



Switzerland regulating manipulation of sports competition

On 31 January 2018, the Federal Council announced that it would ratify the “Council of Europe Convention on the Manipulation of Sports Competitions” concluded in Macolin on 18 September 2014. This ratification will provide Switzerland with tools to combat the manipulation of sports competitions, notably through the implementation of criminal provisions.

The International sports federations based in Switzerland should be ready for this new regulatory framework.

The political context

Switzerland is the seat of numerous International sports federations and sports organisations and has therefore a particular responsibility to adapt the necessary legal framework in order to preserve the integrity of sport.

Further to recent scandals, in particular the controversial award of the FIFA World Cup to Russia and Qatar, there was an urgency to adopt stricter regulations considering that certain sports bodies failed to regulate themselves properly.

In this context, the Swiss penal code (**SPC**) was recently amended in order to allow that bribery – in private matters – would be henceforth prosecuted *ex officio*, that is even if no complaint is filed. As from 1 July 2016, bribery of private individuals (art. 322^{octies} SPC) and accepting bribes (art. 322^{novies} SCP) are criminal offenses subject to a custodial sentence of up to three years or a monetary penalty.

Such provisions are tailored to apply when the bidding process of sports events is tainted by bribery.

Another threat to sport integrity is illegal betting and the manipulation of sports competitions. The sports betting market has grown by nearly 300% over the last ten

years, following a marked increase in legal and illegal revenues boosted by the Internet. According to World Lottery Association estimates, the gross income of sports betting providers (difference between bets and winnings paid) reached nearly 25 billion euros in 2012. Out of this amount, illegal providers received approximately 11 billion euros.

Aware of the dangers of the manipulation of sports competitions, the Swiss Confederation has signed the Convention on the Manipulation of Sports Competitions (the “**Convention**”) and is about to ratify it.

Four years after its adoption, three States – Norway, Portugal and Ukraine – have ratified the Convention and 30 other countries have shown their commitment to accede by signing. Since the issue requires a united and global response, not only the member States of the Council of Europe but any State worldwide can become a Party of the Convention.

The Convention will enter into force after five ratifications.

The Macolin Convention

The purpose of the Convention is to prevent, detect, punish and discipline the manipulation of sports competitions, as well as enhance the exchange of information and national and international cooperation between the public authorities concerned, and with sports organisations and sports betting operators.

The Convention will encourage more efficient collaboration between the police and judicial authorities in different countries. It will also facilitate a more structured cooperation and information exchange between state bodies and sports bodies.

Sports bodies will be encouraged to prosecute disciplinary cases under their own regulatory framework. The Convention will also provide state



authorities with access to the sport industry's expertise, which will assist in the investigation and prosecution of organised crime in a sport-specific setting.

The Parties to the Convention will be bound by certain obligations, *inter alia*:

- To co-ordinate the policies and action of all the public authorities concerned with the fight against the manipulation of sports competitions. In Switzerland, this coordination will be under the responsibility of the Commission of lotteries and betting ("Comlot") and of the Federal Office of Sport (art. 4);
- To encourage sports organisations, sports betting operators, competition organisers and any other relevant organisation to establish procedures and rules in order to combat manipulation of sports competitions and shall adopt, where appropriate, legislative or other measures necessary for this purpose (art. 5);
- To raise education and awareness to strengthen the fight against manipulation of sports competitions (art. 6);
- To adopt legislative or other measures regarding the financing of sports organisations (art. 8) and the managing of sports betting operators (art. 10);
- To explore the most appropriate means to fight operators of illegal sports betting (art. 11);
- To facilitate, at national and international levels and in accordance with its domestic law, exchanges of information between the relevant public authorities, sports organisations, competition

organisers, sports betting operators and national platforms (art. 12);

- To identify a national platform addressing manipulation of sports competitions (art. 13).

Sports federations will be encouraged to adopt principles of good governance related, in particular, to the prevention of conflicts of interest and the obligation to report suspicious activities. They will have to implement appropriate measures to monitor the course of sports competitions exposed to the risks of manipulation and to apply sanctions in case of manipulations of sports competition (art. 7).

Since corrupt referees can manipulate the outcome of a competition, the Convention expresses that the appointment of judges and referees is made at the latest possible stage (art. 7 § 2, let. e)

Sports federations will therefore be encouraged to adopt effective rules in order to prevent, detect and sanction the manipulation of sports competition.

For the sports entities funded by the Swiss Confederation, they may not be eligible for funding should they not comply with the obligations provided for under the Convention.

Art. 15 of the Convention stipulates that each Party shall ensure that its domestic laws allow criminal sanctioning for the manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law.

The implementation of the Macolin Convention in Swiss law

The principles defined by the Macolin Convention are notably enforced in Switzerland through the new Gambling Act, which entered into force as of 1 January 2019, and through the Act on



encouraging sport and physical activities, which has been amended.

The Gambling Act foresees in particular that sports organisations have the duty to report suspicions of manipulation (Art. 64).

The Act on the encouragement of sport and physical activities has been amended with a new provision which allows the sanctioning, with a custodial sentence up to three years and/or with a monetary penalty, of anyone who is associated with manipulation.

Art. 25a states as follows:

(§1) Anyone who offers, promises or grants an undue advantage to a person holding a position in the framework of a sporting competition for which bets are proposed, in order to distort the course of the competition in favour of that person or a third party (indirect manipulation), shall be punished with a custodial sentence up to three years or with a monetary penalty.

(§2) Whoever, as a person exercising a function in a sporting competition for which bets are offered, solicits, promises or accepts an undue advantage in his or her favour or in favour of a third party in the event of a breach the goal of distorting the course of the competition (manipulation direct) shall be punished with a custodial sentence up to three years or with a monetary penalty.

(§3) In serious cases, the judge pronounces a custodial sentence for up to five years or a monetary penalty; in the case of custodial sentence, a monetary penalty shall also be imposed. The case is serious notably when the offender (a) acts as a member of a band formed to manipulate indirectly or directly competitions in a systematic way; (b) realizes an important turnover or a

profit in the profession of manipulating competitions.

Conclusion

The new regulatory framework which has recently been adopted in Switzerland obliges sports organisations to adapt their governance and implement new sets of rules and policies in order to effectively combat the manipulation of sports competitions.

They will have to abide by certain duties, notably the obligation to report suspicious activities, and may face adverse consequences if they fail to do so.

More importantly, any person or entity associated with the manipulation of sports competitions may face criminal charges from now on, which is a significant step forward in order to protect the integrity of competitions.