

# **ESSA Response: Law Commission of India Gambling Consultation**

**June 2017**



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# Chapter 1:

## INTRODUCTION

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1. ESSA<sup>1</sup> is an international betting integrity body that represents many of the world's largest regulated sports betting operators and which serve over 40 million consumers in the EU alone.
2. It is a key player in the fight against betting related match-fixing and acts for the regulated betting sector at national and international match-fixing policy discussion forums.
3. In particular, the organisation holds positions on important betting policy working groups at the European Commission, Council of Europe and the International Olympic Committee (IOC).
4. The organisation helped develop and supports the adoption of the Council of Europe (CoE) Convention on the Manipulation of Sports Competitions.<sup>2</sup>
5. ESSA's principal goal is to protect its members, consumers and partners such as sports bodies from fraud caused by the unfair manipulation of sporting events and associated betting.
6. The organisation combats this fraud with evidence-based intelligence, principally obtained from its monitoring and alert system which identifies suspicious activity on its members' markets.
7. That includes crucial information on consumer identities, locations and other transactional information which is not available via other non-regulatory authority platforms.
8. To facilitate this, ESSA has established information sharing arrangements with gambling regulators and sports bodies through which it disseminates suspicious betting activity data.
9. The association's members also spend over €50 million on compliance and internal security systems every year in order to help combat betting related fraud in sport.
10. To complement this detection activity, the association invests in mitigating actions such as a multi-jurisdictional player betting education programme with EU Athletes.<sup>3</sup>
11. ESSA is also involved in anti-match-fixing projects, such as the CoE Keep Crime out of Sport (KCOOS)<sup>4</sup> and Transparency International Anti Match-Fixing Top Training (AMATT) programmes.
12. That investment has been successful in helping to drive criminals away from regulated betting markets, creating a safe and secure environment for our members' customers and sports.
13. ESSA is the only non-regulatory body to release quarterly sports betting integrity data.<sup>5</sup>
14. Many of our members are licensed and operate within various regulatory frameworks for gambling around the world; their operations and focus are international.
15. ESSA, and its members, therefore have an interest in the review of India's current gambling framework, most notably with regard to the legalisation of betting and related integrity issues.

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<sup>1</sup> <http://www.eu-ssa.org/>

<sup>2</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215>

<sup>3</sup> [http://www.eu-ssa.org/wp-content/uploads/Eu-Athletes\\_Erasmusfunding\\_2015\\_FINAL.pdf](http://www.eu-ssa.org/wp-content/uploads/Eu-Athletes_Erasmusfunding_2015_FINAL.pdf)

<sup>4</sup> <http://www.eu-ssa.org/wp-content/uploads/PR-ESSA-AND-OTHER-KEY-STAKEHOLDERS-AIM-TO-KICK-CRIME-OUT-OF-SPORT.pdf>

<sup>5</sup> <http://www.eu-ssa.org/documents/>

## Chapter 2: BACKGROUND

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16. ESSA welcomes the review initiated by the Law Commission of India<sup>6</sup> on the possibility of legalising gambling in the country and the opportunity to engage in this important policy debate.
17. This process is an extension of various proceedings regarding the governance practices and integrity issues surrounding Indian cricket and the Board of Control for Cricket in India (BCCI).
18. That involves related reports from the Supreme Court appointed and mandated IPL Probe Committee (2014)<sup>7</sup> and the Supreme Court Committee on Reforms in Cricket (2015)<sup>8</sup>.
19. Betting integrity issues have been an important consideration throughout this process, most notably ongoing concerns around the legitimacy of the Indian Premier League (IPL) tournament.
20. The IPL Probe Committee report, led by Justice Mudgal, made several important recommendations to prevent and address betting and match/spot-fixing in Indian cricket.
21. These include: the education of players on integrity issues, the legalisation of sports betting to help detect fraud and information sharing; they are mitigating actions which ESSA supports.
22. Chapter nine of the subsequent proceedings of the Supreme Court Committee on Reforms in Cricket, chaired by Justice Lodha, also covered match-fixing and betting issues.
23. The Lodha Committee report, as it is often referred, importantly highlighted that: “the issue of betting can be effectively dealt with by providing a legal framework”<sup>9</sup>.
24. Gaming and betting in India is an area that can be deemed to be under concurrent jurisdiction between the federal government and the states.<sup>10</sup>
25. The central federal law is the 150 year old Public Gaming Act 1867<sup>11</sup>, which provides for the punishment of public gambling and relates to physical premises.
26. However, the Constitution of India in its Seventh Schedule, List II (State List)<sup>12</sup> does empower state governments to make laws regarding the regulation and taxation of gaming and betting.
27. Whilst some states have established their own legislation, the vast majority were enacted prior to the advent of online gambling, and betting, in general, remains prohibited.
28. An exemption has been made for betting on horseraces, following a Supreme Court ruling in 1996, and it is therefore the one form of betting which is legally permissible across India.<sup>13</sup>
29. Only the state of Sikkim has enacted a law for sports betting (e.g. cricket, football etc.).<sup>14</sup>

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<sup>6</sup> <http://lawcommissionofindia.nic.in/BettingandGambling.pdf>

<sup>7</sup> [http://p.imgci.com/db/DOWNLOAD/100/0127/JUSTICE\\_MUDGAL\\_IPL\\_PROBE\\_COMMITTEE\\_REPORT\\_final\\_feb\\_9.pdf](http://p.imgci.com/db/DOWNLOAD/100/0127/JUSTICE_MUDGAL_IPL_PROBE_COMMITTEE_REPORT_final_feb_9.pdf)

<sup>8</sup> <https://lodhacommittee.wordpress.com/2016/01/>

<sup>9</sup> Ibid. page 60 Volume 1

<sup>10</sup> <http://www.gamingcounsel.co/pdf/WOGLR%20December2011.pdf>

<sup>11</sup> <http://www.sangrurpolice.in/wp-content/themes/intrepidity/images/actrule/publicGamblingAct1867.pdf>

<sup>12</sup> [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(35\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(35).pdf)

<sup>13</sup> <https://indiankanoon.org/doc/1248365/>

<sup>14</sup> [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/The\\_Curious\\_Case\\_of\\_the\\_Indian\\_Gaming\\_Laws.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf)

