009" to at least €2.5bn.

5.214 With the "growing availability of betting services on-portal, the mobile is an increasingly convenient and user-friendly means of placing a bet," the report states, with gross win from mobile gambling services to "rise from just under \$192m [€131m] in 2008 to \$3.4bn [€2.32bn] by 2013." This service will have nearly 400m users worldwide by the end of this forecast period, with Western Europe accounting for the largest share of wagers.¹⁹⁶

5.215 Digital technologies will therefore create new commercial opportunities and are expected to lead to greater demand for sports betting, and the consequent establishment of additional deals between licensed gambling operators and sporting bodies. With the European product established worldwide as the leading sporting brand, those EU countries that permit arrangements between gambling operators and sports will attract that new investment.

5.216 In addition to considerable expenditure on broadcast rights for sporting events, notably to display in retail premises, licensed gambling operators are also increasingly acquiring rights from sports to stream pictures on websites. One licensed gambling operator alone has stated that it has spent around €9m per annum purchasing streaming rights for sporting events.¹⁹⁷

5.217 Live pictures of the international football match between Ukraine and England (October 2009) were broadcast exclusively through streamed internet platforms, the first time an international match has been delivered entirely via this medium.

5.218 Prices for the broadcast ranged from €6 to €16; however, bet365, for example, allowed its customers to watch this match free of charge. The match is said to have attracted an audience of 0.5m. The English FA announced in October 2009 that it intends to broadcast live pictures of early rounds of the prestigious FA Cup via streamed website platforms.¹⁹⁸

5.219 There appears to be considerable potential for additional investment and economic growth in this area for sports and licensed gambling operators alike, especially as digital technologies evolve and become more prevalent in the global market place.

¹⁹⁵ PWC Global Entertainment and Media Outlook 2008-2012 ¹⁹⁶ Mobile Betting: Casinos, Lotteries and Betting 2008-2013 ¹⁹⁷ Europe Economics Report (2009): The Funding of Sports In the EU by Private Sector Gambling Operators ¹⁹⁸ UK Guardian newspaper (28 October 2009)

5.220 The symbiotic relationship between the two industries provides that, should they determine to engage more fully in commercial partnerships, that they should be at the forefront of developments in this area and be able to fully exploit the potential revenue streams attracted via new technologies.

Arguments for Additional Payments to Sport

5.221 The Sports Rights Owners Coalition (SROC), notably represented by FIFA, UEFA, Bundesliga and the English Premier League, has increased its lobbying of national governments and EU institutions in recent years, pressing for the introduction of an EU-wide (either centrally via EU institutions or nationally via Member States) statutory mechanisms that provide controls over the commercial activity of licensed gambling operators and increased revenues from them.

5.222 As an article in May 2009 pointed out, one “of the common causes right from the start of SROC was to campaign for a regime for sports betting that enables sport to protect its integrity, and establishes a fair return to grassroots and professional sports from betting operators.”¹⁹⁹

5.223 This argument has been promoted by the major sporting bodies (IOC, FIFA and UEFA) in their regular dialogue with the European Commission,²⁰⁰ a process established as a result of the Biarritz Declaration²⁰¹ during the French Presidency of the EU (2008).

5.224 Licensed gambling operators have not been invited into that discussion to any meaningful degree during this period. The fiscal issues outlined in the previous sections have not been disclosed by sport in its representations nor appear to be encapsulated within the discussions with EU institutions and national governments. As such, only a partial examination of the issues and evidence surrounding the sports betting debate appears to have taken place.

5.225 Reports such as the European Parliament’s on the ‘Integrity of Online Gambling’, which states that “sports bets are a form of commercial exploitation of sporting competitions” makes no mention of the symbiotic relationship or licensed gambling operators’ significant investment in integrity and commercial activities that benefit sport within the EU. This debate supposedly centres on commercial exploitation, but no substantial evidence has been publicly advanced.

5.226 Hence the production of this report, with the principal aim of getting beyond the rhetoric of lobbying and demonstrating the realities of the relationship between the two industries and the level of commercial investment in the sporting product provided by licensed gambling operators. An examination of the SROC argument, in relation to professional sport and grassroots activities, will therefore form the basis of the following paragraphs.

5.227 However, before the detail of the SROC position is considered, it should also be noted that the European Commission is due to complete a study on the ‘Internal Market Barriers in Sports Funding’ sometime towards the end of 2010. This study is a commitment in the White Paper on Sport published in 2007, and is being led by the Directorate-General for Internal Market and Services along with the Commission’s Sports Unit.

5.228 The tender states that the “study on barriers to sport funding will analyse a wide range of internal market policies that have direct impact on the way sport is financed across the EU. Particular attention will be paid to how internal market policy and in particular the free movement of services when applied to, for example, cross-border sponsorship, media or gambling services might dominate, undermine or crowd out financing to sport, and in particular to grass-roots sports, i.e. those sports disciplines that rely most heavily upon public support.”

5.229 In addition the “study will look across the whole spectrum of sources of funding, including direct and indirect financial flows between professional and grass-roots sport through the solidarity mechanisms. It will then analyse the different national regulatory aspects that could give rise to internal market barriers.”²⁰²

¹⁹⁹ Europolitics SROC article ‘The case for sport – broadcasting to betting’ (May 2009) ²⁰⁰ www.euoffice.eurolympic.org ‘Second top-level meeting between IOC President Rogge and Commissioner Figel’ (August 2009) ²⁰¹ “To foster exchanges between the European Union and the International and European Olympic and sports movement, the ministers asked the relevant European institutions, in relation with the Council of Europe, to strengthen current dialogue mechanisms by setting up a consultative framework as of 2009 associating notably the International Olympic Committee and representatives of the sports movement at the most relevant levels.” Meeting of EU Sports Ministers in Biarritz on 27-28 November 2008 ²⁰² European Commission ‘Open call for tender MARKT/2009/04/E: “Study on Internal Market Barriers to Sport Funding”’ (March 2009)

5.230 It has been reported that SROC and the UK Central Council of Physical Recreation (CCPR), a member of ENGSO and also which supports SROC policies, hopes to influence the Commission's funding study.²⁰³ It is appropriate that sporting bodies engage and promote their views and opinions across the range of EU funding issues that this exercise considers.

5.231 However, it is also important that the licensed gambling industry is fully engaged in any process that considers the impact and economic importance of the significant investment from the licensed gambling industry, if the results from studies of this nature are to properly reflect the economic realities within the EU and as such truly reflect the funding of sporting bodies.

Professional Sport

5.232 It is right and proper that, as global businesses, professional sports should seek to maximize their income streams. As such, sports should not be castigated for presenting their arguments for economic returns from the licensed gambling industry, which has increasingly employed a wide array of sporting events, outside of the traditional horse and greyhound racing, in its product catalogue in an attempt to meet consumer demand.

5.233 As this report has shown, digital platforms have added to that product's availability and to associated competition between gambling operators in this area. As a consequence, a wider variety of products and greater value is readily available to consumers on a global scale.

5.234 Turnover on sports betting, outside of horse and greyhound racing, has shown a significant increase; although it should be remembered that turnover does not necessarily equate to profits for fixed-odds operators and as Figure 2.5 demonstrates, operators' profit margins are expected to continue to be squeezed in favour of consumers over the coming years.

5.235 The central argument advanced by sporting bodies through the SROC platform is that licensed gambling operators profit from sport and they should therefore provide a 'fair return' for the use of that product. The actual mechanism of choice to achieve this has fluctuated from levies to the most recent championing of the French legislative proposal of a 'right to bet'.

5.236 However, as has been explained by sporting bodies, there is flexibility as to the exact mechanism employed; sports have now become "neutral in terms of legislative arrangements that structure different betting models in different countries."²⁰⁴ The central point therefore appears to be to establish and then enforce the principle of a 'fair return' through whatever suitable mechanisms may be exercised by governments in achieving that aim for sports.

5.237 The phrase 'fair return' is of course a misnomer, as it determines from the outset that sports are not receiving the appropriate level of fiscal benefits from the licensed gambling industry. It also plays on moral sensitivities through the emphasis on fairness; gambling has historically been represented as a 'sin' product, whereas sport is seen in an opposite light; previous sections of this report dispel such outdated positions in the modern commercial age.

5.238 Until late 2009, no economic value had been placed on either the contribution by the licensed gambling industry or what sports believed a 'fair return' constituted in an economic sense. These are of significant importance in the consideration of the issue in a wider economic context. The former has now been provided with Europe Economics determining that the gambling industry's contribution to sport within the EU accounts for at least €3.4bn per annum.

5.239 The findings of Europe Economics were published in November 2009. From the headline figure of €3.4bn to EU sports (a conservative estimate) from public and private sources, it is estimated that "some €2.1bn, or 62 per cent, is contributed by private sector organizations."²⁰⁵ This accounts for nearly 2/3rds of the entire contribution to sport from gambling within the EU, and immediately questions the validity of the 'fair return' accusation.

5.240 It should also be noted that the €3.4bn figure does not include the considerable amounts directed from lottery funds to Olympic sports, as the "amount of gambling support to Olympic sports (which comes almost exclusively from lottery operators) fluctuates so widely from year to year that [Europe Economics] concluded that it could be misleading to include them."²⁰⁶

²⁰³ UK Guardian newspaper 'Bookmakers may have to start paying their way' (March 2009) ²⁰⁴ Europolitics SROC article 'The case for sport – from broadcasting to betting' (May 2009) ²⁰⁵ Europe Economics report 'The funding of sports in the EU by private operators' (November 2009) ²⁰⁶ Ibid.

5.241 Nevertheless, when considering this issue, it is important to understand the overall fiscal environment within which this debate is taking place. The previous sections of this chapter have already outlined the significant fiscal advantages provided to professional sport through State aids (the extent and legality of which appear unknown) and taxation (preferential treatment of sporting bodies and players), which are not afford to licensed gambling operators.

5.242 France's tax break for its sportspeople is estimated to run at €30m per annum alone. The removal of Spain's preferential tax measure that has benefited high earning players since 2005 is expected to cost clubs' €100m per annum,²⁰⁷ and the results of the UK Customs investigation into the improper use of sports players' image rights to avoid taxation will also significantly contribute towards any figure, whether found to have been abused or not.

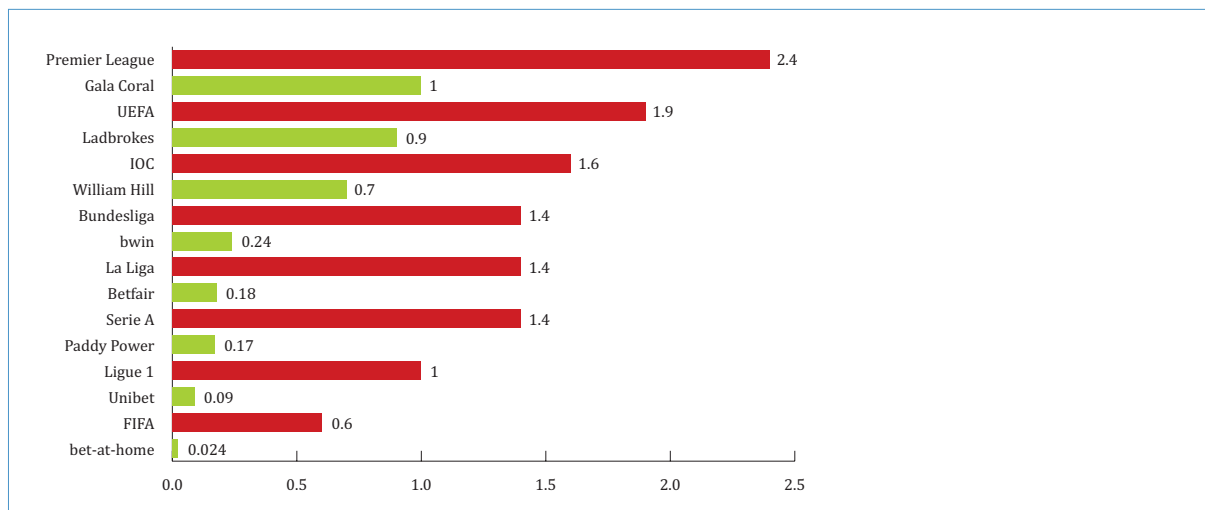
5.243 It is clear that preferential aids and taxation - for the IOC, UEFA and FIFA that effectively means no taxation on revenue, and many other sporting bodies also reside in similar tax efficient jurisdictions - are commonplace in the sporting sector. Such measures have potentially benefited the wealthy commercial sporting sector to tens, even hundreds, of €ms per annum.

5.244 The justification for such measures is coming under increasing pressure, in large part due to the vast revenue streams professional sporting bodies now attract. A comparison of the monies received by the top-tier of English football shows revenues of €214m in 1991/92; by 2007/08 that had reached €2.4bn, over ten times as much.²⁰⁸

5.245 With that in mind, and with the ECJ's deliberations regarding the application of EU law to Member States' gambling markets, when determining how robust the SROC argument is it is important to consider a number of aspects such as whether its proposals are valid, necessary and proportionate in relation to the realities of the legal and fiscal situation.

5.246 To that end, the commercial success and business oriented approach for both international and national sports bodies is also outlined below (Figure 5.25). For comparison purposes, the sports-books of some of the most globally successful licensed gambling operators have also been added to this table to demonstrate the relative revenue streams.

Figure 5.25: Sporting bodies²⁰⁹ and sports betting²¹⁰ revenues in €bns (2008)



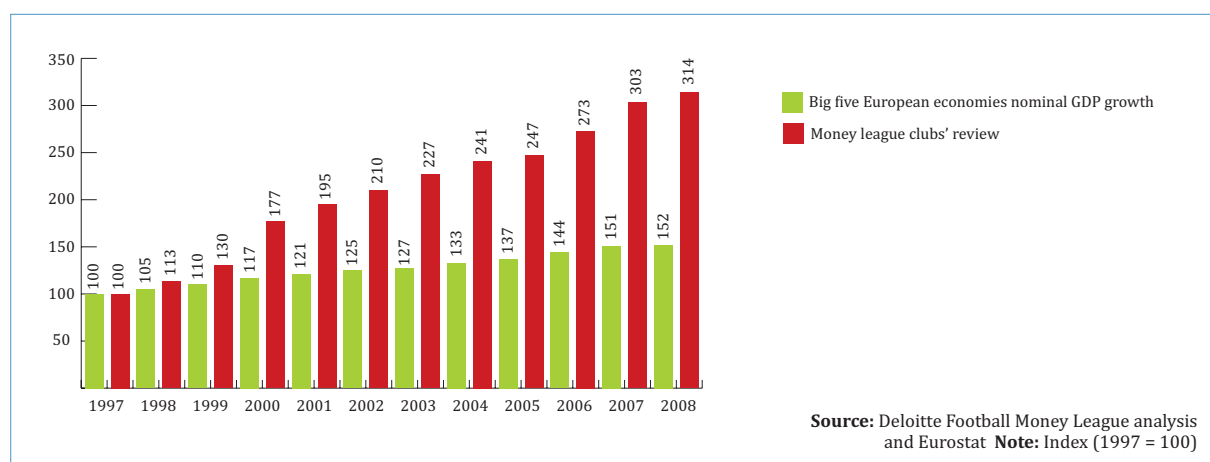
5.247 Clearly, the sports-books of major licensed operators cannot match the economic strength of modern-day professional sport and the preferential treatment afforded it. The general assumption that licensed gambling operators are making huge profits from sports betting is incorrect; it is a very competitive market place. However, as the 'Sponsorship and Advertising' section highlighted, the need to align the betting product with successful sporting products has meant considerable economic benefits for sport.

²⁰⁷ UK Daily Mail newspaper 'Spanish big guns threaten La Liga strike a government looks to change 'David Beckham law' on tax' (November 2009) ²⁰⁸ Deloitte 'Football Money League' report (Feb 2009) ²⁰⁹ The figures have been taken from the Deloitte Football Finances report 2007/08, the annual accounts available from these sporting bodies websites and the IOC's American tax returns ²¹⁰ The exact figure for retail and remote sports betting is not provided by many licensed gambling operators. Sports betting revenues have been estimated at 60%, which is a broad but generally accepted figure of the overall split between betting and gaming revenues; Bwin's accounts for 2008 show sports betting to be 56% of their overall gambling operation.

5.248 As has also been highlighted, the investment from licensed gambling operators has contributed to the burgeoning commercial success of sports, notably within the European Union, and the demand for commercial deals with sports. The commercial market place should ultimately determine a 'fair return' to sporting bodies in relation to the prevailing economic situation; even in times of economic difficulty, sports appear to be relatively healthy.²¹³

5.249 A clearer picture arises if this commercial sporting success is compared to the growth of the major EU economies. Figure 5.26 therefore details the GDP growth of the 'big five' European economies (UK, France, Germany Italy and Spain) against Deloitte's top twenty commercially successful football clubs, also from those countries, in its Football Money League report (2009).

Figure 5.26: Indexed nominal GDP growth of the big five European football nations' economies and the money league clubs



5.250 As the Deloitte report states, "revenue growth has comfortably exceeded that of the 'big five' European football nations during the last decade. The business side of football has also developed an extremely high profile and is now an integral part of many people's perception of, and interest in, the sport."²¹⁴ It is, however, important to note that not all sports are as successful.

5.251 Nevertheless, the football industry is one of the main proponents of the SROC argument. A comparison of Figures 5.25 and 5.27 demonstrates that many individual football clubs have larger revenues than all but a handful of the sports-books of major licensed gambling operators.

Figure 5.27: Total revenues of the top 20 football money league clubs in €ms (2008)

Club	Match-day	Broadcasting	Commercial	Total Revenue ²¹⁵
Real Madrid	€101.0m	€135.8m	€129.0m	€365.8m
Manchester United	€128.2m	€115.7m	€80.9m	€324.8m
Barcelona	€91.5m	€116.2m	€101.1m	€308.8m
Bayern Munich	€69.4m	€49.4m	€176.5m	€295.5m
Chelsea	€94.1m	€97.8m	€77.0m	€268.9m
Arsenal	€119.5m	€88.8m	€56.1m	€264.4m
Liverpool	€49.5m	€96.4m	€65.0m	€210.9m
AC Milan	€26.7m	€122.5m	€60.3m	€209.5m
AS Roma	€23.4m	€105.7m	€46.3m	€175.4m
Internazionale	€28.4m	€107.7m	€36.8m	€172.9m
Juventus	€12.5m	€106.6m	€48.4m	€167.5m
Olympique Lyonnais	€21.8m	€75.0m	€58.9m	€155.7m
Schalke 04	€32.3m	€56.0m	€60.1m	€148.4m
Tottenham Hotspur	€51.0m	€50.9m	€43.1m	€145.0m
Hamburger SV	€45.5m	€28.7m	€53.7m	€127.9m
Olympique de Marseilles	€23.5m	€69.4m	€33.9m	€126.8m
Newcastle United	€41.0m	€51.9m	€32.7m	€125.6m
VFB Stuttgart	€18.7m	€43.9m	€48.9m	€111.5m
Fenerbahce	€27.9m	€26.7m	€56.7m	€111.3m
Manchester City	€23.4m	€54.6m	€26.0m	€104.0m
Total	€1,029.3m (26.3%)	€1,599.7m (40.8%)	€1,291.4m (32.9%)	€3,920.6m

Source: Deloitte Money Football League Report (2009)

5.252 Yet there remains a misperception that licensed gambling operators are somehow withholding large sports betting profits from the already fiscally benefited (via widespread government aid and taxation measures) professional sporting sector within the EU.

5.253 The arguments presented by the sporting sector, through the platform provided by the Sports Rights Owners Coalition (SROC), rightly fights to protect professional sports' incomes streams and maximize profits, which are then inevitably directed towards the spiraling cost of player transfers and wages; the use of that income is of course primarily an issue for each sport.

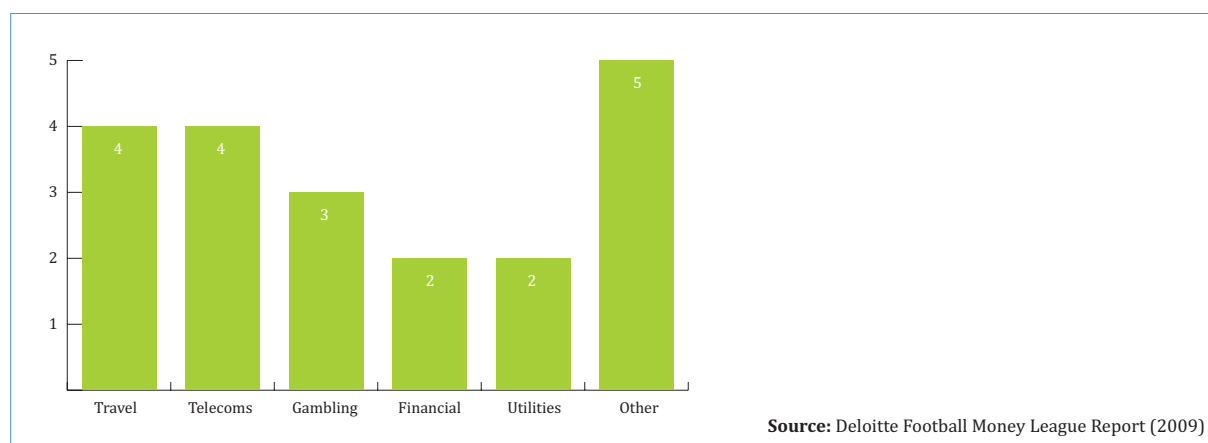
²¹⁵ Does not include players transfer fees, VAT and other sales related taxes

5.254 SROC has determined to challenge the existing legal and commercial landscape to engineer greater control over the sports betting product offered by gambling operators, as a necessary prerequisite to obtaining what it views as its due economic return from the gambling industry, in addition to the existing commercial relationship, and other funding streams.

5.255 As stated, a fundamental aspect of this debate focuses on whether that action is valid, necessary and proportionate in relation to the existing framework and the funding of sport. SROC strongly suggests that this is needed (although no substantial evidence of that has ever been advanced), whilst the contrasting fiscal environment affecting both industries and the investment levels directed towards professional sport strongly suggests otherwise.

5.256 There has been considerable evidence (although by no means exhaustive) put forward within this report of the scope and nature of the investment by licensed gambling operators in the professional sporting industry. To highlight this yet further, the business sectors of the principal sponsors of the top twenty 'Money League' clubs within Europe is set out (Figure 5.28).

Figure 5.28: Sponsorship sector of top 20 European football clubs by revenue (2008)



5.257 Again, gambling is to the fore in terms of the commercial contractual arrangements surrounding the leading professional sport within the EU, and is at the top-end of one the most competitive aspects of that professional sports' commercial revenue streams.

5.258 It should be remembered that licensed gambling operators are presently unable to sponsor clubs in two of the EU five leagues that nineteen of these twenty clubs belong to.. Had sponsorship been allowed (see 'Advertising and Sponsorship' section) then prohibited deals involving Bayern Munich and Stuttgart, for example, would have seen gambling as the leading business sector in relation to the principal sponsors of these twenty EU football clubs listed by revenue levels.

5.259 Lord Triesman, Chairman of the English Football Association (a member of SROC), told a UK Parliamentary hearing into the state of football governance, in December 2008, that he saw "no reason why the gambling industry should be able to make use of the football industry to make money, but make no contribution of that revenue."²¹⁶ Yet there was no consideration of the extensive commercial revenues from the gambling industry into football in that assertion.

5.260 Additionally, the European Professional Football League's (EPFL) conference noted that "since significant amounts of income are increasingly generated by the betting industry on the back of sports, some of that income ought to be allocated towards sport."²¹⁷ The disclosure of the realities of the industry's extensive commercial investment in sport within this report is however unlikely to quell these calls for additional, sport controlled, funding mechanisms.

5.261 The basic premise of the argument presented by professional sport appears to be that licensed gambling operators benefit from the sporting product - which they clearly do, although not always with economic success – and that those operators should as a consequence be statutorily and contractually required to direct a percentage of those revenues to sport.

²¹⁶ UK Telegraph newspaper 'Bookmakers under pressure to share their revenue from football with the sport' (December 2008) ²¹⁷ EPFL Protection of Intellectual Property Rights and Sports Betting Integrity Conference (May 2008)

5.262 If the premise is that those using sport to profit should pay additional sums in line with those profits over and above any separate commercial arrangements, then it must surely be employed in a consistent manner across all and any business sectors that might be deemed to use or associate itself with the sporting product to derive increased profits as a result.

5.263 The following table (Figure 5.29) details a select list (many others could have been included) of globally successful businesses that derive profits from the sporting product and the comparable reaction of sport to the 'fair return' argument for use of that product. These businesses are all dependent on a successful and globally recognizable sporting product to maintain the viability of their own sports-related products and the delivery associated profits.

Figure 5.29: Selected businesses profiting from the sporting product

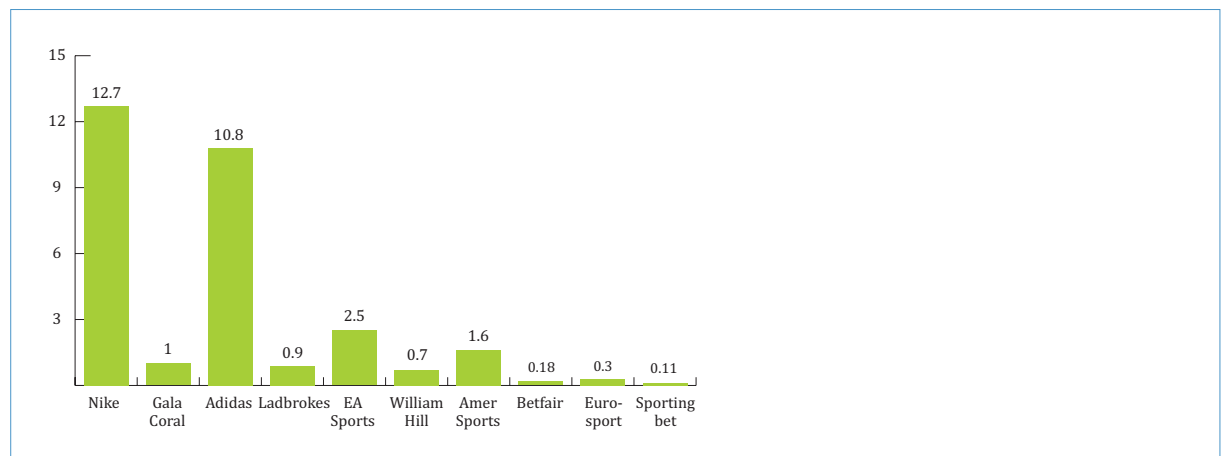
Sports-Reliant Business	Business Model (at a base level)	Principal commercial relationship with sport	Pressure from sports for statutorily increased revenues in addition to existing commercial deals
Eurosport	Predicated on the ability of the business to derive profits from the sale of sports TV products	Pays for picture rights which it promotes and sells through a sports-focused media platform	None – no levy on profits sought by sports or any power to determine the provision of the product
Gala Coral	Predicated on the ability of the business to derive profits from the sports betting product	Pays for pictures, sponsorship and advertising to market the sports betting product	Yes – introduction of a statutory power controlling the ability to offer betting and forcing payments
Nike	Predicated on the ability of the business to derive profits from the sale of sportswear products	Pays for sponsorship and advertising to promote the sale of sports and leisure	None – no levy on profits sought by sports or any power to determine the provision of the product wear products
Ladbrokes	Predicated on the ability of the business to derive profits from the sports betting product	Pays for pictures, sponsorship and advertising to market the sports betting product	Yes – introduction of a statutory power controlling the ability to offer betting and forcing payments
Adidas	Predicated on the ability of the business to derive profits from the sale of sportswear products	Pays for sponsorship and advertising to promote the sale of sports and leisure wear	None – no levy on profits sought by sports or any power to determine the provision of the product
William Hill	Predicated on the ability of the business to derive profits from the sports betting product	Pays for pictures, sponsorship and advertising to market the sports betting product	Yes – introduction of a statutory power controlling the ability to offer betting and forcing payments
EA Sports	Predicated on the ability of the business to derive profits from the sale of sports games	Pays for trademarks and copyrights to promote the sale of sports-based	None – no levy on profits sought by sports or any power to determine the provision of the product computer games
Betfair	Predicated on the ability of the business to derive profits from the sports betting product	Pays for pictures, sponsorship and advertising to market the sports betting product	Yes – introduction of a statutory power controlling the ability to offer betting and forcing payments
Amer Sports (Wilson)	Predicated on the ability of the business to derive profits from the sale of sports equipment	Pays for sponsorship and advertising to promote the sale of sports equipment.	None – no levy on profits sought by sports or any power to determine the provision of the product
Sportingbet	Predicated on the ability of the business to derive profits from the sports betting product	Pays for pictures, sponsorship and advertising to market the sports betting product	Yes – introduction of a statutory power controlling the ability to offer betting and forcing payments

5.264 The table above lists a number of the most successful sports-related businesses in their respective fields: sportswear (Nike and Adidas); equipment (Amer Sports); computer games (EA Sports); and broadcasting (Eurosport).²¹⁸ As is apparent, their fundamental business models are clearly founded on the sporting product, which they use to generate profits. In that respect, they are no different from the activities of licensed gambling operators' sports-books.

5.265 As with other businesses, licensed gambling operators pay sports commercial rates for pictures (in retail premises and internet streaming), sponsorship and advertising income in the same way that other sport-reliant businesses negotiate and conclude commercial arrangements. However, sports have determined that gambling operators, unlike other businesses, should: a) pay more to sport; and b) have the extent of their betting product determined by sports.

5.266 Before giving further consideration to the legitimacy of singling out the licensed gambling sector, an examination of the commercial position of licensed gambling operators' sports-generated revenues relative to other sports-reliant businesses is outlined (Figure 5.30). This is aimed at putting the SROC argument and that advanced by the European Parliament that betting operators' commercially exploit sporting competitions in context.

