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Business, Sports & Fraud

Sports Law Commission/International Business Law
Commission/ Commercial Fraud Commission

54th Annual AIJA Congress

Munich, 2016

General Report

General Reporters

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LIST OF COUNTRIES AND NATIONAL REPORTERS

This general report is based on the 9 national reports that have been drafted for the following jurisdictions by the following authors:

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I. Introduction

The IBLC, Commercial Fraud and Sports Law Commissions' joint session focuses on several issues related to the good governance in sports and on sensitive topics such as compliance and the criminal risk. Corporate governance of sports organizations has become a key issue over the past years, their increasing influence has led to a great need for legislation and enforcement. In connection to this, bribery scandals have stressed the need for a good understanding of the issues at stake, rules applicable to online-gambling and to the protection of whistle-blowers also need to be reassessed in view of those recent developments.

This General Report shall outline the regulatory framework applying to sports organizations and sports clubs in different jurisdictions. The efforts currently made to agree on some minimum standards on a European level are scarce, and the need for legislation and regulation differs from one jurisdiction to the other. National reports from the UK, Spain, Germany, Italy and France provide for an interesting view on how increasing financial stakes may conflict or modify the management of sports organisation, especially in Football. The focus is also made on the situation in Switzerland given the number of international sports federations that are based there. Furthermore, the Greek, Polish and Panamanian National Reports offer interesting analysis of how the fight against white collar crime is conducted.

This General Report also underlines the increasing reliance on self-regulation, and provide examples of how sanctions by self-regulatory bodies or/and state institutions are effectively used to punish bribery, match-fixing, doping incidents, online gambling and other offences. Overall, the issue of fraud and compliance in sport is highly topical and constantly on the move. The current efforts to improve legislation and enforcement in sports are significant of an area where business and self-regulation interact to face the challenges of modern sport.

II. Sports and Fraud: identifying the relevant framework

1. Are there specific forms for sports clubs (e.g. specific type of company structure, association etc.) in your jurisdiction?

Sports clubs take various different legal forms depending on the jurisdiction that they are established under. Certain countries, like Germany, Poland and the United Kingdom, place no sport-specific restrictions on the form taken by clubs, instead allowing them the freedom to choose from the options laid out by pre-existing legislation. This is in stark contrast to some of the other jurisdictions who have set out strict systems for the formation of these clubs.

Panamanian law provides that sports clubs be established as non-profit associations. These associations must be approved by the Panamanian Institute of Sports (PANDEPORTES) and subsequently be registered at the Panamanian Public Registry Office (PRO).

Greece and Italy have set out differing requirements for amateur and professional sports clubs. To exemplify this, under Greek law, amateur sports clubs must be established as a 'sports association'; a non-profit legal entity. In contrast, professional sports clubs must take the form of a 'Limited Sports Company'.

Spain has state-level law with a national law called the "Spanish Sports Act" and several regional laws. As a result, the different regional laws cannot contradict the essential terms of the Spanish Sports Act. This Act establishes three types of sport clubs: elementary sports clubs, basic sports clubs and sports public limited companies.

In France, a club can be an association or a society. The society can be a limited liability company, a public limited company with sporting object, professional sports limited company, public limited company and simplified joint stock company (Article 122-2 of the French Sports Code).

In Switzerland, sports clubs can be organised in any allowed legal form outlined in the Swiss Code of Obligations or the Swiss Civil Code. As association law in Switzerland is very flexible with only few compulsory rules, many sports clubs are organised as associations. However, there are possible (self-imposed) exceptions where a certain legal form is required. For example, the Swiss Football association organised the Swiss football league in a separate association. The rules of this association stipulate that the sports clubs playing in the highest national Swiss football league must be organised as private limited companies, like FC Basel 1893 AG.

2. How are sports clubs / players grouped? Are they administrative bodies, associations, federations etc.? Please provide a few examples.

Each country that submitted a report groups sports clubs and players in its own unique way, therefore a brief summary of each system is given.

Germany uses a system of indirect membership, similar to a pyramid scheme, in order to group both players and sports clubs. This system has six levels: the International Federation, Continental Federation, National Federation, Federal Federation, sports clubs and players. Bar certain rare exceptions, sports clubs are direct members of the Federal Federation and players are, in turn, members of these sports clubs.