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30. Whilst the initial intention was reportedly to allow online betting across India, it is currently limited to a small number of physical premises and an intranet facility confined within the state.
31. The result is that betting on sports, outside of horseracing, is generally not currently permitted across much of India (retail or online) and there is no licensing or regulatory oversight in place.
32. Nevertheless, driven in part by the availability of sports broadcasts and new technologies, there is a significant and growing consumer demand for betting on sporting events in the country.
33. This situation has given rise to widespread (illegal) betting on many sports, notably cricket, which is legally available and commonplace in many other jurisdictions, especially in Europe.
34. Estimates of the size of the global illegal market range from \$750 billion to \$1 trillion<sup>15</sup>, although some estimate it as high as \$3 trillion, with cricket accounting for 12% of that figure<sup>16</sup>.
35. India is therefore not alone in facing such issues; betting is prohibited in other Asian countries, notably China<sup>17</sup>, and a similar position, and growing debate, is also currently raging in America.<sup>18</sup>
36. The latter is estimated to have a \$150 billion illegal sports betting market<sup>19</sup>, with most legal betting (outside of horseracing, which is widely permitted) effectively limited to one state (Nevada) as a result of the prohibition enforced by an outdated federal legal framework.<sup>20</sup>
37. That state's regulated sportsbooks, in comparison, totalled a mere \$4.5 billion<sup>21</sup> in bets during 2016; that is less than 1/30<sup>th</sup> of the unregulated and untaxed American market.
38. It is projected that legalising sport betting could generate \$4.8 billion to \$5.3 billion in federal, state and local tax revenue, and \$21.9 to \$26.6 billion in total economic impact.<sup>22</sup>
39. As a result, there is a growing consensus (policymakers, law enforcement and sports) in America that the law should be amended and that regulated sports betting be more widely permitted.<sup>23</sup>
40. In contrast, sport betting has been regulated (in various forms) and taxed in many European countries for some time, along with related revenues from advertising and sponsorship.
41. Initially provided through retail premises, the availability of betting has expanded considerably, most notably through the advent of remote technologies such as online betting facilities.
42. In the UK, for example, betting has been permitted in regulated physical premises (betting shops) since the early 1960s<sup>24</sup>, having previously been licensed at horse and greyhound tracks.
43. Recent legislation, such as the Gambling Act 2005<sup>25</sup>, has sought to update earlier laws to fully account for new digital technologies (remote betting) and related integrity issues.

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<sup>15</sup> <http://www.scmp.com/sport/china/article/1920959/china-tries-make-sport-central-part-its-economy-its-massive-illegal>

<sup>16</sup> <http://www.dailymail.co.uk/wires/afp/article-3040540/Global-sports-gambling-worth-3-trillion.html>

<sup>17</sup> <http://www.scmp.com/sport/china/article/1920959/china-tries-make-sport-central-part-its-economy-its-massive-illegal>

<sup>18</sup> <https://www.americangaming.org/newsroom/press-releases/diverse-coalition-launches-repeal-failing-federal-sports-betting-ban>

<sup>19</sup> <https://www.americangaming.org/newsroom/press-releases/diverse-coalition-launches-repeal-failing-federal-sports-betting-ban>

<sup>20</sup> <https://www.law.cornell.edu/uscode/text/28/part-VI/chapter-178>

<sup>21</sup> [http://gaming.unlv.edu/reports/NV\\_sportsbetting.pdf](http://gaming.unlv.edu/reports/NV_sportsbetting.pdf) & <https://calvinayre.com/2017/01/31/casino/nevada-sportsbook-record-betting-handle-2016/>

<sup>22</sup> [https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/593dd28ee58c62c93bcff94/149722382296/ASBC\\_Oxford\\_Economics.pdf](https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/593dd28ee58c62c93bcff94/149722382296/ASBC_Oxford_Economics.pdf)

<sup>23</sup> [https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/593ec9765016e1b82e813233/1497287030460/ASBC\\_PressRelease.pdf](https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/593ec9765016e1b82e813233/1497287030460/ASBC_PressRelease.pdf)

<sup>24</sup> The Betting and Gaming Act 1960 & <http://www.legislation.gov.uk/ukpga/1963/2/contents>

<sup>25</sup> <http://www.legislation.gov.uk/ukpga/2005/19/contents>

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44. Spain<sup>26</sup>, Italy<sup>27</sup>, Denmark<sup>28</sup> and many others, have introduced licensed online betting over the last decade; others, such as Sweden<sup>29</sup> and Germany<sup>30</sup>, are seeking to enact comparable laws.
45. The position India finds itself is therefore one that many countries have, or are currently seeking, to address and includes issues around criminality and the corruption of sporting events.
46. Quite rightly, the Law Commission has consequently moved to explore this important issue and, through this consultation, to subsequently deliver a report to the Government on this matter.
47. The following paragraphs entail ESSA's international experience in this area and are intended to assist the Law Commission in delivering its report and related recommendations.
48. The principal focus is on enacting necessary integrity provisions around betting, but which also includes interrelated issues that help to create a viable and effective regulatory framework.

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<sup>26</sup> <http://www.ordenacionjuego.es/en/que-es-el-juego-ilegal>

<sup>27</sup> [http://europa.eu/rapid/press-release\\_IP-10-504\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-10-504_en.htm?locale=en)

<sup>28</sup> <https://spillemyndigheden.dk/en/legislation>

<sup>29</sup> <https://www.gamblinginsider.com/news/3065/new-online-gambling-regulations-anticipated-in-sweden> & <https://ddconsultus.com/news/1401>

<sup>30</sup> [http://e-comlaw.com/world-online-gambling-law-report/article\\_template.asp?from=wogl&ID=2389&Search=Yes&txtsearch=interstate](http://e-comlaw.com/world-online-gambling-law-report/article_template.asp?from=wogl&ID=2389&Search=Yes&txtsearch=interstate)

## Chapter 3: EFFECTIVE REGULATORY FRAMEWORK

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49. It is clear that, whilst currently illegal in much of India, betting on sport, and particularly the national game of cricket, is widespread and yet largely unregulated and untaxed.
50. This has led to a situation that has unfortunately benefited criminal elements (illegal betting, money laundering, match-fixing etc.) and has been to the detriment of sport, related investment such as advertising and sponsorship income, public revenues and the wider society in general.
51. On the basis that prohibition of betting has proved ineffective, and where a renewed drive to impose it would appear impractical, a continuation of the status quo is clearly not advantageous.
52. The Lodha Committee report quite understandably thus recommended “that the legislatures ought to legalize betting in cricket”<sup>31</sup> and that position must surely be considered for all sports.
53. The Committee’s report further helpfully proposed a number of basic actions for an effective regulated sports betting market in India and also related sports integrity provisions.<sup>32</sup>
54. From a pure sports betting integrity perspective, the Council of Europe Convention on the Manipulation of Sports Competitions also provides a useful framework of actions.
55. However, a wider market examination is necessary to fully evaluate and deliberate on the key regulatory issues; the following paragraphs therefore seek to provide a synopsis on that basis.
56. Firstly, it is fundamental that any legislation is able to adequately cater for, and readily adapt to, new commercial developments and any regulatory challenges that may accompany those.
57. Modern technological advances have opened new global channels of interaction between businesses and consumers; the betting and sports sectors are no different in that regard.
58. Policymakers must consider their market regulation and structure within that landscape, notably whether to adopt a monopoly operator, limited or open (unlimited) licensing market position.
59. Our experience is that there are clear limitations regarding integrity and related issues such as revenue generation/taxation from a market with restricted numbers of licensed operators.
60. Evidence shows that imposing a restriction on choice and competition will not adequately cater for the needs of modern consumers who are able to readily access products in other markets.
61. Various attempts to block citizens from accessing operators outside of a regulated market (e.g. ISP<sup>33</sup> and DNS<sup>34</sup> blocking) have not proved to be effective and can be easily circumvented.<sup>35</sup>
62. That in turn adversely impacts the ability of the regulatory authority to oversee related consumer activity and to have access to important data on the functioning of that market.