Figure 5.30: Revenues of select sports-reliant businesses in €bns (2008)²¹⁹



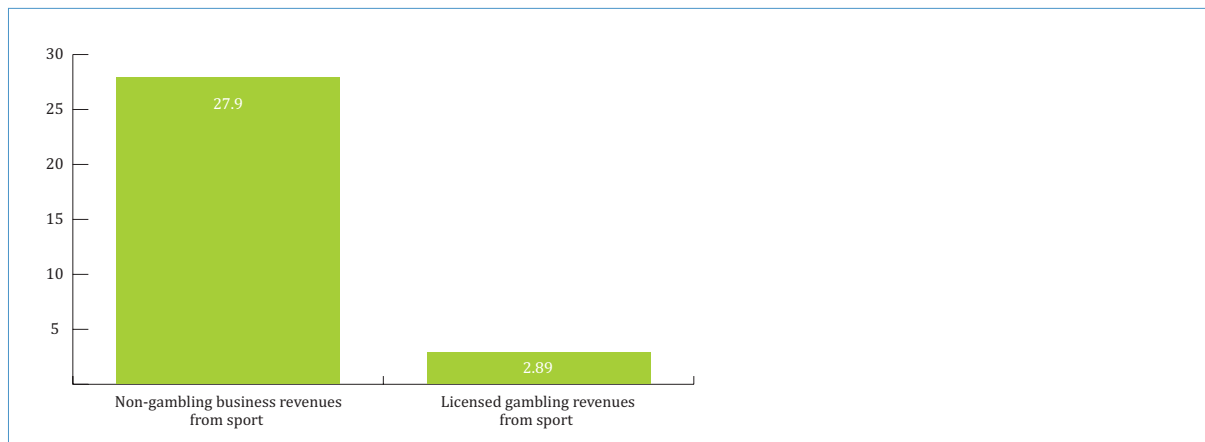
5.267 Apart from providing a useful economic backdrop to the debate, this overview of revenue levels also allows for the proportionality and validity of the SROC 'fair return' accusation to be considered in relation to all of professional sports' major businesses sectors.

5.268 Indeed, the revenue levels obtained from sports-reliant products provides a useful barometer of just how effective their association with the sporting product has proven. Adidas, for example, which will supply the kit for up to 12 national teams competing in the South African hosted World Cup and is also a FIFA partner, expects record sales from its football business in 2010 as a result.²²⁰ The company's total revenues in 2008 equated to €10.8bn.

5.269 On the basis that licensed gambling operators meet all of their legal and commercial obligations to sport, as do the other sectors listed, then it could be argued that those other sectors have been more successful in exploiting the sporting product. The disparity in revenues between non-betting, sports-reliant businesses and the competitive licensed gambling sector is immediately clear, but there is no comparable criticism of exploitation or financial returns.

5.270 To emphasize this disparity, the combined commercial revenues (Figure 5.31) obtained from the use of and/or association with sport by the non-betting related, but sports-reliant, businesses reveals a figure of around €28bn for these five businesses alone (Nike, Adidas, Eurosport etc). Whilst the equivalent sports-book revenues of the major licensed gambling operators equate to around €3bn (or approximately 11% of those other businesses).

²¹⁸ In the broadcasting arena, larger operators such as ESPN or Sky would provide a more suitable example, with revenues potentially far outweighing that of Eurosport. However, difficulty obtaining any precise figures (they are part of businesses with multiple operations, e.g. ESPN is part of the Disney Group, which do breakdown the revenue and profits of individual businesses within the group) for either of those businesses precluded their participation. ²¹⁹ Sports-books have been estimated at 60% of gambling operators' entire revenue. Exact figures are not publicly available for many companies, however, bwin's accounts show sports betting revenue at 56% and William Hill's Investor presentation for 2008 shows that over the counter (predominantly betting), interactive sports-book and telephone revenues (again predominantly betting) equate to 59% of entire revenues; 60% is the generally agreed broad-based figure. The figures others come from the annual reports of those businesses, except Eurosport (TF1 Group does not provide a separate figure for Eurosport from the rest of its Group) which comes from a broadbandtvnews.com article 'Eurosport revenue increases' (February 2009). ²²⁰ sports-city.org 'Adidas will get record sales from World Cup, CEO says' (October 2009)

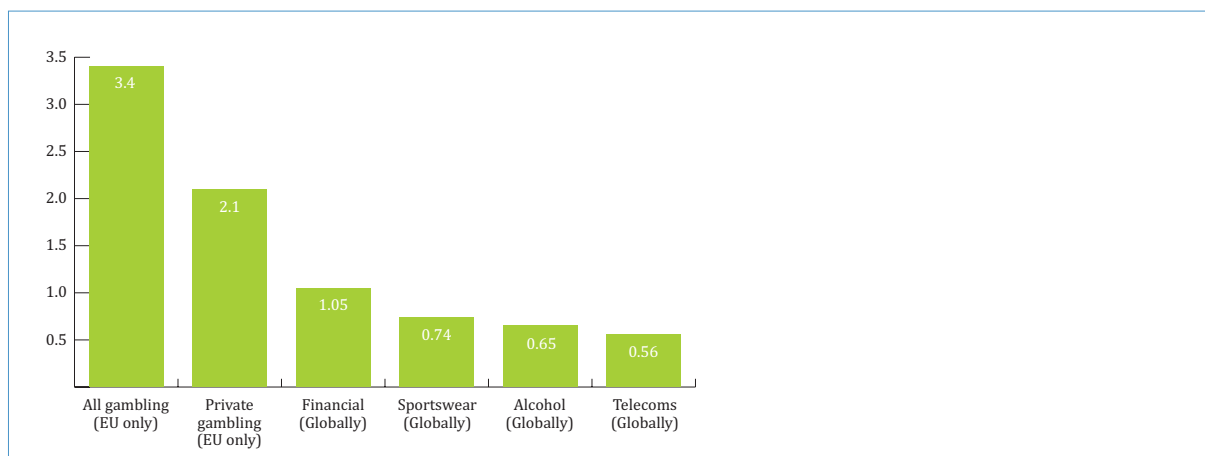
Figure 5.31: Combined revenues of select sports-reliant businesses in €bns (2008)

5.271 The revenues attributable to these non-betting businesses as a result of the alignment of their own sports-based products with the sporting product are considerable. They utilize the sporting product; in fact they are to a large degree reliant on its success to stimulate demand within their own sectors, and represent many of the leading commercial brands in those areas.

5.272 The use of the sporting product in this way is not questioned, nor is the commercial association between the two; it is a symbiotic relationship, but the actual level of investment into sport by each business is still dependent on fully commercial negotiations. This is principally the case with regard to what has become sports' largest revenue provider, namely the broadcasting sector, which is expected to contribute €20bn to sport in 2010 alone.²²¹

5.273 The licensed gambling operators listed above represent broadly equivalent businesses within their own sector; leading companies that have developed strong brands, and yet the differential in revenue streams is markedly evident. This reflects the tight margins and highly competitive markets that define the modern licensed gambling industry. The introduction of remote technologies has enhanced this environment, benefiting sports and consumers alike.

5.274 As a final contribution towards the validity, necessity and proportionately of the SROC argument in relation to the commercial contribution made by the licensed gambling industry, as well as the supposed, and clearly flawed, exploitation argument that has been presented, Figure 5.32 details the known investment by some of the main industries that contribute to sport.

Figure 5.32: Contribution to sport by business sector in €bns (2008)²²²

5.275 All of these businesses contribute varying levels of income to sporting events in an attempt to associate themselves with a globally successful and recognised product, increasing their product recognition and economic benefits as a result. In essence, they agree commercial deals with sports with a view to exploiting that product association and to profiting accordingly.

²²¹ www.sportbusiness.com 'The business of TV Sport' (August 2009) ²²² Europe Economics Report (2009) and Pro Sport Magazine's 'Global Sponsorship Analysis' (April 2009)

5.276 However, the total investment from private licensed gambling operators in professional sport within the EU represents double that of the financial sector and more than three times that of the alcohol sector worldwide. Outside of broadcasting (expected to reach €20bn globally in 2010) and the automotive industry (which is mainly focused in America and therefore been excluded from this principally EU focused study), these represent the major investors in sport.

5.277 If all of these businesses are deemed to profit from their various associations with sport, and for which they have invested varying degrees of income (notably sponsorship for the non-betting related businesses), then the basic tenet of the SROC argument indicates that all should provide addition revenues as a result of any profits their own business ingenuity creates.

5.278 If challenging sports-reliant businesses for additional revenues, over and above commercial deals, and requesting control over those businesses' commercial products to force those deals appears incongruous in the context of a market economy, then it is no less so, from a wholly commercial perspective (integrity is considered in Chapter 6) in directing that policy towards licensed gambling operators, who already invest heavily in EU sport.

5.279 The fundamental issues that have led to this inconsistent approach appear to be that:

- a) Licensed gambling operators are deemed by sports to use a particular aspect of their product which leads sporting bodies to believe that additional income should be forthcoming. That principally surrounds the use of data e.g. fixture lists; and
- b) There is a, now increasingly redundant, tendency to view the licensed gambling industry as a sole or principle mechanism to deliver revenues to sport; even though professional sports' principal revenue stream is often now obtained through broadcasting deals.

5.280 With regard to the first of these, the present legal situation – the application of the Database Directive through the ECJ decisions in the *BHB v. William Hill Ltd* and *Fixtures Marketing* cases (see Chapter 4) – determines that the data does not form a substantial part of the database and the data taken had not been the subject of relevant investment.

5.281 As a UK Treasury note for a meeting with the Premier League in September 2007 states, the Premier League has “supported calls for intellectual property law to be extended to cover fixture lists so that betting companies would have to pay sport for the right to use them. The development of a ‘sports levy’ on bookmakers has also been put forward.”

5.282 The ministerial briefing note goes on to conclude that “both are likely to be illegal under EU law and have been ruled out through Cabinet correspondence. Other Member States have actively opposed any revision of the ECJ’s stance on the application of the current legislation, which concluded no right exists to charge for simple information such as fixture lists.”²²³

5.283 Indeed, the principal aspect of this data pertains to the use of the names of sports teams, which are themselves generally derived from the geographical location within which they conduct their commercial sporting operation. This data is what sports often refer to as their ‘product’, and for which they have been focused on garnering recognition and acceptance.

5.284 If such a ‘product’ warrants payment for its use, then again this must be consistent across all sectors. Media platforms, the print media in particular, make use of that same sporting data and which has varying degrees of impact on that sector’s profitability – for the media is a profit making sector – but is not being pursued by sports for use of that data.

5.285 The argument may be that the print media adds to the sporting product by promoting it and encouraging consumer engagement; it is a symbiotic relationship. It is clear that the advertising of betting, which directs consumers to the sporting product and information such as it broadcast availability, likewise promotes sport. Again, it is a symbiotic relationship.

5.286 However, the validity of this ‘product’ statement is in many respects inconsequential, as the EU legal environment, to date, has determined that the enforcement of this ‘product’ to obtain the level of income that professional sports seek (British horseracing was looking for around €130m per annum in 2004²²⁴), is not enforceable under the EU Database Directive.

²²³ UK Treasury website (freedom of information) - ministerial briefing note with the Premier League (September 2007) ²²⁴ UK Guardian Newspaper ‘Board left staring into £100m black hole’ (November 2004)

5.287 The validity of this ‘product’ will not therefore be laboured within this document any further than the legal standpoint already explained. To do so would be tantamount to engaging in a hypothetical discussion, rather than one based on evidence and firm legal foundation, which has been the rationale behind the examination of sports betting issues within this study.

5.288 The draft French gambling legislation has been championed by SROC members as “ground breaking”²²⁵ but which in reality appears to be an extension of the existing French Sports Code rather than a wholly new approach, and as such is a strengthening of an existing arrangement and hence its tentative acceptance by the European Commission.

5.289 It would, however, be interesting to see how the European Commission responds if a formal State aid complaint is made on the grounds that the law will serve to give French professional and commercial sporting bodies a competitive advantage over comparable sporting bodies operating in a global commercial market place within other EU Member States.

5.290 The latter has, nevertheless, emphasised the Treaty provisions (e.g. Article 56 TFEU, previously 49 EC), and the decision of the French Parliament to discriminate by prohibiting betting exchanges, as well as other aspects, may well form future legal action if they remain in place when the law is passed.

5.291 As such, there may be additional hurdles for this law to navigate before it could be deemed secure. In addition, whether the organiser’s right delivers the commercial environment it is designed to may depend on whether the policy approach is predicated on opening the market to competition or controlling it to maintain the favoured position of monopoly operators.

5.292 Given the level of fiscal burdens on licensed online operators, time will tell if this market place is a long-term commercially viable option and if the enforcement of a manufactured relationship between sports and licensed gambling operators proves a commercial success for all involved. With increasing competition as other Member States open their markets, there may be other more truly commercially engineered relationships that attract that investment.

5.293 Ultimately, there is no overriding commercial reason to protect the professional sporting sector that warrants the establishment of a new statutory right over another sector; in this case the licensed gambling industry. The latter no more exploits the sporting product than many other sports and non-sports related businesses, and which appear to drive greater profits.

5.294 With payments of €3.4bn per annum in the EU sporting sector, the licensed gambling industry contributes more towards sport than any other sector apart from broadcasting. The revenue streams of UEFA, FIFA and the IOC amounted to over €4bn in 2008 (with effectively a zero tax rate) with the five major European football leagues accounting for another €7.6bn.

5.295 Consequently, neither the validity, necessity nor proportionality of the argument that sport should have greater control over the betting product and that additional revenues should be forthcoming from that industry appears to be robust given the actualities of the situation.

5.296 However, there remains a view, predicated on the historical allocation of a significant proportion of income obtained from gambling to amateur and professional sport within certain Member States, that sport should be protected from the realities of the commercial market.

5.297 Indeed, that monopoly gambling operations should be allowed to maintain those positions to ensure that income to sport is protected; in other words, that betting should be provided solely to finance sports. This is in addition to the many fiscal advantages provided to sport through State aids and preferential taxation measures, both within and outside of the EU.

5.298 Whilst it is understood that professional sporting bodies have differing revenue streams, there appears to be more than ample income being generated across the sector, notably within Europe. If solidarity mechanisms are being over-focused on particular leagues or clubs, then that is a matter for the sport concerned to rectify.

5.299 The latter is increasingly a topic of discussion at national and international level. In English football the lack of competitive balance between the top four and the rest of the Premier League, and between the top flight and the lower divisions, is said to be “the biggest threat facing the game” and to be “becoming acute”.²²⁶ UEFA is pressing for “financial fair play”.²²⁷

²²⁵ Europolitics SROC Article ‘The case for sport – from broadcasting to betting’ (May 2009) ²²⁶ UK Guardian newspaper ‘Lord Triesman unveils FA plan to overhaul governance of football’ (May 2009) ²²⁷ UK Guardian newspaper ‘Platini calls on European parliament to make sport a special case’ (February 2009)

5.300 If as appears case, sporting bodies are increasingly encountering financial difficulties, then realigning solidarity mechanisms or restructuring expenditure to prevailing commercial revenues would be a more appropriate action, rather than determining that another industry should pay additional income to meet those spiralling costs. This is especially true given that the wider sporting sector is significantly more wealthy and profitable than the licensed gambling industry.

5.301 The significant revenues of professional sport has been primarily demonstrated in this report via the fiscal results of individual sporting clubs, leagues and governing bodies, as well as the investment of other sport-reliant businesses, in relation to the contribution provided to EU sport by licensed gambling operators at €3.4bn per annum.

5.302 Figure 5.33 provides the total value of the global sports deals completed in the first six months of 2009 alone, and which totals around €29.5bn. Details of the top 25 deals for each of the first two quarters of 2009 are contained in the Appendices to this document.

Figure 5.33: Global sports sector deals in the first six months of 2009 in €bns²²⁸

Sector	Quarter 1	Quarter 2	Total
Sports properties	€1.275bn	€0.696bn	€1.971bn
Infrastructure	€5.146bn	€2.570bn	€7.716bn
Personal endorsement	€0.029bn	€0.023bn	€0.052bn
Broadcast	€12.813bn	€3.080bn	€15.893bn
Agencies	€0.212bn	€0.118bn	€0.330bn
Sponsorship	€1.830bn	€1.679bn	€3.509bn
Total	€21.305bn	€8.166bn	€29.471bn

5.303 The sheer size and scope of the professional sporting industry's income far outweighs that achieved by the sports betting operations of licensed gambling operators; to recap (see Figure 2.4), gross betting win is expected to reach €12.4bn per annum in 2010 (with €3.4bn online), whereas professional sports' broadcasting income alone is expected reach €20bn globally in the same year, and broadcast deals completed in the first quarter of 2009 totalled €12.8bn, with nearly €30bn of sports deals completed in the first half of 2009.

5.304 In general, broadcasting represents the largest revenue stream for professional sporting bodies. Consequently, if governments were seeking to protect income, then broadcasting would surely be the most logical stream to secure. That governments do not take such action is because sport is subject to the commercial market place and its broadcasting arrangements are agreed accordingly, albeit with favourable joint selling practices permitted within the EU.

5.305 Broadcasting deals for sport often involve public companies vying with private broadcasters for those rights, with demand increasing value accordingly. Whilst there are some differences in the markets, protections given to monopoly gambling operators are nevertheless highly questionable both in practice and as a way of deriving the greatest commercial income for sport and the sale of its various rights (e.g. sponsorship and advertising).

5.306 There is no overriding reason why the funding of professional sport should be a public sector role. If it is, then there are similarly no grounds that the delivery of such funding should be placed upon the commercial activities of a particular sector, in this case the gambling sector. Again, there is no validity to maintaining or imposing such an outdated policy approach.

²²⁸ SportsPro Special Report Second Quarter 2009: Quarterly Sponsorship Analysis

5.307 That EU gambling markets are opening and the exclusive position of monopolies being challenged is likewise not a compelling reason to argue for the imposition of a new statutory mechanism to manufacture payments to professional sport from licensed gambling operators as a replacement for monopoly gambling income to an already economically benefited and fiscally favoured professional sporting sector.

5.308 Such an approach does not reflect the global realities within which both industries operate, and will not be a secure protective income mechanism as it relies on operators agreeing to partake in that regulatory and fiscal mechanism when they can offer bets on that jurisdiction's sporting events from other more economically viable global locations.

5.309 To preclude licensed gambling operators from a market, and to prevent citizens from gambling with those licensed operators requires significant resources and places additional burdens upon national economies. For the power of the State to be employed to effectively enforce restrictions on trade and civil liberties on behalf of sport, such action needs to be given very careful consideration, notably to determine if it is valid, necessary and proportionate.

5.310 Instead, it should be recognised that there is a strong commercial interest for both licensed gambling operators and professional sporting bodies to negotiate commercial deals, as with other industries that wish to associate their products with sport. As such, it should be encouraged (with all proper regulatory measures concerning gambling established) as another contributory income stream for the maintenance and growth of the professional sports sector.

5.311 For example, if certain sporting bodies that presently permit alcohol advertising, which appears inconsistent with sports supposed health-enhancing role, but which preclude sponsorship from the licensed and regulated gambling industry, reconsidered that approach then considerable additional income may well be forthcoming to the sector.

Grassroots Sport

5.312 SROC states that it is campaigning for "a regime for sports that enables sport to protect its integrity, and establishes a fair return to grassroots and professional sport."²²⁹ The validity, necessity and proportionality of the proposed statutory regime that would deliver this for sports has been dealt with in previous paragraphs and will not be reconsidered in its entirety in relation to the grassroots, suffice to say that the argument presented is not deemed to be robust.

5.313 This section will, however, consider how appropriate this is as a concept in relation to grassroots given: (i) the investment that professional sport presently makes in grassroots relative to their revenues and investment in other areas; and (ii) that there is no obvious or logical commercial link between licensed gambling operators and grassroots sporting activities.

5.314 The use of additional gambling income to benefit grassroots has increasingly been placed to the fore in media articles and other documentation by sporting bodies, and consequently presented as a priority funding area. The impression given by sports is that a sizable proportion of the income generated from a new statutory regime that enforced additional payments from licensed gambling operators would go to grassroots.

5.315 Whilst it is not refuted that professional sport invests in grassroots, it is questioned whether the emphasis in their commercial lobbying activities is appropriate in relation to their existing levels of funding in this area. The grassroots investment for some of the major UK sporting bodies in 2008 ranged from around 6-16% of total revenues (see Figure 5.34). However, this appears to include significant public revenues directed to grassroots via sports governing bodies (see paragraph 5.321); the actual investment by sports would therefore appear to be somewhat lower.

5.316 Given that taxation is relatively low (near zero in many cases) for these sport bodies, it cannot be concluded that this is professional sports' primary area of investment, and it does not appear to be appropriate to place as much emphasis on grassroots in that sectors' commercial lobbying activities given the realities of that level of grassroots investment.

²²⁹ Europolitics SROC article 'The case for sport – from broadcasting to betting' (May 2008)

Figure 5.34: Grassroots payments by UK sporting bodies (2008)

Sporting Body	Revenue	Tax paid	Grassroots payments	Grassroots as % of revenue
English Premier League Ltd ²³⁰	€1,193m	None	€47.7m	4%
English Premier League ^{231a}	€2,400m	Unknown	€153.6m	6.4%
English Football Association ^{231b}	€329.6m	Credit of €3.8m	€51.6m	15.6%
England and Wales Cricket Board ²³²	€119m	€0.16m	€15.1m	12.7%
English Rugby Football Union ²³³	€124.8m	Credit of €2.5m	€20.4m	16.3%

5.317 The level of that investment is of course a decision for each sport to make; if grassroots activities are being squeezed by other expenditure pressures, then that sport must take a decision on its funding priorities. As with the commercial issues, that is not a validity reason to pursue another industry to contribute additional revenues through a manufactured product.

5.318 The English Premier League spent 6.4% of income (or €153.6m) on grassroots in 2008, whilst over 60% (€1.5bn²³⁴), or nearly ten times as much, was directed towards players' wages in the same year. In 2009, Premier League clubs spent €80m on players' agents for bringing in players, negotiating contracts and facilitating sales; this does not include additional agents' revenues for negotiating salaries which must under FA rules come out of players' wages.²³⁵

5.319 Again it should be pointed out that licensed gambling operators contribute €3.4bn per annum in EU sport and that there is no reason why those sports should not have ample income to invest in grassroots activities. That is in addition to the significantly higher revenues that many national and international bodies receive from broadcasting deals and which are distributed through their solidarity mechanisms to their respective associations.

5.320 In the UK, the biggest investor in grassroots sports appears to be the public sector, via the Exchequer and the national lottery, the licence for which is awarded by the Government to a private operator with a 7-year licence. It is one of the most successful lotteries in the world, even in the face of competition from the various on and offline private gambling products.

5.321 Over €24bn has been distributed to various good causes, including sport (€4.5bn), since the UK lottery's inception in 1995 (see Figure 5.35). During the period 2009-2013, Sport England alone will allocate €544m to sports governing bodies with: €96m to football²³⁶; €69m to rugby union and league; €43m to cricket; €27m to cycling; €30m to tennis; €22.6m to athletics; and €22.6m to badminton, as well as many others.

²³⁰ This does not include clubs' revenue. Figures taken from Premier League Season Review 2007/08 ^{231a} Combined clubs' and broadcasting revenues. Figures taken from Premier League Season Review 2007/08 ^{231b} FA Report and Financial Statements 2008 ²³² ECB Annual Report 2008 ²³³ RFU Annual Report 2008 ²³⁴ Deloitte Annual Review of Football Finance 2009 ²³⁵ UK Guardian Newspaper 'Premier League clubs send £70m on agents' (December 2009) ²³⁶ This includes investment in the Football Foundation

Figure 5.35: Lottery awards to UK sporting distribution bodies (1995-2009)

Sporting organisation	No. of sports projects funded	Amount awarded since 1995
Sport England	19,335	€3,417m
Sport Scotland	8,518	€286.2m
Sports Council for Northern Ireland	3,310	€168m
Sports Council for Wales	7,112	€162.6m
UK Sport	11,686	€505.7m
TOTAL	49,961	€4,539.5m (€4.5bn)

5.322 The principal funder of grassroots and mass participation in the UK appears, therefore, to be the public sector, mainly through the national lottery, a gambling product that operates in competition with private licensed gambling operators and other leisure industries. There appears to be ample public funding available to subsidise UK sports' grassroots activities, in addition to considerable commercial income from broadcasting, gambling etc.

5.323 Other Member States take different approaches, which often involve monopoly operators; the UK is an example of a properly regulated gambling market with a wide range of private operators, but where grassroots and mass participation are well-funded through public and private mechanisms. Indeed, the lottery was established (in 1995) in a mature and well-established gambling market place and has still flourished.

5.324 Add to that the commercially successful UK professional sporting industry (e.g. English Premier League) and the necessity for closed markets to protect sporting income appears unfounded. Again, when considering the validity, necessity and proportionately of the SROC argument in the true context of the situation, the response to the assertions made by that the organisation do not appear to be robust or formed via any substantial evidence-base.

5.325 There is no direct linkage between private gambling operators and grassroots sports, except an historical use of gambling income in some countries, which does not mean that those systems should remain in perpetuity as if in an historical vacuum, especially given the evolving global gambling market and because broadcasting is now the principal funder of sports.

5.326 In addition, whilst there is no reason that private licensed gambling operators should be singled out to pay for a particular sector; it should be noted that in the UK alone, those operators contributed around €14bn in direct gambling taxation alone during 2001-09 should additional public revenues are required for grassroots sports funding purposes.²³⁷

²³⁷ UK HM Customs and Revenue annual receipts



Chapter 6: INTEGRITY

6.1 The issue of integrity in sport, in general, has been a source of debate for some decades, with suspicions and then confirmation of widespread doping involving East German athletes in the 1960s and 70s, and more recently the 'BALCO affair' in America implicating doping with leading sportspeople. Betting related incidents have also entered the debate, although in some sports, such as horse racing, its potential and undesirable impact has been ever-present.

6.2 With the growth of sports betting and associated cross-border platforms testing the suitability of existing regulatory mechanisms, the issue of betting integrity has occupied a more pronounced position amongst the list of integrity issues facing the sporting movement. In addition to considering the extent and nature of the challenges presented by sports betting, this chapter also will attempt to place this issue in context with other forms corruption.

6.3 This chapter will also focus on the reaction of sporting bodies to betting integrity issues, whether there are sufficient rules and regulations in place, and importantly, if those rules are properly enforced by sports. To that end, particular focus will be placed on horseracing, cricket, football and tennis, and the integrity mechanisms that have been established in those sports.

6.4 The wider media has also taken more interest in the sports betting issue in recent years; although the articles that have been produced have sometimes been misleading and unbalanced, an issue which, during discussions concerning the production of this report, has been advanced as a serious concern to both sporting bodies and licensed gambling operators.

6.5 However, there is evidence to suggest that this situation may have sometimes been the result of certain sporting groups using this as a tool to pressure licensed gambling operators, governments and European institutions to meet their commercial agenda. The latter will also be examined later in this chapter, notably surrounding the suggested connection between the levels of doping and corrupt betting and the relative risks they pose to sport.

Background: Corruption and bringing sport into disrepute

6.6 Before focusing on sports betting related incidents, an overview of the various types of corruption and other activities that bring sport into disrepute are provided in the following paragraphs and tables. As with many other issues examined in this report, the importance of including these activities, the majority of which are not betting related, is to place incidents of sports betting corruption within the context of the various negative incidents that affect sport.

6.7 That is not to lessen the importance of dealing with the particular and important issues surrounding sports betting, but to provide a level of proportionality to that discussion and a clear picture within which a proper debate can take place. Ideally, licensed gambling operators and sports would prefer that there was no threat and no incidents of betting related corruption.

6.8 However, the unfortunate reality is that there are individuals, outside and within sport, who will seek to corrupt the sporting product and adversely affect betting markets for their own financial gain. The two industries can, and in many instances already do, significantly deter, punish and ultimately limit adverse betting incidents affecting professional sport.

6.9 As stated above, it is, nevertheless, important to acknowledge the extent of this activity within the overall scope of corruption and other incidents that bring sport into disrepute, as part of the integrity debate. To that end, the following paragraphs will focus on:

- Doping;
- Financial irregularities;
- Cheating;
- Match-fixing (non-betting); and
- Match-fixed (betting related).

Doping

6.10 Instances of doping probably account for the majority of the most infamous examples of corruption in sport. Ben Johnson and Marion Jones, two Olympic gold medallists, are towards the head of the list of the globally recognised athletes to have taken drugs to enhance their performance; but drug taking is not confined to athletics: cycling; weightlifting; baseball; weightlifting; football; tennis; cricket, in fact just about every sport has been affected.

6.11 With the fall of Communism in the late 1980s and early 1990s, and as long suspected, evidence emerged of the widespread doping of athletes in the former Soviet Union and East Germany, in particular. However, many of the most recent high-profile examples have been linked to the Bay Area Laboratory Co-Operative (BALCO), an American company found in 1984. BALCO was a service business for blood and urine analysis and food supplements. In 1988, it offered free blood and urine tests to a group of athletes known as the BALCO Olympians.

6.12 BALCO marketed tetrahydrogestrinone ('the Clear'), a then undetected, performance-enhancing steroid, which was then supplied to a number of high-profile sports stars from the US and Europe. In September 2003, following an anonymous tip-off, agents of the US Internal Revenue Service, Food and Drug Administration, Narcotics Task Force, and USADA conducted a search of BALCO facilities. They found steroids, names of athletes and dosage plans.