The Polish system is similar to that of Germany in that it operates using a pyramidal structure. At least 3 individual sports clubs (1st level) can come together to form a sports association (2nd level), which can in turn either act independently or operate as a union of sports associations. Spare certain

associations and unions aim to organise the competitive nature of specific sports; these associations make up the third level of the pyramid.

In the United Kingdom, each sport has a specific national governing body which is responsible for the development, implementation and enforcement of the rules and regulations of its respective sport at UK, GB or home country level. There are certain exceptions to this rule, for example each home country has a separate national Football association which represents it at a national and international level.

Panamanian law provides that sports clubs be grouped into federations. These federations are subsequently grouped into committees, such as the Olympic Committee of Panama.

There is once again a distinction made between amateur and professional sports clubs under Greek law. The former follows a three-tiered system in which there are sports associations, sports unions (10+ associations) and sports federations (20+ associations / 5+ unions). Players are not grouped at an amateur level. At the professional level, Limited Sports Companies are members of Professional Sports Unions which are non-commercial associations. These unions organise the official championships for their respective sport.

Under Italian jurisdiction, there are three organisations of note: the Italian National Olympic Committee (CONI), Federations and Leagues. CONI is responsible for the discipline, regulation and management of national sporting activities. It represents ~95,000 sports clubs and has ~11 million members. Federations represent single sport disciplines at a national level and are endorsed by CONI if certain requirements are met. Within these federations, sports clubs are represented by leagues; private associations.

In Spain, the Spanish Sports Act describes three collective administrative bodies: federations, leagues and sports promoting entities. Federations are at state level, they are in charge of the organisation of official competitions, the promotion of sport, the preparation of coaches and trainers, the disciplinary proceedings and the control and administration of public subsidies. Among the federations, they are the leagues which are in charge of organising their own competitions in coordination with the federations and exercise the disciplinary authorities. Sports promoting entities are clubs associations whose objective is to promote and organise sporting events.

In France, there are several forms of sports clubs, namely: Sports associations, companies, sports federation (Approved or delegate Federation) and professional leagues. Similarly in Switzerland, there are no administrative body governing all sports clubs: sports clubs are (voluntarily) mostly grouped in their respective national organisation.

3. What is the relevant regulatory framework for sports associations/clubs/etc. in your jurisdiction? Is State legislation applicable or is self-regulation applicable? Please provide a few examples.

Self-regulatory powers have been devolved to some extent in each of the nine jurisdictions. The extent of this devolution varies, with the UK seemingly being the most progressive in this area. The majority of the countries use a hybrid system whereby sports associations are granted certain self-regulatory powers, yet still have to adhere to national laws.

There are no specific German laws pertaining to sports clubs and as such, the regulatory system in Germany differs depending on the judicial nature of the club; whether is an association or a corporation. Associations benefit from organisational autonomy, allowing them to set their own internal rules. This autonomy is restricted by the principles of private autonomy and mandatory provisions. Sports clubs in the form of corporations must adhere to the mandatory requirements of those acts governing corporations.

Sports associations in the UK are self-regulated, but have the option to subscribe to the Voluntary Code of Good Governance for the Sport and Recreation Sector.

There are similarities in the way in which sports associations are regulated in Panama, in Greece, in Switzerland and in Spain. Panamanian sporting Federations and Committees are subject to both national legislation and self-regulation. Similarly, in Spain each sports entities are under regional laws and regulations which have to comply with the national law.

Under Greek jurisdiction, both amateur and professional sporting associations are regulated by state legislation, although some sporting sectors are self-regulated to a certain extent. Football constitutes one of these exceptions with its federation being able to set its own rules and regulations without state intervention, provided that they comply with the Constitution and prevailing laws.

In Italy, CONI holds overarching regulatory power across the sports sector. It is nonetheless entitled to delegate regulatory powers with regards to rules applicable under private law, state legislation remains binding on sports clubs.

In France, the regulatory framework for sports associations is the State legislation. There are special Acts, among which some are codified into the Sport Code.

Two important areas, where state legislation is especially important for sports clubs and applicable irrespective of their legal form, are labour law and accounting regulations. This is valid for all the European countries mentioned above.