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<sup>31</sup> <https://lodhacommittee.wordpress.com/2016/01/> Page 61 Volume 1

<sup>32</sup> Ibid. Pages 62 & 63 Volume 1

<sup>33</sup> Internet Service Provider (ISP)

<sup>34</sup> Domain Name System (DNS)

<sup>35</sup> [http://www.rga.eu.com/data/files/PR\\_2016/2016\\_09\\_05\\_Regulation\\_of\\_online\\_betting\\_market\\_in\\_Poland\\_EN\\_4.pdf](http://www.rga.eu.com/data/files/PR_2016/2016_09_05_Regulation_of_online_betting_market_in_Poland_EN_4.pdf) Page 5

63. That includes any fraudulent betting activity (e.g. match-fixing) that may involve persons whose illicit actions may have otherwise been caught within a wider licensed betting market.
64. The adoption of a sports betting integrity framework is therefore invariably weakened by the imposition of a licence limitation or monopoly provider of sports betting products.
65. With that in mind, we therefore argue strongly against adopting a restricted number of licences.
66. Instead, we recommend that all aspects of the market benefit from an open licensing system that allows any number of operators, that fulfil the licensing criteria, to offer betting services.
67. The prevailing policy direction in European jurisdictions endorses this open licensing method; the UK, Denmark, Italy, Ireland, Spain and many others attest to the success of this approach.
68. Aligned to that is the adoption of a taxation model that reflects the international availability and dimension of sports betting products and is not over-burdensome from that perspective.
69. Again, the evidence from European markets shows that a burdensome fiscal framework, notably for online betting and relative to other markets, is counterproductive to market maximisation.
70. The type of taxation is also important, as regulated betting operators are greatly attracted to a gross gambling revenue (GGR)<sup>36</sup> tax at a reasonable level, as opposed to a turnover tax regime.
71. A turnover tax (on stakes) invariably creates betting products that are less competitive and are unappealing to consumers compared to operators offering the same products taxed on GGR.<sup>37</sup>
72. As with other services, many betting consumers are product and price sensitive and will therefore switch between operators depending on the competitiveness of the betting offer.<sup>38</sup>
73. The type and level of taxation thus significantly influences the size and product availability of the betting market and is an important driver of market growth, structure and consumer attraction.
74. An assessment of European countries shows that their approach to betting taxation, especially online, directly impacts the rate of consumer activity channelled to their regulated market.
75. For example, those in the 10-20% GGR range have 'high to very high' levels of channelling of consumers to their regulated operators (as opposed to offshore operators), with the UK (15% GGR) and Denmark (20% GGR) estimated to have consumer channelling rates of 95% and 90%.<sup>39</sup>
76. Whereas channelling rates for those employing a turnover tax is 'low to medium'; Poland (12% turnover tax) is estimated to only have 30% of its consumer activity channelled to its operators and France (9.3% turnover tax) around 60% channelled to its regulated betting operators.<sup>40</sup>
77. Such markets are unattractive to betting operators (especially online) and consumers alike, and invariably suffer from low levels of licence applications and related market competition.

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<sup>36</sup> Gross gaming revenue (GGR) or gross gaming yield (GGY) is defined as the gross turnover less the amount paid out to customers as winnings.

<sup>37</sup> [http://www.rga.eu.com/data/files/PR\\_2016/2016\\_09\\_05\\_Regulation\\_of\\_online\\_betting\\_market\\_in\\_Poland\\_EN\\_4.pdf](http://www.rga.eu.com/data/files/PR_2016/2016_09_05_Regulation_of_online_betting_market_in_Poland_EN_4.pdf) Pages 7, 9 and 10

<sup>38</sup> Ibid Page 17

<sup>39</sup> Ibid. Pages 19,20 and 21.

<sup>40</sup> Ibid. Page 18, 21 and 24



78. To highlight this, in 2016 online gambling licences in the UK numbered over 200, with Spain 51 and Denmark 38 (all have a GGR taxation ranging between 15-25%), whilst France had only 16 licensed operators, with Poland 4 and Portugal 2 (all employing a turnover taxation of 8-16%).<sup>41</sup>
79. Unsurprisingly, French regulator ARJEL has recently renewed calls for the government to reform the current turnover taxation system to increase the attractiveness of its gambling market.<sup>42</sup>
80. The regulated UK market, on the other hand, has flourished with the retail betting market currently standing at £9.7 billion in turnover and £1.6 billion in gross gambling yield (GGY).<sup>43</sup>
81. Whilst the remote (online) betting market accounted for £17.7 billion in turnover and £2 billion in GGY, with cricket accounting for around £500 million in turnover and £24.5 million in GGY.<sup>44</sup>
82. The UK betting market contributed nearly £510 million in betting duty taxation in 2016/17.<sup>45</sup>
83. A successful betting regulatory framework therefore begins with an interrelated system of licensing and taxation, and which form key drivers to the success of the market.
84. From our perspective, there is clear evidence to support an open (unlimited) licensed market incorporating a reasonable GGR taxation system as the foundation of that regulatory platform.
85. It is the most successful approach to maximising the market both from a licensing and revenue generating perspective and where both are complementary to the central regulatory aim.
86. That then provides a stable platform from which other important issues such as sports betting integrity factors can be addressed and mitigating actions and sanctions implemented.
87. It is important that responsible betting operators are involved in the discussions regarding any integrity provisions and that there be a clear distinction between those operators and illegal “bookies”, as is often referred in India, and which have been embroiled in match-fixing.<sup>46</sup>
88. The latter are not betting operators as we would determine and often form part of a wider criminal network; clearly mechanisms must be in place to detect and punish such activity.
89. These illegal operators are not required to adhere to any regulatory oversight, notably to ensure the protection of consumers, the integrity of betting markets and related sporting events.
90. Unlike the regulated betting industry, they are not required to detect or report suspicious betting and in fact have been implicated in instigating numerous match-fixing cases.<sup>47</sup>
91. The Report on Corruption in International Cricket (2001) highlighted this clear disparity between responsible regulated operators and these illegal “bookies”, which are in effect criminals.<sup>48</sup>
92. In particular, it importantly highlighted that responsible regulated betting operators are “subject to money laundering regulations” and are also “better placed through record keeping and analysis to detect individuals and events linked to cricket corruption.”<sup>49</sup>

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<sup>41</sup> Ibid. Pages 19,20 and 21

<sup>42</sup> [https://gamblingcompliance.com/premium-content/insights\\_analysis/france%E2%80%99s-arjel-pushes-ggr-tax-illegal-offerings-grow](https://gamblingcompliance.com/premium-content/insights_analysis/france%E2%80%99s-arjel-pushes-ggr-tax-illegal-offerings-grow)

<sup>43</sup> <http://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx>

<sup>44</sup> Ibid. Gross gaming revenue (GGR) or gross gaming yield (GGY) is defined as the gross turnover less the amount paid out to customers as winnings.