6.13 In 2009, nearly 1 in 10 retired American National Football League (NFL) players polled in a confidential survey said they had used now-banned anabolic steroids while still playing; 16.3% of offensive linemen admitted using steroids, as did 14.8% of defensive lineman.²³⁸

6.14 Figure 6.1 outlines a fraction of the numerous examples of proven drug taking in professional sport, occurring mainly in the last decade.

²³⁸ www.health.usnews.com '1 in 10 Ex-NFL Players Used Steroids, Poll Reports' (February 2009)

Figure 6.1: Examples of professional athletes who have taken drugs

Sport	Incident
Athletics (Ben Johnson)	On September 24, 1998 Johnson beat Carl Lewis in the 100m final at the Olympics, lowering his own world record to 9.79 seconds. However, Johnson's urine samples were found to contain Stanozolol, and he was disqualified three days later. He later admitted having used steroids when he ran his 1987 world record, which caused the IAAF to rescind that record. Johnson and hundreds of other athletes have long complained that they used drugs in order to remain on an equal footing with the other top athletes on drugs that they competed against.
Athletics (Marion Jones) ²³⁹	In October 2007, former track star Marion Jones admitted using steroids as she prepared for the 2000 Summer Games in Sydney, and pleaded guilty to lying to federal agents about her drug use and an unrelated financial matter. Jones, who won five medals at the Sydney Olympics, said she took the steroid known as “the clear” for two years beginning in 1999. The clear, also known as THG, or tetrahydrogestrinone, is a powerful anabolic steroid that was at the centre of the federal investigation into the Bay Area Laboratory Co-operative (BALCO).
Cycling (Floyd Landis)	In 2006, Landis won the first edition of the Tour of California, before going on to finish first in the 2006 Tour de France. However, he was stripped of his Tour de France victory and fired from the Phonak team after a drug-control test demonstrated the presence of a skewed testosterone/epitestosterone ratio during Stage 17. Landis maintained his innocence and he mounted a vigorous defense. Although Landis' legal team documented inconsistencies in the handling and evaluation of his urine samples, the disqualification was upheld.
Boxing (Shane Mosley)	Shane Mosley is a WBA Welterweight Super Champion, who along with many other professional or Olympic athletes, has been connected to the BALCO Labs steroid scandal. The lead investigator on the BALCO case reported that documents seized from the lab show that Mosley received “the clear” and “the cream”, both designer steroids. Mosley told a grand jury in 2003 that he injected himself with the doping agent EPO as he prepared for a fight against Oscar De La Hoya, a match that he won due in part to his strong performance in the later rounds of the fight.
Swimming (Ute Geweniger)	Ute Geweniger was a breaststroke and medley swimmer of the 1980s who was a leading member of the East German swimming team. She won two Olympic gold medals, in the 100m breaststroke and 4x100 m medley relay at the 1980 Summer Olympics in Moscow, and set seven individual and two relay world records. She was named by Swimming World magazine as World Swimmer of the Year in 1983 and as the European Swimmer of the Year in 1981 and 1983. In 2005, she admitted that her performance had been supported by doping.
Baseball (Jason Giambi)	Jason Gilbert Giambi, a Major League Baseball designated hitter and first baseman. He was the American League MVP in 2000, and is a five-time All-Star who has led the American League in walks four times the Silver Slugger award twice. Late in 2003, Giambi was named by FBI officers investigating the Bay Area Laboratory Co-operative (BALCO) as being one of the baseball players believed to have received anabolic steroids from trainer Greg Anderson. In December 2004, the San Francisco Chronicle reported in his testimony, Giambi had admitted to using several different steroids during the off-seasons from 2001 to 2003, and injecting himself with human growth hormone during the 2003 season. He publicly apologized in 2005.
American Football (Bill Romanowski)	William Thomas “Bill” Romanowski had a 16-year career in the NFL, playing 243 consecutive games, an NFL record among linebackers, won 4 Super Bowl Championships, and is the only linebacker to start 5 Super Bowl Games. He is one of only three players in NFL history to win back to back Super Bowls with two different clubs. Romanowski was a Pro Bowl selection twice, in 1996 and 1998. Records seized by the government belonging to the Bay Area Laboratory Co-operative indicate that he had used the anabolic steroid “The Clear” and synthetic testosterone ointment “The Cream” provided by BALCO since 2003. In an October 16, 2005 appearance on 60 Minutes, Romanowski admitted to using steroids and human growth hormone that he received from Victor Conte, BALCO owner.

²³⁹ Washingtonpost.com ‘Marion Jones Admits to Steroid Use’ (October 2007)

Cheating

6.15 Increasingly prevalent in modern-day sport with huge commercial revenue streams at risk. The most recent example involves Thierry Henry's blatant hand-ball in the 2010 World Cup qualifying match between France and Ireland that saw the French go through thanks to Mr Henry's hand control and then pass to William Galas to score the winning goal. Henry has admitted he handled, but FIFA have determined that there will be no replay of the game.

Figure 6.2: Examples of cheating in sport

Sport	Incident
Rugby ²⁴⁰ (Bloodgate)	During the quarter final of the Heineken Cup 2009 against Leinster, Harlequins wing Tom Williams came off the field with what turned out to be a faked blood injury in order to facilitate a tactical substitution. An investigation revealed that blood injuries had also been faked by Harlequins to enable tactical substitutions on four previous occasions. These findings resulted in a twelve month ban for Williams - reduced to 4 months on appeal, a three year ban for former director of rugby Dean Richards and a two year ban for physiotherapist Steph Brennan as well as a £260,000 fine for the club. The club chairman Charles Jillings subsequently tendered his resignation while the club doctor Wendy Chapman was suspended by the GMC for cutting Williams's lip to hide his use of the blood capsule. On 2 September 2009, it was reported that Harlequins had escaped being thrown out of the Heineken Cup following the scandal when the board of organisers European Rugby Cup (ERC) said it approved of the bans and fines already handed out.
Football (Hand of God)	England v Argentina in the 1986 World Cup quarter-final match. A looped back pass forced 6ft 1in goalkeeper Peter Shilton to rush out to punch the ball away from the oncoming 5ft 5in Maradona. Unlike to get his head to the ball before Shilton's fist and so levered up an arm and lifted it over Shilton. The referee gave a goal and Maradona referred to it as the 'Hand of God'.
Football (Diving)	Referred to as 'simulation' by FIFA. One of the most blatant examples came in the 202 World Cup. Brazil player Rivaldo hit in the shin by a ball kicked at him by a Turkish player, paused, then suddenly clutched his face and fell to the ground. The referee sent the Turkish player off and Brazil went on to win the game.

Financial Irregularities: Bungs, fraud and bribery

6.16 The following is a selection of examples of alleged or proven corrupt financial practices that have adversely impacted on the integrity of sport. The increasingly large revenue streams that sport is attracting also unfortunately appears to be bringing with the some adverse instances of highly irregularly financial practices within sport.

²⁴⁰ Times online 'Harlequins have let all of rugby down' (August 2009), Independent newspaper 'Quins chairman falls on his sword over Bloodgate' (August 2009), bbc.co.uk 'Bloodgate' doctor is suspended' (September 2009)

Figure 6.3: Examples of alleged or proven corrupt financial practices

Sport	Incident
Football (England) ²⁴¹	Lord Stevens was appointed head of the Premier League's bungs inquiry in March 2006, in the wake of claims made by the then Luton FC manager Mike Newell, who criticised the role of agents and suggested that offers of illegal payments were not uncommon. Stevens examined 362 transfers which took place between January 1, 2004 and January 31, 2006. Concerns over transfers involving Chelsea, Newcastle, Bolton, Middlesbrough and Portsmouth were highlighted. Stevens also expressed concern about 15 agents and third parties involved in some 17 transfers, and concerns about two managers. However, no clubs or officials were found to have taken illegal payments. The Premier League and the FA also admitted some responsibility for failing to check transfers sufficiently. The League stated in its report to clubs: "Both the Premier League and the FA have already accepted partial responsibility for not having effective checking and verification systems at the front end of the transfer process. However, this does not excuse the prevalence of slack administration and lack of understanding of complex rules by some clubs that have led to an unacceptable level of compliance."
Football (Brazil) ²⁴²	In December 2001, a Congressional Commission in Brazil recommended that some of the country's top football officials face criminal proceedings, following an investigation into alleged corruption in the sport. The Senate Commission accused the President of the Brazilian Football Confederation (CBF), Ricardo Teixeira, and other senior officials of abuses including fraud and misappropriation of funds. The Commission held them partly responsible for debts of over \$10m that the CBF has incurred. Between 1998 and 2000, the CBF's income had rocketed thanks to lucrative television and sponsorship contracts but that there had been no control over expenditure, which had jumped 400% on staff and 600% on services - including transportation and hotels. It was also alleged that the CBF had financed trips to the World Cups in 1994 and 1998 for people who had nothing to do with the sport, including magistrates and other officials.
Boxing (AIBA) ²⁴³	In June 2007, the Executive Committee of the International Boxing Federation (AIBA) banned its former President, Anwar Chowdhry, for life and expelled its suspended secretary general, Caner Doganelli, following a report by its Ethics Committee. The report, obtained by television station NBC Sports, outlines a series of financial regularities during Chowdhry's 20 year long reign from 1986 to 2006. According to NBC Sport, the report says that the AIBA's financial reports were routinely not filed; documentation for expenses were variously unclear or missing; the federation operated amid a number of finance-related conflicts of interest; and petty cash was improperly used for private affairs and not properly accounted for. The report also says that Chowdhry treated AIBA as his personal property where rules were disregarded and greed was rampant. In all, the report describes the Chowdhry years as "a saga of bad or poor management, dereliction of duty, total lack of governance, greed, breach of rules and law, gross negligence and possibly criminal acts cascading down from the very top of AIBA's former administration."
Cricket (Zimbabwe and the ICC) ²⁴⁴	In May 2008, Malcolm Speed was placed on 'gardening leave' for the remaining two months of his tenure as Chief Executive of the International Cricket Council (ICC) after infighting within the organisation over how to proceed following an independent ICC audit of Zimbabwe Cricket found "severe financial irregularities" within the organisation. Speed was reportedly in favour of adopting a tougher line against Zimbabwe, and in particular with Peter Chingoka, the head of the Zimbabwe Cricket (ZC) and who is an ally of Robert Mugabe. In an ICC meeting in March 2008, Speed had asked for the ICC to publish the audit, and was in favour of handing the matter to the ICC's ethics committee to investigate the report. However, he was voted down by the Board, due to strong resistance from ICC president Ray Mali and representatives from India, the ICC's most economically powerful member. The audit was commissioned by the ICC and was undertaken in order to establish whether money paid to ZC by the ICC was being diverted for personal and political gain. While the report found no evidence of individuals gaining from the funds, the auditors reportedly alleged severe financial irregularities within the organisation.

²⁴¹ UK Guardian Newspaper (15 June 2007) ²⁴² bbc.com 'Brazilian Football rife with Corruption' (December 2001) ²⁴³ Playthegame.org 'Boxing federation bans ex-president and expels secretary general' (June 2007) ²⁴⁴ Playthegame.org 'Speed's departure highlights divisions over Zimbabwe at ICC' (May 2008)

Match-Fixing (Non-Betting Related)

6.17 It is often assumed that if a sporting event is fixed that it must be principally for a betting related reason. Below are a number of examples which, if betting did taken place, was not principal driver behind the corruption of these sporting events. Unfortunately, they sometimes erroneously appear in articles discussing betting related corruption in sport.

Figure 6.4: Examples of non-betting related match-fixing

Sport	Incident
Formula 1 (Renault)	During the 2009 season, the actions of Renault F1 during the 2008 season were examined over alleged race fixing. The issue surrounded Nelson Piquet, Jr's crash during the 2008 Singapore Grand Prix which Renault team mate Fernando Alonso went on to win. At the time, Piquet, Jr. had characterised the incident as a simple mistake. After Piquet, Jr. left the Renault team in August 2009, allegations surfaced that this crash had been deliberate, to give an advantage to Alonso. Following an Fédération Internationale de l'Automobile (FIA) investigation in which Piquet, Jr. stated he had been asked by Renault team principal Flavio Briatore and engineer Pat Symonds to stage the crash, on 4 September 2009 Renault were charged with conspiracy and race fixing, and were due to face the FIA World Motor Sport Council in Paris on 21 September 2009. Initially, Renault and Briatore stated they would take legal action against Piquet, Jr. for making false allegations, however, before the 21 September meeting, Renault announced they would not contest the charges, and that Briatore and Symonds had left the team.
Football (Serie A - Calciopoli)	In May 2006, perhaps the largest match fixing scandal in the history of Italian Serie A football was uncovered by Italian Police, implicating league champions Juventus, AC Milan, Fiorentina, and Lazio. Teams were suspected of rigging games by selecting favorable referees. Initially, Juventus were stripped of their titles in 2004-05 and 2005-06, all four clubs were barred from European club competition in 2006-07, and all except Milan were relegated to Serie B. After all four clubs appealed, only Juventus remained relegated, and Milan were allowed to enter the third qualifying round of the Champions League (they went on to win the tournament.).
Football (World Cup)	The World Cup of 1982 was marred by what many believe to be the most blatant example of match-fixing between Germany and it neighbour Austria. Algeria had created an ups by beating Germany 2-1 in the opening game. Austria has already qualified when the two teams met in the last game of the group. A 1-0 win ensured that both teams went through at the cost of Algeria. In a match that was referred to as a 'disgusting charade' by one newspaper, Germany scored early and the two teams then effective settle for that mutually agreeable result for the rest of the game, knocking the Algerians out of the competition.

Match-Fixing (Betting Related)

6.18 Instances of betting related and match and race-fixing have been attracting increased interest in recent years. There appears to be a general perception, especially from sporting bodies, that incidents are increasing, but the truth of that is unclear and no substantive evidence has been provided. Indeed, whether this is because of the increased use of technologies, a significant increase in this activity, a product of misinformation and sensationalist reporting, or a mix, is open to question.

Figure 6.5: Examples of betting-related match-fixing

Sport	Incident
Cricket (Cronje)	In 2000 the Delhi police intercepted a conversation between a blacklisted bookie and the South African cricket captain Hansie Cronje in which they learnt that Cronje accepted money to throw matches. The South African government refused to allow any of its players to face the Indian investigation unit, which opened up a can of worms. A court of inquiry was set up and Cronje admitted to throwing matches. He was immediately banned from all cricket. He also named Salim Malik (Pakistan), Mohammed Azharuddin and Ajay Jadeja (India). Jadeja was banned for 4 years. They too were banned from all cricket. As a kingpin, Cronje exposed the dark side of betting, however with his untimely death in 2002 most of his sources also have escaped law enforcement agencies. Two South African cricketers, Herschelle Gibbs and Nicky Boje, are also wanted by the Delhi police for their role in the match fixing saga. A few years before in 1998, Australian players Mark Waugh and Shane Warne were fined for revealing information about the weather to a bookmaker.
Football (Hoyzer)	In January 2005, the German Football Association (DFB) and German prosecutors launched separate probes into charges that referee Robert Hoyzer bet on and fixed several matches that he worked, including a German Cup tie. Hoyzer later admitted to the allegations; it has been reported that he was involved with Croat gambling syndicates. He also implicated other referees and players in the match fixing scheme. The first arrests in the Hoyzer investigation were made on January 28 in Berlin, and Hoyzer himself was arrested on February 12 after new evidence apparently emerged to suggest that he had been involved in fixing more matches than he had admitted to. Hoyzer has been banned for life from football by the DFB. On March 10, a second referee, Dominik Marks, was arrested after being implicated in the scheme by Hoyzer. Still later (March 24), it was reported that Hoyzer had told investigators that the gambling ring he was involved with had access to UEFA's referee assignments for international matches and Champions League and UEFA Cup fixtures several days before UEFA publicly announced them. Ultimately, Hoyzer was sentenced to serve 2 years and 5 months in prison.
Football (English Premier League)	In February 1999 a Malaysian-based betting syndicate was caught attempting to install a remote-control device to sabotage the floodlights at English Premier League team Charlton Athletic's ground with the aid of a corrupt security officer. If the match had been abandoned after half-time, then the result and bets would have stood. Subsequent investigations showed that the gang had been responsible for previously unsuspected "floodlight failures" at West Ham's ground in November 1997, and again a month later at Crystal Palace's ground during a home match of Palace's ground-sharing tenant Wimbledon.
Football (Serie A)	The Italian Football Federation said in October 2000 it had found eight players guilty of match-fixing. Three were from Serie A side Atalanta and the other five played for Serie B side Pistoiese. The players were Giacomo Banchelli, Cristiano Doni and Sebastiano Siviglia (all Atalanta) and Alfredo Aglietti, Massimiliano Allegri, Daniele Amerini, Gianluca Lillo and Girolamo Bizzarri (all Pistoiese). The charges related to an Italian Cup first round tie between the two sides in Bergamo on August 20, 2000 which ended 1-1. Atalanta scored at the end of the first half and Pistoiese equalised three minutes from full time. Atalanta qualified for the second round. Snai, which organises betting on Italian football, said later it had registered suspiciously heavy betting on the result and many of the bets were for a 1-0 halftime score and a fulltime score of 1-1.

Suspicious Betting: Response from sports

“Clear, well publicised, rules on who can bet on what and effective sanctions for those found breaking those rules, alongside effective information sharing, can assist sports governing bodies to maintain integrity in their sports. Such rules will also help betting operators to decide if an individual is breaching their sports governing body’s rules.”

British Gambling Commission Betting Integrity Policy Position Paper (March 2009)

6.19 Some high profile corrupt betting incidents have affected the sporting and licensed gambling sectors in the last decade (although the known events are nowhere near doping levels). Many of these cases have already been outlined in the previous sections of this document and will not be revisited in any detail in the following paragraphs, which will instead focus on the mechanisms employed by sports to deter and address such matters.

6.20 Horseracing is generally the starting point when examining the effectiveness of rules and regulations relating to betting. The Integrity Team at the British Horseracing Authority (BHA) has a wealth of knowledge and experience in this area, and has advised a number of other sports with regard to their own reviews surrounding betting integrity in recent years.

6.21 It should, however, be remembered that any integrity measures should be proportionate to the risk, and most sports do not require the BHA’s level of provisions. Especially, as the BHA’s integrity services require considerable funding (up to €3.4m per annum)²⁴⁵ which is principally provided by the statutory levy mechanism applied to licensed betting operators’ profits from British horseracing.

6.22 However, it is the UK Government’s intention to abolish the levy as soon as a viable commercial alternative can be identified and, again, it is questionable whether it could survive in its current form if subject to a State aid competition complaint; as a pre-existing aid, established in the early 1960s, it has never been notified to the European Commission.

6.23 British horseracing is intertwined with the betting product to such a degree that, unlike other sports, it is principally a betting product rather than sporting event and has grown to its present state on the back of betting income. As would be expected, British horseracing has consequently developed regulations (e.g. paragraph 35 of its Rules – ‘Placing bets or laying a horse to lose’) and investigative techniques to guard against, if not eradicate, integrity threats.

6.24 There have been some issues regarding the enforcement of rules, achieving judgements and imposing the penalties the BHA would have preferred in some cases. Nevertheless, the independent review conducted by Dame Neville, which reported in May 2008,²⁴⁶ determined that the BHA has been effective in countering the threat of corruption, and the implementation of the recommendations of a previous integrity review in 2003. It also noted that the BHA had been widely referred to as a “model for the effective investigation of corruption in sport”, although it should be remembered that corruption is not limited to betting related incidents.

6.25 Other sporting bodies have, however, mainly reacted to events rather than adopted a proactive stance concerning effective rules and regulations surrounding betting, most notably demonstrated by the reaction of the International Cricket Council (ICC) following the ‘Cronje Affair’ in that sport. The subsequent report by Lord Condon on Corruption in International Cricket, published in April 2001, provided a range of proposals for the ICC to consider.

6.26 Lord Condon’s report stated that (at that time, in 2001), “the ICC has not and still does not have the staff or systems in place to enable the proper governance, leadership or supervision of world cricket.” He subsequently outlined twenty-four recommendations (which also covered doping) to address corruption in the sport, including: training and education; appointment of full time security officers; and an enhanced corruption unit.

6.27 The ICC appears to have rectified the lack of regulations in the area of betting with stand alone rules including enforcement, sanctions, appeals and investigative processes in its Anti-Corruption Code for Players and Player Support Personnel, which came into force in October 2009 replacing the corruption aspect of the previous Code of Conduct.

²⁴⁵ UK Telegraph newspaper ‘Racing leads the way in British sport’s corruption clampdown’ (November 2009) ²⁴⁶ ‘The British Horseracing Authority and integrity in Horseracing: An Independent Review’ (May 2008)

6.28 This includes a minimum of five years to a maximum lifetime ban from the game for corrupting international cricket events. In addition, betting on international cricket matches is prohibited for players, umpires and support personnel, again with clear sanctions (two to five years ineligibility). The full text of the new Code is available from the ICC's website²⁴⁷, but pertinent betting-related aspects are provided in the Appendices to this document.

6.29 It is clearly stated from the outset (in the Code) that, in the area of betting, the "ICC is committed to taking every step in its power to prevent corrupt betting practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of an International match or ICC event." However, this only appears to cover international and ICC sporting events, leaving domestic cricket to the national governing bodies.

6.30 The potential discrepancies between international and national regulations apply to many sports. The RGA consultation specifically asked sports whether betting integrity issues should be conducted via international or national bodies; where responses were given, each side supported itself as the most applicable party to lead on sports betting integrity issues.

6.31 Governance and subsidiarity issues, whilst entirely understandable, can potentially lead to inconsistencies, duplication and added cost in this area. This issue will be covered in more detail later in this chapter in relation to information sharing agreements, especially the proliferation of such arrangements and whether they are being established with appropriate bodies.

6.32 Whilst the ICC's new regulations are welcome, as are any effective rules relating to corruption, if licensed gambling operators and sporting bodies are to establish effective partnerships, then the whole licensed gambling industry needs first hand knowledge of reviews and publications of this nature.

6.33 That includes trade associations, even where formal information sharing arrangements may not be in place at that time, but which can use their facilities to inform members (who may have agreements) and the wider industry and thereby ensure that licensed gambling operators' integrity mechanisms are adapted accordingly.

6.34 This also makes the lack of a full independent response from the ICC to this consultation all the more disappointing, in that the ICC may have particular expertise that would have added to this study, and which also offered to discuss the establishment of an information sharing arrangement between the Remote Gambling Association and that sporting body.

6.35 The England and Wales Cricket Board (ECB) also declined to provide its rules in response to the RGA consultation, forming part of SROC's response, which as outlined earlier in this document, did not provide any detail regarding the betting related rules and regulations of its members (which also includes the ICC). The ECB's regulations on its website²⁴⁸ include anti-doping rules, but no specific betting or corruption rules are apparent.

6.36 However, the ECB has signed the UK Government promoted 10-Point Plan (see following section), which commits signatories to "include provisions in their rules and regulations governing the behaviour of their participants in relation to betting."²⁴⁹ Furthermore, the British Gambling Commission's 'Integrity in Sports Betting' policy position paper, published in May 2007, states that the ECB has "stringent regulations and a robust supporting framework/structure in place to protect the game's integrity", but does not specify betting rules.

6.37 Cricket Australia (CA), also an SROC member, likewise has specific guidance and rules regarding anti-doping, but no specific corruption or betting document. However, it does have a Code of Behaviour listed on its website²⁵⁰ under its 'Laws and Policies' section, and that covers betting (amongst many other issues). As with the ICC's rules, this Code includes clear guidance on the ability of players and officials to gamble on cricket matches (which is prohibited), and the penalties for breaching its betting rules, which have unlimited sanctions e.g. lifetime bans.

6.38 The effective enforcement of the ICC and CA betting rules, which is critical, is not known, but their regulations appear robust and they should be commended for instilling such betting related measures. The position regarding the ECB is not as clear; rules may be present (the ECB did not provide any when requested), but do not appear to be readily accessible if they are.

6.39 It is apparent that there are different approaches to addressing betting with regard to these three cricket bodies alone: one has specific corruption rules, including betting; another lists betting under its 'general behaviour' rules; and for the third, betting rules are unclear.

²⁴⁷ www.icc.cricket.yahoo.net ²⁴⁸ www.ecb.co.uk ²⁴⁹ www.culture.gov.uk '10-Point Plan' (March 2005) ²⁵⁰ www.cricket.com.au

6.40 Nevertheless, it is important to recognise that rules have been established (in at least two major cricketing bodies); what may be more of a concern is the potential for inconsistencies regarding these rules between different nations and events involving the same sport. For example, the level of sanctions in such instances varies between the ICC and CA.

6.41 In cricket, there is a relatively small number of nations involved, notably at a professional level, which may not make this a particularly irreconcilable issue for its participants; other major cricketing nations were asked to engage in the RGA consultation and provide rules, but did not respond and this study has not then sought to identify those rules, if available.

6.42 In football, however, this has the potential to be more problematic noting its global scope and increasing cross-border activity of its participants, not to mention the closely guarded subsidiarity and governance of the sport at all levels. It should not, therefore, be surprising that both UEFA and FIFA have established early warning systems to detect betting related corruption, and that some national governing bodies also have their own networks. There may be good reasons for this, but there must also be potential duplication and cost implications.

6.43 FIFA's Code of Ethics has a specific reference to betting (Article 15). That states that, "Officials, players and players' agents are forbidden from taking part, directly or indirectly, in betting, gambling, lotteries and similar events of transactions connected with football matches. They are forbidden from having stakes, either actively or passively, in companies, concerns, organisations etc. That promote, broker, arrange or conduct such events or transactions."

"The [EPFL] Conference agreed that much more needs to be done to prevent, rather than react to, major betting corruption scandals."

EPFL Conference on the Protection of Intellectual Property Rights and Sports Betting Integrity (May 2008)

6.44 UEFA's Disciplinary Regulations²⁵² include offences and sanctions for bribery, corruption and a specific betting rule (Article 5) for the scope of its direct governance of its events, and which states that a breach of the rules is committed by anyone who "participates directly or indirectly in betting or similar activities relating to UEFA competition matches, or who has a direct or indirect financial interest in such activities."²⁵³

6.45 The English FA also has a regulation on betting (FA Rule E8 – see Appendices) for its domestic competitions, prohibiting participants betting on events in which they are involved. The FA's rule is not as detailed, specifically sanctioned, or as well signposted as some other bodies (nor at the level of its own stand alone doping regulations), but importantly has been enforced employing evidence supplied by the licensed gambling industry.²⁵⁴

6.46 Elsewhere in football, the European Professional Football Leagues (EPFL) has expressed concern about sports betting integrity and has worked with its twenty-eight affiliated Leagues to undertake "a wide range of actions to tackle this cross-border problem, and protect the integrity of their competitions from this detrimental behaviour. These actions have involved a significant cost burden and urge clear discipline and regulation at national and European level."

6.47 The EPFL's Annual Report 2008/09 states that it "believes that enhanced cooperation between sports bodies and the licensed betting companies is vital to ensure the integrity of the game."²⁵⁵ The EPFL was invited to engage in this study to consider the effectiveness of existing integrity arrangements between the industries and how that could be improved; the EPFL declined to provide an individual response, instead forming part SROC's, the limitations of which, notably concerning integrity, have already been stated within this document.

6.48 The EPFL conference on the 'Protection of Intellectual Property Rights and Sports Betting Integrity' in May 2008, reportedly included "representation of the European and international sport industry...as well as European political institutions and the representatives of other relevant parties, joined by the most experienced international specialists". "Other relevant parties" did not, however, include the largest online gambling trade association.

6.49 In July 2008, the EPFL signed an MoU with the European Sports Security Agency (ESSA) to “detect irregular betting patterns and ensure, as much as possible, that Professional Football is clean and free of corruption,” and this has reportedly resulted in a number of instances of irregular betting being brought to the attention of the EPFL, allowing prompt action. The EPFL champions the French draft law, which it would like to see all other European countries adopt, and has also supported the Council of Europe’s Ethics Resolution (see next section).²⁵⁶

6.50 However, contrary to its publicly stated position of seeking “enhanced cooperation between sports bodies and the licensed betting companies”, the EPFL has not sought any dialogue or to agree an integrity MoU with the RGA (which formed one of the many unanswered questions posed as part of this study - see Appendices), a global gambling trade association that represents more the double the number of licensed gambling operators covered by ESSA.

6.51 Similar to cricket, and following concerns regarding alleged betting-related incidents in its sport, tennis conducted an ‘Environmental Review of Integrity in Professional Tennis’ with a report published in May 2008 that proposed the creation of an Integrity Unit with a global remit to tackle corruption, amongst its fifteen recommendations.

6.52 The report noted that “gambling is a legal and mainstream leisure activity in many parts of the world” and that prohibition of gambling had “very limited chances of success.” It also pointed out that “the threat to the integrity of tennis is not solely linked to betting,” coming from a range of sources. The Tennis Integrity Unit also declined to respond to the RGA consultation, but positive dialogue with the organisation provides a platform for future integrity discussions.

6.53 The lack of detailed responses from sporting bodies means that the position regarding the existence of betting integrity mechanisms for many sports remains unclear. The International Olympic Committee (IOC) is a notable exception, having provided information to this study regarding its integrity rules (publicly available and reproduced in the Appendices), and has been proactive in establishing information sharing arrangements to protect its sporting events with licensed gambling operators, and has been open to discussions on the form of that.

6.54 The IOC’s Code of Ethics (Articles A5 and A6) states that all forms of “participation in, or support for betting related to the Olympic Games, and all forms of promotion of betting related to the Olympics games, are prohibited.” Violations and sanction relating to betting are also included, although it is understood that they have not needed to be invoked, to date.

