

Tackling match-fixing in Switzerland: the new duties on International Sports Federations to monitor & report suspected match manipulations



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In 2014, the Member States of the Council of Europe (which includes Switzerland) signed the [Macolin Convention on the Manipulation of Sports Competitions](#). Although the Convention has not yet entered into force, Switzerland has adopted a new [Federal Act on Money Games \(FAMG\)](#), which came into effect on 1 January 2019. The FAMG relates more broadly to betting rather than the sports industry specifically. However, it does include among other measures to tackle corruption, a criminal offence for match fixing in sports and, pursuant to Paragraph 12 of the Macolin Convention, establishes a specific duty to report any suspicion of competition manipulation.

This article examines the FAMG as it relates to the sports industry, explaining which entities are subject to it and the conditions of the reporting duty, as well as the possible destination of the reported data.

A specific criminal offence for the act of bribery in sports

Background

Swiss regulations on betting and casinos dated back to the 1920's and were in need of revamping to address the challenges of our new digital era.

Neither this regulation nor any other Swiss laws addressed match-fixing specifically. The issue was dealt within the classical offence of fraud, which proved inefficient since it had to determine that an individual (not a machine) had been deceived¹. This often proved a difficult (if not impossible) obstacle to overcome in match fixing cases involving undue profits secured through betting operators on the internet. In fact, Swiss courts have refused to grant mutual legal assistance on the sole consideration of fraud in match fixing cases under investigation in Turkey² or Italy³, given that such fraud had not been committed through deception of a human body, but that of a betting system. In domestic investigations, Swiss Courts have acquitted individuals that gained undue profit from betting operators through manipulation of competitions, under this similar consideration⁴. Yet, a case of match-fixing could be considered under the offence of private bribery under para. 322octies and 322novies of the [Swiss Criminal Code](#) but, to the knowledge of the author, it has never been tested before Courts so far.

Match-fixing under the FAMG

This panorama convinced the regulator to include in the FAMG some of the important changes inducted by the Macolin Convention, namely the introduction of a criminal offence for competition manipulation (para. 15 of the Macolin Convention) and the introduction of a reporting duty (para. 12 of the Macolin Convention).

As far as match fixing is concerned, the most remarkable change introduced by FAMG (and the [Sport Promotion Act](#), which has been modified accordingly) is the creation of a specific criminal offence related to match fixing⁵. The offence of active corruption reads as follows:

“Any person who, for his own benefit or for the benefit of a third party, offers, promises or grants an undue advantage to a person who exercises a function at a sports competition at which sports betting is offered in order to falsify the outcome of that sports competition

¹ Para. 146 of the [Swiss Criminal Code](#).

² Award RR.2009.33-36 dated June 25 2009 of the Swiss Federal Criminal Tribunal ([in French](#)). In this very case, mutual legal assistance was granted as the investigated actions also included undue operation of lotteries.

³ Award RR.2013.46-47 dated June 7 2013 of the Swiss Federal Criminal Tribunal ([in Italian](#)).

⁴ Award SK.2016.48 dated February 14 2017 of the Swiss Federal Criminal Tribunal ([in German](#)); Award SK.2011.33 dated November 13 2012 of the Swiss Federal Criminal Tribunal ([in German](#)); Award SK.2012.21 dated November 13 2012 of the Swiss Federal Criminal Tribunal ([in German](#)); Award 6B_544/2017 dated December 12 2017 of the Swiss Federal Tribunal ([in German](#)).

⁵ See Para. 25a of the [Sport Promotion Act](#), introduced by FAMG according Annex to Para. 139 FAMG

(indirect competition rigging) shall be liable to a custodial sentence not exceeding three years or to a monetary penalty”.

Passive corruption is encompassed as follows:

“Any person who exercises a function at a sports competition at which sports betting is offered and who requests, secures the promise of or accepts, for his own benefit or for the benefit of a third party, an undue advantage in order to falsify the outcome of that sports competition (direct competition rigging) shall be liable to a custodial sentence not exceeding three years or to a monetary penalty”.

The offence is based on similar provisions to private bribery under the Swiss Criminal Code⁶. Hence, the offence targets individuals who either

1. offer, promise or grant an undue advantage; or
2. secure the promise of or accept an undue advantage in order to falsify the outcome of a sports competition.

Paragraph 25a of the Sport Promotion Act applies to athletes, officials, referees, sports administrators and event organizers. In the preparatory work to the FAMG (and Sport Promotion Act), the Federal Government described a broad scope of this provision as it includes those responsible for technical issues such as mid-game turning off the floodlights or excessive watering of fields. It will be necessary to demonstrate that such actions had, or would have had, a proven influence on the outcome of the competition.