<sup>45</sup> <https://www.uktradeinfo.com/Statistics/Pages/TaxAndDutybulletins.aspx>

<sup>46</sup> <http://www.espnricinfo.com/india/content/story/144219.html>

<sup>47</sup> <http://www.aipsmedia.com/index.php?page=news&cod=5424>

<sup>48</sup> <http://www.scoop.co.nz/stories/WO0105/S00039/report-on-corruption-in-international-cricket.htm>

93. As a result, the regulated betting industry “whilst vulnerable to the bet on a fixed match, has a much stronger chance to monitor and detect these betting ‘scams’” and to protect sport.<sup>50</sup>
94. Whereas the business practices of unregulated betting operators (illegal bookies) are “fragmented, secretive and long-term record keeping is anathema to those who are involved.”<sup>51</sup>
95. The report concluded that: “Betting on corrupted matches flourished in this [unregulated] environment and the huge volume of betting hid the smaller number of bets on fixed events.”<sup>52</sup>
96. It is also important to highlight that betting related match-fixing is an activity often aimed at manipulating sporting events to defraud “real” betting operators and their consumers.
97. Those regulated betting operators are the intended victims of this crime, they are not the perpetrators, and this needs to be factored in when policy actions are being considered.
98. As the Lodha Committee report states: “There is a fundamental difference between betting and match/spot-fixing.”<sup>53</sup> Betting does not create match-fixing; it does not, by itself, corrupt sport.
99. ESSA’s members, for example, are responsible operators licensed in numerous jurisdictions around the world and have a clear inherent operational business need to ensure the integrity of sporting events and their associated betting products and services.
100. Regulated betting operators therefore invest significant resources in achieving that and to working closely with regulatory, law enforcement and sports bodies to create an effective licensing framework that includes specific sports betting integrity focused initiatives.
101. This partnership working undoubtedly strengthens the national integrity framework and deters corrupters from those markets, benefiting consumers, sports and betting operators alike.
102. Effective mechanisms employed within licensed frameworks include:
- Establishing a specific betting integrity unit within the national/state gambling regulator;
  - Imposing licensing conditions requiring regulated operators to report any suspicious activity;
  - Providing the regulator with the ability to void bets identified as being connected to fraud;
  - Information sharing between stakeholders (regulator, law enforcement, sports and betting operators) both within and outside of the national regulated gambling structure;
  - An offence of cheating at gambling (employed in cases of betting related match-fixing);
  - Providing the regulator with the power of prosecution; and
  - Clear guidance on the national betting integrity decision making framework in operation.
103. Such provisions have been employed to positive effect and have resulted in successful prosecutions using offences under gambling legislation and other laws such as bribery.
104. A number of countries such as Germany<sup>54</sup>, Russia<sup>55</sup>, Ukraine<sup>56</sup>, Latvia<sup>57</sup> and New Zealand<sup>58</sup> have also enacted specific match-fixing offences within their criminal legislation.

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<sup>49</sup> Ibid. Paragraph 70

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. Paragraph 71

<sup>52</sup> Ibid.

<sup>53</sup> <https://lodhacommittee.wordpress.com/2016/01/> Page 60 Volume 1

<sup>54</sup> <http://www.dw.com/en/german-parliament-passes-law-against-match-fixing/a-37881179>

<sup>55</sup> [http://rapsinews.com/legislation\\_news/20130724/268304784.html](http://rapsinews.com/legislation_news/20130724/268304784.html)

<sup>56</sup> <http://futbolgrad.com/ukraine-passes-anti-corruption-law-to-fight-match-fixing/>

105. Malta<sup>59</sup> and Cyprus<sup>60</sup> are currently seeking to pass legislation, and it is understood that India has drafted a bill, but the government has no plans, at this time, to progress this into legislation.<sup>61</sup>
106. Whether such explicit additional legislation and offence is necessary is an issue for each government to determine within its criminal justice framework.
107. What is vitally important is that suitably robust criminal sanctions are available and applied consistently and with due vigour. It is also important that provisions are developed with key stakeholders in an open and transparent manner, employing an evidence-based approach.
108. The model currently in operation in the United Kingdom (UK) is one of the most effective approaches in this regard, with a Sports Betting Integrity Forum (SBIF)<sup>62</sup> established in 2012 to develop the UK's approach to protecting sport and sports betting from being corrupted.
109. The SBIF has put in place a national Sport and Sports Betting Integrity Action Plan<sup>63</sup> developed by its key members: gambling regulator, law enforcement, sports and licensed betting operators.
110. It details the expected focus and actions of those parties in delivering timely and effective actions to identify and control risks associated with match-fixing and sports betting integrity.
111. This strategic cross-sector approach forms part of the UK's wider Anti-Corruption Plan<sup>64</sup> and is a blueprint of good practice and effective detection and enforcement measures to protect sports, consumers and regulated operators from the negative impact of betting related match-fixing.
112. As such, it complements the important work of the British Gambling Commission's Sports Betting Intelligence Unit (SBIU), which investigates reports of betting-related corruption and is principally financed from the licence fees of that market's regulated betting operators.
113. However, such costs must be justified, proportionate, established on the basis of a thorough risk analysis with stakeholders and keep under review, as they are with the Gambling Commission.<sup>65</sup>
114. It is vital that other stakeholders, and in particular sports governing bodies, also to demonstrate that they are contributing sufficient resources to the protection of their events.
115. This is most notably achieved through the developmental and enforcement of suitable sports betting integrity rules and player betting education initiatives.
116. There are some good examples of this led by the International Olympic Committee (IOC)<sup>66</sup> and others such as the World Professional Billiards and Snooker Association (WPBSA).<sup>67</sup>
117. However, there are also many sports which have not sought to prioritise mitigating actions covering the manipulation of sporting events in same way they would in other areas, e.g. doping.

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<sup>57</sup> [http://news.xinhuanet.com/english/2015-10/07/c\\_134688098.htm](http://news.xinhuanet.com/english/2015-10/07/c_134688098.htm)

<sup>58</sup> <https://www.baldwins.com/news/new-zealand-enacts-new-law-to-deal-with-match-fixing>

<sup>59</sup> [http://www.maltatoday.com.mt/sports/football/74346/anticorruption\\_task\\_force\\_starts\\_internal\\_debate\\_on\\_harsher\\_matchfixing\\_laws#.WUuLNuGmM8](http://www.maltatoday.com.mt/sports/football/74346/anticorruption_task_force_starts_internal_debate_on_harsher_matchfixing_laws#.WUuLNuGmM8)

<sup>60</sup> <http://cyprus-mail.com/2017/05/10/hopes-match-fixing-bill-will-ready-next-season/>

<sup>61</sup> <http://www.tribuneindia.com/news/sport/government-shelves-sports-fraud-bill/416408.html>

<sup>62</sup> <http://www.sbigf.uk/home.aspx>

<sup>63</sup> <http://www.sbigf.uk/images/Documents/SBI-Action-Plan-2017-FINAL.pdf>

<sup>64</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388894/UKantiCorruptionPlan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf)

<sup>65</sup> <http://www.eu-ssa.org/wp-content/uploads/UK-Gov-and-GC-fees-paper-Sept-2016-FINAL.pdf>

<sup>66</sup> <https://www.olympic.org/playfair> & [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Ethics/rio2016\\_rules\\_on\\_the\\_prevention\\_of\\_manipulation-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Ethics/rio2016_rules_on_the_prevention_of_manipulation-en.pdf)

<sup>67</sup> <http://www.wpbsa.com/governance/monitoring/> & <http://www.wpbsa.com/governance/members-rules/>