In Switzerland one of the most well-known self-regulating bodies is the Court of Arbitration for Sport (CAS), based in Lausanne. Most national sports associations exclude ordinary jurisdiction in favour of the CAS. For example the Swiss Judo Federation or the Swiss Football Association.

4. Are there any sport-specific risks that you may think of? Is there specific legislation for such risks?

Doping was identified by all countries involved as an area of potential risk, with Italy, Germany, Greece, Poland or Spain. The United Kingdom and France are also emphasising the risks posed by the handling of finances, the decision making process (e.g. corruption), match-fixing and online gambling.

Despite these areas being identified as risk-prone, several are not legislated for within some of the jurisdictions at hand. Greece is lacking legislation governing the decision making process and Germany currently only has legislation relevant to doping.

In contrast, Italy and Poland have laws in place which attempt to tackle the problems posed by each of these areas.

The following are examples of legislation relevant to the identified risks:

- The handling of finances: Polish Fiscal and Penal Code (Poland)
- The decision making process: Legislative Decree 231/2001 (Italy)
- Doping: Executive Decree 599 (Panama), Organic Law 3/2013 (Spain)
- Competition, e.g. match fixing: article 132 of the Law on Sports (Greece)
- Online gambling : Gambling Act 2005 (UK)/ Law on the opening to competition and industry regulation of gambling and gambling online (France)
- Manipulation of matches: Article 445-2-1 of the French penal Code.

III. The case for compliance

5. How are risks to be evaluated with regard to corruption, fraud and other white collar crimes? Are there internal control systems? Transparency criteria? Compulsory controls by auditors/administration?

Few countries make an allusion to the actual process used for evaluating the risks posed by corruption, fraud and white collar crime. The UK Anti-Corruption Plan broaches the topic and as a consequence, the UK's National Crime Agency is in the process of creating a new task-force with the main aim of tackling bribery and corruption. The Polish report highlights how a different approach to the evaluation of risks is taken depending on the nature of the club or association at hand, therefore no

concrete answer is possible. Similarly, in Spain all sports entities have to apply general anti-corruption, anti-fraud and anti-other white collar crimes regulations, however the risks and controls depend of each entity and its size.

In France, the approved federation can receive delegation of Minister of sports for the implementation of a normative power. This gives them the right and responsibility to issue technical rules of discipline which they are responsible, to draw up the regulations for the organization of events and the rules of safety and ethics applicable to the discipline concerned.

The application of internal control systems is relatively prevalent, either through mandatory implementation (Panama) or through the choice of the association itself (Germany and the UK). These control systems can be complex and comprehensive with Germany citing the DFB (German Football Association) as an example.

Limited reference was made to transparency criteria, the exception being the United Kingdom. In the UK, all sports associations are required to submit transparency and accountability reports, with Sports England stating that “transparency and accountability is intrinsic to the way the Board, the CEO and the wider NGB operates”.

Due to the liberal legislation and the freedom of organisation in Switzerland, sports clubs are prone to corruption. There are no compulsory controls by auditors or any administration. However, (self-) regulation might apply if subsidies are involved (e.g. Swiss Olympic).

6. How is compliance applied to sports organisations? What differences are there compared to the traditional business world?

In certain jurisdictions, like that of Panama, Switzerland, Spain and Poland, there are no compliance requirements applied to sports organisations. It would be safe to assume that there are at least some compliance requirements for businesses, and therefore in comparison to the traditional business world, the sporting world is infinitely less burdened.

At the opposite end of the spectrum, sports organisations in Italy, Greece and some of those in the UK are subjected to a substantially stricter application of compliance. These requirements often surpass those of the “traditional business world”. A possible explanation for this are the sizable wages and transfer fees that have become the norm in today’s sporting world, with it being commonplace for these fees to surpass seven digit sums.

The compliance systems of German and France organisations are internally structured based on the rules and regulations of each organisation, coupled with national law. While this may be similar to the systems in Italy, Greece and the UK, what differentiates Germany from the rest is the more lax

implementation of compliance in the sports industry, in comparison to the “traditional business world”.

7. Could you give examples of internal compliance/decision making processes?

Examples put forward in the countries’ reports were nearly exclusively related to the sport of football, with Italy, Poland and France providing their premier leagues as case studies: Serie A (Italy) and Ekstraklasa (Poland). The former imposed the requirement for teams to conform to the organisational model set out in Legislative Decree 231/2001 in 2013 and the latter obliges participants in the league to satisfy various conditions, including financial transparency.