6.55 SportAccord (previously known as the General Association of International Sports Federations) which provides a platform for 104 sporting bodies, has reportedly established a working group to consider betting and to assist its members in this area. The organisation was subsequently asked to assist this study, but declined as it could not “add value to it”.

6.56 Few sports provided betting related rules and regulations for this study (the RGA offer to discuss the establishment of MoUs with sports is covered in a later section), and this report has not sought to locate and analyse these rules (if they exist) across the large number of national and international sports asked to engage in this process.

6.57 However, a trawl of the websites and published rules and regulations of a select number of sporting bodies revealed that whilst anti-doping rules were prevalent and easily accessible, the rules concerning corruption (not just betting related) were not identified as easily, if at all in some cases. These included the following international sporting bodies, which were asked, but did not provide, betting rules as part of the RGA consultation:

- International Handball Federation (IHF) – Anti-doping rules clearly identified on its website²⁵⁷ along with other rules, but no specific corruption or betting rules apparent;
- World Snooker – no regulations on its website.²⁵⁸ World Snooker is a signatory of the UK Government promoted 10-Point Plan (see following section) and when contacted advised that it does not put its rules, which themselves can act as a deterrent both within and outside of the sport, in the public domain. The organisation did, however, consent to provide those rules when asked (although, as with all SROC members, it did not provide them as part of the consultation) and which appear particularly thorough.

²⁵⁶ eufootballbiz.com ‘EPFL calls to tackle illegal betting’ (June 2009) ²⁵⁷ ihf.info ²⁵⁸ worldsnooker.com

- International Rugby Board (IRB) – Regulation 6 of the Regulations of the Game: Wagering²⁵⁹ covers betting corruption and prohibits participants from betting on matches or tournaments in which they are involved. However, specific sanctions are not specified, simply stating that on notification of a breach of the regulations from a Union or Association, the “CEO shall take such action as he considers appropriate.”

6.58 It may be that, in some of the cases above and indeed many others, detailed and specific betting or corruption rules are available but have been missed during the trawl conducted as part of producing this document. However, if that is the case, then it is even more puzzling why the vast majority of sporting bodies declined to forward such regulations (if they exist) to this study and to promote that action as an example of sport meeting its responsibilities in this area.

6.59 There are some examples (above) of well-established and specific rules and sanctions; the ICC’s mechanisms are worthy of particular merit in that respect. The position regarding many sports is therefore unclear, but is vital to deterring corruption. However, if the lack of response to this study were to be an indication of a corresponding lack of proper rules and enforcement, then it should be of greater concern to stakeholders in all sectors and at all levels.

6.60 Ultimately, any information sharing agreements between sports and licensed gambling operators, be they voluntary MoUs or statutory conditions, are only as effective as each sport’s own betting and corruption rules, and its subsequent investigative and enforcement mechanisms. If those are not in place, then the provision of relevant evidence of suspect activities by licensed gambling operators becomes meaningless as a deterrent, merely becoming a statistical recognition of such undesirable activity that adversely affects both industries.

6.61 The British Gambling Commission’s comment that “sporting bodies rules governing betting and the use of inside information vary enormously as do the effectiveness of their own integrity enforcement and sanctioning arrangements” suggests that, although a wide variety of sports have expressed concerns about the availability of betting and castigated licensed gambling operators, the overall position in the sports sector appears less than satisfactory.

Suspicious Betting: Response from governments, regulators and European institutions

“While there is limited evidence to support it, the Commission recognises the widespread concern about the risks of betting integrity particularly in relation to sporting events”

British Gambling Commission Betting Integrity Paper (March 2009)

6.62 The viability of existing national gambling laws within many EU countries is in serious doubt, with the impact of remote gambling and judgements by the European Court of Justice leading many to contemplate seriously if prohibitive or restrictive policies are appropriate or enforceable. Indeed, the outdated form of many Member States’ gambling laws has been challenged by new technologies to such a degree that such legislation is proving ineffectual.

6.63 Acknowledging that situation, and in addition to the commercial ‘fair return’ argument, sports have also pressed for greater control of the betting product from an integrity perspective, as well as attempting to persuade governments and EU institutions that integrity payments should also be forthcoming from licensed gambling operators to protect sport.

6.64 Reports from the European Parliament have been supportive of the position of sports and of restricting the opening of gambling markets and are therefore potentially in contravention of the fundamental principles of the European Union.²⁶⁰ This includes the protection of monopoly gambling operators which are deemed to provide an essential funding mechanism for sport, and at the exclusion of licensed private gambling operators who are not.

6.65 Whilst useful information has been provided by the majority of the recognised modern licensing jurisdictions, the overall response from governments to this study, notably EU Member States, has been limited in number. However, it is known that certain Member States are aware of, and have views on, betting on sporting events.

²⁵⁹ irb.com ²⁶⁰ European Parliament report on the integrity of online gambling (Feb 2009)

6.66 Indeed, many Member States are in the process of considering, or developing, new gambling legislation. The French draft gambling law includes integrity provisions to protect sporting events, although the exact scope and nature has not been determined, at the time of writing. The legislation only concerns the opening of online gambling, and the extent to which (if at all) the existing monopoly retail outlets, notably cafes which offer betting, will be subject to suitable comparable integrity measures is unclear.

6.67 It should be recognised that, just because a gambling operator is a state run organisation, that does not mean that it is any less open to the impact of corrupt practices than licensed private operators. Any integrity practices imposed on private licensees should likewise be required of monopoly operators.

6.68 The UK has been proactive in this area, seeking to improve the information sharing between sports and licensed gambling operators. Firstly, it developed a '10-Point Plan' in partnership with the Jockey Club and English Football Association. The document (see Appendices) to which twelve sports have signed and which was supported by betting industry trade associations, provides that sports will create suitable betting integrity rules.²⁶¹ The Plan was promoted at the 'Integrity in Sports Betting Conference' on 19 April 2006.

6.69 Secondly, the Gambling Act 2005 (which came into force in September 2007), apart from establishing a modern licensing structure, also has specific measures relating to the protection of sporting events that requires licensed betting operators to provide sporting bodies with information relating to any breach of a sporting rule. It also allows the Commission to void a bet, and provides an offence of cheating with a maximum two-year prison sentence. The legislation only covers Britain (Northern Ireland has its own gambling laws, as does Gibraltar).

6.70 Finally, the UK Government established an Integrity Panel²⁶² in June 2009 to consider the risks from betting and assess associated sporting rules. Panel members include a mix of sports and licensed gambling operators (including RGA members).

6.71 The UK Integrity Panel's deliberations are running concurrently with this study, the remit for which is wider both in topics considered (commercial and integrity) and scope (international, notably EU, focused) than the UK Panel's considerations, which are principally focused on Britain, reflecting the scope of the Gambling Commission's statutory powers.

6.72 In addition, the British Gambling Commission, which regulates the largest single retail betting market within the EU, along with a number of prominent online gambling operators which offer betting (e.g. bet365 and Betfair), has produced two key policy position documents in this area: Integrity in Sports Betting (May 2007); and Betting Integrity (March 2009).

6.73 The Gambling Commission has recognised that the integrity of sport is primarily an issue for sport itself, but that statutory regulatory bodies such as the Commission have a role to play in that process where it involves an operator licensed by it. It further notes that there would need to be "persuasive arguments for it to take on an increased role."²⁶³

6.74 The Commission has stated that the organisation's "approach to regulation seeks to reflect the principles of better regulation. It will be risk-based and our assessment of risk will be led by evidence, relevant information and best regulatory practice". It notes that there is "an interrelationship between betting and sport through sports betting"²⁶⁴ and is aware of potential risks but states that, through its consultation and regulatory processes, "limited evidence has so far emerged"²⁶⁵ to support the widespread concerns regarding sports betting.

6.75 Sports betting has increasingly emerged as a topic for discussion at the European Commission's sports working groups and meetings of Directors' and Sports Ministers, held during each six-month Presidency of the EU. The ratification of the Lisbon Treaty has provided a 'supporting competence' for sport, with a dedicated budget and more formal involvement in Commission discussions and influence over policies and their affect on the sporting sector.

²⁶¹ UK Department for Culture, media and Sport (DCMS)'10-Point Plan' (March 2005) & 'Caborn calls on sports to tackle betting cheats' (April 2006) & gamblingcommission.gov.uk 'Integrity in Sports Betting' paper (May 2007) ²⁶² UK Department for Culture, Media and Sport (DCMS) press release 'Rick Parry appointed to head new sports betting integrity panel' (June 2009) ²⁶³ British Gambling Commission 'Integrity in Sports Betting' Paper (May 2007) ²⁶⁴ British Gambling Commission 'Integrity in Sports Betting' Paper (May 2007) ²⁶⁵ British Gambling Commission 'Sports Betting' Paper (March 2009)

“Maintaining integrity within sport is primarily an issue for the sport governing and regulatory bodies, particularly when it involves licensed/registered sports participants who commit disciplinary offences against the rules of their sport.”

British Gambling Commission Integrity in Sports Betting Issues Paper (May 2007)

6.76 The Biarritz Declaration²⁶⁶ agreed by Sports ministers during the French Presidency of the EU (July-Dec 2008) commits the Commission to regular dialogue with the sports movement. The second meeting, in June 2009, noted that topics discussed include the “financing of sport, with particular regard for the issues of sport betting rights and fair return to sport.”²⁶⁷

6.77 The Swedish Presidency (July-Dec 2009) informal meeting of Directors’ (there was no Sports Ministerial during the Swedish Presidency) considered the integrity and funding of sport²⁶⁸, with presentations on the French draft law and the Swedish gaming legislation. Sports betting issues e.g. the French draft law, have been discussed at previous Commission working groups and is likely to emerge on the agenda of future meetings, especially as the funding of sport and related studies contained in the Commission’s White Paper on Sport are progressed.

6.78 The conclusions of the Swedish hosted meeting of Sports Directors, in October 2009, noted that it discussed the “issue of the integrity of sport inter alia noting that illegal gaming and inefficient gaming markets can damage the ‘fair play’ associated with sport competitions, which is the basis of all organised sports.” In reaching that position, the group again relied on evidence supplied by sports without engaging in a comparable way with the licensed gambling industry.

6.79 However, a positive action from that meeting was the request from the Sports Directors that the Commission “examine the possibilities of organising a meeting between relevant actors from the gaming industry, the sport sector and the Member States, aimed at discussing issues concerning sport funding and integrity, and efforts to combat gambling addiction.”

6.80 The Council of Europe (CoE) has also entered the integrity discussion. The 11th Council of Europe Conference of Ministers responsible for Sport was held in Athens on 11 and 12 December 2008. The main theme of the Conference was ‘Ethics and Autonomy in Sport’ and a resolution agreed at the event on the former that invites the CoE, through its Enlarged Partial Agreement on Sport (EPAS), to consider: match-fixing; corruption; and illegal betting. The full text of the Ethics Resolution relating to betting is in the Appendices to this document.

6.81 The resolution specifically supports training and education and the promotion of best practices. However, it also proposes that the EPAS “draw up a new draft recommendation to [Member] States on corruption, match fixing and illegal betting which could form the basis of a possible new convention on these subjects to help achieve integrity controls and a ‘fair return’ to sport for grassroots funding as regards betting.”²⁶⁹ Moreover, that the EPAS work in “co-operation with its Consultative Committee, to continue the work on possible ways to enhance co-operation (between government and the sport movement) on combating corruption.”

6.82 The Council does not have the same legislative powers over nations as the European Union, but the EPAS is tasked with promoting “international standards in areas where new challenges arise to sports ethics, especially with regard to the trafficking of young players and corruption.”²⁷⁰ At the end of 2009, the EPAS had 32 members: France and the Netherlands are prominent members, whilst Germany, Italy, Spain and the UK are not represented at this time.

6.83 In addition, both ENGSO and UEFA have been granted observer status on this body, and no doubt provide opinions and information to the EPAS members regarding the views of the sporting movement on this matter. Indeed, they have both been established as members of the Consultative Committee considering the ethics issues arising from the Athens Conference of Sports Ministers. The European Commission’s Sports Unit is also listed as an ‘EPAS partner’.

6.84 Jose Luis Arnaut, author of the Independent European Sports Review (IESR), referenced earlier in this document and which promotes exemptions for sport from EU law and mechanisms to secure the financing of sport with regard to betting, is a member of the Council of Europe Assembly and Chairperson of the Sub-Committee on Youth and Sport.

²⁶⁶ europa.eu ‘Declaration of the Sport Ministers of the European Union (2008)’ ²⁶⁷ europa.eu ‘Commission holds second high-level meeting with Olympic movement’ (June 2009) ²⁶⁸ Presidency conclusions from the Informal meeting of EU Sport Directors in Solna, 1-2 October 2009 ²⁶⁹ Council of Europe Sports Ministerial Ethics Resolution (December 2008) ²⁷⁰ coe.int

6.85 Mr Arnaut can be expected to provide the EPAS with the benefit of his previous experience in this area, which he promoted in a report to the Council Assembly in December 2007, and also proposed a resolution that incidents “involving betting and manipulation of results have seriously damaged the image of sport in Europe. A number of mutually reinforcing mechanisms are needed to reduce the risk of match-fixing, illegal betting or other forms of corruption. These problems will require the more active involvement of the state authorities.”

6.86 For there to be a full and balanced discussion, licensed gambling operators should be part of any integrity debate. Noting the ‘Ethics Resolution’, the CoE EPAS was invited to participate in the RGA consultation, but did not respond. By late 2009, around 12 months since the CoE Sports Ministerial agreed the ethics resolution and policy actions concerning betting and corruption, no doubt progressed during this period, the gambling industry has not been invited to participate in any discussions or to provide any material relating to this matter.

Suspicious betting: Comparison with doping

“Match fixing is as great a risk to the integrity of sport as doping.”

SROC spokesperson – UK Independent newspaper (March 2009)

6.87 The comment above was made by a spokesperson for the Sports Rights Owners Coalition (SROC) to a UK newspaper in March 2009, under the banner headline “Exclusive: Gambling is ‘bigger threat to sport than doping’”²⁷¹ The comment was not backed-up with any corresponding evidence to link the existing or potential level of suspicious betting activity surrounding sporting events to the corresponding prevalence of doping violations in sport.

6.88 The newspaper itself commented that the extent of corrupt betting was unknown in British sport, and that the British Gambling Commission had told the paper that “in just 17 months it had received 47 notifications of betting patterns that were sufficiently irregular that they may lead the Commission to consider voiding a bet”²⁷² in justifying its article.

6.89 The validity of this statement, a consideration of the comparability of this issue, the present integrity mechanisms, and the suitability of establishing an equivalent WADA type body, and processes as currently exists for doping, for betting is covered in the following paragraphs.

Doping and betting

6.90 The level of any corruption in sport has serious reputational and financial implications for both the sporting and gambling industries. However, the statement linking the comparable risk of betting with doping levels warrants specific focus within this report to assess, on known evidence, the validity of that statement and the basis on which it has been made.

6.91 There are clearly dangers to both products, in particular via the potential activities of unlicensed gambling operators, and both industries have sought to establish integrity mechanisms to deter, detect and punish corruption.

6.92 Allegations of match-fixing led to a number of arrests in Germany and Switzerland at the end of 2009, and which investigators state potentially involves up to 200 footballs matches across 9 countries during the previous 4 years. These principally involve eastern European leagues and lower-tier games in Germany, Austria and Switzerland, along with a small number of qualifying games in Champions League and Europa Cup competitions.

6.93 These are allegations at the time of writing, albeit serious, and the investigation should be allowed to be conducted without any external pressures or pre-judged results. It should be remembered that this could have serious adverse affects on participants and their careers.

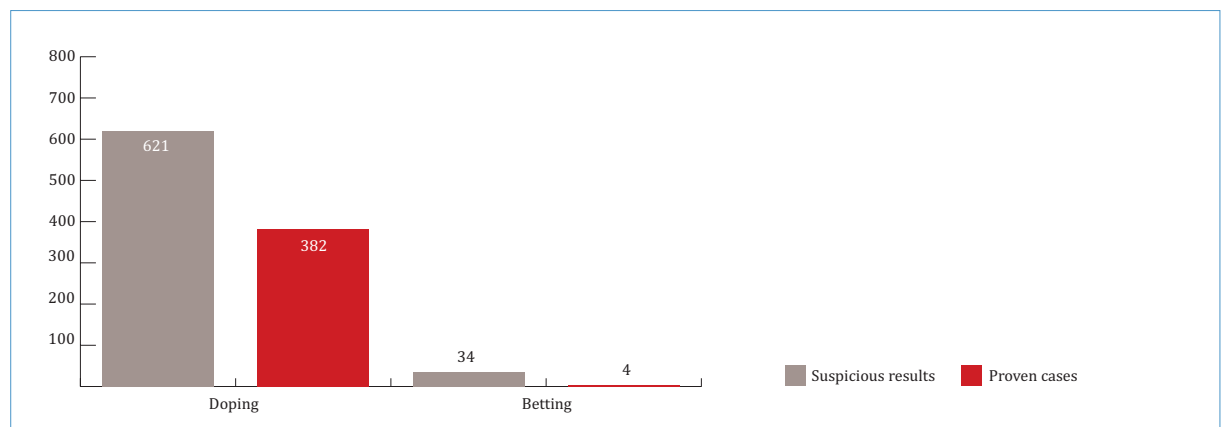
6.94 The collapse of a high-profile case brought by law enforcement agencies in the UK²⁷³ is also a testament to the need to be cautious and not to jump to unsubstantiated conclusions before proper processes have been completed and suitable judgements pronounced on that basis of that information.

²⁷¹ UK Independent newspaper - Exclusive: Gambling is ‘bigger threat to sport than doping’ (March 2009) ²⁷² Ibid. ²⁷³ UK Guardian newspaper ‘Fallon race-fixing case collapses’ (December 2007)

6.95 The potential for corruption in sport is a serious one and should not be understated, and can have wide-ranging and adverse commercial impacts for both the sporting and gambling sectors. Nevertheless, the linkage with doping is of a magnitude that should only be advanced with sound evidence, even with the allegations above in mind.

6.96 To that end, Figure 6.6 (below) presents the available facts and figures surrounding doping and betting cases from the most reputable sources that provide such information. As is clear, on the known evidence, and subject to the allegations in football over the last 4 years, which are under investigation, known doping levels are far in excess of equivalent betting cases.

Figure 6.6 Doping and betting statistics for 2008



6.97 With regard to the comparison with doping, Figure 6.6 lists the available figures for doping and betting related incidents in 2008. It shows that Adverse Analytical Findings (AFFs) for doping equated to 1826%, and reported Anti-Doping Rule Violations (ADRVs) at 9550%, of the known level of equivalent sports betting cases of 34 suspicious and 4 proven.

6.98 Put another way, in 2008, suspicious cases relating to doping were over 18 times more likely than a suspicious case involving betting on sport, and actual doping violations over 95 times more likely than corruption involving sports betting. These figures were provided by the World Anti-Doping Agency (WADA) and the European Sports Security Agency (ESSA).

6.99 The latter is an organisation that was established by a number of European-based licensed betting operators following the Hoyzer case; this also includes a small number of RGA members. It has established information sharing agreements with a number of the major international sporting bodies e.g. IOC, FIFA, UEFA; indeed, the European Professional Football League (EPFL) displays the ESSA logo prominently on its website. The World Anti-Doping Agency (WADA) is well-known and will be covered in more detail in the following section.

6.100 Whilst the ESSA figure therefore brings with it a level of credibility, this report would nevertheless have preferred to have used the British Gambling Commission's figures for 2008, given that it has statutory powers in this area and during that period licensed a wider and larger number of global remote betting operators e.g. Ladbrokes, William Hill, Gala Coral, bet365 etc.

6.101 The Gambling Commission Industry Statistics 2008/09 states that 48 cases of suspicious betting activity involving sport were reported to it during the period 1 September 2007 to 31 March 2009. Of these, 31 were reported by licensed betting operators with 17 coming from other sources, such as sporting bodies, media and the public.

6.102 Of the 48 cases referred to the Gambling Commission, its statistics show that 22 of these suspicious cases have not been substantiated, 15 have been referred to the relevant sporting body for further investigation and 11 involve ongoing investigations by the Commission.

6.103 At the time of writing (late 2009), the British Gambling Commission has refused to put those statistics into annual figures. A precise figure for 2008 cannot, therefore, be provided. The Commission has also declined to break down figures for the other sources that referred 17 cases to it, although it singles out and details how many cases betting operators provided.

6.104 With regard to the latter issue, the credibility of those additional sources (betting operators have extensive technological tools and staff expertise) cannot, therefore, be considered. It should also be noted that many RGA operators that provide information to the Gambling Commission believe that they over-report cases, erring on the side of caution.

6.105 Of the 19 months' worth of figures provided, the 48 cases referred to the British Gambling Commission average out at around 2.5 cases per month, or around 30 cases during 2008. ESSA states figures of 34 suspicious (with 4 highly suspicious, effectively proven) cases during 2008, and consequently appears roughly consistent with the Gambling Commission.

6.106 Even in a situation with a large licensed remote betting operator and high levels of liquidity surrounding a particular market, any party seeking to corrupt a sport and its associated betting market, would very likely spread any wagers across a number of companies in an attempt to avoid detection; an large single bet would draw immediate interest, but suspicious patterns of any kind are monitored by licensed gambling operators.

6.107 Information in the past has routinely been shared by individual companies through organisations such as ESSA, the ABB and the RGA. The statistics provided by ESSA appear on all available information a credible statistical level of suspicious cases of sports betting in 2008.

6.108 An argument can of course be made that this does not encapsulate all betting related cases. That is feasible, however, there appears to be no evidence to support a significant variation at this time.

6.109 The argument that not all suspicious or corrupt cases are identified could likewise be directed towards the anti-doping statistics. For example, the WADA figures do not include American sports (NFL, NBA etc) which run their own doping operations. There have also been concerns expressed about how certain WADA affiliated doping operations are being conducted.

6.110 For example, in the Tour de France in 2008, six riders were caught on doping offences, in 2009 it was zero. However, the AFLD, France's national anti-doping agency, has published a scathing report into the testing processes of cycling's governing body (UCI) during the 2009 Tour. The report, sent to WADA, accuses the UCI of bias towards the testing of certain teams.²⁷⁴

6.111 Other criticisms include the improper storage/transportation of samples in non-chilled containers, the incorrect labelling of samples as being out-of-competition (and thus being liable to testing for fewer substances) and excessive amounts of time being given for notification of post-stage controls and discussing the details of planned testing while in the vicinity of riders.²⁷⁵

6.112 So whilst accusations that separate corrupt activities involving doping and betting are being missed have been made, with the possible exception of the British Gambling Commission in relation to betting, which at the time of writing will not release more details surrounding its figures, these are the most accurate statistics available.

6.113 The results outlined in Figure 6.6, whilst therefore not a perfect statistical measure for either doping or betting, represent figures provided by credible sources. As such, they show a clear numerical differential in the two issues and no validity to the assertion that match-fixing surrounding betting is a greater risk to sport than doping, at this time.

6.114 Moreover, there was no balance in the reporting of this sweeping and factually erroneous comment, made by an SROC official, with the licensed gambling industry. The industry does not refute that there have been, and remains, a risk of sporting events being used for corrupt betting activities and is happy to engage in a balanced discussion surrounding the suitability of the measures that have been put in place by both industries to combat this risk.

²⁷⁴ cyclingnews.com 'War of words over doping' (October 2009) ²⁷⁵ Ibid.

6.115 Indeed, it is the licensed gambling industry that has greatly encouraged sporting bodies to adopt rules and regulations surrounding betting and to sign information agreements with gambling operators for over a decade, but with varying success.

6.116 Whilst acknowledging the ongoing investigations into suspicious betting by UEFA and the German authorities, and that there is no room for complacency from either sports or licensed gambling operators, there is at this point no firm evidence to substantiate the comment that betting presents as great a risk as doping.

The WADA Model: A Global Approach

6.117 There have been suggestions from a number of sources²⁷⁶ that a body, similar to the World Anti-Doping Agency (WADA), should be established to oversee betting-related and wider integrity issues surrounding sport. Before considering whether such an approach is necessary and proportionate, the following paragraphs will firstly outline the existing WADA operation.

6.118 WADA was established following the increasing prevalence of doping in sport, notably in cycling, during the summer of 1998. The International Olympic Committee (IOC) subsequently convened a World Conference on Doping to address this issue and to seek effective measures to detect and deter doping in sport on a global scale.²⁷⁷

6.119 The conference (February 1999), produced the Lausanne Declaration which provided for the creation of an independent international anti-doping agency to be operational in time for Sydney Olympic Games in 2000. WADA was subsequently established in November 1999.²⁷⁸

6.120 The World Anti-Doping Code, introduced in 2004 and updated in 2009, provides the core framework for the global harmonisation of anti-doping policies, rules and regulations. Governments have committed to the Code and formally recognised the role of WADA via the Copenhagen Declaration in 2003.²⁷⁹

6.121 The Code is, however, a non-governmental document which is not legally binding; the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention against Doping in Sport was therefore unanimously adopted and came into force in February 2007. More than 100 governments have ratified the Convention to date.²⁸⁰

6.122 The cost of anti-doping measures is considerable; WADA received €17.6m in 2008, provided by the Olympic movement and national governments (Europe provides nearly 50%, of the latter at €4.1m). The Olympic Movement has a policy of making payments to WADA only when governments make their payments, matching dollar for dollar contributions.²⁸¹

6.123 Importantly, the WADA figure (€17.6m) does not include the costs of individual nations or sporting bodies own operations. The overall global cost for anti-doping measures is therefore somewhat higher, reportedly equating to around €378m per annum and referred to as an “ever-mushrooming industry”; the International Cycling Union (UCI) alone reportedly spent more than €6.3m on anti-doping in 2008, representing around half of its entire budget.²⁸²

6.124 Whilst noting the linkage with sporting integrity and the issues surrounding sports betting, WADA declined to contribute to this consultation. That was a disappointing response from an organisation that, given its scope of activities, clearly has much knowledge and expertise in the establishment and running of such an arrangement on a global scale.

6.125 Furthermore, being funded by the sporting movement and national governments, both of which have expressed opinions and concerns regarding the availability of betting on sport and its impact on integrity, WADA's involvement in this debate would have had some credibility.

²⁷⁶ Gambling Compliance ‘Sports Betting Monitor wants WADA Style Anti-Corruption Body’ (July 2009) and Playthegame.org ‘Betting industry leader calls for sport world anti-corruption agency’ (April 2008) ²⁷⁷ WADA ²⁷⁸ Ibid. ²⁷⁹ UK Department for Culture, Media and Sport ²⁸⁰ UNESCO ²⁸¹ WADA ²⁸² Times online ‘Cost hits £300m to stop cheats prospering’ (March 2009)

6.126 As with the opinion presented in the previous section, which misleadingly associated the prevalence of doping and betting, there are considerable flaws with a direct link between this platform and other forms of corruption. The WADA model is by definition specifically tailored for doping, and the extent to which a similar approach can be adopted elsewhere would require considerable deliberation by all stakeholders regarding the proportionality of such an action.

6.127 The statistical data for 2008, for example, does not result in an immediate reaction that other forms of corruption are at numerically equivalent levels to doping at this time. A direct linkage with the present WADA approach is questionable for a variety of reasons, such as costs and the comparable scale and scope of operations. Therefore, any proposal that a WADA doping style approach should be adopted for wider corruption in sport needs to be qualified.

6.128 Discussion about a global network or agreed practices is, however, entirely appropriate. In the area of betting, the great advantage of remote technologies are that they do not necessarily require the levels of expenditure associated with the fight against doping, and arguably have a much wider application and ability to detect potential corruption. Those processes, e.g. Memorandum of Understanding (MoUs), are considered later in this chapter.

6.129 Ultimately, the generally accepted notion of the autonomy of sport directs that it is best placed to consider issues surrounding its governance, although that does not preclude stakeholders from other industries voicing opinions; after all, the sporting industry is not shy of presenting its views on the influence of other industries on its commercial product.

6.130 It is also understandable that questions are being posed about the consistency of sporting bodies' approaches to corruption, and whether they are unduly influenced in the determination of potential sanctions which might be imposed, when they can often lead to adverse commercial impacts for that sport. A conflict of interests appears entirely feasible.

6.131 In the Formula One spying scandal in 2007, where McLaren obtained confidential information on rival Ferrari, it was determined that McLaren be stripped of "all constructor points in the 2007 FIA Formula One World Championship and the team can score no points for the remainder of the season. Furthermore, the team will pay a fine equal to \$100m [€68.3m], less the FOM [Formula One Management] income lost as a result of the points deduction."²⁸³

6.132 Race-fixing (non-betting related) revelations regarding the same sport, concluded in October 2009, found the Renault team to have committed, according to the FIA's conclusion, breaches "of unparalleled severity" that "not only compromised the integrity of the sport but also endangered the lives of spectators, officials, other competitors" and its own driver. While the two top Renault team directors were banned from motor racing for their part in the affair, the team was only given a two-year suspended exclusion from the championship.²⁸⁴

6.133 The FIA, motorsport's governing body, does not conduct the commercial activities of the sport, but clearly has an interest in it continuing to be a global commercially successful enterprise. As such, its ability to conduct such proceeding, involving multi-billion euro industries, without also giving consideration to those commercial impacts, is open to question.

6.134 The symbiotic relationship is such that, just as sports have concerns regarding betting and whether that could potentially lead to a reduction in the perceived integrity of the sporting event, betting operators also have concerns about the ability of sports to properly conduct and enforce their rules and corruption proceedings, which in turn affects the betting product.

6.135 In summary, each corrupt activity might be best considered on its own merits and with regard to its own specific impacts to avoid the inappropriate linkage of unrelated issues, and what are in light of existing evidence, exaggerated comments. In consideration of the latter, the quality of reporting, which can often be misleading, ill-informed and sensationalist, should also be a concern for all stakeholders. Whilst governance resides with the sport, and the autonomy of sporting bodies should be maintained, that does not preclude them from being challenged about the suitability of their arrangements surrounding betting, and corruption more generally.