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118. This inactivity and poor governance creates an environment where corruption can flourish and which unfortunately seems to have been evident in the case of Indian cricket and the BCCI.<sup>68</sup>
119. ESSA draws your attention to the FIFPro report 2012<sup>69</sup> which details the impact of poor fiscal practices in sport as a facilitator of match-fixing, further endorsed by a separate report in 2016.<sup>70</sup>
120. The Lodha Committee report also touched upon the impact of financial insecurities of players and other fiscal matters which can tempt sportspeople to engage in illicit activities.<sup>71</sup>
121. In addition to such governance and fiscal management issues, the 2014 Bangladesh cricket match-fixing tribunal worryingly found that: “more often than not, sports regulators do not stop matches or events even where they have information about corruption in the match or event.”<sup>72</sup>
122. Whilst some in the sports sector claim that betting creates risks for them, it should be noted that corrupt sports personnel and poor sports governance actually creates increased risk and associated regulatory costs for betting operators, who are often the focus of sports fraud.
123. Betting related match-fixing is fundamentally the product of corrupt sportspeople, either acting alone or colluding with criminal elements, seeking to unfairly manipulate sporting events to financially defraud betting operators (regulated or unregulated) and their consumers.
124. For any sports betting integrity framework to be effective, it must include requirements on all stakeholders, including the sports sector, and sanctions if those are not implemented.
125. The Council of Europe Convention on the Manipulation of Sports Competitions importantly proposes that governments: “withhold some or all financial or other sport-related support from any sports organisations that do not effectively apply regulations for combating manipulation of sports competitions.”<sup>73</sup> ESSA supports the availability and enforcement of this approach.

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<sup>68</sup> <https://lodhacommittee.wordpress.com/2016/01/>

<sup>69</sup> <http://www.fifpro.org/en/don-t-fix-it/black-book>

<sup>70</sup> [https://footballmap.fifpro.org/assets/2016\\_FIFPRO\\_GLOBAL\\_EMPLOYMENT\\_REPORT.pdf](https://footballmap.fifpro.org/assets/2016_FIFPRO_GLOBAL_EMPLOYMENT_REPORT.pdf)

<sup>71</sup> <https://lodhacommittee.wordpress.com/2016/01/> Page 63 Volume 1

<sup>72</sup> Paragraph 56 Bangladesh Cricket Board Anti-Corruption Tribunal (Issued 8 June 2014) <http://www.thedailystar.net/upload/gallery/pdf/bpl-full-verdict-file-.pdf>

<sup>73</sup> Article 8 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016801cdd7e>

## Chapter 4:

# AVAILABILITY OF REGULATED PRODUCTS

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126. It is also fundamental to the viability of regulated betting operators and their markets that they are able to offer a wide range of products. Imposing restrictions invariably leads to consumers seeking banned products through other markets, including unregulated channels.
127. Some sports bodies and others have pressed for certain types of bets to be prohibited on sporting integrity grounds. They believe that these products, such as in-play betting, are detrimental to the integrity of sport, although no clear supporting evidence has been shown.
128. Indeed, law enforcement bodies such as INTERPOL and Europol have stated that match-fixing is not primarily focused on regulated, but unregulated operators, mainly in based in Asia.<sup>74</sup>
129. Corruptors are also known to focus on the more mainstream traditional betting markets, such as the final result, which have higher levels of liquidity and therefore offer greater opportunity to mask their illicit activities, rather than newer forms of sports betting markets e.g. in-play betting.
130. An independent report published by the ASSER Institute, which assessed the integrity risks of certain sports bets on the basis of quantitative empirical evidence, supports this position.<sup>75</sup>
131. Published in January 2015, the report analysed a detailed set of betting data covering football matches likely to have been manipulated for betting purposes over a period of five years (May 2009 - November 2014) to assess the impact of pre-match and in-play betting.
132. The report shows that match-fixers primarily take advantage of high liquidity betting markets and that almost all suspicious betting patterns were observed in the main betting markets which relate to the final outcome of a match (with only 0.4% in side markets).
133. The report therefore concluded that the evidence does not support the claim that live betting, in comparison to pre-match betting, significantly encourages corruption in sport.
134. Indeed, the study found no correlation between live betting or side betting and possible instances of betting-related match-fixing that would justify a prohibition of these bet types.
135. The assessment of risk and product availability is of course an issue for national legislators and regulatory authorities to ultimately determine, and where all stakeholders should be involved in evidence-based policy discussions regarding the associated betting market framework.
136. The British Gambling Commission has long taken such an approach and, after a detailed consideration of stakeholder positions and market analysis, published its initial position in 2009; it has continually reassessed this important matter and its policy since that time.
137. The regulator, which has detailed data from one of the largest and mature betting markets in the world, “works on the principle of risk-based regulation and must act in a proportionate manner” and was “not persuaded that there is a sufficient case for restricting types of bets”.<sup>76</sup>

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<sup>74</sup> Page 11 Interpol Match-fixing in Football Training Needs Assessment 2013 & <https://www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe>

<sup>75</sup> <http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf>

<sup>76</sup> Paragraph 3.2 <http://www.gamblingcommission.gov.uk/pdf/Betting%20integrity%20policy%20position%20paper%20-%20March%202009.pdf> & Paragraph 1.5 <http://www.gamblingcommission.gov.uk/pdf/Betting%20integrity%20policy%20position%20paper%20-%20March%202009.pdf>

138. The regulatory body reiterated this stance following the European Parliament's Resolution Online Gambling adopted in September 2013<sup>77</sup>, which proposed the prohibition of certain types of bets such as in-play betting, stating that: "any threat to sports betting integrity can be managed without the need to ban what is a very popular activity."<sup>78</sup>
139. In its subsequent October 2013 position paper it commented that it is: "familiar with methods used in other countries to promote betting integrity such as restricting the types of bets offered or approving sports governing bodies' rules before allowing betting on those sports."<sup>79</sup>
140. The regulator importantly noted that it: "has the power to impose such restrictions. However, the Commission does not consider, based on the available evidence, that such intrusive or resource intensive methods are warranted or would be effective".<sup>80</sup>
141. The Commission reassessed its policy position as recently as September 2016, stating that: "Despite the concerns raised about the risks to integrity from in-play betting there is limited evidence to show that the risks are greater than those associated with pre-event betting."<sup>81</sup>
142. As such, restrictions on the type of bets regulated betting operators can offer to consumers "are not warranted at this time. Taking such action may also increase the risk that bettors would be driven to seek to place bets via grey and black markets, over which we have no oversight."<sup>82</sup>
143. As the Gambling Commission notes in its policy paper, it works closely with all stakeholders, and especially its regulated operators, to analyse and manage the risks to sports betting integrity.
144. Responsible regulated betting operators are constantly assessing the risk of every market they offer and impose their own betting limits where that is deemed necessary and appropriate.
145. Those operators are focused on providing a safe and secure environment for consumers. They employ advanced security systems and are well-versed in guarding against fraudulent activity.
146. Most countries that regulate betting on sporting events do not currently impose significant restrictions on bet types or events, with regulated operators able to offer a wide range of products and services and employing risk-based security systems to monitor their markets.
147. Significant product restrictions are therefore only enforced in a small number of jurisdictions and there is no evidence to suggest that the sporting events taking place in these countries are any less susceptible to corruption, often perpetrated through unregulated channels.
148. Indeed, moves to ban regulated in-play (or live) betting are borne of little supporting evidence and it is of questionable positive integrity impact given the limitations of any national level approach in a fragmented global market of differing regulatory models.
149. It is important to remember that other more effective integrity measures are available to regulatory authorities, depending on the legislative framework, including: information sharing, voiding bets, the suspension of betting markets and the instigation of criminal prosecutions.

