Switzerland and International Sports Organisations

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Legal status of ISOs in Switzerland

- Non profit associations
  - Swiss Civil Code (1907) => weak legal density (20 arts.)
    - Non-economic purpose + statutes
    - Annual General Assembly
    - Executive body
    - External annual audit (2007)
      - Results : 10 mio CHF
      - Revenues : 20 mio CHF
      - Staff : 50 employees
A brief overview of the Swiss hosting policy toward ISOs

- 1981: The IOC benefits of a direct federal tax exemption

- 1998: The Federal government recognises via a federal ordinance that the IOC pursues public purposes

- 2008: The Federal government approves the direct federal tax exemption for all ISOs + Enforcement of the Host State Act

- 2011: New Swiss Law on the Promotion of Sport
  - The Federal government ensures that ISOs enjoy favorable conditions for the exercise of their activities in Switzerland
  - The Federal government can support (financially) sports organisations that are committed to ethical practices but also withdraw its support if they are not committed to such practices
Corruption issues

- FIFA
  - On the contrary to many ISOs, it pays taxes (5 mio $ in 2011, 17 mio $ in 2012)
  - Since 2010, FIFA is criticized by the Federal government
    - “[Micheline Calmy-Rey] urged Sepp Blatter and the 208 national delegations, to “take seriously the many criticisms voiced about corruption. She assured her listeners that Fifa is “important to Switzerland”, but said it should reform its governance” (Swissinfo, 2010)
Legal mechanisms

- **Until 2000**
  - Corruption of foreign public agents was not prosecuted in Switzerland
  - Offering bribes was the usual way of doing business and was also deductible from tax

- **From 2000**
  - International pressure trough:
    - OECD Anti-Bribery Convention (ratification in 2000)
    - Council of Europe Criminal Law Convention on Corruption (ratification in 2006)
    - United Nations Convention against Corruption (ratification in 2009)
    - GRECO third evaluation cycle on Switzerland (2011)
- **Swiss Criminal Code**

    - Not applicable to International sports organisations since they are not considered as Intergovernmental organisations (built on Treaties, immunities, VAT exemptions)

    - “The [organization] is punished [...] for not having taken all reasonable organisational measures necessary to prevent such offenses (i.e. art 322septies CP, art. 4a LCD, art. 23 LCD)”
    - 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.
- **Swiss Unfair Competition Act**
  
  - Arts. 4a LCD & 23/1 LCD: “Active and passive corruption” (2006)
    - “...bribery and taking of bribes...” (art. 4a LCD)
    - **Not applicable to International sports organisations** because bribery of officials for votes is not considered as creating an unfair economic competition (Conseil Fédéral, 2004)
    - **Only prosecuted on complaint** (art. 23/1 LCD)
Legislative process

- **Postulate Büchel (2010, 2011)**
  - Asks the Government to present measures in order to fight against corruption in sport and match fixing.

- **Parliamentary initiative Sommaruga (2010)**
  - Transfer of the article regarding the fight against corruption from the Swiss Unfair Competition Act to the Swiss Criminal Code and remove the complaint requirement.
Postulate Büchel

  - “A responsible conduct in terms of good governance is an essential prerequisite in the fight against corruption and match fixing”
  - “Federal authorities must work to ensure that the international community establishes general principles of good governance or minimum requirements for the development of a universal "code of good practice in sport”
  - “If it turns out that ISOs are not willing to take reasonable measures to fight against corruption and therefore protect the positive values of sport for society and the image of Switzerland, the privileges they benefit might no longer be justified”. 
Parliamentary initiative Sommaruga

- Accepted by both Chambers of the Swiss Parliament in 2012
- Department of Justice and Police prepared a preliminary draft amendment to the Criminal code:
  - Active and passive private corruption in the private sector is punished without complaint requirement (art. 322octies + novies (new))

May 2013, preliminary draft sent to a wide range of groups of stakeholders for consultation (State authorities, unions, political parties, universities, associations, etc.)

- Mixed reactions
Concluding remarks (I)

- On a **sporting policy perspective**, ISOs can enjoy favourable conditions (f.i. free offices).

- On a **foreign policy perspective**, ISOs are formally recognised as INGOs and can enjoy favourable conditions (f.i. work permits).

- On a **fiscal policy perspective** ISOs are considered as “public service providers” and can claim for tax exemption.

- On a **criminal policy perspective**, mechanisms of compliance with the law are still not effective.
Concluding remarks (II)

- The amendments to the Criminal Code targets not only ISOs, but also corporations, which generates potential reluctance from the economic spheres towards increasing regulation.

- If the Criminal Law is not amended, conditioning privileges, tax exemptions, or financial support to the respect of principles of good governance may then potentially act as a “softer” way of fighting against corruption.
Thank you for your attention!