Regarding the more specific manipulation of sports equipment (e.g. the use of an engine on a cycle), it is uncertain at this stage how the regime will apply: the lawmaker’s preparatory work addresses this issue twice, with two different outcomes on whether manipulation of sports equipment is or is not encompassed within the offence of bribery described at para. 25a Sport Promotion Act. There is also uncertainty to what extent it applies to doping.

The preliminary work of the lawmaker expressly excludes doping from the scope of the legislation but is contradictory as veterinarians are included in the personal scope of the criminal offence. To the contrary, fan behavior is not considered as an instrument to influence a competition under FAMG⁷.

⁶ Para. 322octies and 322novies of the [Swiss Criminal Code](#).

⁷ For all these examples, see Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7746 and 7747 (in [French](#)).

Sanctions can lead up to five years of imprisonment and a monetary penalty in excess of 540'000.Swiss francs (which amount is based on the wealth and revenue of the offender involved)⁸.

Interaction with the Swiss Criminal Code

It is worth mentioning here that Swiss Criminal law includes a limited concept of corporate criminal liability. Among other situations (which are not all discussed here), such liability may arise where an offence is committed “*provided the undertaking has failed to take all the reasonable organisational measures that are required in order to prevent such an offence*”⁹. One may consider here the situation where an official within an International Federation is corrupted to influence the outcome of the competition and question whether an International Federation may be held criminally liable.

Such liability is not encompassed within the corporate criminal liability in relation to the offence of competition manipulation as analysed here, for two reasons.

- First, corporate criminal liability as described above only relates to actions of active corruption (focused on the corruptor), not to actions of passive corruption (focused on the corrupted agent). Corporate criminal liability related to passive corruption could only be considered under another provision of the Swiss Criminal Code¹⁰. In such case, criminal liability of an International Federation could only be considered if the corrupted agent could not be identified due to a lack of organization within the International Federation. Such situation seems highly hypothetical.
- Second, the provisions of the Swiss Criminal Code on corporate criminal liability have not been specifically adapted to the passing of FAMG, and solely refers to private bribery in general, not to manipulation of sports competitions under para 25a of the Sport Promotion Act specifically. As already mentioned, the offence of private bribery¹¹ has, to the knowledge of the author, never been tested before Courts so far in the context of match-fixing.

Scope of FAMG

⁸ Para 25a Section 3 of the [Sport Promotion Act](#) and para. 34 Section 1 and of the [Swiss Criminal Code](#).

⁹ Para 102 Section 2 of the [Swiss Criminal Code](#).

¹⁰ Para 102 Section 1 of the [Swiss Criminal Code](#).

¹¹ Para. 322octies and 322novies of the [Swiss Criminal Code](#).

The **territorial scope** of the regulation is two-fold.

On the one hand, FAMG is of **national reach**.

- Any competition (amateur or professional) that is organized, conducted or monitored by an entity in Switzerland is concerned. However, an act of manipulation of sports competition will be considered as a criminal offence only if bets on such competition are offered. The lawmaker's preparatory work does not specify whether the offer of bets must occur in Switzerland or anywhere in the world¹². We believe the first approach is more in accordance with FAMG in general, especially the duty to report which will be discussed below. There is no element in the lawmaker's preparatory work that suggests that bets worldwide should be considered.
- According general rules on international criminal jurisdiction under Swiss law¹³, the lawmaker's preparatory work makes clear that para. 25a of the Sport Promotion Act will apply either if the corruption is offered in Switzerland, if the corruption agreement is concluded in Switzerland or if the undue advantage is granted in Switzerland. Additionally, the lawmaker mentions that Swiss jurisdiction would "not be excluded" (in other words, that it is possible) where none of those conditions are met but if the manipulated competition happens in Switzerland. In such similar situation but where the competition is staged outside of Switzerland, there would be no Swiss jurisdiction. To the contrary, should the corruption (the offer, the agreement or the payment) occur in Switzerland para. 25a of the Sport Promotion Act would be applicable on any competition that is "*organised by an international, national or regional association, or by their local entity, or happens according the rules set by an international or national organization, no matter its legal structure*"¹⁴. Consequently, the fixing outside of Switzerland of a competition staged outside of Switzerland under the monitoring of a Swiss-based International Federation should not be prosecuted in Switzerland.

Hence the provision appears primarily for local use in Switzerland.

On the other hand, despite these obvious limitations, FAMG has an **international dimension**.

- First, the introduction of the FAMG will make international cooperation much easier. As described above in introduction, mutual legal assistance granted by Switzerland was limited due to the strict conditions of fraud, which could not apply to manipulations operated through internet. Now, assistance sought by foreign authorities in Switzerland (e.g. the

¹² See Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7746 and 7747 (in [French](#)).