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<sup>77</sup><http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0218&language=EN&mode=XML>

<sup>78</sup>[http://www.egrmagazine.com/news/gambling\\_commission\\_rejects\\_in-running\\_ban\\_proposal](http://www.egrmagazine.com/news/gambling_commission_rejects_in-running_ban_proposal)

<sup>79</sup> Paragraph 3.6 <http://www.gamblingcommission.gov.uk/pdf/Protecting%20betting%20integrity.pdf>

<sup>80</sup> Ibid.

<sup>81</sup> <http://live-gamble.com.cloud.contensis.com/PDF/In-running-betting-position-paper.pdf>

<sup>82</sup> Ibid.

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150. Moreover, unregulated operators will continue to offer whatever types of products they chose without any regulatory limitation, oversight or possible sanctions and there is also no requirement on them to engage in responsible preventative actions to protect betting markets.
151. Imposing bet type restrictions on regulated operators does not therefore make it any less likely that the sporting events in that licensing jurisdiction will be any safer from betting related corruption, which can take place with a multitude of operators around the world.
152. The proposal that products offered by regulated operators should be restricted on integrity grounds is not a policy generated from any firm evidence base; placing product restrictions on regulated betting operators does not represent a proportionate or effective approach.
153. Any proposals in this area should also recognise that the ability to advertise and sponsor, subject to suitable restrictions, is a fundamental business necessity for regulated betting operators, as with many others business sectors, and which also contributes significant revenues.
154. Directing consumers to sports betting operators that report to a regulatory authority therefore has many benefits from an integrity and revenue generation perspective.
155. Whilst imposing arbitrary restrictions on licensed operators' products, which are not forced on operators outside of that jurisdiction, can conversely have a significant detrimental impact on the business model of in-country operators and the attractiveness of a licensing jurisdiction.
156. ESSA recommends that India should seek to adopt a policy that regulates and allows its citizens access to all types of betting products with a range of licensed betting operators as a means of maintaining both the viability and integrity of its sports sector and any licensed betting market.

## Chapter 5: SPORTS BETTING RIGHT

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157. Entwined with the issue of restrictions on betting is the assertion that sports should have control over the availability of betting markets offered by regulated operators.
158. This sports organisers' right (or sports betting right) involves a payment by licensed betting operators to national sports bodies for their agreement to allow betting on their events.
159. Whilst the promotion of a sports organiser's betting right has commercial roots, it has increasingly been presented as an important integrity measure by sports bodies, albeit there is little evidence to support this as a necessary or effective sports betting integrity approach.<sup>83</sup>
160. The European Commission contracted a study to analyse the operation and effectiveness of the sport organisers' right as an integrity measure.<sup>84</sup>
161. The subsequent Asser Institute authored report (published in April 2014<sup>85</sup>), which assesses the sports betting right adopted in France and the Australian State of Victoria, is highly critical of the approach as an effective integrity measure and lists numerous practical and legal obstacles.
162. The study highlights that supporters of this approach assert that its adoption enable sports to preserve the integrity of their events by determining the events on which bets could take place (and what type of bets), with the corresponding remuneration levied on those betting operators for that agreement invested in preventive measures to protect sports integrity.<sup>86</sup>
163. However, in France, the integrity basis of the legislation imposing the right to bet policy is shown to have been an afterthought, predicated on pressure from the European Commission which had identified aspects of the law which infringed EU Treaty provisions.<sup>87</sup>
164. The initial premise of the legislation was purely commercial (to benefit the sports sector), using database rights which do not qualify for protection. Only in the subsequently amended version did provisions state that any remuneration for the sports sector take account "in particular the costs incurred in detecting and preventing fraud".<sup>88</sup>
165. The associated contracts agreed in France average 1.1% of bets placed with, in the period June 2010 to June 2012, €2.4 million being paid by online betting operators to sports.<sup>89</sup>
166. In the same period €6.9 million was paid by monopoly land-based operations to the holders of the right to consent to bet with almost all of this going to football and rugby (93%).<sup>90</sup>
167. French regulator ARJEL observed that: "the amount paid by betting operators for the right to organise bets remains limited. Excluding football, tennis, and rugby, the remuneration is quite small and is unlikely to cover the costs incurred for risk prevention" in other sports.<sup>91</sup>

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<sup>83</sup> [http://www.uefa.org/MultimediaFiles/Download/uefaorg/Clubs/01/93/51/24/1935124\\_DOWNLOAD.pdf](http://www.uefa.org/MultimediaFiles/Download/uefaorg/Clubs/01/93/51/24/1935124_DOWNLOAD.pdf)

<sup>84</sup> <http://www.publications.parliament.uk/pa/cm201314/cmpublic/gambling/memo/gb08.htm>

<sup>85</sup> Open Call for tender EAC/18/2012, Study on sports organisers' rights in the EU Terms of reference

<sup>86</sup> <http://www.ivir.nl/publicaties/download/1353>

<sup>87</sup> Page 123 [http://www.ivir.nl/publicaties/margoni/study\\_sports\\_organisers.pdf](http://www.ivir.nl/publicaties/margoni/study_sports_organisers.pdf)

<sup>88</sup> Page 136 & 137 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>89</sup> Ibid. & Codified in the Sports Code, Article L.333 & page 140 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>90</sup> Page 142 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>91</sup> Ibid.



168. The reality is that only €75 million (or 21%) of the €362 million in bets placed by French consumers in 2012 involved sporting events covered by the right to bet approach - the rest being on events outside of France and thereby not covered by the system. Moreover, only the major betting events are covered, with French football generating almost half of the total return.<sup>92</sup>
169. ARJEL has advised that territorial licensing limitations also severely undermine the approach as: “the organiser of the competition can thus only have a partial view of the betting activity performed during its event and consequently, it can only claim a fair return on an exceedingly small proportion of the income generated by betting on its event” worldwide.<sup>93</sup>
170. This position is prevalent in all right to bet models and is a function of the legal practicalities of territorial boundaries in the enforcement of national laws. The integrity and product fee prescribed by the Australian State of Victoria model is similarly “only mandatory (i.e. enforceable) for sports events that take place wholly or partially in the State of Victoria.”<sup>94</sup>
171. This drawback was highlighted in a review in 2011 and, as with France’s national regime, consumers and operators outside of this territory are able to offer and engage in betting on events occurring in Victoria without any need to meet that state’s integrity agreements.<sup>95</sup>
172. This legal framework thereby results in a “potential integrity gap”. In addition, the costs involved in seeking status as a sports controlling body (SCB) under the Victoria legislation contributes to the reluctance of some smaller sports bodies to apply for SCB status.<sup>96</sup>
173. As such, it was noted by the review in 2011 that the current position where “sports controlling bodies have differing ability to negotiate with sports betting providers depending on how many of their games are played in Victoria, is unsatisfactory.” It was also unable “to form a view as to whether the legislation has strengthened public confidence in the integrity of sports.”<sup>97</sup>
174. ARJEL presents arguments that the right to bet model in France has benefited integrity with increased awareness of the risks and preventative actions (basic measures commonly used).
175. However, as the ASSER study for the European Commission points out, “the law does not mandate the effective implementation of these integrity measures” merely that a sport specifies the integrity measures it “intends” to introduce.<sup>98</sup>
176. As a result, the “adoption of adequate integrity mechanisms is not a prerequisite for the exercise of the French right to consent to bets” and there is no guarantee that the income is in fact allocated to fraud prevention and detection.”<sup>99</sup>
177. The report also concludes that as the French Sports Code already requires sports to put in place certain preventative rules, ARJEL cannot claim that any resulting integrity benefits can be attributed to the right to consent to bet approach.<sup>100</sup>
178. As such, it states that: “At most, the betting right marketing contracts help ensure compliance with the provisions of the Sports Code.”<sup>101</sup>

