



# THE SWISS REGULATORY FRAMEWORK AND INTERNATIONAL SPORTS ORGANISATIONS

MICHAEL MRKONJIC, PHD CANDIDATE

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Institut de hautes études en administration publique  
Swiss Graduate School of Public Administration

L'Université pour le service public

# 1. SWITZERLAND AS HOST COUNTRY OF INTERNATIONAL SPORT

## 1. Switzerland is the “Queen of Sport” (de Coubertin, 1906)

1. It hosts the IOC since 1915 (perpetual “military” neutrality of Switzerland)
2. It hosts 36 International and European Olympic sports federations (ISOs) (SwissOlympic, 2011)
  1. 50 % of International Olympic sports federations (FIFA, FIVB, FIBA, ...)
  2. 25 % of European Olympic sports federations (UEFA, EAA, ...)

## 2. Legal status : associations

1. Swiss Civil Code (arts. 60ss.)
  1. Non profit + Statutes (art. 60)
  2. Annual General Assembly (art. 64)
    1. Voting rights and majority (art. 67)
    2. Deprivation of voting rights (art. 68)
  3. Executive body (art. 69)
  4. Conditional external annual audit (art. 69b)
    1. Results : 10 mio CHF
    2. Revenues : 20 mio CHF
    3. Staff : 50 employees

## 2. THE IOC TAX EXEMPTION CASE

### 1. Between 1915 and 1981

1. The IOC has no legal personality and fights for an “international status”.
2. Sporadic agreements on personal tax exemptions (members and staff).

### 2. Between 1981 and 1998

1. The Swiss Federal Government recognises unilaterally that the IOC is a non governmental organisation having the status of an association under Swiss law.
2. It recognises the unique nature of the IOC as an international institution.
3. Arguments (Ogi, 1981)
  1. International prestige for Switzerland
  2. Important for Swiss sportsmen and sportswomen
  3. International / universal dimension of the IOC
  4. International pressure to host the IOC
4. Decision
  1. Direct Federal Tax exemption
5. Legal basis
  1. The Swiss Federal Constitution (art. 102/8 aCst.)
    1. “The Swiss Federal Council sees to the interests of the Confederation outside and is, in general, responsible for external relations”

### 3. Between 1998 and 2008

1. The Swiss Federal Government recognises that the IOC pursues public purposes
2. Arguments
  1. It promotes physical education
  2. It promotes mutual understanding and peace
  3. It has an economic impact (100 mio CHF/Y for the region)
3. Decision
  1. Direct Federal Tax exemption + VAT exemption (asked by the IOC in 1994 but withdrawn in 1999)
4. Legal basis
  1. The Swiss Federal Constitution (art. 102/8 aCst.)
  2. Swiss Federal Law on Direct Federal Tax (art. 56g, LIFD)
    1. "Are exempt from tax <...> entities that pursue public goals or public utility <...>"
  3. Mutual agreement between the Swiss Federal Government and the IOC (2000) formalising the status of the IOC

4. From 2008

1. The Government approves the direct federal tax exemption for all ISOs (2008) on the basis of art. 56g LIFD
  1. International sport :
    1. Mutual understanding between cultures
    2. Promotion of peace
    3. Positive values (fair-play, fight against racism and xenophobia, integration)
    4. Development
2. Host State Act for international institutions (2008)
  1. International Non Governmental Organisations (Chapter 5, arts. 24 & 25)
    1. "INGOs may be entitled to benefits provided for under other federal acts, in particular the tax exemption provided for under the Federal Act of 14 December 1990 on Direct Federal Taxation"
    2. "INGOs are not eligible for the privileges, immunities and facilities contemplated by this Act"

### 3. THE FIFA CORRUPTION CASES

1. FIFA has its seat in Zurich since 1932
  1. A non profit association under Swiss Law (arts. 60ss ccs)
  2. On the contrary to many ISOs (notably in the canton of Vaud) it pays taxes (5 mio \$ in 2011)
2. The FIFA - ISL case (1989-2012)
3. The FIFA election and bidding scandals (2010-2011)
4. Off-the-field corruption
  1. Officials
  2. Since 2000, FIFA is worldwide criticized by scholars, the media and NGOs.
  3. Since 2010, FIFA is also criticized by the Swiss Parliament and Government.
  4. Legal mechanisms ?

## Fighting against off-the-field corruption in sport in Switzerland

### 1. Until 2000

1. Corruption of foreign public agents was not prosecuted in Switzerland
2. Offering bribes was the usual way of doing business
3. Bribes were also deductible from tax

### 2. From 2000

#### 1. International pressure trough:

1. OECD Anti-Bribery Convention (ratification in 2000)
2. Council of Europe Criminal Law Convention on Corruption (ratification in 2006)
3. United Nations Convention against Corruption (ratification in 2009)
4. GRECO third evaluation cycle on Switzerland (2011)
  1. It recommends that private corruption is no longer prosecuted upon complaint, but automatically (i.e amend the Unfair Competition Act)
  2. It recommends the extension of the offence of private sector bribery to sports associations (i.e amend the Unfair Competition Act)

#### 2. National pressure trough parliamentary initiatives:

1. Initiative Thanei and Leutenegger (2010)
2. Initiative Sommaruga (2010)

### 3. Swiss Criminal Code

#### 1. Art. 322<sup>septies</sup> CP: "Corruption of foreign public agents" (2006)

1. "...to grant or to accept an undue advantage...contrary to its duties..."
2. Not applicable to International sports organisations since they are not considered as International organisations (built on Treaties, immunities, VAT exemptions)
3. Proposal by the Parliament in 2010 (Thanei) : International sports organisations should be treated as intergovernmental organisations, i.e. consider officials as foreign public "sports" agents
4. Proposal withdrawn by the Parliament

#### 2. Art. 102/2 CP: "Criminal liability" (2003)

1. "The [organization] is punished [...] for not having taken all reasonable organisational measures necessary to prevent such offenses (i.e. art 322<sup>septies</sup> CP, art. 4a LCD, art. 23 LCD)"
2. Applicable to International sports organisations but limited impact so far since only a very few corporations have been sentenced on the basis of this article.



#### 4. Swiss Unfair Competition Act

##### 1. Arts. 4a LCD & 23/1 LCD: "Active and passive corruption" (2006)

1. "...bribery and taking of bribes..." (art. 4a LCD)
2. Not applicable to International sports organisations because bribery of officials for votes is not considered as creating an unfair economic competition
3. Only prosecuted on complaint (art. 23/1 LCD)
4. Proposal by the Parliament (Sommaruga) in 2010: Transfer of the article in the Swiss Criminal Code (Title 19 on corruption) + remove the complaint requirement.
5. Proposal accepted by both Chambers of the Parliament
6. Department of Justice and Police is in charge of preparing a preliminary draft amendment to the law (2013)

## 4. CONCLUSIONS

1. With the Host State Act, ISOs that have their seat in Switzerland are formally recognised as INGOs.

2. On a fiscal perspective (art. 56g, LIFD) they are considered as public service providers.

3. On a criminal perspective, mechanisms of compliance with the law are still not effective:

1. To some extent, FIFA can protect itself from the threat of art. 102/2 of the Swiss Criminal Code by reforming its internal structures, but...
2. The potential modification of the Swiss Unfair Competition Act (i.e. the amendment to the Swiss Criminal Code) enhances the accountability of ISOs towards Swiss public authorities.



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