¹³ Para. 8 of the [Swiss Criminal Code](#).

¹⁴ See Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7746 and 7747 (in [French](#)).

interview of an International Federation's official, the production of banking documentation), will be granted where elements of competition manipulation are presented, regardless whether the undue profit was secured through a betting system or the deceit of a specific individual.

- Secondly, in cases where at least a 10'000 Swiss Francs benefit is made (which captures the majority of match-fixing transactions) the specific offence will appear as the preliminary crime of money laundering. Besides possible criminal prosecutions in Switzerland in cases where the proceeds of crime are deposited in Switzerland, this new regime also affects banks' duties to report suspicions of money laundering to the [Money Laundering Reporting Office Switzerland](#). Bank accounts related to sports organization, betting operators, athletes, officials and anyone involved in a competition object of a publicly reported suspected manipulation will be scrutinized by Swiss banks. In the author's view, banks would probably not report information of a possible match fixing if it has no specific connection with their client. However, clients (mainly betting operators, clubs, athletes or officials) will need to give the necessary comfort to banks in such situation, and explain their endeavors to ban match fixing.
- Third, the FAMG introduces a reporting duty that applies to all IF's in cases of match fixing, which we describe below.

A duty to report on all International Federations based in Switzerland

One of the key developments under the Macolin Convention (para. 12) is the creation of a network of central reporting authorities (national platforms) within the member states, in order to gather and share information from and to sports organisations, competition organisers, sports betting operators and national platforms useful to both prevention of match fixing and prosecution of international criminal cases¹⁵. For more information on this, please see [this LawInSport article](#)¹⁶.

In view of implementing the national platform described here, para. 64 para. 2 FAMG states:

"In case of suspicion of manipulation of a competition staged in Switzerland or for which bets are offered in Switzerland, organisations which are seated in Switzerland and that

¹⁵ On the difficulty to bring evidence in match fixing matters, see generally: [G. Palermo, B. Williams, Match-fixing and the evolution of CAS jurisprudence, CAS Bulletin, 2018/2](#), § 17ff.

¹⁶ Marc Henzelin, Giulio Palermo, Teresa Mayr, 'Why 'national platforms' are the cornerstone in the fight against match-fixing in sport: the Macolin Convention, lawinsport.com, 18 June 2018, last accessed 6 Jun 2019, <https://www.lawinsport.com/topics/articles/item/why-national-platforms-are-the-cornerstone-in-the-fight-against-match-fixing-in-sport-the-macolin-convention?>

participate, organise, operate or monitor this competition shall immediately inform the intercantonal authority”.

The FAMG does not specify the type of suspicion to report. However, there is a broad description of data that a sports organization is expected to disclose, including: information on participants to the competition, individuals or entities that organize or monitor the competition and the specific suspected actions¹⁷. This is information that will be cross-examined by the national platform in order to prevent any further match fixing process.

The information must be reported immediately (within 5-7 days maximum) to the Swiss national platform, namely the [Lottery Commission](#) (which is the “intercantonal authority” mentioned hereabove). Given the limited time at disposal, there is no room for extensive examination of the suspicion by the entity due to inform. Hence, nearly any suspected manipulation red-flagged by an internal fraud detection (in-house or performed through third-party service) system will have to be brought to the attention of the Lottery Commission. Given the nature of the data and the short deadline to forward the information, a basic suspicion is sufficient to trigger the duty to report. It should be noted that there are also obligations upon betting operators to report (para 63 section 1 FAMG) although discussion of such obligations is beyond the scope of this article.

Sports organizations seated in Switzerland that take part in, organise, conduct or monitor the competition must comply with this duty to report. The lawmaker’s preparatory work has expressly specified that FIFA, UEFA and the IOC, with headquarters in Switzerland, fall within the scope of this regulation and, consequently, that competitions played worldwide are potentially encompassed by this provision¹⁸. Hence, any International Federation which fulfils such conditions will have to comply with this reporting duty, e.g. for matches of the FIFA World Cup or the UEFA Champions League, or competitions at the Olympic Games.

The FAMG does not provide any further guidelines regarding competitions organized by regional or national members of International Federations. As reported in the [Independent Review of Integrity in Tennis](#), danger of manipulation appears to be greater at the lower end of professional sports than at the top international level and the lawmaker’s preparatory work has stressed the important role to be played by Switzerland given the number of International Federations seated in the country¹⁹. At present, one of the most uncertain aspects of the FAMG is to assess to what extent an International Federation is due to report a potential competition manipulation organized outside of Switzerland by one of its members. For example, shall FIBA report any suspected manipulation on a German basketball league match? This must be answered through the

¹⁷ Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7698 (in [French](#)).