In Spain, compliance acquired a new dimension in 2010, with the amendment of the Spanish Criminal Code. For the first time, legal entities may now be held criminally liable for certain crimes.

In Switzerland, as associations are free to choose their organisation, some associations have special bodies to control compliance. For example, FIFA introduced the ethics committee as body to ensure compliance with the FIFA’s code of ethics. The code of ethics applies to conduct that damages the integrity and reputation of football and in particular to illegal, immoral and unethical behaviour¹. The ethics committee has the power to impose anything from issuing a warning to banning someone from taking part in any football related activity². The ethics committee is divided in an investigatory and an adjudicatory chamber, which are both involved in case of proceedings³. The investigatory chamber’s duty is to investigate potential breaches of the FIFA Code of Ethics and, if breaches are detected, prepare a report on the investigation proceedings and forward this report to the adjudicatory chamber⁴. The adjudicatory chamber reviews the investigation files can undertake further investigations and decide whether to close the proceedings or adjudicate the case⁵. As within the Swiss Judo Federation, a decision by the ethics committee may be contested at the appeals committee and afterwards at the CAS⁶.

Germany is the exception here, putting forward the intricate compliance system of the DOSB (the German Olympic Sports Confederation). This system includes multiple methods of ensuring good corporate governance and regular review meetings.

¹ Art. 1 FIFA Code of Ethics.

² Art. 6 FIFA Code of Ethics.

³ Art. 26 FIFA Code of Ethics.

⁴ Art. 28 FIFA Code of Ethics.

⁵ Art. 29 FIFA Code of Ethics.

⁶ Art. 80 f. FIFA Code of Ethics.

IV. The issue of sanctions

8. According to which provisions (e.g. criminal law, regulatory law, and administrative law, etc.) may a sports association be sanctioned in your jurisdiction?

Polish law provides sanctions for sports associations with the following legislation:

- The Sport Act
- The Polish Penal and Fiscal Code
- The Mass Events Security Act

Panamanian law provides sanctions for sports associations with the following legislation:

- Law 16
- Executive Decree 599

French law provides sanctions for sports associations with the following legislation:

- Penal sanctions in the penal Code.
- Administrative sanctions in the Sports code.

Within the abovementioned jurisdictions, persons may also receive sanctions through an internal regulatory system.

In Spain, sports associations are subject to general legal provisions (like any other association) and specialized sports regulations.

Neither Italian law, nor German law clearly sets out provisions by which an association may be sanctioned. To rectify this situation, German lawmakers have put forward a proposal for the revision of criminal law which would create the ability for associations to be sanctioned under said law. It is to be followed whether or not this proposal will be accepted and subsequently, whether there will be an increase in the accountability apportioned to sports associations.

In Switzerland, there is no state supervisory authority for sports associations as it exists, for instance, for foundations. In view of the recent FIFA scandal, a group of Swiss parliamentarians put forward in June 2015 a postulate inviting the Federal Council to examine whether the mere application of the general provisions on associations was still adequate for sports associations with huge turnover such as FIFA and, in particular, whether a specific state supervision of such sports associations should be put in place.

9. Who may be sanctioned within the association (e.g. the association itself, the board, an employee)? Please provide examples of applicable sanctions in the recent years.

Who can be sanctioned within the Italian and German jurisdictions differs greatly from association to association. This is due to the fact that associations in these countries are free to structure their internal disciplinary framework how they choose. The recipient of sanctions can therefore vary substantially:

- Football club SV Sandhausen was sanctioned with a points deduction for not following guidelines on licensing procedure (Germany)
- Football club Juventus' general manager, Luciano Moggi, received a life ban from all football related activity for his involvement in a match fixing scandal (Italy)

Similarly to the two abovementioned jurisdictions, it is difficult to pinpoint those who are able to be sanctioned in the United Kingdom because of the freedom granted to clubs when choosing what legal form to take.

In contrast, because of the strict requirement for a Panamanian sports club to take the form of a non-profit association, it is much more clear who may be sanctioned. Any and all members of the organisation are liable to be sanctioned, dependant on the nature of the violation. To exemplify this overreaching liability, both the manager of a club and the person responsible for the kit were sanctioned for unsportsmanlike behaviour following a cup final in 2015.