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<sup>92</sup> Page 143 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>93</sup> Page 141 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>94</sup> Page 133 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>95</sup> Ibid.

<sup>96</sup> Page 134 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>97</sup> Page 28 [http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803\\_Gleeson\\_Sports\\_Betting\\_Review.pdf](http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803_Gleeson_Sports_Betting_Review.pdf)

<sup>98</sup> Page 144 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>99</sup> Page 144 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>100</sup> Page 144 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>101</sup> Ibid.

179. It is interesting to note that, whilst the French authorities have continually pushed for the right to consent to bets (or an equivalent system) to be implemented in the other countries within the EU, there has been relatively little appetite to enact such a mechanism.
180. Indeed, as the ASSER report states: “Several Member States that have recently proceeded to the opening of their (online) gambling markets to licensed operators have instead opted for alternative mechanisms”.<sup>102</sup>
181. Moreover, apart from the clear practical and operational flaws in the effectiveness of the variations of this system, along with territorial preferences and limitations, a number of important legal obstacles exist regarding the introduction of this arrangement within the EU.
182. Firstly, the right to bet enables sports to control betting and the ASSER report notes that this “legal monopoly granted to sports organisers might be considered as leading to the creation of a dominant position within the meaning of Article 102 TFEU. Consequently, the marketing of the right to consent bets might give rise to anti-competitive concerns.”<sup>103</sup>
183. Secondly, the report for the European Commission highlights that “the requirement for betting operators to obtain consent for the organisation of sports bets could impede or render less attractive the free provision of gambling services” and as such could constitute a restriction on the free movement of services within the European Economic Area (EEA).<sup>104</sup>
184. The French authorities have determined that the right to consent to bets is justified “to prevent threats to sports’ ethics (and) the fairness and integrity of competitions”.<sup>105</sup>
185. However, as the ASSER report outlines, there is a serious question as to whether the French right to bet approach, in particular, genuinely fulfils this criteria as “there is no legal obligation to utilise the income for fraud prevention and detection” justifying its imposition.<sup>106</sup>
186. Furthermore, the ASSER report also emphasises that the right to bet’s administrative costs “will always be considerable. This is evident from the experiences with both the French and the Victorian enforcement mechanism” and further questioning its suitability.<sup>107</sup>
187. In addition, as the report states, the “right to consent to bets enables a sports organiser to effectively control the organisation of bets on its events.”<sup>108</sup> Rather than being a positive integrity measure, this presents a clear danger to betting markets and sporting events.
188. There must be a significant question as to whether it is appropriate to permit self-regulating sporting bodies any degree of control over regulated betting markets, especially given the on-going commercial issues and conflicts that are inherent in this matter.
189. Senior representatives of sporting bodies and clubs around the world have been implicated and/or convicted of involvement in both betting and non-betting (or sporting) related match-fixing, notably in Italy, Turkey, South Africa and Brazil.<sup>109</sup> Not to mention the wider high-level corruption issues and investigations that have involved FIFA and the IAAF, for example.<sup>110</sup>

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<sup>102</sup> Page 146 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>103</sup> Page 151 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>104</sup> Page 147 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>105</sup> See e.g. C-42/07 Liga Portuguesa de Futebol Profissional and Bwin International (2009) ECR I-7633, paras. 59-61. Conseil d’État, Décision n° 342 142 du 30 mars 2011 (fourth subsection) Page 148 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>106</sup> Page 148 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>107</sup> Page 152 & 154 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>108</sup> Page 150 [http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible\\_en.pdf](http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf)

<sup>109</sup> <http://news.bbc.co.uk/sport1/hi/football/europe/5215242.stm>, <http://www.bbc.co.uk/news/world-europe-13914118>, <http://www.bbc.co.uk/news/world-europe-18681119>,

<http://www.bbc.co.uk/sport/0/football/22042549> & <http://sports.ndtv.com/football/news/169887-brazil-football-chiefs-hit-with-match-fixing-fines>

<sup>110</sup> <http://www.bbc.co.uk/sport/0/athletics/34765444> & <http://www.bbc.co.uk/news/world-europe-32897066>

190. A report for the European Parliament's Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) in 2012 determined that "strong ties have been detected between the football establishment and criminal organisations".<sup>111</sup>
191. That position has been corroborated by other studies with a report by Sportradar stating that in football the organisation is "aware of at least ten owners/chairmen who are most likely linked to organised crime and their club is also most likely involved in match-fixing."<sup>112</sup>
192. The IPL has encountered its own issues in that regard, with the Supreme Court-appointed Justice Lodha Committee suspending two teams and their owners for two years to protect "the integrity of the game" following an illegal betting and match-fixing probe.<sup>113</sup>
193. Promoting a right to bet model could therefore be deemed questionable from the simple perspective that it potentially gives controlling power over betting markets to those unregulated persons and organisations that might be involved in corrupting those markets.
194. The British Gambling Commission has, quite understandably given the issues raised in the previous paragraphs, determined 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."<sup>114</sup>
195. The authors of the European Commission report examining the French and State of Victoria approaches, consequently advise that other countries have understandably "opted to obtain the claimed [integrity] benefits of the right to consent to bets through other regulatory means" and which indisputably seek to prevent the manipulation of all sporting events.<sup>115</sup>
196. The Italian and UK models are notable alternate approaches where their regulators' centralised systems are financed via betting operator licence fees, which ensure that there is no "integrity gap", as is the case with the French and Victoria right to bet approaches.
197. The Italian gambling regulator<sup>116</sup> employs its own sports betting monitoring system with all of its licensed betting operators' servers linked to it so that every bet can be recorded, monitored and validated. Unusual betting patterns are then sent to the respective sports for investigation.<sup>117</sup>
198. Whilst, the British Gambling Commission requires all of its licensed betting operators to notify and share information with the relevant sports and the regulator of any suspected or attempted betting fraud and any breach of a sport's rule.<sup>118</sup>
199. In short, it has been shown that the sports betting right approach is not an effective or safe integrity model. It is unclear that the associated revenues are being used for integrity and the administration costs are considerable. More secure, effective and clear integrity-focused methods are in operation in most European jurisdictions that regulate sports betting.