²⁸³ cnn.com 'F1 'spygate':\$100m fine for McLaren' (September 2007) ²⁸⁴ New York Times 'It's on to the Next Big Thing, as Scandal Begins a Fast Fade' (October 2009)

Meeting the Challenges

6.136 The following sections are aimed at evaluating the various tools and mechanisms that are (or are not) in place in both the gambling and sporting industries to protect sporting events and the betting product from corrupt activities, how effective they are and how they might be improved. This will specifically include:

- Information sharing: Memorandum of Understanding (MoUs);
- Integrity Models: The ABB and ESSA;
- Restricting Bet Types;
- Integrity Payments;
- Training and education; and
- Future stakeholder dialogue

Information Sharing: Memorandum of Understanding (MoUs)

“We....encourage sports governing bodies and [licensed gambling] operators to have direct agreements on how they will work together.”

British Gambling Commission Betting Integrity Paper (March 2009)

6.137 Along with encouraging sporting bodies to adopt specific betting and/or corruption rules and regulations, licensed gambling operators have also encouraged sporting bodies to agree information sharing arrangements with them. Those arrangements aim to deliver both a level of protect, by seeking to detect irregular betting and allow sports to take action before the event, and also provide evidence to convict and punish those parties that corrupt sport.

6.138 Far from being in the interests of operators to cover-up irregular betting as some misleadingly suggest (itself revealing a lack of commercial or operational understanding), there is actually a very strong commercial reason that predisposes licensed gambling operators to detect and encourage sports to punish such corruption from a purely commercial standpoint.

6.139 Licensed gambling operators are the businesses that corruptors seek to defraud when fixing sporting events to influence betting markets. Such betting related corruption adversely affects the economic viability of gambling operators and left unchecked has the potential to render those sporting events, and by association the betting product, as unviable commodities.

6.140 The European sporting product is particularly well regarded around the globe, and allied to its associated levels of broadcasting, it forms the basis of many licensed gambling operators’ betting businesses. As such, it is a commodity on which licensed operators expend a great deal of investment (see Chapter 5) and are keen to maintain; it would not be in their commercial interests for it become tainted by corruption (betting or non-betting related).

6.141 Establishing information sharing arrangements has therefore been a priority for many licensed gambling operators, some which have agreements with around forty different sporting bodies. These arrangements are not contractual; their strength is that it is in both parties’ commercial interests to maintain the credibility and continuing viability of sporting events.

6.142 This is a partnership arrangement. However, it is understandable that some sporting bodies are keen to deliver what they believe to be the most secure forms of protection possible and to seek more formal legislative or contractual arrangements. There is no evidence that such arrangements will deliver greater security than is already in place; both sport and gambling are global businesses and there is no cross-border legislative vehicle to deliver such coverage.

6.143 Legislation surrounding gambling remains a national level policy (but to be conducted within the scope of the guiding principles of the European Union), and ratification of the Lisbon Treaty only provides sport with a supporting competence. As such, the viability of a pan-EU approach appears unlikely, even before it is considered if that action would be necessary, effective or proportionate given the evidence and levels of betting related corruption.

6.144 Restricting access to gambling markets will not stop corrupt activities, nor will it stop licensed operators in one jurisdiction continuing to take bets on sports in another. Such a regressive policy merely denies competition and consumer choice, and in restrictive markets may cause price sensitive consumers to breach internal gaming laws and seek gambling with unlicensed operators.

6.145 Gambling regulators only have control over their own licensees and markets, but the members of trade associations such as the RGA (which represents nearly 30 licensed gambling operators and software providers, including some of the largest internationally recognised organisations) are based in a number of jurisdictions and have an international consumer base.

6.146 As such, non-statutory Memoranda of Understanding (MoU) with organisations such as the RGA offer a wider and potentially more effective network for the protect sporting events than statutory systems, which will inevitably vary from county to country e.g. consider the UK and French approaches, and are restricted in their effectiveness to their national borders

6.147 Gambling and sport are global products and any considerations regarding integrity mechanisms, statutory or non-statutory, need to be understood within that framework. These non-statutory information sharing arrangements, whilst not perfect, therefore potentially deliver the most practical and coherent global integrity mechanisms at this time.

6.148 Nevertheless, sporting bodies such as the European Professional Football Leagues (EPFL) have pressed “for a new legislative framework for sports betting. A framework that establishes a statutory-based relationship between sports rights holders and betting organizations in order to establish together: Mechanisms to protect the integrity of sport, including information sharing, data control and responsibility over the types of bets offered.”

6.149 The latter issue of restricting bet types is considered in more detail later in is chapter, but the overall message is, however, consistent with the SROC policy (of which the EPFL is a member) and which appears to be as much about controlling the betting product from a commercial standpoint as protecting sporting integrity; the EPFL has declined the RGA’s offer to discuss the establishment of an information sharing agreement to protect sporting events.

6.150 As a prominent figure in both the BHA and SROC has similarly commented, “to respond to the challenges of match-fixing and corruption, a framework is needed to ensure cooperation by all parties, that is to say sports organisations, betting operators and regulators.”²⁸⁵ That is a reasonable proposal and could be said to already occur and to have been in place for sometime.

6.151 However, he further comments that a “framework has to be based on contractual agreements as well as market regulation. Without a clear legal framework, and without a contract within that framework, there is no obligation on betting operators offering a bet on that event to share information with sports bodies when they detect irregular patterns.”²⁸⁶

6.152 Controlling the betting product appears to be a common theme, be it surrounding commercial issues or integrity. Furthermore, as stated, the approach also misunderstands and misrepresents the position of licensed gambling operators who have consistently encouraged sports to agree information sharing arrangements to protect the sporting event (and the betting product), and have also pressed for specific betting and/or corruption related sporting rules.

6.153 Gambling operators freely provide relevant information; it is in their commercial interests to do so. Moreover, the position promoted above by a senior BHA and SROC official does not appear entirely consistent with the conclusion of Dame Neville’s review into the BHA’s integrity mechanisms in May 2008. That review concluded that the “sources of information available to BHA appear to be adequate for it to discharge its regulatory functions.”²⁸⁷ Those sources include MoUs agreed with licensed gambling operators.

²⁸⁵ Europolitics SROC Article ‘The case for sport – from broadcasting to betting’ (May 2009) ²⁸⁶ Ibid. ²⁸⁷ Dame Neville ‘The British Horseracing Authority and integrity in horseracing: An independent Review’ (May 2008) E-31

6.154 Dame Neville's review of the BHA's arrangements determined that, for British horseracing, a sport that is more closely associated to betting than any other, and which faces higher associated integrity risks, sufficient information sources are available to it to protect the sport. Given that the British Gambling Commission has no jurisdiction outside of Britain, and that the MoUs signed with on and offshore gambling operators are not legally binding, the suggestion that a contractual framework is required appears to contradict the Neville review.

6.155 In addition, the BHA's website comments that "Crucial to the fight against corruption and malpractice is our close working relationship with the betting industry" and that "the vast majority of races are run within the rules and there is no doubt that our sport is as clean as it's ever been."²⁸⁸ The establishment of MoUs and working in partnership with the gambling industry appears to be an effective mechanism for the protection of British horseracing.

6.156 Therefore, there appears to be no overriding reason why such arrangements are not suitable for other sports. Moves towards a law-based approach should also consider the Neville review conclusion that, "the criminal justice system is an inefficient and inadequate means by which to seek to regulate horseracing, but that the regulation of malpractice in horseracing can be better performed by the BHA than by external criminal prosecution agencies."²⁸⁹

6.157 Of the 116 international and national sporting organisations that were invited to respond to the RGA consultation, and asked as part of that process if they would be prepared to discuss establishing an information sharing arrangement with the RGA (if one did not already exist) to protect sport and gambling operators, only two sporting bodies responded positively.

6.158 The policy position above, adopted by SROC members, may be a contributory factor to that lack of engagement during the consultation. However, agreeing an MoU does not preclude sports from continuing to argue their case, and in the meantime will provide for greater protection of the sporting product, which is surely what both industries seek to achieve.

6.159 At the moment there are various forms of MoUs established by individual operators, trade associations and sporting bodies, and these continue to grow in number and in an uncoordinated fashion. A contributory factor appears to be that MoUs are being agreed with sporting organisations that have no direct integrity operation or remit, unnecessarily adding to that ever growing figure.

6.160 A key aspect of that growth are the various layers of governance within sport, which is closely guarded at international and national levels and which contributes to the proliferation of MoUs within a single sport. For example, separate MoUs have been required to be agreed with FIFA, UEFA and then many national governing bodies in football, which can all differ. There is the potential for inconsistency of reporting between operators and sporting bodies as a result.

6.161 Whilst it may be perceived that there are good reasons for this position in some sports, it adds to potential costs, to which licensed gambling operators are increasingly being pursued by sporting bodies to contribute towards, above the significant commercial amounts already invested (see Chapter 5), along with duplication and inconsistent rules and regulations.

6.162 Licensed gambling operator Betfair provides that all interactive customers registering with it must agree to a provision that allows the operator to share all customer details with sporting bodies. Many other licensed operators do not provide information regarding their customers to sporting bodies, outside of specific cases of suspicious betting related incidents, expressing concerns regarding data protection regulations surrounding customers' details.

6.163 The British Gambling Commission considered this matter in relation to its licensees, determining that it did "not consider it appropriate for the Commission to require through a licence condition that betting licensees make it a condition of business that a customer must agree to personal information being made available to the sport governing bodies."²⁹⁰ However, disclosures under operators' licence obligations are sufficient to avoid breaching data protection laws where there is justification (suspicious betting) for the provision of such data.²⁹¹

²⁸⁸ www.britishhorseracing.com ²⁸⁹ Dame Neville 'The British Horseracing Authority and integrity in horseracing: An independent Review' (May 2008) E-28 ²⁹⁰ British Gambling Commission 'Integrity in Sports Betting' Issues Paper (May 2007) ²⁹¹ British Gambling Commission 'Betting Integrity' Paper (March 2009)

6.164 Sports and Member States will themselves be aware of the complexities and concerns regarding data protection following the protracted discussions regarding WADA's 'whereabouts' rule, which was determined to contravene EU law on data protection and privacy. It was reported that WADA was only persuaded to make changes that reflected data protection law after "being warned by European governments that the agency's funding would be cut."²⁹²

6.165 In July 2009, it was reported that five Italian tennis players that had been suspended for a year for gambling on the sport had decided to sue a licensed gambling operator which they claim "improperly provided confidential information" to the Association of Tennis Professionals (ATP) as part of an MoU, and which they claim has led to financial and reputational loss.²⁹³

6.166 These incidents highlight the need to ensure that data protection issues are properly considered regarding any imposition of procedures that potentially affect the personal data of sportspeople or the customers of licensed gambling operators. Nevertheless, there is a responsibility on both sporting bodies and licensed gambling operators to establish effective internal integrity mechanisms and to engage in suitable information sharing agreements. As such, the type and extent of data that can be made available should be kept under review.

Integrity Models: The ABB and ESSA

6.167 The integrity mechanisms employed by the European Sports Security Association (ESSA) and the Association of British Bookmakers (ABB) provide for a useful comparison: one is online focused with a group of European operators and a global customer base; the other covers the majority of Great Britain's extensive network of licensed retail betting shops.

6.168 Both organisations provided written responses to the consultation, but the more meaningful examination of their respective integrity processes was elicited during discussions. The two organisations employ MoUs as the central platform for their information sharing channels with the various sporting bodies that they have agreements with.

6.169 The ABB, and its predecessor associations, have been in existence far longer than ESSA and has already established a relationship with the sporting sector, which is principally UK-focused recognising its remit. It is rightly cautious of data protection issues and has argued against the many restrictions and controls that the British sporting sector has attempted to persuade the Gambling Commission to enact through its licensing powers e.g. bet types.

6.170 ESSA has been looking to establish itself within the EU and has been successful in achieving that and being seen as a leading organisation in the minds of many international sporting bodies. It is a proactive organisation and appears to have presented itself as such.

6.171 ESSA's operational approach is to use a central person/s as a conduit, not just for establishing relationships with sports and agreeing MoUs, but to actually determining if a particular betting pattern is suspicious. The ABB is more of a facilitator for its members, distributing information rather than taking decisions regarding suspicious betting, which is left to the experts in each betting company.

6.172 ESSA has a range of MoUs which whilst impressive in that they are with large international sporting organisations, it is perhaps strange that many of those organisations have no direct integrity remit (e.g. ITF, ATP etc).

6.173 The scope and nature of each organisation's MoUs are also of critical importance. The ABB freely passed its MoUs to the RGA as part of this study and that document appears to be a functional text (as with the RGA's), as you'd expect from an organisation that has been promoting MoUs for some time. ESSA, however, declined to provide the text of its MoUs and it has therefore been impossible to evaluate properly the organisation's integrity processes.

²⁹² Reuters 'WADA "whereabouts" rule contravenes EU law: panel' (April 2009) & UK Guardian newspaper 'Threat forced Wada 'whereabouts' climbdown (May 2009) ²⁹³ Gambling Compliance 'Tennis Players Blast ATP's Anti-Gambling Agreement' (July 2009)

Restricting Bet Types

“The [EPFL] Conference called for a new legislative framework for sports betting... including information sharing, data control and responsibility over the types of bets offered.”

EPFL Conference ‘Protection of Intellectual Property Rights and Sports Betting Integrity’ (May 2008)

6.174 It has been suggested that one of the principal issues surrounding the integrity of sporting events lies in the types of bets that are available, and which weren’t readily available in the past. Technological advances, notably the increasing availability of hardware (computers, mobile phones etc) for the everyday consumer; and the growing global digital network, have been significant contributory factors in the growth of online gambling and the array of products, as well as numerous other products and services that form part of the modern global economy.

6.175 Indeed, this technology has created greater access to and demand for gambling services around the globe. Licensed gambling operators, as with all successful businesses, have been required to adapt their service to meet those customer needs. This has also coincided with the globalisation and increasing commercialising of professional sport, notably European.

6.176 Types of bets such as: half time/full time; first goal/try scorer; first booking; number of corners; number of aces or double faults (tennis); three balls (golf); handicap betting; highest break (snooker); and many others, have added to the appeal of the betting product and also greater interest in sporting events. Interactive platforms, in particular, have allowed a far wider variety of products to be offered before and during sporting events.

6.177 Some sports have expressed serious concerns over the availability of such bets,²⁹⁴ suggesting that they offer increased opportunities for corrupt activities.²⁹⁵ Again, the British Gambling Commission, which has the power to impose a restriction on the types of bets offered by its licensees, has examined the concerns of sports with an evidence-based, risk analysis.

6.178 The Commission has stated that it “is familiar with methods used in other countries to promote betting integrity, such as restricting the types of bets offered or approving sporting bodies’ rules before allowing betting on those sports. The Commission has the power to impose such restrictions on its licensees but does not consider, based on the available evidence, that such intrusive or resource intensive methods are warranted or would be effective.”²⁹⁶

6.179 As the Commission rightly points out, there would need to be a very strong evidence-based justification to introduce what would essentially be a restriction on trade. Given the seriousness of such an approach in relation to free market principles and the balance with a properly regulated environment, a justification of that nature would only appear warranted if:

- all parties involved in the protection of sport, and the adverse commercial and reputational impacts of corruption, have been open to full and proper negotiation and facilitation of proportionate non-statutory measures short of such bet type restrictions;
- the non-statutory integrity arrangements between licensed gambling operators and sporting bodies did not include sufficient mechanisms, or had not evolved sufficiently, to meet integrity issues in a proportionate and evidence-based manner;
- all alternative statutory regulatory mechanisms had been considered and proved inadequate beyond reasonable doubt through proper analysis; and
- that such a measure was considered with regard to the wider international sporting and gambling environment, and the effectiveness of that approach evaluated accordingly.

²⁹⁴ www.bbc.co.uk ‘Bookmaker may stop football bets’ (June 2009) ²⁹⁵ Risk to the Integrity of Sport from Betting Corruption (2008)

²⁹⁶ Gambling Commission ‘Betting Integrity’ Issues Paper 2009

6.180 At present, there is no available evidence to suggest that restricting bet types would prove an effective mechanism to ensuring a significantly increased level of protection for sport from potential corruption relating to betting, nor that it would have a marked effect on the relatively limited numbers of proven corruption involving betting and sport. Indeed, given that the consumer demand for these betting opportunities is already acknowledged and understood by both industries, it would potentially push consumers to unregulated gambling operators.

6.181 As has already been demonstrated, on all available evidence, this is not an issue of the same magnitude as doping – although no stakeholder should be complacent and there is room for improvement in the present integrity mechanisms. Given that sports are not pursuing legitimate drugs manufacturers (nor should they) to restrict their products and commercial activities that can be abused by some and adversely affect sport, and noting that known suspicious betting patterns equated to 5% of drug related in 2008, there is no comparable justification to introduce a commercial restriction on licensed betting operators' product levels.

6.182 Indeed, any suggestion that restricting bet types would make a significant integrity impact is fundamentally flawed for the following reasons:

- sports have no control (nor should they) over the evolution of global gambling;
- the increasing availability of gambling, notably online, is not something that in any event can be restricted in any effective way and on a global scale; and
- licensed gambling operators are very commercially sensitive, and given that corruption in sport adversely affects their business and financial returns, they would quickly withdraw any bet types that affected their economic position (and that includes adverse press coverage of corruption) well before any statutory measures could counter these.

6.183 To highlight the latter, licensed gambling operator William Hill advised in June 2009 that it might abandon betting on certain football matches to prevent it becoming the victim of potential corrupt betting activity, "if we start to feel all is not well with every game you may well end up with a situation where bookmakers will start to be selective about some of the matches they decide to bet on and may restrict people from betting on certain games."²⁹⁷

6.184 The SROC position champions the French draft law and the ability of sports to "manage the risk levels of the betting that takes place on their events" and that a "competition organiser would have to agree that a particular operator could offer a bet on the competition."²⁹⁸ This control is only available over the bets offered by French licensees and will not stop other licensed gambling operator offering whatever bets on French sport that those operators decide.

6.185 The British Gambling Commission's position is that "it could not delegate a decision to a sport governing body as to the activities on which licensed betting operators could lawfully take bets."²⁹⁹ It does not "consider such intrusive action would be proportionate and prefers to look to options for improving punters' understanding of the nature of different bets and their potential for corruption along with the measures to reduce the incidence of corruption."³⁰⁰

6.186 In addition, at the time of writing, the French draft law is such that many operators have indicated that they will not be applying for sports betting licences, and consequently there is the potential for it to be wholly ineffective, merely placing French licensees at a commercial disadvantage that may not prove economically sustainable.

6.187 Control of bet types may be as much about establishing authority over the commercial betting product than the integrity of sport. Those that challenge this position are likely to emphasise sports' special place in our society and that measures to protect sport, that might not be so quickly introduced or even considered in other business sectors, are justified accordingly.

6.188 Professional sport can tend to overstretch its supposed special status, especially in relation to some sports-related grassroots funding levels and notably when focused on what are primarily commercially-based arguments justified by way of the, often unchallenged, mantra of sports' (undefined) specificity, which to sport appears to be unlimited in its scope and nature.

²⁹⁷ www.bbc.co.uk 'Bookmaker may stop football bets' (June 2009) ²⁹⁸ SROC Europolitics article 'The case for sport – from broadcasting to betting' (May 2009) ²⁹⁹ Gambling Commission 'Integrity in Sports Betting' Issues Paper (2007) ³⁰⁰ Gambling Commission 'Integrity in Sports Betting' Issues Paper (2007)

6.189 This much is clear in the ongoing debate that sport should be exempt from EU law, and which would undoubtedly see a raft of measures such as wages restrictions and nationality based limits on players introduced under the principal premise of the protection of sport's specificity. But which would ultimately conspire to further control its governance, commercial evolution (e.g. success of the Premier League) and consequently be a regressive step in the context of a truly global economy, premise of subsidiary and sports' commercial application.

6.190 However, the governance of sport is principally for sport to concern itself with and not for this report. In the context of sports betting, the argument to restrict the types of bets licensed gambling operators can offer on the basis of integrity appears principally about sports' wider control of the sporting and betting product, for there is no substantive evidence-based justification for such action from an integrity perspective; it would ultimately prove ineffectual.

6.191 There may, however, be some scope for discussions between sports and individual licensed operators surrounding the extent of betting markets on a principally age-related (not bet type) basis of the participants of the sporting event. Other events on which betting might generally be perceived as unpalatable from a societal perspective, might also be added.

6.192 If there is a degree of commercial understanding, and a partnership approach adopted, then it may be possible to seek some agreements in this area. Competition considerations would need to be factored into any possible wider industry discussions. A potential platform for initial dialogue surrounding this matter is proposed later in this chapter.

Integrity Payments

"The ICC must accept that a proper percentage of the money which they have coming in from television rights and all other sources has to be put into the prevention of corruption and match-fixing."

Sir Paul Condon, Director of the ICC's Anti-Corruption Unit – Report of Official Enquiry (May 2001)

6.193 As with the calls for the establishment of new legislation in Member States that forces licensed gambling operators to pay additional income, above the considerable commercial arrangements which are already in place and which contributes towards the €3.4bn that the industry already contributes to sport, sporting bodies have also pressed for integrity payments from licensed gambling operators for "the cost of policing integrity in sports."³⁰¹

6.194 When presenting this argument, and as with gambling operators' commercial investment, sporting bodies do not take account of the extensive and costly internal integrity mechanisms established within licensed gambling operations and which have been particularly effective in informing and providing evidence to sporting bodies of suspicions betting activities.

6.195 Without this integrity mechanism, the cost of which is borne exclusively by the licensed gambling operators, sports' own integrity processes would not be nearly as effective as a deterrent or be able to present evidence that enabled sporting bodies to achieve judgements and to punish participants within its sport that seek to corrupt sports events for financial gain.

6.196 Nevertheless, sporting bodies have continued to express concerns about the growing costs of protecting the integrity of their sports. However, as the British Gambling Commission has rightly stated, "integrity within sport is primarily an issue for the sport governing and regulatory bodies, particularly when it involves licensed/registered sports participants who commit disciplinary offences against the rules of their sport."³⁰²

6.197 It should also be remembered that corruption related to betting is but one of a number of activities that can adversely affect sport, and in the case of betting related incidents, also adversely affects the betting product and the economic position of licensed gambling operators, who are the principal parties that such corruptors seek to defraud.

³⁰¹ British Gambling Commission 'Integrity in Sports Betting' Issues paper (May 2007) ³⁰² British Gambling Commission 'Integrity in Sports Betting' Issues Paper (May 2007)

6.198 The argument put forward by sports to support integrity payments is based around the premise that the 'polluter pays'. This may well be the underlying principle behind the French draft law's integrity provisions, the jurisdictional limitations of which are immediately apparent, not to mention that the 'polluter pays' premise presented by sports and supported by others, is fundamentally flawed as an argument both in the realities of the global market and in relation to the betting product which licensed gambling operators' provide to consumers.

6.199 Such an argument ('the polluter pays') is wholly simplistic and misrepresentative of the significant operational and financial investment by licensed gambling operators in the integrity of the sporting and betting products. Far from being the polluter, licensed gambling operators are victims of corruption in sports. The polluters are those who corrupt sport either by seeking to affect outcomes or by sportspeople or officials who actively corrupt events.

6.200 Unfortunately, as has also been shown (see Chapter 5), comparable sponsorship opportunities are not always available for licensed gambling operators due to some restrictive national laws (e.g. Germany and France) or self-imposed prohibitions by sporting bodies (e.g. FIFA, UEFA and the IOC) which consequently limits operators' ability to invest in those areas and to agree commercial deals that can financially contribute to integrity processes.

6.201 Were FIFA or UEFA, for example, ever to allow sponsorship from licensed gambling operators, and noting the considerable sums provided by licensed gambling operators to individual teams in Europe (e.g. Real Madrid), then such deals have the potential to fund their entire integrity mechanisms, along with additional solidarity and grassroots investment.

6.202 Nevertheless, the 'polluter pays' argument is fundamentally flawed; licensed gambling operators are legitimate businesses that invest in sport (€3.4bn per annum in the EU alone) and are the principal party that is defrauded by corrupt activities. Ultimately, as the British Gambling Commission's policy papers and Sir Paul Condon's report to the ICC state, sporting integrity and the funding of suitable mechanisms are primarily the responsibility of sports.

6.203 Furthermore, and noting some legislative barriers, it should be noted that no sports have explained why their integrity operations could not be funded via the commercial payments professional sports negotiate with licensed gambling companies as part of this study.

6.204 The ICC was informed that it "must accept that a proper percentage of the money which they have coming in from television rights and all other sources has to be put into the prevention of corruption and match-fixing."³⁰³ That organisation distributed around €176m to its member associations in 2007 (and paid a total of €7.5m in tax), of which there are ten full members and a number of associate and affiliate members.

6.205 In addition to this, the England and Wales Cricket Board (ECB) has commercial deals with Betfair and Totesport,³⁰⁴ and Cricket Australia (CA) has similar deals with Betfair and Sportingbet,³⁰⁵ financial resources would not, therefore, appear to be an irresolvable issue in relation to the funding of sports betting integrity mechanisms within cricket. There is clearly already significant investment from licensed gambling operators in that sport, part of the "other sources" referred to above, that could go towards protecting against corrupt activities.

6.206 However, the financial commitment of cricketing bodies appears to vary considerably. The Board of Control for Cricket in India (BCCI), which manages the lucrative Indian Premier League (IPL), only agreed to pay the €0.9m annual cost for the ICC's Anti Corruption and Security Unit (ACSU) to monitor the IPL the day before the tournament was due to begin - it usually takes two months for the ASCU operation to be in place - questioning the cost.³⁰⁶

6.207 To place the ICC's €0.9m annual integrity fee in perspective, the BCCI had declared an overall income of €137m for 2007-08, a profit of €7m from the first IPL alone, and in 2009 sold the IPL's broadcast rights for €1.2bn for the next nine years.³⁰⁷ The BCCI only agreed to pay the integrity fee after criticism of its commitment to protecting the event from corruption.³⁰⁸

6.208 The importance of this is apparent when considering that, whilst betting is illegal in India, police sources state that at least €3.5bn, and possibly up to €29bn, is bet with unlicensed bookmakers each year. In the light of this, it is difficult to understand the BCCI's reluctance to ensure that proper integrity processes were in place well before the start of the tournament. This level of unlicensed betting clearly brings with it increased risks.

³⁰³ Sir Paul Condon, Director of the ICC's Anti-Corruption Unit – Report of Official Enquiry (May 2001) ³⁰⁴ www.ecb.co.uk ³⁰⁵ cricket.com.au 'Betfair and CA announce commercial partnership at Boxing Day Test (December 2008)', 'CA appoints Sportingbet Australia as approved sports betting provider' (December 2008) and 'betting partners' ³⁰⁶ www.cricinfo.com 'ICC's anti-corruption unit for IPL, Champions League' (July 2009) ³⁰⁷ www.sports-city.com 'Sony keeps IPL TV rights; new deal is \$1.6 billion' (March 2009) ³⁰⁸ www.cricinfo.com 'Price tag put BCCI off ICC's anti-corruption cover' (April 2009) ³⁰⁹ Asia Sentinel 'Betting on India's government' (July 2008)

6.209 This also questions why licensed gambling operators are being asked to pay for what is often the undesirable product of the unlicensed gambling sector, notably operating in Asia, and which adversely affects legitimate licensed gambling operators as much as it does sports around the globe. A senior IPL official supports the licensing and proper regulation of betting, to bring greater investment from that sector into Indian cricket and provide greater protection.^{310a}

6.210 It should also be remembered that when professional sporting bodies state that the cost of integrity measures are increasing, that this cost may not only include betting related issues, but the whole range of corrupt activities that can affect sport. In addition, it is interesting to note that, whilst major sporting bodies prohibit gambling sponsorship (and hence any commercial revenues that could go towards integrity costs), the IOC has announced a sponsorship deal with a drugs company that will contribute around €11m towards anti-doping during the 2012 Games.^{310b}

6.211 It is accepted that professional sports have varying levels of income, but basic integrity measures can be relatively inexpensive and the information streams from licensed gambling operators are freely available. It is, therefore, hoped that the many sports that did not respond to the RGA's offer to discuss establishing an MoU arrangement will reconsider their position.

Training and Education

Q21. Do you have any training and education programmes for players and officials associated with your sport regarding the impact of betting, and would you be prepared to discuss establishing one in partnership with the RGA?

RGA Sports Betting Consultation (July 2009)

6.212 For any integrity programme to be fully effective with sports' own participants (players, officials, coaches etc), a clear and well-defined strategic mechanism must be put in place to deliver the key messages surrounding potential corruption activities, notably detailing the sports' own rules, detection methods and stringent penalties concerning any breaches.

6.213 Most sporting bodies already have training and education programmes surrounding other issues such as doping. Those activities provide a useful platform from which to develop and coordinate betting related programmes that are either dedicated to that particular topic or form part of discussions surrounding other issues impacting on that sport.

6.214 This study's consultation (see Chapter 3) therefore enquired if sporting bodies would be prepared to engage with the RGA to discuss suitable training programmes. As with many of the integrity questions, the response was limited in number and interest. Nevertheless, early positive discussions have taken place with some stakeholders about introducing such arrangements, and the resources that the RGA and its members can potentially contribute.

6.215 This is an area where it was hoped that commercial considerations would not intervene and discourage engagement and the formation of partnerships between the sectors. However, it is difficult not to conclude that this has unfortunately proved to be the case, noting the widespread lack of interest from professional sporting bodies in developing collaborative processes with the RGA surrounding training and education, and other integrity initiatives.