The same applies to Spain and France, where all persons and legal entities involved in sports are liable to be sanctioned. However, despite that it is quite difficult to find good examples of heavy sanctions at the highest level, indeed they are mostly routine sanctions for minor breaches.

Greece employs a relatively simple system whereby only a club's board, managers and employees may be sanctioned. This is relatively similar to the Panamanian system, although has the potential to be more restrictive due to the language used.

In Switzerland, under certain specific conditions, the association itself, as a legal entity, might also be sanctioned by the Swiss Criminal Code. An interesting illustration is the recent FIFA scandal in Switzerland: In September 2015, the Office of the Attorney General of Switzerland (OAG) opened a criminal investigation against FIFA President Mr. Sepp Blatter, on suspicion of criminal mismanagement as well as – alternatively – on suspicion of misappropriation, with regards to the signature and implementation of a contract with the Caribbean Football Union unfavourable to FIFA, as well as to a disloyal payment of CHF 2 Mio. to Mr. Michel Platini, President of the Union of European Football Associations (UEFA). In this case, the abovementioned limitations are likely to prevent any conviction of FIFA itself, even if the commission of the offence is confirmed, since a) as a natural person is convicted, there is no room for a subsidiary liability of the association pursuant to article 102 para. 1 SCC and b) neither criminal mismanagement nor misappropriation are included in

the serious offences leading to a primary liability of the association pursuant to article 102 para. 2 SCC. Now six months earlier, the OAG had already opened a first criminal investigation in this context, this time against persons unknown, on suspicion of criminal mismanagement and of money laundering in connection with the allocation of the 2018 and 2022 Football World Cups.

With regards to this investigation, a condemnation of FIFA is conceivable if the commission of the offences is confirmed. Indeed, if due to FIFA's inadequate organization the natural person(s) having actually committed the offence is never found, FIFA could potentially be held criminally responsible for criminal mismanagement and/or money laundering. Furthermore, since money laundering is one of the serious offences mentioned in article 102 para. 2 SCC (primary liability), FIFA could also be held liable irrespective of the conviction of the responsible natural person - i.e. even if a natural person is eventually convicted - for having failed to take the reasonable organizational measures to prevent such offence to be committed. Still, to our knowledge and as of today, FIFA itself has not been accused by the OAG (yet).

10. How do these sanctions interact with decisions from state courts? Is there a need for enforcement of the sanctions (i.e. is there a filter / exequatur process by State courts, as in arbitration)? Is there a possibility for State courts to consider a case also examined by a regulatory body, e.g. a federation (i.e. is there a risk of “double jeopardy”)?

There are two contrasting positions taken by the jurisdictions involved: those advocating the supreme nature of state court decisions and those favouring the independence of regulatory bodies. The former encompasses the German, Greek and Polish stance, whereas the latter best describes that of Panama, United Kingdom and France. Italy falls somewhere in between the two abovementioned approaches, although tends to favour the former.

Germany, Greece and Poland have given preference to the state courts to varying extents:

- Poland: decisions taken by regulatory bodies can be challenged in the state courts.
- Germany: on a criminal matter, only a decision made by the state courts can be binding. Decisions taken by regulatory bodies on all other matters can be reviewed by the state courts if an arbitration clause has been agreed upon by the parties.
- Greece: all decisions must be made by the state courts.

Both Panama, United Kingdom and France have taken the opposite approach, preferring to allow regulatory bodies the freedom to impose sanctions they deem to be warranted. In these jurisdictions, sanctions are handled by sport regulatory bodies, although it is important to note that the United Kingdom makes an exception whereby courts may intervene under ‘weighty circumstances’.

Panama is the only jurisdiction that has positively excluded the possibility of double jeopardy. Conversely, the UK has purposefully allowed for the possibility of double jeopardy, as is partially exemplified in Chelsea football player, John Terry's case in 2012.

In France, there is a principle of independence between disciplinary action and criminal action. The administrative authority, as the administrative judge, is not bound by the decision of the prosecuting authorities.

In Switzerland there are no specific regulatory or administrative provisions applicable to sports association, so that there is no risk of double jeopardy.