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<sup>111</sup> <http://www.europarl.europa.eu/document/activities/cont/201209/20120925ATT52303/20120925ATT52303EN.pdf>

<sup>112</sup> Page 66 <https://security.sportradar.com/sites/security.sportradar.com/files/Sportradar%20Security%20Services%20World%20Match-Fixing-The%20Problem%20and%20the%20Solution.pdf>

<sup>113</sup> <http://www.bbc.co.uk/news/world-asia-india-33517583>

<sup>114</sup> Paragraph 4.7 <http://www.gamblingcommission.gov.uk/pdf/Integrity%20in%20sports%20betting%20-%20issues%20paper%20-%20consultation%20-%20May%202007.pdf>

<sup>115</sup> Ibid.

<sup>116</sup> <https://www.agenziadoganemonopoli.gov.it/portale/>

<sup>117</sup> Ibid.

<sup>118</sup> British Gambling Commission licensing conditions and codes of practice section 15.1 [http://www.gamblingcommission.gov.uk/gambling\\_sectors/betting/operating\\_licence\\_holders\\_-\\_wh/information\\_that\\_must\\_be\\_provi/reporting\\_suspicious\\_bets\\_to\\_s.aspx](http://www.gamblingcommission.gov.uk/gambling_sectors/betting/operating_licence_holders_-_wh/information_that_must_be_provi/reporting_suspicious_bets_to_s.aspx)

## Chapter 6: CONCLUSIONS

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200. It is clear that, whilst currently illegal in much of India, betting on sport, and particularly the national game of cricket, is widespread and yet largely unregulated and untaxed.
201. This has benefited criminal elements, been to the detriment of sport, related investment and public revenues, whilst also denying consumer demand and access to a regulated product.
202. On the basis that prohibition of betting has proved ineffective, and where a renewed drive to impose it would appear impractical, a continuation of the status quo is clearly not advantageous.
203. The creation of a regulated sports betting market brings with it a range of sizeable fiscal and integrity benefits that are certainly worth examining and seeking to implement in India.
204. To that end, it is fundamental that any legislative framework is able to adequately cater for, and readily adapt to, new commercial developments and any accompanying regulatory challenges.
205. Modern technological advances have opened new global channels of consumer interaction and policymakers must consider their market regulation and structure within that landscape.
206. Verifiable evidence shows that all aspects of the market benefit from an open licensing system that allows any number of operators, that fulfil the licensing criteria, to offer betting services.
207. Imposing an arbitrary restriction on choice and competition will not adequately cater for the needs of modern consumers who are able to readily access products in other markets.
208. That in turn adversely impacts the ability of the regulatory authority to oversee that consumer activity and to have access to important data on the functioning of that market.
209. Aligned to that is the adoption of a taxation model that reflects the international availability and dimension of sports betting products and is not over-burdensome from that perspective.
210. The type and level of taxation significantly influences the size and product availability of the betting market and is an important driver of market growth, structure and consumer attraction.
211. Existing market evidence shows that betting operators and consumers are greatly attracted to a gross gambling revenue (GGR) tax, at a reasonable level, as opposed to a turnover tax regime.
212. These licensing and taxation policies provide the platform from which other important issues such as betting integrity can be addressed and mitigating actions and sanctions implemented.
213. It is important to highlight that betting related match-fixing is an activity fundamentally aimed at manipulating sporting events to defraud betting operators and their consumers.
214. Responsible regulated private betting operators have a clear inherent operational business need to ensure the integrity of sporting events and their associated betting products.
215. Those operators invest significant resources in achieving that and work closely with authorities and sports to create an effective licensing framework that includes specific integrity initiatives.

216. This partnership working undoubtedly strengthens the national integrity framework and deters corrupters from those markets, benefiting consumers, sports and operators alike.
217. It is vital that regulated betting operators are permitted to offer a wide range of products; imposing market restrictions leads consumers to seek those products through other channels.
218. Moves to ban regulated in-play (or live) betting have been shown to be borne of little supporting evidence and are of questionable benefit in a global market of differing regulatory models.
219. It is important to remember that other integrity measures are available to regulatory authorities, including: information sharing, voiding bets, suspending markets and criminal prosecutions.
220. Moreover, unregulated operators around the world will continue to offer whatever types of products they chose without any regulatory limitation, oversight or sanction.
221. Imposing bet type restrictions on regulated operators does not therefore make it any less likely that the sporting events in that licensing jurisdiction will be any safer from betting corruption.
222. As such, the proposal that products offered by regulated operators should be restricted on integrity grounds has no firm evidence base and does not represent an effective approach.
223. It is therefore recommended that India should seek to adopt a policy that regulates and allows its citizens access to all types of betting products with an range of licensed betting operators as a means of maintaining both the viability and integrity of its sporting events and betting markets.
224. Entwined with the issue of restrictions on betting is the assertion that sports should have control over the availability of the betting products and markets offered by regulated betting operators.
225. ESSA is aware that this flawed sports organiser's betting right, as it is often referred and which has commercial roots, has increasingly been presented to policymakers as an integrity measure.
226. There is, however, little evidence to support this as a practical or proportionate integrity action and which potentially gives controlling power over already regulated betting markets to those unregulated sportspeople and organisations that might be involved in sports betting corruption.
227. A detailed report for the European Commission has clearly shown that this approach is not an effective or safe sports betting integrity model; the administration costs are considerable and it is also unclear that the associated revenues from betting are actually being used for integrity.
228. Understandably, this flawed approach has gained little support; instead, more secure, effective and clear integrity-focused methods are in operation in most jurisdictions that regulate betting.
229. With these issues in mind, ESSA would like to extend an open invitation to the Law Commission and the wider Indian authorities to meet with ESSA and our members to explore the effective and well-developed regulated environments and integrity provisions in operation in Europe.

## Annex A: ADDITIONAL MATERIAL

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230. ESSA has listed (and added links) to a number of key documents for the Law Commission to consider and which provide a more detailed examination of the many of the issues raised above.

### ASSER Institute Studies

- [ASSER Institute Study on Sports Organisers' Rights](#)
- [ASSER Institute Study on risk assessment and management in the fight match-fixing](#)
- [ASSER Institute Report on the Integrity risks of certain types of sports bets](#)

### British Gambling Commission Policy Papers

- [In-play \(in-running\) betting: position paper](#)
- [Protecting betting integrity](#)
- [The Gambling Commission's betting integrity decision making framework](#)
- [Misuse of inside information: policy position paper](#)
- [UK Sport and Sports Betting Integrity Action Plan](#)
- [Licence conditions and codes of practice](#)

### Betting Industry Reports

- [Sports Betting: Legal, Commercial and Integrity issues](#)
- [Sports Betting: Commercial and Integrity issues](#)
- [The Key to Sports Integrity in the United States: Legalized, Regulated Sports Betting](#)

## Annex B: ESSA MEMBERS AND CONTACT INFORMATION

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888	Fonbet
Association of British Bookmakers (ABB)	Interwetten
Bet365	Ladbrokes Coral
Bet-at-home	PaddyPower Betfair
Betclic	Skybet
Betdaq	Sportingbet
Betsson	Sporting Index
BetStars	Sportium
BetVictor	Stanleybet
Betway	Stoiximan
Bwin	Unibet
Digibet	William Hill
Expekt	

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