6.216 As with the commercial and integrity aspects of sports betting, there is no direct linkage to the licensed gambling industry in this area from a financial standpoint. But licensed gambling operators have shown in the past that they are willing to allocate resources to this issue; after all, they have a strong commercial interest in maintaining the integrity of sport, and from that standpoint, this activity can be seen as an extension of a their own integrity mechanisms.

6.217 RGA discussions surrounding training and education programmes are on hold whilst the UK Government completes its integrity considerations, noting that some parties that have been approached to work with the RGA are also engaged in that process. In addition, it may also include particular recommendations that may provide for a suitable collaborative approach between the sporting movement, licensed gambling industries and the UK Government.

^{310a} www.cricinfo.com 'Betting agencies keen to make operations legal in India' (April 2008) ^{310b} timesonline.co.uk 'Drugs company pledges £10m to increase testing at the Olympics' (December 2009)

6.218 However, the longer-term goal must be to look at this from an international perspective, thereby properly representing both the global nature of sport, sports betting and the RGA's membership. Coverage of that nature is something that individual governments will struggle to deliver. Nevertheless, as the only government that appears to be proactive in this area, the UK should be complemented for attempting to address betting integrity with the relevant sectors.

6.219 However, whether any training and education proposals that might emanate from the UK Government established Integrity Panel prove to be practical and proportionate remains to be seen at this stage; the Panel is expected to publish in early 2010.

6.220 Sir Paul Condon's report to the ICC contained a number of recommendations concerning training and education that are worth considering (Figure 6.7) when contemplating the potential form and nature of a suitable training and education template with sporting bodies.

Figure 6.7: Extract from the Report on Corruption in International Cricket (April 2001)

Education and Awareness

Ignorance of the risk and actuality of corruption in cricket have enabled malpractice to spread and flourish. I have spoken to mature and worldly wise players, umpires and administrators who were genuinely unaware of the corrupt practices until the revelations in recent years. There is a compelling case and acceptance for a programme of education and awareness training.

Recommendation 1: The ICC should develop and implement a comprehensive training and awareness programme designed to raise awareness of the risks of corruption in cricket and the methods used to entice players and others into malpractice. It should also emphasise the resolve of the ICC to deal with the problem and to punish wrongdoers.

Recommendation 2: An education programme will only be effective if it is professional, embraces all member countries and is ongoing. Whilst respecting national, cultural and religious differences, the ICC should produce training material that can be utilised in all the member countries with a consistent and enduring series of messages.

Recommendation 3: Best practice in major sports in the United States of America has shown the value of a professionally made video being at the core of a training programme to deter corruption. American football, basketball, baseball and the ice hockey authorities use a video commissioned by them. The ICC should commission a professionally made video for use in cricket. Such a video would be strengthened by the inclusion of disgraced cricketers relaying their experiences to deter others.

Recommendation 4: As well as raising awareness of the problem, the programme should encourage the reporting of improper approaches and engender confidence that the ICC does want to confront the problem. The video should be reinforced and supported by posters and other literature.

Recommendation 5: The training and awareness programme should target all international players, umpires and other relevant people in cricket. It should include all representative national teams from the youngest age group upwards. Beyond that consideration should be given to making sensible links with cricket academies and the domestic game within the individual countries.

6.221 However, different sports will have different training and education methodologies and programmes, and if the licensed gambling industry engages with sporting bodies in this area it will need to understand those differential processes, and as long as they are justified and do not incur unnecessary expense, adopt a flexible approach. Working with sports and their considerable resources provides opportunities to transmit a clear and unequivocal message.

6.222 Education of the media is also something that has been identified as an area of concern during this study's discussions. Representatives from both industries have commented that there has been a significant amount of sensationalist and ill-informed comment that has adversely affected the reputation of both industries, and in case of sport, its participants who are in danger of being judged before investigations and hearings have been concluded.

Future Stakeholder Dialogue

6.223 There has been considerable discussion and opinion advanced with regard to the availability of betting on sports in recent years, notably by sporting bodies such as the Sports Rights Owners Coalition (SROC), which has promoted a clear agenda intent on establishing a "regime for sports betting that enables sport to protect its integrity, and establishes a fair return for grassroots and professional sports from betting operators."³¹¹

6.224 In taking that stance, SROC ultimately seeks the introduction of a new statutory right to derive increased profits and control over the licensed gambling industry. It is less inclined to voluntary arrangements, favouring contractual and statutory mechanisms. Whilst the position of sports to achieve such goals may be warranted in their view, the validity, necessity, and proportionality of such an approach is highly questionable in a global market.

6.225 Indeed, whilst sporting bodies focus on this agenda, there is a real risk that alternative mechanisms such as MoUs, which appear far less favoured in the eyes of sporting bodies, but which nevertheless provide a level of protection for sport, are not being advanced or properly considered. That would neglect the responsibilities both industries have to protect sport.

6.226 The sporting industry has, aided by its access to platforms within European institutions, been able to promote its views relatively unhindered by opposing opinion or required to substantiate any evidence, and which has found favour with some Member States, Members of the European Parliament (MEPs) and Members of the Council of Europe's Assembly.

6.227 The reasons for this support appears varied, predicated on protecting Member States' gambling markets, monopoly operators, investment in both professional and amateur sport, and often based on the fundamental, but unsubstantiated, premise that the introduction of properly licensed and regulated gambling markets, open to all legitimate gambling businesses, will see a reduction in income to sports and taxation, and a rise in gambling addiction and corruption.

6.228 This document and the European Economics report detailing the level of contributions by the gambling industry in sport within the EU provides evidence that refutes many of those assertions. This is evidence that licensed gambling operators would have provided in proper dialogue with stakeholders, but which it has not been invited to engage in such discussions.

6.229 At present, the situation revolves around a process of sports (usually SROC) advancing opinions via the media or its many meetings with governments and European institutions, and then licensed gambling operators either being challenged with those assertions by the media or by policymakers who have seemingly adopted those positions without detailed debate.

6.230 It is right that sports should promote their views and be considered by policymakers. However, for there to be a proper and balanced debate, the licensed gambling industry must also be given similar opportunities to advance its views and evidence supporting those opinions with all stakeholders, and for it to be heard objectively.

6.231 This study has sought to engage more fully with the sporting sector in particular, to explore that sector's views and to attempt to establish greater dialogue between the sporting and licensed gambling industries. This formed a specific part of the questionnaire (see Appendices) sent to over 150 sporting bodies around the globe, but which only received a positive and specific response to establishing greater dialogue from two sporting bodies.

6.232 There is a distinct danger of policy in this area, both for the sporting movement and by national and European institutions, being established unilaterally. Those parties may wish to consider if the approach they have so far taken with regard to the issues and challenges facing all stakeholders, and that includes licensed gambling operators, would be an acceptable approach with regard to the development of policy in other areas.

³¹¹ Europolitics SROC article 'The case for sport – from broadcasting to betting' (May 2009)

6.233 For example, the EPFL's conference in May 2008 concluded that there should be "more information sharing and closer co-operation between betting companies and sports bodies".³¹² In addition, the Council of Europe's meeting of Sports Ministers in December 2008 agreed an Ethics Resolution and asked the Council to look consider match-fixing, corruption, and betting, and draft a recommendation.³¹³

6.234 Assuming that policy development regarding integrity has taken place within these two bodies since those events (some 18 and 12 months ago at the time of writing), it is concerning that there has been no engagement with the RGA from either organisation. To recap, the RGA is the largest online gambling trade association in the world, representing over 20 operators with international operations, and would appear to be a principal party in any engagement.

6.235 However, the conclusions of the Sports' Directors meeting during the Swedish Presidency of the EU, that the European Commission should seek to "examine the possibilities of organising a meeting between relevant actors from the gaming industry, the sport sector and the Member States, aimed at discussing issues concerning sport funding and integrity, and efforts to combat gambling addiction" is a much more positive approach.

6.236 Given the importance of the integrity of sport to all stakeholders, and specifically to the sporting and licensed gambling sectors from a commercial standpoint, it seems highly negligent that such discussions via a proper international level forum are not in place and regularly convened. Attempts to establish greater dialogue through this study have proved difficult due to the general lack of engagement or support from the professional sports sector.

6.237 However, a number of parties have expressed a desire to discuss the establishment of an integrity forum, that has no link to commercial activities, and which is principally focused on assessing and, if required, improving existing mechanisms. It has also been advanced that those individuals representing sport and licensed gambling operators should be those that have responsibility for the day-to-day integrity operations, to maintain the focus of discussions.

6.238 Issues which such a forum might discuss include, but should not be limited to, the:

- effectiveness of existing information sharing;
- a minimum industry standard text for MoUs;
- assessing the need to consolidate the growing number of MoUs;
- betting and/or corruption sporting rules and regulations;
- training and education programmes;
- the cost of integrity measures;
- exchange visits to view and consider integrity mechanisms;
- data protection issues;
- working with regulators;
- working with law enforcement agencies;
- relationship with the media surrounding suspicious betting; and
- the prohibition of bets on age-related sporting events.

6.239 There is clearly a pressing need for greater dialogue between the two industries in particular, and for all of the integrity related issues and opinions advanced to be fully evaluated through a forum of this nature. It is hoped that initial discussions as part of this study will lead to the establishment of greater dialogue, and that those sporting organisations that did not engage in this process during the consultation will reconsider their position.

³¹² EPFL Conference 'Protection of Intellectual property Rights and Sports Betting integrity' (May 2008) ³¹³ Presidency conclusions from the Informal meeting of EU Sport Directors in Solna, 1-2 October 2009



Chapter 7:

CONCLUSIONS

7.1 The sports betting debate concerns two principal issues: commercial; and integrity, which are themselves cross-cutting to a degree. Sports seek to control the betting product and to obtain increased revenues from the betting industry, and continue to lobby Member States and European institutions for statutory reforms that would provide them with new rights to improve their already favourable fiscal position, which includes State aids and taxation benefits.

7.3 However, the concept of a 'fair return' as presented by sports is a misnomer; sports are receiving the appropriate level of fiscal benefits from the gambling industry. The latter provides €3.4bn per annum to EU sport, with €2.1bn (62%) contributed by private companies. The assertion that gambling operators exploit the sporting product does not recognize that many other products also seek to associate with sport, but are not pursued for additional revenues.

7.4 As such, the argument presented by sports that a new EU-wide statutory mechanism is required to permit sports greater control over the betting product and to enforce additional payments from gambling operators does not appear to be valid, necessary or proportionate. There is ample income within the professional sporting sector. Whether or not that income is currently being distributed in a fair manner is an issue for each sport to determine.

7.3 With regard to the integrity of sport, again professional sporting bodies seek control over the operation of the commercial betting product; sport has determined that sports betting makes it more susceptible to corrupt activities and that sports should have control of betting.

7.4 Licensed gambling operators have invested considerable resources in establishing integrity mechanisms that seek to detect and deter corruption and have encouraged sporting bodies to put in place specific corruption rules. There are some good examples within sport, but the vast majority declined to provide their betting rules as part of this study; the overall position is therefore unclear. The enforcement of such rules is essential to the protection sport.

7.5 Licensed gambling operators have a particular commercial interest in ensuring that the sporting product, and by association, the betting product are not corrupted. It is fundamental to understand that the gambling industry is the likely victim of any fraud that is perpetrated. There would need to be a very strong evidence-based justification to introduce what would essentially be a restriction on trade. The evidence strongly demonstrates that it is not.

7.6 Given the €3.4bn per annum that the gambling industry contributes towards the EU sports sector alone, sufficient integrity income is clearly available. Again, the argument presented by sports does not appear to be valid, necessary or proportionate. However, both industries have a common objective in safeguarding sporting integrity and should engage in regular structured dialogue surrounding integrity and the development of protective measures.



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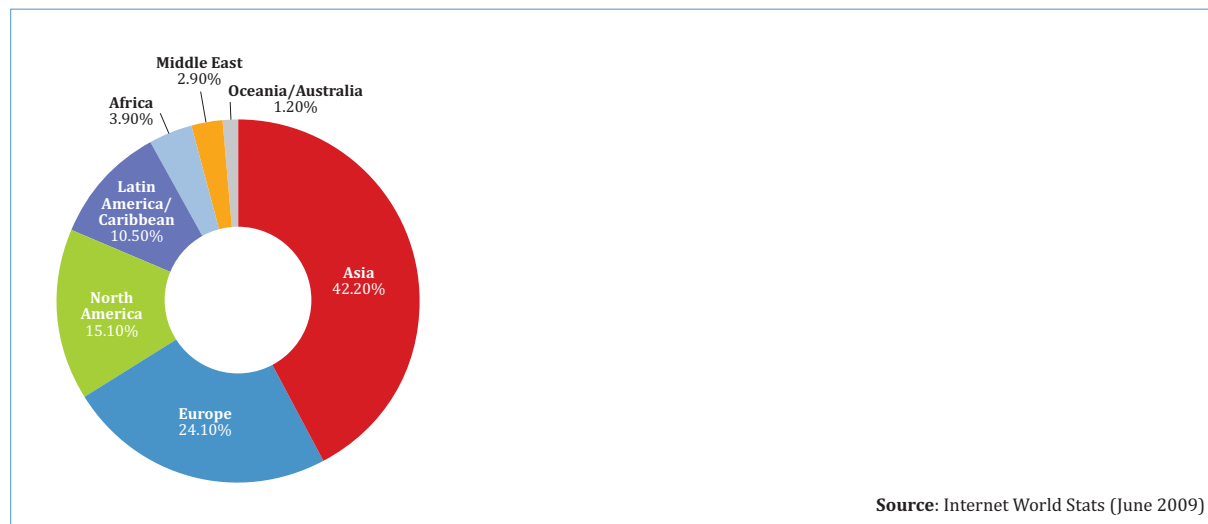
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Appendix A: IMPACT OF NEW TECHNOLOGIES

Global Internet Access

A.1 Internet access, in percentage terms, within the existing global market place is headed by Asia, with Europe and North America following (Figure A1.1).

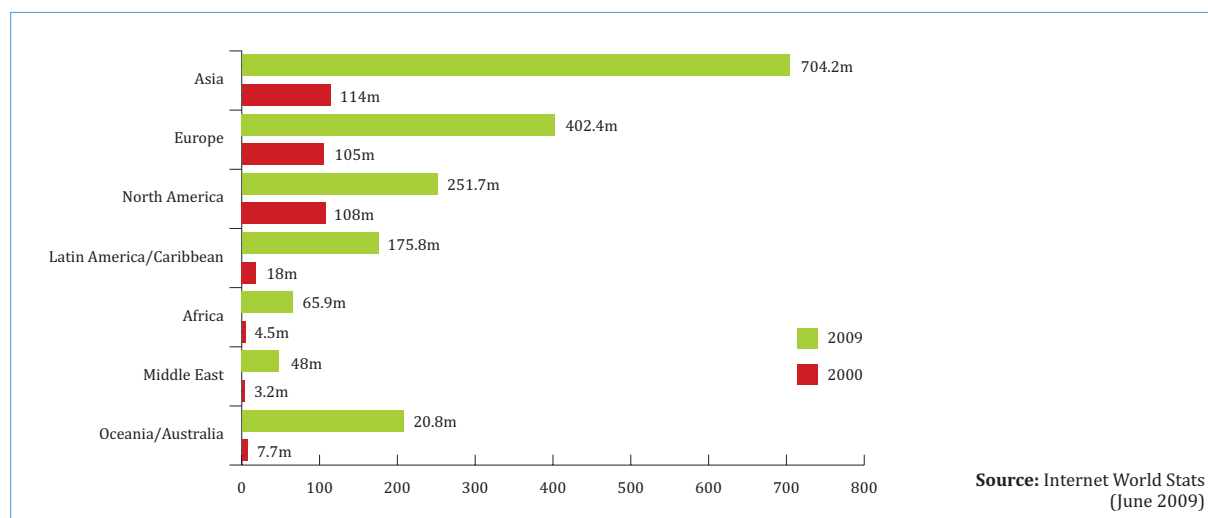
Figure A1.1: Global Internet Users by World Regions in Percentage (2009)



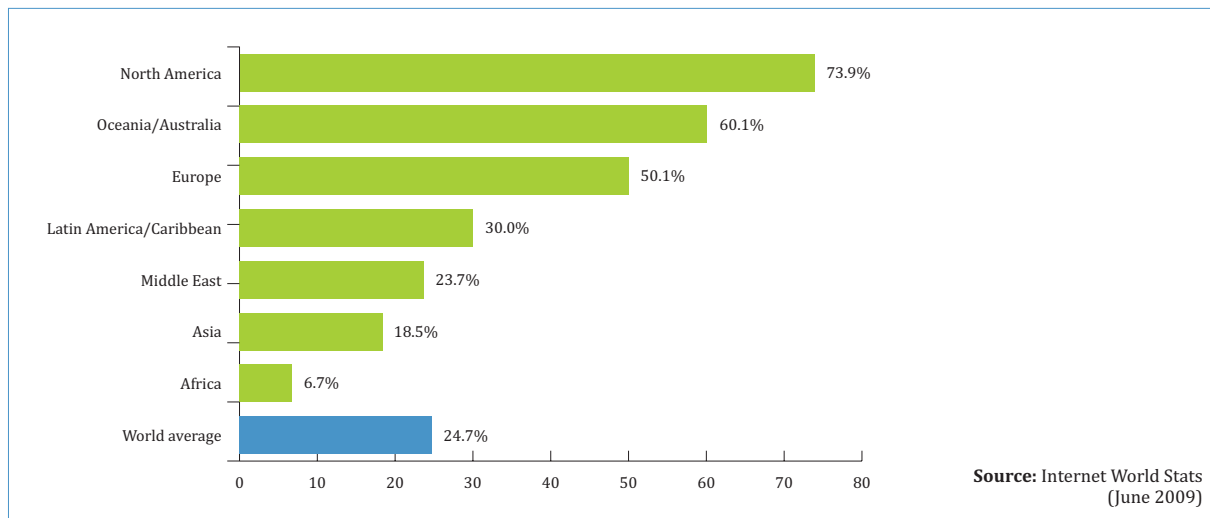
A.2 Asia's huge population (3.8bn), within the growing economies of India and China, makes it of particular interest to commercial sectors. Neither country has, as yet, permitted licensed gambling operators to enter their markets, although illegal gambling is commonplace, and Asian consumers also find their way to legitimate licensed operators based in Europe and elsewhere.

A.3 The significant growth in internet access within all markets is clear (Figure A1.2); Europe increased from 105m in 2000, to 401m in 2009 (+282.9%). Access within North America increased from 108m to 251m in the same period (+132.95), and Asia 114m to 704m (+1,359.9%).

Figure A1.2: Global Internet Users by Geographical Region in Millions (2000 & 2009)



A.4 However, Asia's internet penetration is still low, and below the global average of 24.7%; North America and Europe both boast over 50% penetration and that points to the relative maturity and strength of the economic markets and technological platforms in those regions.

Figure A1.3: Global Internet Penetration Rates by Geographical Region by Percentage (2009)

A.5 The American gambling market is also restricted; there is no real access (with the exception of racetracks who offer online horserace betting) for licensed online gambling operators, although as in the Asian market many American consumers use the internet to locate offshore gambling operators, and the effectiveness of this prohibitionist policy is highly questionable. The region has seen internet use increase by 132.9% from 2000 to 2009.

A.6 European gambling markets, notably within the EU, are currently in a state of flux as the governments of many jurisdictions attempt to reconcile the continual growth of commercial products and services via interactive platforms with national fiscal and consumer priorities.

A.7 The European Market presently has a 50.1% internet penetration rate. That allows room for significant expansion and even in the developed markets of the major economies within that region there is still considerable potential scope for ecommerce to develop.

A.8 To highlight this point, Figure A1.4 shows the known and estimated internet penetration and population growth over the period 2008-2013 for some of the major European economies.

A.9 Russia will grow the fastest, from a relatively low level of 29.1% to 45.1% user penetration by 2013. The UK will reach 70.7% penetration by that time, with Germany (64.7%), France (62.1%), Spain (62.5) and Italy (52.3%) following, and as populations continue to grow.

Figure A1.4: Internet Users and Penetration in Selected European Countries 2008-2013

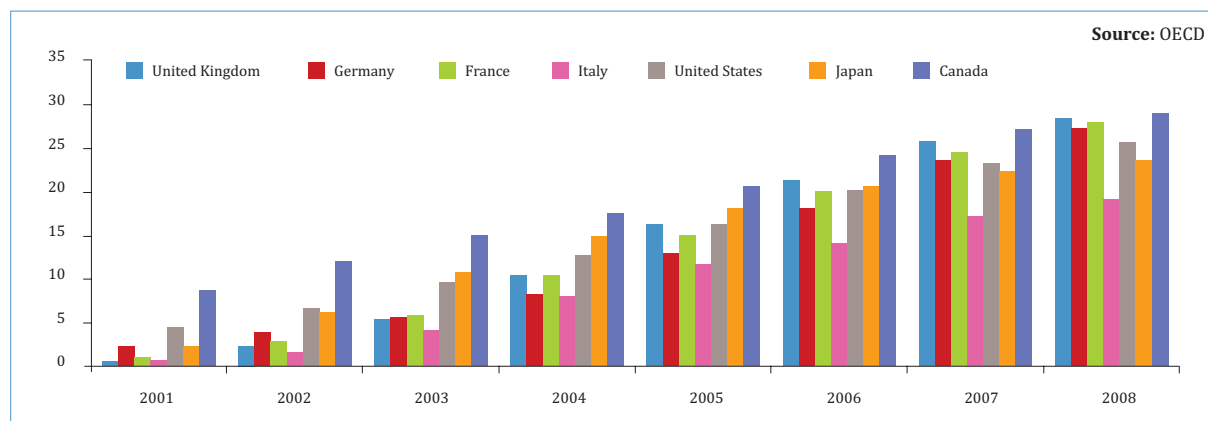
Country	2008	e2009	e2010	e2011	e2012	e2013
France % pop.	35.2m (54.9%)	37.0m (57.4%)	38.2m (59.0%)	39.1m (60.1%)	40.0m (61.2%)	40.8m (62.1%)
Germany % pop.	46.0m (55.8%)	48.0m (58.3%)	49.7m (60.4%)	51.0m (62%)	52.1m (63.4%)	53.1m (64.7%)
Italy % pop.	25.3m (43.5%)	26.4m (45.4%)	27.5m (47.3%)	28.5m (49.1%)	29.5m (50.9%)	30.3m (52.3%)
Russia % pop.	41.0m (29.1%)	45.8m (32.7%)	50.6m (36.3%)	54.9m (39.6%)	58.7m (42.5%)	61.9m (45.1%)
Spain % pop.	21.0m (51.9%)	22.4m (55.3%)	23.4m (57.8%)	24.1m (59.4%)	24.6m (60.6%)	25.1m (62.0%)
UK % pop.	38.1m (62.6%)	39.4m (64.5%)	40.6m (66.25m)	41.7m (67.8%)	42.8m (69.5%)	43.7m (70.7%)

Source: emarketer.com (Feb 2009)

Key: e = estimated

A.10 Broadband, allowing high speed internet access, is a considerable driver in the use of ecommerce. Its increasing availability and application further adds to the confidence in and appeal of economic transactions via that platform.

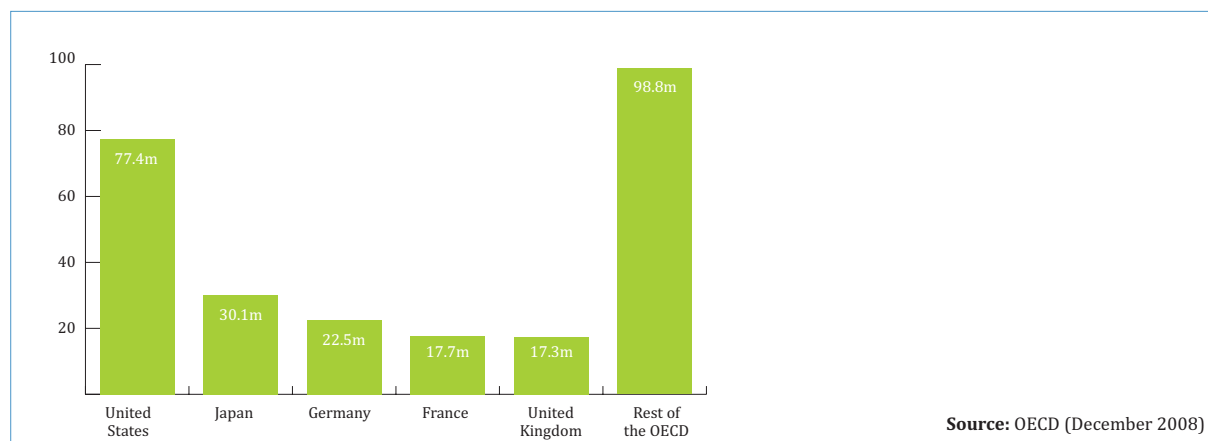
Figure A1.5: Broadband Penetration for G7 Countries (2001-2008)



A.11 Figure A1.5 (above), shows a significant increase in broadband (replacing dial-up) penetration in the major global economic markets between 2001 and 2008. Broadband penetration is now treated as a key economic indicator.³¹⁴

A.12 For the EU, broadband coverage was 21.7% in July 2008.³¹⁵ In terms of total users (Figure 2.8), broadband usage is still somewhat below general internet penetration levels (see Figures 2.4 & 2.5), representing 45% of UK penetration, 48% for Germany and 50% for France in 2008.

Figure A1.6: Largest Global Broadband Markets in Millions of Users (2008)



A.13 However, broadband access is estimated to reach 71% in Europe by 2013, with the Netherlands and Denmark leading that market penetration with 85% each. The UK is predicted to have 82% broadband penetration with Germany 72% and France expecting to reach 69% broadband penetration by that time.³¹⁶

A.14 The OECD has stated that broadband is “increasingly important as an enabling technology for structural changes in the economy, most notably via its impact on productivity growth, but also by raising product market competition in many sectors, especially in service.”³¹⁷

³¹⁴ OECD – Key Information and Communications Technologies (ICT) Indicators ³¹⁵ European Commission ‘Broadband access in the EU’ (July 2008)

³¹⁶ BizReport ‘Forrester: European broadband penetration to reach 71% by 2013’ (January 2008) ³¹⁷ OECD ‘Broadband and the Economy’ Ministerial Background Report (2008)

A.15 Further that broadband “enables the emergence of new business models, new processes, new inventions, new and improved goods and services, and it increases competitiveness and flexibility in the economy”. In addition that consumers “increasingly make use of the internet and broadband communication networks, for example, for ecommerce”.³¹⁸

Mobile Phones

A.16 The OECD has reported that mobile and broadband subscriptions “accounted for 74% of all communication subscriptions in 2007. Mobile alone accounted for 61% of all subscriptions while standard hones lines have dropped to 26%.”³¹⁹

A.17 As a result the “total number of fixed, mobile and broadband subscriptions in the OECD grew to 1.6 billion in 2007 for just over 1 billion inhabitants... Mobile subscriptions grew at a compound rate of 10% over the previous two years to push the number of OECD mobile subscriptions to 1.14 billion in 2007.”³²⁰ A decline in prices has added to availability.

A.18 There were 3.1 billion (46.8% penetration) global mobile phone subscribers in 2007, and it is predicted that this will reach 4.5 billion (64.7% penetration) by 2012. Other estimates suggest that this figure may be surpassed as early as the end of 2009.³²¹ The ‘first-generation’ mobiles are being to be replaced by new ‘ultra mobile broadband’ devices.³²²

A.19 The increasing expansion and technological developments surrounding mobile phones is also having an important impact with regard to ecommerce, as the availability of broadband on those devices develops. It is predicted that 50% of the European population will have access to the internet through broadband on their mobile phones by 2012.³²³

A.20 It is also predicted that mobile broadband “will grow to 148 million connections in Europe by 2014, accounting for almost half of all European broadband connections”.³²⁴ Global mobile broadband subscriptions are expected to reach 600 million by the end of 2009.³²⁵ This will further enhance consumers’ ability to access goods and services around the globe.