Spain is the only exception, as it is a particularly complex matter in that country. This is due to the hybrid private/public nature of the regulatory bodies (mainly federations). Although, the Spanish Constitutional Court clearly stated that federations are private associations with attributed public authorities (Spanish Constitutional Court Sentence no. 67/1985). Consequently, there is a need to distinguish when federations exercise private authorities and when they exercise public authorities.

V. Case studies: Online gambling, doping scandals and whistleblowing

11. What are the legal consequences with regards to match fixing in your jurisdiction? Please specify the relevant legal framework.

Under UK, German and Panamanian law, the act of match fixing itself is not one that is specifically legislated for. Nevertheless, there is scope for the prosecution of actions in connection with match fixing in each of these jurisdictions. In contrast, both Greece, Spain and Italy have specific laws governing the offence.

While one cannot be prosecuted for match fixing itself in the UK, Germany, Panama and France it is possible to be charged with related criminal offences such as:

- Gambling (s. 42 of the Gambling Act 2005) or bribery (ss. 1 and 2 of the Bribery Act 2010), (UK)
- Fraud (s. 263 StGB) or for Abuse of Trust (s. 266 StGB), (Germany)
- Fraud (Switzerland)
- Fraud (Panama)
- Specific incrimination (Articles 445-1-1 and 445-2-1 of the French penal Code).

This is a non-exhaustive list.

The Governance of Sport Bill put forward by Lord Moynihan would strengthen UK law with regards to match fixing. Similarly, a draft for the revision of the German Criminal Act has been submitted which would criminalise certain acts, such as betting fraud and the manipulation of professional competitions.

As previously mentioned, Greece, Spain and Italy have legislation dealing with the offence of match fixing. Article 132 of the Greek Law on Sports provides for heavy fines and the imprisonment from 1 to 10 years of those involved in match fixing. In Spain, article 286bis4 of the Spanish Criminal Code provides penalties which are prison from 6 months up to 4 years, professional disqualification from 1 up to 6 years and economic penalty equivalent to three times the value of the benefits obtained. Law 401/1989 governs match fixing within the Italian jurisdiction, although its primary objective is to combat unlawful sport betting. Following this law, the consequences for accepting or offering a reward in exchange for the manipulation of a result are a fine from €1,000-4,000 and imprisonment from 2 to 6 years. It is important to note that recently there has been a strong push to reduce match fixing within football, with the Italian Football Federation introducing the FIGC code of sport justice.

While match fixing is not necessarily legislated for across the board, it is clear that all countries take the offence seriously. This is particularly evident following propositions from UK and German lawmakers advocating the imposition of criminal sanctions on those who engage in the act.

The case of Switzerland is also significant. To address the insufficiencies in the fraud approach, the Swiss Federal Council adopted in October 2015 a draft amendment to the Federal Sports and Physical Activity Promotion Act that proposes to introduce a specific bribery offence for sports called “manipulation of competition”. Considered as a bribery offence and not linked to the offence of fraud, it shall primarily protect the integrity of sports and not the financial private interests of the sports organization or operators of sports betting. This draft is being examined by the Swiss Parliament. Similarly concerning bribery, Swiss law is evolving: unlike the offences related to bribery of public officials, bribery in the private sector is (still) regulated by the UCA, which implies that only an act of unfair competition, which means an act likely to favor or to disadvantage a company in its struggle to acquire clients or to increase or decrease its market share, is punishable. This feature leads to doubt that, in its current form, the offence of private bribery would cover the act of match-fixing, as it is not sure that competition between clubs falls within the notion of competition under the UCA. To address this issue, Switzerland adopted a draft amendment to the SCC last September, which inserts the offence of private bribery into the SCC and removes the condition of a complaint (which was the other major criticism to the current provision), at least for serious cases.

12. How is online gambling considered in your jurisdiction and how is it dealt with in case of fraud?

Within each jurisdiction, those wishing to engage in online gambling require authorisation from their respective authorities. Without said authorisation, any gambling is considered to be illegal and therefore carries significant repercussions.

In Spain, there is no specific regulation for online gambling which is regarded as another gambling modality. Nevertheless, online gambling is regarded as an online service so it should respect the clarity and truthfulness of those services. The Spanish law about gambling stands an administrative nature and not a criminal one for potential breaches and fouls on this matter so the classification of fraud is remote.

