

## **Tackling match-fixing with criminal law: Belgian case study**

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### **Keywords**

Match-fixing, criminal law, private bribery, disciplinary vs. criminal track, Belgium

### **Summary of abstract**

Under Belgian criminal law, private bribery (articles 504*bis* & *ter* Belgian Criminal Code) is considered to be the standard provision for the prosecution of match-fixing. Nevertheless, this provision is unsuitable to cover all the complexities present in the world of sports and the manners in which match-fixing comes into being. This study discusses those loopholes and explores and assesses the options to remedy them, which may also prove valuable for other states encountering similar difficulties.

75 words

### **Abstract**

#### RESULTS

Contrary to what has long been assumed,<sup>1</sup> the study finds that the Belgian private bribery provision (articles 504*bis* & *ter* Belgian Criminal Code), which is the standard criminal provision to prosecute match-fixing in Belgium, is unsuitable to cover all match-fixing cases. Therefore, the study explores the steps required to remedy the loopholes which is also valuable for states encountering similar difficulties. Two options, each coming with their own opportunities and obstacles, are possible: first, amending the existing private bribery provision and, second, specifically criminalizing match-fixing.

#### DISCUSSION

While more and more countries have chosen to specifically criminalize match-fixing,<sup>2</sup> Belgium relies on existing criminal law provisions, particularly private bribery. On the basis of relevant literature, documentation and Belgian case law the study finds that two constituent elements of the private bribery crime may cause application issues: first, the prerequisite that the *bribee* must have a certain professional status vis-à-vis a natural or legal person and, second, the element which prescribes that the bribe must take place without the knowledge and authorization of the *bribee*'s board, general meeting, employer or principal.<sup>3</sup> In essence, application is uncertain in cases involving individual sports as well as in cases where the match-fixing takes place with the knowledge or authorization of e.g. the club's board. Therefore and with relevance to all states encountering similar difficulties, the study explores the steps required to remedy these loopholes taking into account the general challenges associated with defining a crime. One option would be to amend the existing private bribery provision. Nonetheless, amending this provision is challenging due to the fact that states must abide by the obligations stemming from international treaties and because an amendment would potentially alter the current state of affairs for other businesses, which could be undesirable.<sup>4</sup> Another option would be to specifically criminalize match-fixing. However, previous efforts have shown that it is not an easy task to translate the phenomenon accurately into a criminal offence as the definition must capture more serious forms of match-fixing without criminalizing all match-fixing practices, such as tactical manipulations.

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<sup>1</sup> Husting *et al.* (2012) Match-fixing in sport: A mapping of criminal law provisions in EU 27, p. 24.; UNODC & IOC (2021) Legal Approaches to Tackling the Manipulation of Sports Competitions: A Resource Guide, p. 30.; Goudesone, (2015) Een wandeling door het fenomeen matchfixing, Wolters Kluwer – Orde van de Dag 2015/70, p. 65.

<sup>2</sup> UNODC & IOC (2021) Legal Approaches to Tackling the Manipulation of Sports Competitions\_A Resource Guide, p. 6-7.

<sup>3</sup> Article 504*bis* Belgian Criminal Code.

<sup>4</sup> E.g. article 21 UN General Assembly resolution 58/4, 31 October 2003 (United Nations Convention against Corruption).

## IMPLICATION/CONCLUSIONS

The importance of having adequate criminal provisions in combatting match-fixing cannot be underestimated and is *inter alia* externalized through article 15 Macolin Convention.<sup>5</sup> Moreover, while sports federations can and must react to fixing taking place within their competitions through disciplinary measures, the scope *ratione personae* of sports regulations is often limited to persons active, directly or indirectly, within those sports. By consequence, others who may be involved in the fixing but are not bound by sports regulations steer clear of disciplinary liability which is why states' criminal law may be useful to fill those gaps.<sup>6</sup> The Belgian case shows that the world of sports is complex and that, *a fortiori*, match-fixing is a complicated phenomenon which may cause issues in applying non-specific criminal law provisions, *in casu* the private bribery provision, under specific circumstances. Nevertheless, this does not entail that criminal prosecution is entirely impossible as other criminal law provisions may still be applied considering the specifics of each case.<sup>7</sup>

497 words (excl. (sub)titles)

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6. UN General Assembly resolution 58/4, 31 October 2003 (United Nations Convention against Corruption).
7. Council of Europe Treaty No. 215 Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen/Macolin, 18 September 2014 (Macolin Convention).
8. Belgian Criminal Code of 8 June 1867.
9. FIFA Disciplinary Code (ed. 2019).

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<sup>5</sup> Article 15 Council of Europe Treaty No. 215 Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen/Macolin, 18 September 2014 (Macolin Convention).

<sup>6</sup> Van Rompuy (2013) Effective sanctioning of matchfixing: The need for a two track approach, ICSS Journal, Vol. 1 No. 3, p. 70-71.

<sup>7</sup> Tribunal de Première Instance Francophone de Bruxelles (49<sup>ème</sup> ch. extr.), 13 juin 2014, p. 9-71.