³¹⁸ Ibid. ³¹⁹ OECD ‘Communications Outlook 2009’ Executive Summary ³²⁰ Ibid. ³²¹ Prlog.org ‘Global Mobile Phone Subscribers to Reach 4.6 Billion by End of 2009’ (October 2009) ³²² Cuellar news ‘Global Mobile Phone Subscribers to Reach 4.5 Billion by 2012’ (March 2008) ³²³ Cuellar news ‘50% Mobile Broadband Penetration in Europe Within 5 Years’ (March 2008) ³²⁴ Paidcontent.co.uk ‘European Mobile Broadband Market Will Grow To €23 Billion, 148 Million Connections By 2014’ (Feb 2009) ³²⁵ Prlog.org ‘Global Mobile Phone Subscribers to Reach 4.6 Billion by End of 2009’ (October 2009)

Appendix B:

CONSULTATION QUESTIONNAIRES

Sports Betting Questionnaire: Sporting Organisations

- Q1. What intellectual property (IP) rights do you believe that you have ownership of (and why), and do licensed betting operators³³³ pay your sport³³⁴ for using them?
- Q2. What other businesses or industries use sports-related IP, what payment arrangements do you have in place with them, and are there any businesses that you believe should not have to pay (and why)?
- Q3. If you do not believe that the present IP arrangement operates effectively, what framework would you like to see introduced and how would that be accommodated, notably across borders, within the prevailing national and international legal parameters?
- Q4. Where a commercial IP arrangement is in place between sports and the licensed betting industry, to what sporting organisation/s is the revenue sent/who has ownership of what IP (e.g. the clubs/teams, governing bodies), noting the various domestic and international sporting events?
- Q5. Notwithstanding current arrangements, what level of income do you believe that licensed betting operators should contribute and explain what difference this would make to your sport?
- Q6. Do you and/or the clubs/teams/sportspeople associated with your organisation have any commercial relationships with licensed betting operators (e.g. sponsorship, advertising, picture rights), what is the scope of that, and what do you perceive as the positive/negative aspects of that partnership?
- Q7. Does your sport receive any charitable or voluntary donations from licensed betting operators (if so, what is the scope and nature)?
- Q8. In your opinion, does betting on sport add value, or detract from, the sporting event and any associated commercial activities (e.g. is your audience size larger when people are able to bet on that sporting event)?
- Q9. What would be the impact on your sport, in both commercial and integrity terms, if licensed betting operators stopped offering betting on your sport (e.g. in the event of a betting right for sports that prohibited betting) and consequently halted all other commercial arrangements such as sponsorship and advertising?
- Q10. Should sport be treated any differently from other economic activities (e.g. should it have exemptions from certain laws and what would be the balancing mechanism to ensure fairness and to prevent anti-competitive practices)?
- Q11. What do you perceive to be the principal challenges to the integrity of your sport, noting the various platforms that are available (shops, internet etc), from: a) licensed sports betting; and b) unlicensed sports betting, and how can those issues be overcome?
- Q12. How many occurrences of suspicious betting on sport have there been in your area of jurisdiction in each of the last 5 years, how many occurrences have there been of proven corruption (please specify how this has been deemed proven), and how does this figure compare to the scale of betting on your sport?
- Q13. Do you have personnel within your organisation dedicated to investigating betting irregularities on your sport, what is the annual cost (please provide information on the size of your investigating unit and contact details of your integrity personnel), how is this funded, and what is your step-by-step method of investigation and prosecution?
- Q14. Does your organisation, and/or the sporting clubs etc associated with it, take account of the need to fund your own integrity operations when negotiating commercial deals (e.g. sponsorship, advertising) with licensed betting operators (e.g. what percentage of your commercial betting income goes on betting integrity)?
- Q15. Do other bodies within your sport also have personnel investigating betting irregularities, how is that funded, how do you co-operate, delineate responsibility and mitigate potential duplication to ensure an effective and efficient approach?

³³³A licensed betting operator is deemed to be one licensed in any jurisdiction ³³⁴The term 'sports' also includes sporting events such as the Olympic Games

Q16. Do you have rules regarding players and officials associated with your sport and betting (please include the text), and if so, what sanctions are in place, how are they enforced, and how often has this been enforced in each of the last 5 years?

Q17. Should sports betting integrity issues be coordinated primarily at international level (e.g. FIFA, IOC) or at a national level, and who should MoUs therefore be agreed with?

Q18. Do you have a betting integrity Memorandum of Understanding (MoU) with licensed betting operators or trade associations to identify and deter corrupt practices (please provide details) and how do you ensure an effective interaction with licensed betting operators more generally?

Q19. Do you believe that these MoUs are effective, and/or would you like to see the scope of these MoUs extended, and the protection of sporting integrity more generally (e.g. by law enforcement agencies), and for what reasons?

Q20. Would you be prepared to discuss establishing a betting integrity MoU with the RGA (if 'yes' please provide contact details. If 'No', please explain why not)?

Q21. Do have any training and education programmes for players and officials associated with your sport regarding the impact of betting, and would you be prepared to discuss establishing one in partnership with the RGA?

Q22. Would you be prepared to have further discussions with the RGA on integrity, and how can dialogue between sports and licensed betting operators be improved more generally?

Q23. What is your view of the role and responsibility of the media in reporting suspicious betting activity on sport in relation to all of the affected parties (sports, players, betting operators) e.g. does it provide an important public service, or misrepresent the issue to the detriment of your sport's reputation and that of licensed betting operators?

Q24. Is there any additional information that you would like to provide?

Sports Betting Questionnaire: Governments and Gambling Regulators

Q1. What is the nature of your gambling market (e.g. state monopoly, mix of public and private operators) and do you allow your licensed operators to offer sports betting (please specify the platforms e.g. in shops, via the internet)?

Q2. Do your licensed gambling operators contribute towards sport in your country, through what system/s (e.g. direct taxation, lottery funds, commercial arrangements) and how much (broken down into each platform e.g. gaming, lotteries, sports betting) in each of the last 5 years?

Q3. How much of this has gone directly to grassroots sport and how much to professional sport (please provide figures for each of the last 5 years)?

Q4. Do your licensed operators take bets on sporting events occurring in other countries and what happens to the profits from those bets (e.g. are they transmitted to those countries' sports, international sporting bodies or go towards your country's sports, and why)?

Q5. What are your views on the availability of cross-border gambling on sport (e.g. internet) and what: a) opportunities; and b) challenges, does it present for your government, gambling regulator and sports (both domestic and international)?

Q6. What intellectual property (IP) right arrangement does your country have in place, notably for sports, and do licensed betting operators³³⁵ pay your sports³³⁶ for using sporting IP?

Q7. If you do not believe that the present IP arrangement operates effectively, what framework would you like to see introduced and how would that be accommodated, notably across borders, within the prevailing national and international legal parameters?

³³⁵A licensed betting operator is deemed to be one licensed in any jurisdiction ³³⁶The term 'sports' also includes sporting events such as the Olympic Games

Q8. What other businesses or industries (e.g. print media) use sports-related IP and what commercial arrangements are in place to pay your sports for use of that IP?

Q9. Where a commercial IP arrangement is in place between the licensed betting industry and sports, to what sporting organisation/s is the revenue sent/who has ownership of what sports-related IP rights (e.g. the clubs/teams, governing bodies), noting the various domestic and international sporting events?

Q10. Should sport be treated any differently from other economic activities (e.g. should it have exemptions from certain laws and what would be the balancing mechanism to ensure fairness and to prevent anti-competitive practices)?

Q11. What do you perceive to be the principal challenges to the integrity of sport, noting the various platforms that are available (shops, internet etc), from: a) licensed sports betting; and b) unlicensed sports betting, and how can those issues be overcome?

Q12. Should sports take account of the need to fund their own integrity operations when negotiating commercial deals (e.g. sponsorship, advertising) with licensed betting operators?

Q13. What laws (e.g. prosecution, ability to void bets or suspend a betting market) or law enforcement bodies do you have in place (or are developing) to deter and punish those that seek to corrupt sporting events via betting and how many times this has been enforced in each of the last 5 years?

Q14. Do you have personnel within your law enforcement or gambling regulatory organisation dedicated to investigating betting irregularities related to sport, what is the annual cost (please provide information on the size of your investigation unit and contact details of these integrity personnel), how is this funded (e.g. gambling licences) and what is your step-by-step method of investigation and prosecution?

Q15. How do you go about determining what represents suspicious betting on sport?

Q16. How many occurrences of suspicious betting on sport have there been in your country in each of the last 5 years, how many occurrences have there been of proven corruption (please specify how this has been deemed proven), and how does this figure compare to the scale of betting on sport?

Q17. Do you co-operate with other governments, gambling regulators and sporting bodies (domestic and international) to protect sport from corrupt betting practices (please detail these parties, through what forum and how often this interaction occurs)?

Q18. Are your licensed gambling operators part of this information gathering process and is there a legal obligation on them to provide information on suspicious sports betting (please provide the text of any legislative and/or licence conditions)?

Q19. Do you encourage sporting organisations and/or licensed betting operators to: a) provide training and education programmes regarding betting; b) rules regarding players and officials betting on sport; and c) betting integrity Memorandum of Understanding (MoU) between sports and licensed betting operators to identify and deter corrupt practices?

Q20. How can dialogue between sports and betting operators be improved?

Q21. What is your view of the role and responsibility of the media in reporting suspicious betting activity on sport in relation to all of the affected parties (sports, players, betting operators) e.g. does it provide an important public service, or misrepresent the issue to the detriment of the reputation of sport and that of licensed betting operators?

Q22. Is there any additional information that you would like to supply?

Sports Betting Questionnaire: Non-RGA Betting Operators and Trade Associations

- Q1. What is the scope and nature of your funding relationship with sports³³⁷ and the participants in their events (e.g. sponsorship, advertising, levies, intellectual property (IP) rights)?
- Q2. Do you pay any sports for using sports-related IP (if so, on what legal/commercial basis), and what is your view of the scope of sports' IP ownership?
- Q3. Do you believe that the present IP arrangement operates effectively (if not, then what framework would you like to see introduced and how would that be accommodated, notably across borders, within the prevailing national and international legal parameters)?
- Q4. What is your legal view of the ability of government/s to introduce and enforce a cross-border requirement for licensed betting operators to pay sporting operators for using sporting IP, for example in the European Union or across the world?
- Q5. Should sport be treated any differently from other economic activities (e.g. should it have exemptions from certain laws and what would be the balancing mechanism to ensure fairness and to prevent anti-competitive practices)?
- Q6. If you were licensed in a country, or economic area (e.g. European Union), which decided to introduce a measure forcing all of its licensed betting operators to pay sports for the use of sports-related IP, substantially above current levels, what would be the reaction of your business?
- Q7. If you had no alternative but to pay sports (e.g. via a sports betting right) to use sports-related IP, how would this impact on the other commercial activities (e.g. sponsorship, advertising) you presently have with sporting organisations (and to what degree)?
- Q8. Do you provide any charitable or voluntary donations to any sporting organisations (if so, what is the scope and nature)?
- Q9. Do you presently have a sports betting licence in more than one jurisdiction (and if so, why) and does each licensing jurisdiction require you to advise sports of betting irregularities (and if not, would you support that as a general licensing requirement)?
- Q10. How do you go about determining what represents suspicious betting on sport?
- Q11. How many occurrences of suspicious betting on sport has your business witnessed in each of the last 5 years, how many occurrences have there been of proven corruption (please specify how this has been deemed proven), and how does this figure compare to the scale of betting on sport?
- Q12. With what sporting organisations do you have betting integrity Memorandum of Understanding (MoU), through: a) your organisation; and b) in conjunction with another betting operator or trade association (please provide a copy of a standard MoU text)?
- Q13. How effective would you rate these MoUs, would you like to see the scope of these MoUs extended, and the protection of sporting integrity more generally (e.g. by law enforcement agencies, gambling regulators), and for what reasons?
- Q14. Should sports betting integrity issues be primarily coordinated at international sporting level (e.g. FIFA, IOC) or at a national level, and who should MoUs therefore be agreed with?
- Q15. In your experience, how approachable have sports been to engaging with licensed betting operators to protect the integrity of sport, and which sporting organisations have refused to sign MoUs with you, or a trade association you are affiliated to, and why?

³³⁷ The term 'sports' also includes sporting events such as the Olympic Games

Q16. How effective have you found the integrity operations of sporting organisations, notably in reacting to information that you have provided, to identify, punish and deter corrupt betting practices associated with their sport?

Q17. Do sporting organisations have, and enforce, sufficient rules regarding the activities of players and officials towards betting on their sport, and what role should licensed betting operators play in enforcing any rules?

Q18. Should sporting organisations have training and education programmes for players and officials regarding the impact of betting, and should licensed betting operators contribute to that process?

Q19. Should sports take account of the need to fund their own integrity operations when negotiating commercial deals (e.g. sponsorship, advertising) with betting operators?

Q20. Do you have personnel within your organisation dedicated to investigating betting irregularities on sport and what is the annual cost (please provide information on the size of your investigation unit and contact details of your integrity personnel)?

Q21. What do you perceive to be the principal challenges to the integrity of sport, noting the various platforms that are available (shops, internet etc), with regard to: a) licensed sports betting; and b) unlicensed sports betting, and how can those issues be overcome?

Q22. How can dialogue between sports and betting operators be improved more generally?

Q23. What is your view of the role and responsibility of the media in reporting suspicious betting activity on sport in relation to all of the affected parties (sports, players, betting operators) e.g. does it provide an important public service, or misrepresent the issue to the detriment of the reputation of sport and that of licensed betting operators?

Q24. Is there any additional information that you would like to provide?

Sports Betting Questionnaire: Other Interested Parties

Q1. What is the scope of your interest in the sporting and/or gambling sectors, and do you have any commercial relationships with these sectors (e.g. advertising, sponsorship) and what is the scope of that?

Q2. Do you use sporting IP such as competition and fixture lists in your commercial activities, and do you pay sports³³⁸ for the use of that sports-related IP (if so, on what commercial grounds, and if not, why)?

Q3. Should there be cross-border trade restrictions on the ability of licensed online betting operators³³⁹ to offer sports betting services, and if so why should this service be treated differently from other services (such as your own) available on the internet?

Q4. In your opinion, does betting on sport add value, or detract, from the sporting event and any associated commercial activities (please explain your answer)?

Q5. In your opinion, what would be the impact, in both commercial and integrity terms, if licensed betting operators stopped offering betting on a sport, or were forced to stop providing betting (e.g. in the event of sports being given the right to determine who, if anyone, can provide betting on their sport) and consequently halted all other commercial arrangements such as sponsorship and advertising?

Q6. What do you perceive to be the principal challenges to the integrity of sport, noting the various platforms that are available (shops, internet etc), from: a) licensed sports betting; and b) unlicensed sports betting, and how can those issues be overcome?

³³⁸ The term 'sports' also includes sporting events such as the Olympic Games ³³⁹ A licensed betting operator is deemed to be one licensed in any jurisdiction

Q7. Should sports have rules regarding their players and officials betting on their sport, what should these rules encompass and should licensed betting operators help enforce these rules (and how)?

Q8. Should sports and licensed betting operators each have personnel dedicated to protecting sport and licensed betting companies from corrupt betting practices and how should they interact e.g. agree betting integrity Memorandum of Understanding (MoU)?

Q9. Should sports betting integrity issues be primarily coordinated at international level (e.g. FIFA, IOC) or at a national level, and who should MoUs therefore be agreed with?

Q10. Should sports take account of the need to fund their own integrity operations when negotiating commercial deals (e.g. sponsorship, advertising) with licensed betting operators?

Q11. Should sports have training and education programmes for players and officials regarding the impact of betting, and should licensed betting operators contribute to that process?

Q12. What more could be done to safeguard the integrity of sport?

Q13. If you obtain information regarding the integrity of a sport or sporting event (e.g. doping, betting corruption), how do you go about advising sports of that information?

Q14. Should sport be treated any differently from other economic activities (e.g. should it have exemptions from certain laws and what would be the balancing mechanism to ensure fairness and to prevent anti-competitive practices)?

Q15. What is your view of the role and responsibility of the media in reporting suspicious betting activity on sport in relation to all of the affected parties (sports, players, betting operators) e.g. does it provide an important public service, or misrepresent the issue to the detriment of the reputation of sport and that of licensed betting operators?

Q16. Is there any additional information that you would like to provide?

Appendix C: WRITTEN RESPONSES

Table 1: International sports governing bodies

Sporting organisations (in alphabetical order)	Invitation letter and email sent	Response from Organisation	Response via SROC	Comments
Asian Football Confederation (AFC)	✓	✗	✗	No response received
Association of Tennis Professionals (ATP)	✓	✗	✗	No response received
Commonwealth Games Federation (CGF)	✓	✗	✗	No response received
Confederation of African Football (CAF)	✓	✗	✗	No response received
Confederation of North, Central American and Caribbean Association Football (CONCACAF)	✓	✗	✗	No response received
Fédération Internationale de Football Association (FIFA)	✓	✓	✓	Joint response with UEFA Also a member of SROC
Federation Internationale de L'Automobile (FIA)	✓ PO	✗	✗	Referred commercial issues to the rights holders - Formula One & World Rally (see Table 3) Declined to respond regarding integrity issues
Federation Internationale de Motorcyclismo (FIM)	✓ PO	✗	✗	No response received
Fédération Internationale de Natation (FINA)	✓	✗	✗	No response received
Federation Internationale de Ski (FIS)	✓	✗	✗	No response received
Gaelic Athletic Association (GAA)	✓	✗	✗	No response received
International Association of Athletics Federations (IAAF)	✓	✗	✓	Member of SROC
International Baseball Federation (IBAF)	✓	✗	✗	No response received
International Boxing Federation (IBF)	✓	✗	✗	No response received
International Boxing Organisation (IBO)	✓	✗	✗	No response received
International Cricket Council (ICC)	✓	✗	✓	Member of SROC
International Federation of Horseracing Authorities (IFHA)	✓ PO	✗	✓	Member of SROC
International Handball Federation (IHF)	✓	✗	✗	No response received
International Hockey Federation	✓	✗	✗	No response received
International Ice Hockey Federation (IIHF)	✓	✗	✗	No response received
International Olympic Committee (IOC)	✓	✓	✗	Full response
International Paralympic Committee (IPC)	✓	✗	✗	No response received
International Rugby Board (IRB)	✓	✗	✓	No detailed information regarding the IRB - forwarded SROC response
International Sport Combat Federation (ISCF)	✓	✗	✗	No response received

Table 1: International sports governing bodies (continued)

Sporting organisations (in alphabetical order)	Invitation letter and email sent	Response from Organisation	Response via SROC	Comments
International Tennis Federation (ITF)	✓	✗	✓	Declined to respond - deferred to the Tennis Integrity Unit (Table 3) Member of SROC
International World Games Association (IWGA)	✓	✗	✗	No response received
Oceania Football Confederation (OFC)	✓	✗	✗	No response received
Professional Golfers' Association European Tour	✓ PO	✗	✓	Member of SROC
Rugby League International Federation (RLIF)	✓ PO	✗	✗	Member of SROC
South American Football Confederation (CONMEBOL)	✓	✗	✗	No response received
Union Cycliste Internationale (UCI)	✓	✗	✗	No response received
Union of European Football Associations (UEFA)	✓	✓	✓	Joint response with FIFA Member of SROC
Women's Tennis Association (WTA)	✓ PO	✗	✗	Referred to the Tennis Integrity Unit (see Table 3) No response regarding commercial issues
World Bowls Ltd	✓	✗	✗	No response received
World Boxing Association (WBA)	✓	✗	✗	No response received
World Boxing Council (WBC)	✓	✗	✗	No response received
World Boxing Organisation (WBO)	✓	✗	✗	No response received
World Darts Federation	✓	✗	✗	No response received
World Greyhound Racing Federation (WGRF)	✓	✗	✗	No response received
World Professional Billiards and Snooker Association (WPBSA)	✓	✗	✓	Member of SROC

Table 2: National sports governing bodies

Sporting organisations (in alphabetical order)	Invitation letter and email sent	Response from Organisation	Response via SROC	Comments
American Greyhound Track Operators Association (AGTOA)	✓ PO	✗	✗	No response received
Argentine Football Association	✓	✗	✗	No response received
Australian Greyhound Racing Association	✓	✗	✗	No response received
Australian Racing Board (ARB)	✓	✗	✗	No response received
Australian Rugby League	✓	✗	✓	Member of SROC
Australian Rugby Union	✓	✗	✓	Member of SROC
Austrian Football Association	✓	✗	✗	No response received
Belgium Football Association	✓	✗	✗	No response received
Board of Control for Cricket in India (BCCI) and Indian Premier League	✓	✗	✓	Member of SROC
Brazilian Football Confederation	✓	✗	✗	No response received
British Horseracing Authority (BHA)	✓	✗	✓	Member of SROC
Chinese Football Association	✓	✗	✗	No response received
Cricket Australia	✓	✗	✓	Member of SROC
Cricket South Africa	✓	✗	✗	No response received
England and Wales Cricket Board (ECB)	✓	✓	✓	Forwarded SROC response – provided limited information regarding the ECB
English Rugby Football League (RFL)	✓	✗	✓	Forwarded SROC response
English Rugby Football Union (RFU)	✓ PO	✗	✓	Member of SROC
Finnish Football Association	✓	✗	✗	No response received
Football Association (FA) [of England]	✓	✓	✓	Endorsed CCPR and SROC submissions – provided some additional information regarding the FA's position
Football Association of Ireland	✓	✗	✗	No response received
French Football Federation	✓	✗	✗	No response received
French Horse Racing Authority (France Gallop)	✓	✗	✗	No response received
French Rugby Federation	✓ PO	✗	✗	No response received
German Football Association	✓	✗	✓	Member of SROC
German Horseracing Authority	✓	✗	✗	No response received
Greyhound Board of Great Britain (GBGB)	✓	✗	✗	No response received
Hong Kong Jockey Club	✓	✗	✗	No response received

Table 2: National sports governing bodies (continued)

Sporting organisations (in alphabetical order)	Invitation letter and email sent	Response from Organisation	Response via SROC	Comments
Horse Racing Ireland	✓	✗	✗	No response received
Hungarian Football Federation	✓	✗	✗	No response received
Indian Cricket League (ICL)	✓	✗	✗	No response received
Irish Greyhound Board	✓	✗	✗	No response received
Irish Rugby Football Union (IRFU)	✓	✗	✗	No response received
Irish Turf Club	✓	✗	✗	No response received
Italian Football Federation	✓	✗	✗	No response received
Italian Rugby Federation	✓	✗	✗	No response received
Japan Racing Association	✓	✗	✗	No response received
National Association for Stock Car Auto Racing (NASCAR)	✓	✗	✗	No response received
National Basketball Association (NBA)	✓	✗	✗	No response received
National Football League (NFL)	✓	✗	✗	No response received
Netherlands Football Association	✓	✗	✗	No response received
New Zealand Cricket	✓	✗	✗	No response received
New Zealand Rugby League	✓	✗	✗	No response received
New Zealand Rugby Union	✓	✗	✗	No response received
Pakistan Cricket Board (PCB)	✓	✗	✗	No response received
Polish Football Association	✓	✗	✗	No response received
Portuguese Football Federation	✓	✗	✗	No response received
Professional Golfers' Association of America (PGA)	✓	✗	✗	Declined to engage in the consultation
Russian Football Association	✓	✗	✗	No response received
Scottish Football Association (SFA)	✓	✗	✗	No response received
Scottish Rugby Union	✓	✗	✗	No response received
South African Football Association	✓	✗	✗	No response received
South African Rugby Football Union	✓	✗	✗	No response received
Spanish Football Federation	✓	✗	✗	No response received
Swedish Football Association	✓	✗	✗	No response received
Ukraine Football Federation	✓	✗	✗	No response received
Welsh Rugby Football Union (WRFU)	✓	✗	✗	No response received
West Indies Cricket Board	✓	✗	✗	No response received

Table 3: Other (non-governmental) sporting organisations

Sporting organisations (in alphabetical order)	Invitation letter and email sent	Response from Organisation	Response via SROC	Comments
Central Council of Physical Recreation (CCPR)	✓	✓	✗	Broad response for CCPR members – no individual information regarding integrity mechanisms etc.
Darts Regulatory Authority (DRA)	✓	✗	✗	No response received
Early Warning System GmbH	✓	✗	✗	Declined to respond, deferring to FIFA
English Football League	✓	✗	✓	Member of SROC
European Club Association (ECA)	✓	✗	✗	No response received
European Elite Athletes Association (EEAA)	✓	✗	✗	No response received
European Non-Governmental Sports Association (ENGSO)	✓	✗	✗	No response received
European Professional Football Leagues (EPFL)	✓	✗	✓	Member of SROC
Fédération Internationale des Associations de Footballeurs Professionnels (FIFPro)	✓	✗	✗	No response received
Football DataCo	✓	✓	✓	Response received Member of SROC
Formula One Management [commercial rights holder]	✓	✗	✓	Forwarded SROC response
General Association of International Sports Federations (GAISF) – now SportAccord	✓	✗	✗	Declined to respond
Horserace Betting Levy Board	✓	✓	✗	Limited response
Premier League	✓	✗	✓	Member of SROC
Premier Rugby Ltd	✓	✗	✓	Member of SROC
Professional Players Federation (PPF)	✓	✓	✗	Full response
Sports Rights Owners Coalition (SROC)	✓	✓	✓	Broad response for SROC members – no individual information regarding integrity mechanisms etc.
Tennis Integrity Unit (TIU)	✓	✓	✗	Declined to respond to the questionnaire, but open to discussion regarding integrity
World Rally Championship [commercial rights holder]	✓	✗	✗	No response received

Table 4: Governments and regulators (EU Member States)

Country [Minister/s] (in alphabetical order)	Invitation letter and email sent	Response received	Comments
Austria	✓	✓	Limited response, deferred some questions the Austrian Lottery – no response from that organisation
Belgium	✓	✗	No response received
Bulgaria	✓	✗	No response received
Cyprus	✓	✗	No response received
Czech Republic	✓	✗	No response received
Denmark	✓	✗	No response received
Estonia	✓	✗	No response received
Finland	✓	✗	No response received
France	✓	✗	No response received
Germany	✓	✗	Declined to respond stating that the information is not held centrally and would be too costly to gather. Suggested emailing each German state. Only the state of Hessen replied, providing a short synopsis of its legislation.
Greece	✓	✗	No response received
Hungary	✓	✗	No response received
Ireland	✓	✗	No response received
Italy	✓	✓	Full response provided
Latvia	✓	✓	Outline of legislative position provided
Lithuania	✓	✗	No response received
Luxembourg	✓	✗	No response received
Malta	✓	✓	Response provided
Netherlands	✓	✗	No response received
Poland	✓	✓	Detailed response provided
Portugal	✓	✗	No response received
Romania	✓	✗	No response received
Slovakia	✓	✗	Advised that this issue falls within the remit of the Ministry of Finance. Forwarded to that Department, but no response.
Slovenia	✓	✗	No response received
Spain	✓	✗	No response received
Sweden	✓	✗	Declined to respond
United Kingdom (including Scottish, Northern Irish and Welsh Sports Ministers)	✓	✗	The Scottish Minister declined to respond. No response from the UK Government, Welsh assembly or Northern Irish Executive. The British Gambling Commission referred to integrity papers on its website, but declined to respond to the questionnaire.

Table 5: Governments and regulators (Non-EU countries)

Country [Minister/s] (in alphabetical order)	Invitation letter and email sent	Response received	Comments
Alderney	✓	✓	Full response from the gambling regulator
Antigua and Barbuda	✓	✗	No response received
Australia	✓	✗	Advised that the Australian Government is monitoring this issue but did not respond to the questionnaire
China	✓	✗	No response received
Gibraltar	✓	✓	Full response from the gambling regulator
India	✓	✗	No response received
Isle of Man	✓	✓	Full response from gambling regulator
Russian Federation	✓	✗	No response received
South Africa	✓	✗	No response received
United States of America	✓	✗	No response received

Table 6: Non-RGA betting operators and trade associations

Betting Operators and Trade Associations (in alphabetical order)	Invitation letter and email sent	Response received	Comments
188bet	✓	✗	No response received
Association of British Bookmakers (ABB)	✓	✓	Full response
Australian Bookmakers' Association	✓	✗	No response received
Bet24	✓	✗	No response received
Betfred	✓	✗	No response received
Bwin	✓	✗	No response received. Member of EGBA
European Football Pool	✓	✗	Declined to respond
European Gaming and Betting Association (EGBA)	✓	✓	Full response
European Sports Security Association (ESSA)	✓	✓	Full response
European State Lottery and Toto Association	✓	✗	No response received
Gala Coral	✓	✓	Full response
Interactive Gaming Council (IGC)	✓	✗	No response received
Irish Bookmakers' Association	✓	✗	No response received
Mansion	✓	✗	No response received
Pari Mutuel Europe (EPMA)	✓	✗	No response received
Sporting Index	✓	✓	Full response
Spreadex	✓	✗	No response received
Tabcorp	✓	✗	No response received
World Lottery Association	✓	✗	No response received

Table 7: Other interested parties

Organisations (in alphabetical order)	Invitation letter and email sent	Response received	Comments
365 Media Group [sports journal publisher]	✓	✗	No response received
Adidas	✓	✗	No response received
African Union	✓ PO	✗	No response received
AOL	✓	✗	No response received
ARD [German TV broadcaster]	✓	✗	No response received
Association of Southeast Asian Countries (ASEAN)	✓	✗	No response received
ASEANAPOL	✓	✗	No response received
Australian Press Association (APA)	✓	✗	No response received
Betview [sports betting publication]	✓	✗	No response received
British Broadcasting Company (BBC) [global TV, radio and online platforms]	✓	✗	No response received
British Sky Broadcasting (BSkyB)	✓	✓	Full response
Canel+ [French broadcaster]	✓	✗	No response received
CCTV [Chinese broadcaster]	✓	✗	No response received
Channel 4 [UK broadcaster]	✓	✗	No response received
Channel 5 [UK broadcaster]	✓	✗	No response received
Channel One [Russian broadcaster]	✓	✗	No response received
Council of Europe Enlarged Partial Agreement on Sport	✓	✗	No response received
Declan Hill [investigative journalist]	✓	✗	Declined to respond
Electronic Frontier Foundation	✓	✗	No response received
ESPN [sports broadcaster]	✓	✗	No response received
EurolSPA (pan European Association of European Internet Service Providers Associations)	✓	✗	No response received
European Broadcasting Union (EBU)	✓	✗	No response received
European Commission	✓	✗	Declined to respond, but expressed interest in the study and the results
European Football Agents Association (EFAA)	✓	✗	No response received
European Publishers Council	✓	✗	No response received
European Sports Magazines	✓	✗	No response received
Europol	✓	✗	No response received
Eurosport [sports broadcaster]	✓	✗	No response received
Federal Bureau of Investigation (FBI)	✓	✗	No response received
Fox Sports [US sports broadcaster]	✓	✗	No response received
Free Press	✓	✗	No response received
Gaming Business Media LLP	✓	✗	No response received
Gay and Lesbian International Sport Association (GLISA)	✓	✗	No response received

Table 7: Other interested parties (continued)

Organisations (in alphabetical order)	Invitation letter and email sent	Response received	Comments
Google	✓	✗	No response received
Harris Hagan Solicitors [gambling law specialists]	✓	✓	Full and detailed response
Independent Betting Arbitration Service (IBAS)	✓	✗	No response received
Independent Television Company (ITV) [UK broadcaster]	✓	✗	No response received
International Association for the Protection of Intellectual Property (AIPPI)	✓	✗	No response received
International Association of Sports Newspapers (IASN)	✓	✗	No response received
International Sports Press Association (ISPA)	✓	✗	No response received
Interpol	✓	✗	No response received
La Gazzetta dello Sport [Italian sports paper]	✓	✗	No response received
Lance! [Brazilian sports paper]	✓	✗	No response received
L'Équipe [French sports paper]	✓	✗	No response received
Marca [Spanish sports paper]	✓	✗	No response received
Mediaset [Italian broadcaster]	✓	✗	No response received
News Corporation	✓	✗	No response received
News Media Coalition	✓	✗	No response received
Nike	✓	✗	Declined to respond
Play the Game	✓	✗	Declined to respond
Press Association (PA)	✓	✓	Full response provided
Racing Post [UK sports paper]	✓	✗	No response received
Radio Televisione Italiana (RAI)	✓	✗	No response received
Reuters	✓	✗	No response received
Serious Organised Crime Agency [UK law enforcement body]	✓	✗	No response received
Setanta Sports [sports satellite service]	✓	✗	No response received
Sport Business International [sports publication]	✓	✗	No response received
Sports Illustrated [American sports paper]	✓	✗	No response received
Sports Journalists' Association of Great Britain	✓	✗	No response received
Sports Nippon [Japanese sports paper]	✓	✗	No response received
STATS LLC [sports technology, data and editorial company]	✓	✗	No response received
Sunset+Vine [UK production company]	✓	✗	No response received
World Anti-Doping Agency (WADA)	✓	✗	Declined to respond
World Association of Newspapers (WAN)	✓	✗	No response received
World Intellectual Property Organisation	✓	✗	No response received
World Trade Organisation	✓	✗	No response received
Yahoo	✓	✗	No response received

Appendix D: EU TREATY ARTICLES

Article 3 TEU (ex Article 2)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Right of Establishment

Article 49 TFEU (ex Article 43 TEC)

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

Services

Article 56 TFEU (ex Article 49 TEC)

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

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Aids Granted by States

Article 107 TFEU (ex Article 87 TEC)

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
2. The following shall be compatible with the internal market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the internal market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment; and of the regions referred to in Article 349, in view of their structural, economic and social situation;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
 - (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 108 TFEU (ex Article 88 TEC)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109 TFEU (ex Article 89 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

Education, Vocational Training, Youth And Sport

Article 165 TFEU (ex Article 149 TEC)

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

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 education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education,
- 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.