In France, the gambling is regulated by the law of 12 May 2010 on “*the opening to competition and industry regulation of gambling and gambling online*”.

Contrary to Polish legislation, the United Kingdom decided in 2014 to require all persons providing gambling services on its soil to hold a licence, regardless of the actual location of their operations.

There is a significant amount of ambiguity surrounding the current German legal position on online gambling following a recent decision by the Higher Administrative Court of Hessen. The aforementioned court declared the Inter-State Treaty on Gambling unlawful, essentially therefore revoking all licenses granted under this legislation. It will be interesting to see what view the law takes with regards to those who continue to provide these services despite this recent change.

Generally, any case of fraud related to online gambling is dealt with by the relevant legislation pertaining to fraudulent behaviour. Acts carried out in order to commit said fraud may render the perpetrator liable for other offences. An example of this is in the United Kingdom where fraudulent online gambling may also be encompassed by the offence of cheating, and therefore carry additional penalties.

13. Are any measures foreseen in your jurisdiction for the protection of whistle-blowers?

As it stands, neither Panamanian law, nor Polish law provide any form of protection to whistle-blowers. The need for such legislation has been recognised in Poland but as of yet no relevant drafts or propositions have been put forward.

Within both the German, the Swiss and the Italian jurisdictions, some form of protection is provided to whistle-blowers employed in the public sector, although neither country has legislated for the protection of private sector employees.

It should be noted that in response to the lack of relevant legislation in their jurisdictions, companies in Poland and Germany have started to implement their own internal protection systems for whistle-blowers.

The protection of whistle-blowers has been legislated for in both Greece, the United Kingdom and France. Within these jurisdictions, whistle-blowers are afforded a certain amount of protection, although this does not necessarily include complete anonymity. In accordance with article 132 of the Greek Law on Sports, whistle-blowers may benefit from either exoneration or preferential treatment. Additionally, witness protection programs are available to those who come forward.

Whistle-blowers in the UK are protected by the Public Interest Disclosure Act 1998, as well as by subsequent amendments made by the Enterprise and Regulatory Reform Act 2013. This protection encompasses the right to not be disadvantaged or victimised by an employer. Following the UK Anti-Corruption Plan, further options to increase measures of protection are being explored.

In Spain, if it is a criminal case, whistle-blowers may benefit of “the Witness Protection Act” in order to ensure that a crucial proof is not missed by reason of fear of retaliation. Courts take the relevant measures based on facts which could be for example no identification details of the witness in the records of the corresponding judicial proceedings. It is possible to adopt post-proceedings measures when the danger or risks for the witness remain once the proceedings are over. Nevertheless, there are no precedents of such drastic measures adopted in sports related cases but it is always possible. If it is not a criminal case, there are no specific legal provisions but there are no legal arguments against the adoption of specific negotiated measures within the framework of other legal proceedings lead by such authorities or administrative bodies.

14. How is confidential information treated in your jurisdiction? Any risks for whistle-blowers?

For the most part, confidential information is treated as such and is thus protected by law. This is the case in Germany, Poland, Panama and the United Kingdom. Nevertheless, the fact that said information is protected does not completely exclude risk to potential whistle-blowers. In certain cases a whistle-blower may be at risk if:

- A confidentiality agreement does not include a specific description of what information is to be protected (Panama)
- The employee/whistle-blower does not satisfy the requirements of s43 of the Employment Rights Act 1996 (UK)
- The whistleblowing is deemed to be unreasonable (Poland)
- He has not conformed to the Federal Data Protection Act (Germany)
- The court rules it necessary to disclose the whistle-blower’s name (Italy)

This is a non-exhaustive list.

Otherwise, in France and Spain confidential information are not specifically regulated under national law. However, the content of non-disclosure agreements has to be within the limits of civil and commercial law. Furthermore, secret revelation and information disclosure can fall under the Spanish criminal code.

In Switzerland, it is noteworthy that with regards to bribery, the Federal Office of Police launched in summer 2015 a web-based reporting platform, with which people can submit directly an anonymously information on any criminal acts of corruption. The anonymity of the informant is fully guaranteed in this case⁷.

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⁷ www.luttecontrelacorruption.ch