Consumer Protection

Article 169 TFEU (ex Article 153 TEC)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;
 - (b) measures which support, supplement and monitor the policy pursued by the Member States.
3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 2(b).
4. Measures adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. The Commission shall be notified of them.

The Court of Justice of The European Union

Article 258 TFEU (ex Article 226 TEC)

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Appendix E: ECJ CASE LAW

Case C-243/01

Reference for a preliminary ruling from the Tribunale di Ascoli Piceno): Piergiorgio Gambelli and Others

(Right of establishment (Freedom to provide services (Collection of bets on sporting events in one Member State and transmission by internet to another Member State (Prohibition enforced by criminal penalties (Legislation in a Member State which reserves the right to collect bets to certain bodies)

Summary of the Judgment (6 November 2003)

In Case C-243/01: Reference to the Court under Article 234 EC by the Tribunale di Ascoli Piceno (Italy) for a preliminary ruling in the criminal proceedings before that court against Piergiorgio Gambelli and Others on the interpretation of Articles 43 EC and 49 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward (Rapporteur), R. Schintgen, F. Macken, N. Colneric and S. von Bahr; Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator; for the Registrar, has given a judgment on 6 November 2003, in which it has ruled:

National legislation which prohibits on pain of criminal penalties the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or authorisation from the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 and 49 EC respectively. It is for the national court to determine whether such legislation, taking account of the detailed rules for its application, actually serves the aims which might justify it, and whether the restrictions it imposes are disproportionate in the light of those objectives.

Case C-203/02

The British Horseracing Board Ltd and Others v. William Hill Organization Ltd

(Reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division))

(Directive 96/9/EC – Legal protection of databases – Sui generis right – Obtaining, verification or presentation of the contents of a database – (In)substantial part of the contents of a database – Extraction and re-utilisation – Normal exploitation – Unreasonable prejudice to the legitimate interests of the maker – Horseracing database – Lists of races – Betting)

Summary of the Judgment (9 November 2004)

1. Approximation of laws – Legal protection of databases – Directive 96/9 – Definition of investment in the obtaining, verification or presentation of the contents of a database – Resources used to draw up and verify lists of horses entered in horse races – Not included (European Parliament and Council Directive 96/9, Art. 7(1))
2. Approximation of laws – Legal protection of databases – Directive 96/9 – Definitions of extraction and re-utilisation of the contents of a database – Right of the maker of the database to prohibit such acts – Database made accessible to the public – No effect on that right (European Parliament and Council Directive 96/9, Art. 7)
3. Approximation of laws – Legal protection of databases – Directive 96/9 – Definition of substantial part of the contents of a database – Quantitative and qualitative assessment (European Parliament and Council Directive 96/9, Art. 7)
4. Approximation of laws – Legal protection of databases – Directive 96/9 – Prohibition on extraction and re-utilisation of insubstantial parts of the contents of a database – Scope (European Parliament and Council Directive 96/9, Art. 7(5))

1. The expression ‘investment in ... the obtaining ... of the contents’ of a database in Article 7(1) of Directive 96/9 on the legal protection of databases must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database.

The expression ‘investment in ... the ... verification ... of the contents’ of a database in Article 7(1) of Directive 96/9 must be understood to refer to the resources used, with a view to ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation. The resources used for verification during the stage of creation of materials which are subsequently collected in a database do not fall within that definition.

In the context of drawing up lists of horse races, the resources used to draw up a list of horses entered in a race constitute investment not in the obtaining of the contents of the database but in the creation of the data making up the lists relating to those races. The resources used for the checks prior to the entering of a horse on a list for a race relate to the stage of creating the data making up that list and thus do not constitute an investment in the verification of the contents of a database.

(see paras 30-31, 34, 38, 40-42, operative part 1)

2. The terms ‘extraction’ and ‘re-utilisation’ as defined in Article 7 of Directive 96/9 on the legal protection of databases must be interpreted as referring to any unauthorised act of appropriation and distribution to the public of the whole or a part of the contents of a database. Those terms do not imply direct access to the database concerned.

The fact that the contents of a database were made accessible to the public by its maker or with his consent does not affect the right of the maker to prevent acts of extraction and/or re-utilisation of the whole or a substantial part of those contents.

(see para. 67, operative part 2)

3. The expression ‘substantial part, evaluated ... quantitatively, of the contents of [a] database’ in Article 7 of Directive 96/9 on the legal protection of databases refers to the volume of data extracted from the database and/or re-utilised and must be assessed in relation to the total volume of the contents of the database. The expression ‘substantial part, evaluated qualitatively ... of the contents of [a] database’ refers to the scale of the investment in the obtaining, verification or presentation of the contents of the subject of the act of extraction and/or re-utilisation, regardless of whether that subject represents a quantitatively substantial part of the general contents of the protected database.

Any part which does not fulfil the definition of a substantial part, evaluated both quantitatively and qualitatively, falls within the definition of an insubstantial part of the contents of a database.

(see paras 70-71, 73, operative part 3)

4. Article 7(5) of Directive 96/9 on the legal protection of databases, which prohibits, in certain cases, the repeated and systematic extraction and/or re-utilisation of insubstantial parts of the contents of the database, refers in particular to unauthorised acts of extraction and/or re-utilisation the cumulative effect of which is to reconstitute and/or make available to the public, without the authorisation of the maker of the database, the whole or a substantial part of the contents of that database and thereby seriously prejudice the investment by the maker.

(see para. 95, operative part 4)

Joined Cases C-338/04, C-359/04 and C-360/04

Criminal proceeding against Massimiliano Placanica and Others

(References for a preliminary ruling from the Tribunale di Larino and the Tribunale di Teramo)

(Freedom of establishment – Freedom to provide services – Interpretation of Articles 43 EC and 49 EC – Games of chance – Collection of bets on sporting events – Licensing requirement – Exclusion of certain operators by reason of their type of corporate form – Requirement of police authorisation – Criminal penalties)

Summary of the Judgment (6 March 2007)

1. Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Restrictions (Arts 43 EC and 49 EC)
2. Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Restrictions (Arts 43 EC and 49 EC)
3. Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Restrictions (Arts 43 EC and 49 EC)

1. National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services, provided for in Articles 43 EC and 49 EC respectively.

The objective of combating criminality by making the operators active in the sector subject to control and channelling the activities of betting and gaming into the systems thus controlled is capable of justifying those obstacles, a licensing system being capable, in that regard, of constituting an efficient mechanism.

However, it is for the national courts to determine whether, in limiting the number of operators active in the betting and gaming sector, that national legislation genuinely contributes to that objective. By the same token, it will be for the national courts to ascertain whether those restrictions are suitable for achieving the objective pursued, do not go beyond what is necessary in order to achieve those objectives, and are applied without discrimination.

(see paras 49, 52, 57-58, operative part 1-2)

2. Articles 43 EC and 49 EC must be interpreted as precluding national legislation which excludes from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets. Independently of the question whether the exclusion of companies quoted on the regulated markets applies, in fact, in the same way to operators established in the Member State concerned and to those from other Member States, that blanket exclusion goes beyond what is necessary in order to achieve the objective of preventing operators active in the betting and gaming sector from being involved in criminal or fraudulent activities.

(see paras 62, 64, operative part 3)

3. Articles 43 EC and 49 EC must be interpreted as precluding national legislation which imposes a criminal penalty on persons for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to them.

Although in principle criminal legislation is a matter for which the Member States are responsible, Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law. Furthermore, a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned in breach of Community law.

(see paras 68-69, 71, operative part 4)

Appendix F: GLOBAL SPORTS DEALS

Figure 1: First Quarter 2009 – Top 25 Largest Global Sports Deals³⁴⁰

Company	Property	Sport	Sector	Month Agreed	Length	Total Value
Infront Sport and Media	Serie A/Italian national team	Football	Broadcast	Feb 09	6 Years	€5bn
Saudi Arabia	Sport City Project	Multi-Sport	Infrastructure	Feb 09	N/A	€3.3bn
DirecTV	NFL	American Football	Broadcast	March 09	2 Years	€2.2bn
Sky Sports	English Premier League	Football	Broadcast	Feb 09	3 Years	€1.5bn
Multi Screen Media/WSG	Indian Premier league	Cricket	Broadcast	March 09	9 Years	€1.2bn
Premiere - Germany	Bundesliga	Football	Broadcast	Jan 09	4 Years	€1bn
Stephen M. Ross	Miami Dolphins	American Football	Property	Feb 09	N/A	€730m
Kazakhstani Government	Winter Asian Games	Multi-Sport	Infrastructure	March 09	N/A	€530m
Miami Local Authority	Florida Marlins	Baseball	Infrastructure	March 09	N/A	€460m
South African Government	2010 World Cup	Football	Infrastructure	Feb 09	2 Years	€420m
Jeff Moorad	Padres	Baseball	Property	Jan 09	N/A	€290m
Mediaset -Italy	UEFA Champions League	Football	Broadcast	Jan 09	3 Years	€230m
Sportfive	International Olympic Committee	Olympics	Broadcast	Feb 09	3 Years	€230m
Sky Sports	English Premier League	Football	Broadcast	Feb 09	3 Years	€220m
BBC	English Premier League	Football	Broadcast	Jan 09	3 Years	€180m
TF1/Canal Plus - France	UEFA Champions League	Football	Broadcast	Jan 09	3 Years	€175m
Setanta	English Premier League	Football	Broadcast	Feb 09	3 Years	€170m
MegaFon	Sochi 2014	Olympics	Sponsorship	Feb 09	5 Years	€168m
Rostelecom	Sochi 2014	Olympics	Sponsorship	Feb 09	5 Years	€168m
UniCredit	UEFA Champions League	Football	Broadcast	Jan 09	3 Years	€150m
Honda	Brawn GP	Motorsport	Property	March 09	N/A	€145m
Ohio State University	IMG College	Multi-Sports	Agency	March 09	10 Years	€130m
Rosneft	Sochi 2014	Olympics	Sponsorship	Feb 09	5 Years	€130m
City of Vancouver	Fortress Investment Group	Olympics	Infrastructure	Feb 09	4 Years	€110m
Yvelines Region Council	Seine Valley Formula One Circuit	Motorsport	Infrastructure	March 09	N/A	€105m

³⁴⁰ SportsPro Special Report First Quarter 2009: Quarterly Sponsorship Analysis

Figure 2: Second Quarter 2009 – Top 25 Largest Global Sports Deals³⁴¹

Company	Property	Sport	Sector	Month Agreed	Length	Total Value
Gazprom	Sochi 2014	Olympics	Infrastructure	April 09	N/A	€1.5bn
Fox	NFL	American Football	Broadcast	May 09	2 Years	€1.05bn
CBS	NFL	American Football	Broadcast	May 09	2 Years	€920m
Molson family	Montreal Canadians	Ice Hockey	Property	June 09	N/A	€400m
British Government	London 2012	Olympics	Infrastructure	May 09	N/A	€363m
Triathlon Homes	London 2012	Olympics	Infrastructure	June 09	N/A	€325m
ESPN	English Premier League	Football	Broadcast	June 09	4 Years	€300m
Dentsu	Major League Baseball	Baseball	Broadcast	June 09	6 Years	€200m
Sony	UEFA Champions League	Football	Sponsorship	June 09	3 Years	€160m
Mastercard	UEFA Champions League	Football	Sponsorship	April 09	3 Years	€155m
Delhi Government	Commonwealth Games	Athletics	Infrastructure	June 09	N/A	€135m
Sberbank	Sochi 2014	Olympics	Sponsorship	April 09	5 Years	€130m
ESPN	Rose Bowl	American Football	Broadcast	June 09	4 Years	€115m
Verizon	New York Jets/Giants	American Football	Sponsorship	June 09	20 Years	€115m
CB Holding	West Ham United	Football	Property	June 09	N/A	€110m
Forthney Group	Greek Super League	Football	Broadcast	May 09	3 Years	€100m
Red Bull	Red Bull Leipzig	Football	Property	June 09	N/A	€100m
Rogers Sportsnet	Major League Baseball	Baseball	Broadcast	June 09	5 Years	€90m
Sport1/NOS	UEFA Champions & Europa Leagues	Football	Broadcast	April 09	3 Years	€87.5m
Aon	Manchester United	Football	Sponsorship	June 09	4 Years	€87.5m
Setanta	SPL	Football	Broadcast	May 09	4 Years	€73m
Canal Plus	Top 14	Rugby Union	Broadcast	April 09	3 Years	€70m
ISP Sports	University of Georgia	Multi-Sports	Broadcast	June 09	8 Years	€68m
Louisiana State Government	Louisiana Superdome	American Football	Infrastructure	May 09	N/A	€62m
Anta	Chinese Olympic Committee	Olympics	Sponsorship	April 09	4 Years	€50m

³⁴¹ SportsPro Special Report Second Quarter 2009: Quarterly Sponsorship Analysis

Appendix G: SELECTED BETTING INTEGRITY RULES

Integrity in Sports Betting: A 10-Point Plan

(Published by the UK Government in March 2005)

The following code of practice, in the form of a 10-point plan focusing specifically on betting, is intended for sports authorities to use in order to protect the integrity of their sport. The 10 action points are intended to be sufficiently broad so as to be applicable to all sports authorities.³⁴² However, where necessary, it is envisaged that sports authorities will wish to use the plan as a starting point to develop more detailed policies and rules of their own.

Section A - Aims and objectives

- The general principles underpinning the plan:
- To protect the integrity of betting on sport;
- To safeguard participants and consumers; and
- To develop relations (with sporting regulators, betting operators, statutory organisations³⁴³ and Government Departments³⁴⁴).

Section B - The 10-point plan

1. The sports authority will seek to embody the principles underpinning this plan.
2. The sports authority will include provisions in their rules and regulations governing the behaviour of their participants in relation to betting.
3. In the context of betting, sports authorities will expect their participants to avoid any situation that may involve a conflict of interest with the sport and/or which may undermine the confidence of the public. Participants will not misuse privileged information.
4. The sports authority will not avoid taking necessary action when they suspect, or are aware of betting activity which threatens the integrity of sport and objectives of this code of practice.
5. The sports authority will co-operate with and, if appropriate, enter into information sharing agreements with the relevant statutory authorities in the context of sports betting (e.g. police/Customs/National Criminal Intelligence Service/and the Gambling Commission).³⁴⁵
6. Further to the commitment to share intelligence under point 5 above, the sports authority will take responsibility for proactively passing appropriate information or knowledge of corrupt practices (a race/match-fixing scam, for example) to the relevant authorities (e.g. police/Customs and Excise).
7. Where bookmakers or betting operators seek to enter into information sharing agreements, the sports authority will endeavour to work with them.
8. The sports authority will share best practice in maintaining integrity in sports betting with other sporting authorities.
9. The sports authority will seek to ensure that their participants co-operate fully with any investigation conducted by them and will expect them to provide full disclosure of information in relation to any such investigation.
10. The sports authority will nominate a person/department with special responsibility for betting issues.

It is intended that sports authorities will communicate this 10-point plan to all their participants in relevant media.

³⁴² In this document "sports authority" refers to the signatory of this 10-point plan. A sports authority in this context refers to an association such as The FA or a regulatory body such as the Jockey Club ³⁴³ For example, the police or Customs and Excise ³⁴⁴ For example, the Home Office Internet Task Force and the Department for Culture, Media and Sport ³⁴⁵ This code of practice does not override a sports authority's duty or ability to comply with existing legal requirements (e.g. the Data Protection Act 1998 or the Human Rights Act 1998)

Betting Offences under the ICC Anti-Corruption Code - Articles 2 and 6

2.1 Corruption

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.

2.1.2 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.

2.1.3. Failing, for Reward, to perform to one's best abilities in an International Match.

2.1.4 Soliciting, inducing, enticing, instructing, persuading, encouraging or facilitating any Player or Player Support Personnel to breach any of the foregoing provisions of this Article 2.1.

2.2 Betting

2.2.1 Placing, accepting, laying or otherwise entering into a Bet with any other party (whether individual, company or otherwise) in relation to the result, progress, conduct or any other aspect of any International match or ICC Event.

2.2.2 Soliciting, inducing, enticing, instructing, persuading, encouraging, facilitating or authorising any other party to enter into a Bet for the direct or indirect benefit of the Player or Player Support Personnel in relation to the result, progress, conduct or any other aspect of any International match or ICC Event.

2.2.3 Ensuring the occurrence of a particular incident in an International Match or ICC Event, which occurrence is to the Player or Player Support personnel's knowledge the subject of a Bet and for which he/she expects to receive or has received any reward.

2.3 Misuse of Inside Information

2.3.1 Using, for Betting purposes, any Inside Information.

2.3.2 Disclosing Inside Information to any person (with or without Reward) before or during any International match or ICC Event where the Player or Player Support Personnel might reasonably be expected to know that disclosure of such information in such circumstances could be used in relation to Betting.

6.2 Sanctions

Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption) – A minimum of five (5) years and a maximum of a lifetime, and a fine up to a maximum of the value of any Reward received for the committal of the offence.

Articles 2.2.1, 2.2.2 and 2.2.3 (Betting), and 2.3.1 (Misuse of Inside Information) – A minimum of two (2) years and a maximum of five (5) years of ineligibility in the sport, and a fine up to a maximum of the value of any Reward received for the committal of the offence.

Article 2.3.2 (Misuse of Inside Information) - A minimum of six (6) months and a maximum of five (5) years of ineligibility in the sport, and a fine up to a maximum of the value of any Reward received for the committal of the offence.

Cricket Australia – Code of Behaviour: Betting, Match-fixing and Corruption (Rule 8)

Players or officials must not, directly or indirectly, engage in the following conduct:

- bet, gamble or enter into any other form of financial speculation on any cricket match or on any event connected with any cricket match or series of cricket matches (for the purposes of this Rule, an Event);
- induce or encourage any other person to bet, gamble or enter into any other form of financial speculation on any cricket match or series of cricket matches or on any Event or to offer the facility for such bets to be placed;
- be a party to contriving or attempting to contrive the result of any cricket match or series of cricket matches or the occurrence of any Event in exchange for any benefit or reward (other than a benefit or reward received from his home Board);
- fail to attempt to perform to the best of his ability in any cricket match for any reason whatsoever (including, in particular, owing to an arrangement relating to betting on the outcome of any cricket match or series of cricket matches or on the occurrence of any Event) other than for legitimate tactical reasons in relation to that cricket match;
- induce or encourage any player not to attempt to perform to the best of the player's ability in any cricket match for any reason whatsoever (including, in particular, owing to an arrangement relating to betting on the outcome of any cricket match or series of cricket matches or on the occurrence of any Event) other than for legitimate tactical reasons in relation to that cricket match;
- for money, benefit or other reward (whether for the player him or herself or any other person and whether financial or otherwise), provide any information concerning the weather, the state of the ground, a Team or its members (including, without limitation, the Team's actual or likely composition, the form of individual players or tactics) the status or possible outcome of any cricket match or series of cricket matches or the possible occurrence of any Event other than in connection with bona fide media interviews and commitments;
- engage in any other form of corrupt conduct in relation to any cricket match or series of cricket matches or Event;
- fail to promptly disclose to the Chief Executive Officer of Cricket Australia that he or she has received an approach from another person to engage in conduct such as that described in paragraphs (a) – (g) above (such disclosure to be in writing and include full particulars of any such approach);
- fail to promptly disclose to the Chief Executive Officer of Cricket Australia that he or she knows or reasonably suspects that any current or former player or official or any other person has engaged in conduct, or been approached to engage in conduct, such as that described in paragraphs (a) – (g) above (such disclosure to be in writing and include full particulars of any such knowledge or suspicion);
- fail to promptly disclose to the Chief Executive Officer of Cricket Australia that he or she has received, or is aware or reasonably suspects that another player or official or any other person has received, actual or implied threats of any nature in relation to past or proposed conduct such as that described in paragraphs (a) – (g) above (such disclosure to be in writing and include full particulars of any such knowledge or suspicion); or
- engage in conduct that relates directly or indirectly to any of the conduct described in paragraphs (a) – (j) above and is prejudicial to the interests of the game of cricket or which could bring him or her or the game of cricket into disrepute.

A valid defence may be made to a charge in respect of any prohibited conduct set out in this Rules 8(h), (i) and (j) if the person charged proves that the conduct was the result of an honest and reasonable belief that there was a serious threat to the life or safety of the person charged or any member of the person's family.

Guidelines

For the purpose of this Rule:

- a reference to a “cricket match or series of cricket matches” includes any cricket match or matches whatsoever played anywhere in the world and is not restricted to a cricket match or matches in which the player or official concerned, or any Team, took part; and
- a reference to an “attempt” shall include an offer or an invitation.

Sanctions

Rule 8: Betting, Match fixing and Corruption - Unlimited penalties

International Olympic Committee Betting Rules (Code of Ethics)

A.5 All forms of participation in, or support for betting related to the Olympic Games, and all forms of promotion of betting related to the Olympic Games, are prohibited.

A.6 Also, in the context of betting, participants in the Olympic Games must not, by any manner whatsoever, infringe the principle of fair play, show non-sporting conduct, or attempt to influence the result of a competition in a manner contrary to sporting ethics.

English Football Association Betting Rules

(a) A Participant shall not, either directly or indirectly, bet, or instruct, permit or enable any person to bet, on the result, progress or conduct of a Match or Competition in which the Participant is participating, or has participated in that season, or in which the Participant has any influence, either direct or indirect.

(b) A Participant shall not use, or provide to any other person any information relating to football which the Participant has by virtue of his or her position within the game and which is not publicly available for, or in relation to, betting.

It shall not be a breach of the above provisions of this Rule E8, if the Participant can prove that the bet was on authorised and registered football pools.

Appendix H:

COUNCIL OF EUROPE'S ETHICS RESOLUTION – SPORTS BETTING

11th Council of Europe Conference of Ministers Responsible for Sport

(Ethics in Sport Resolution adopted in December 2008)

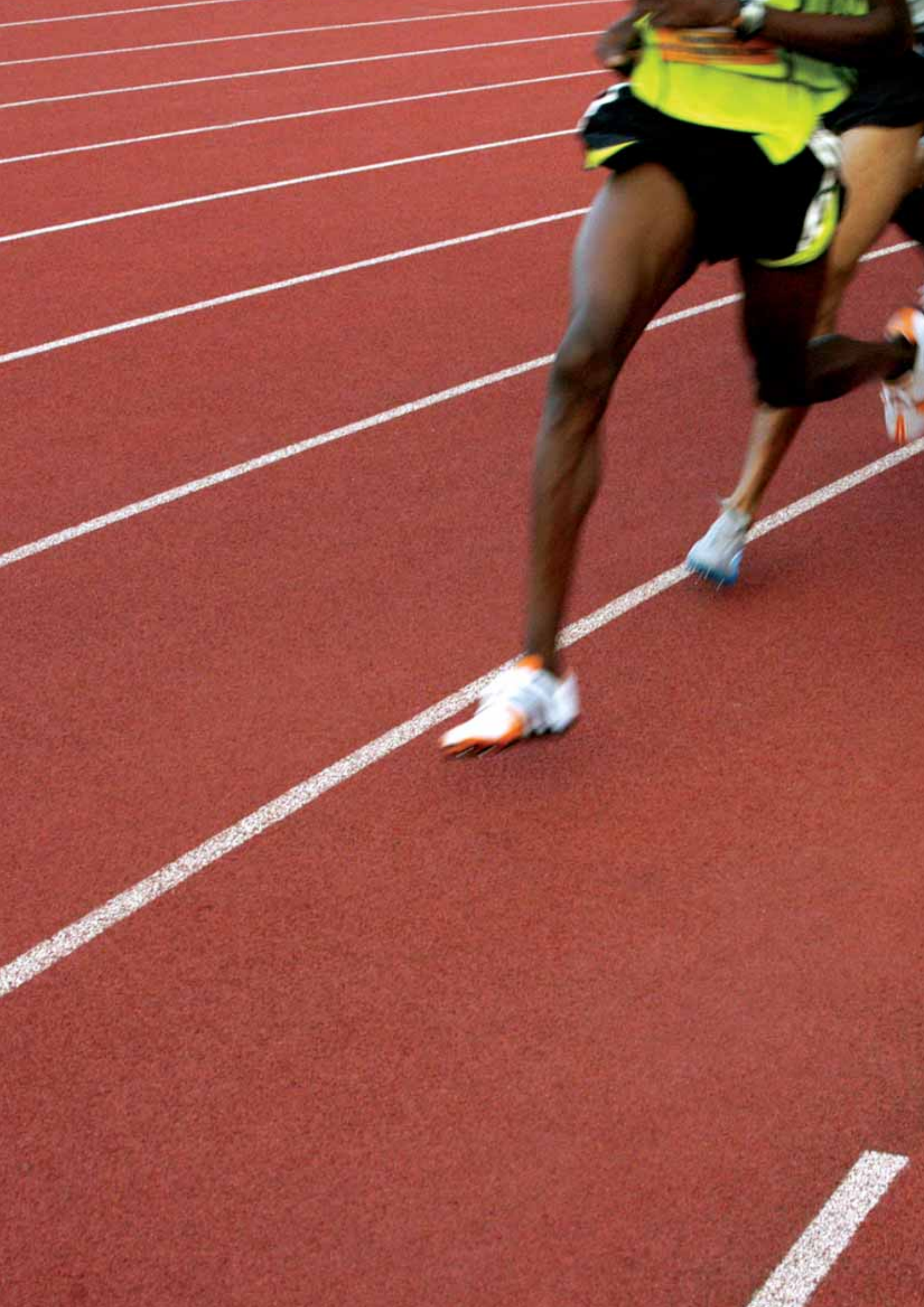
With regard to the new challenges to ethics in sport: match fixing, corruption, illegal betting

- Acknowledge that there is a problem of corruption, match fixing and illegal betting in sport and invite sports organisations to investigate the situation and, where appropriate, identify the problems;
- Promote best practices developed by sports organisations in order to foster transparency and establish stricter rules and better control systems for financial transactions;
- Support discussions and research, in co-operation with the sport movement and relevant NGOs and specialised agencies, on measure to prevent, deter and sanction corruption in sport;
- Support education, training and guidance so as to reach a wide audience in the sport movement;
- Encourage to enforce existing laws and, where appropriate, ratify existing Council of Europe conventions on corruption (CETS 173, 174 and 191);
- Support sports organisations in their efforts to increase transparency;
- Recommend involving independent experts in ethics bodies responsible for dealing with cases and issues where typical integrity in sport is at stake;
- Invite the EPAS, along with other concerned bodies and organisations:
 - to promote best practices to tackle the challenges to sports ethics posed notably by match fixing, corruption, illegal betting;
 - in co-operation with its Consultative Committee, to continue the work on possible ways to enhance co-operation (between government and the sport movement) on combating corruption; and
 - to draw up a new draft recommendation to states on corruption, match fixing and illegal betting which could form the basis of a possible new convention on these subjects to help achieve increased integrity controls and a 'fair return' to sport for grassroots funding as regards betting.

NOTES

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BATS	9	TOTAL	436
13	FOR	9	WKTS
UNS TO WIN	LAST WKT.	OVERS	138.2
	425		
MAN NO.	HOW OUT	FLDR.	BWLR.
10	154		10
BOWLERS	11	9	10 6 8