¹⁸ See Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7746 and 7698 (in [French](#)).

¹⁹ See Message from the Federal Council related to the Federal Act on Money Games, October 21 2015, p. 7746 and 7698 (in [French](#)).

assessment of the role played by such International Federation in the organization, conduct or monitoring of the competition. In this analysis, it should be noted that national or regional organizations are members of International Federations, follow their rules and often assume obligations towards their International Federation to organize competitions, e.g., as far as football is concerned, the “interclub” competitions organized by the confederations²⁰. Confederations’ statutes must include provisions relating to measures required to protect the integrity of competitions²¹. These may be considerations that a competition such as e.g. Copa Libertadores, would be considered as being “monitored” by FIFA under the meaning of para. 64 section 2 FAMG. The author believes that, as long as an International Federation is able to demonstrate that measures taken at national/regional level comply with its own standards and that they are properly enforced to detect, report and sanction (and later prevent) competition manipulation, the Swiss-based International Federation is not subject to an additional duty to report. We should however note here that the Swiss standard on prevention/prosecution of match-fixing now includes, precisely, a duty to inform which does not exist in many countries.

Even if a sanction for a failed non-report existed in preliminary drafts of the FAMG, it does not appear in the regulation that has entered into force. However, a gross and repeated failure to report may preclude the public authorities (namely the Lottery Commission and then the prosecution offices in Switzerland and abroad) from preventing and prosecuting match fixing. At least for its own reputation, sports organizations in Switzerland should, in the author’s view, be aiming to avoid any eventual responsibility in this, even if there is no criminal corporate or civil liability envisaged in such case.

The efficiency of the above-described mechanism will have to be reviewed in the coming years. It should here be observed that the Lottery Commission does not make its decisions public, but will issue press releases in certain specific cases of public interest and yearly reports. This practice seems debatable as regards to obligations of transparency of public authorities. It will be difficult to assess best practices in the future.

The flow of information

Pursuant to para. 65, 111 and 112 FAMG, the Lottery Commission has a broad discretion to forward the reported information to many different interested parties or authorities, including most notably:

- betting platforms
- sports organizations and

²⁰ E.g. para. 22.3 (c) of the [FIFA Statutes](#).

²¹ E.g. para. 23 (g) [FIFA Statutes](#).

- criminal prosecution authorities in Switzerland,

in order to prevent or prosecute competition manipulation.

In such a case, an International Federation in Switzerland may have to eventually provide law enforcement authorities with requested additional information and documents. The Lottery Commission may also share this data with national platforms abroad in order for these to inform interested parties in their jurisdiction, in accordance with objectives set out at para. 13 of the Macolin Convention.

Sports organizations, as well as betting operators, may also receive information from the Lottery Commission upstream, in order to cross-examine it with their own data. This may include sensitive data such as personal profiles on bettors, athletes or officials. International Federations will have to handle this data with care in order to respect local data protection regulations and ensure efficiency to properly comply with FAMG provisions. International Federations should be prepared to receive such information, store it properly and have it ready to be analyzed whenever eventual new information is received or suspicion is detected by the sports organization.

A betting regulation, not a sports regulation

Despite its obvious affiliation to the Macolin Convention, the FAMG remains primarily aimed at regulating the betting industry, not the sports industry. As far as match fixing is concerned, this has two major impacts.

- First, both the duty to report and the criminal offence solely relate to competitions that are organized in Switzerland or, if organized abroad, for which bets are offered in Switzerland. As far as foreign competitions are concerned, if no bet is offered in Switzerland, there is neither a duty to inform on a possible manipulated competition nor a possible offence to FAMG in case of match fixing. The new regulation has taken a strong position against foreign-based betting platforms. These are prohibited (including through website blocking) unless, among other conditions, they are run by a Swiss-based subsidiary entity which will face drastic tax obligations. Betting activities in Switzerland are heavily taxed as they are sources of revenue for various social assistance, sport and cultural public funding. Prominent worldwide betting platforms have declined to enter the Swiss market so far, which is, for the moment still in the hands of the local players. However, Swiss historic betting operators [Swisslos](#) and [Loterie Romande](#) offer a complete set of online betting on all major international, as well as regional and national competitions in football, tennis, rugby, ice hockey, formula 1, cycling, basketball etc. Consequently, most competitions

organized or monitored by Swiss-based International Federations have to be scrutinized under FAMG's duty to report.

- Secondly, despite efforts made by FIFA and UEFA with the Swiss Government, the FAMG does not recognize sports organizations' ownership over their competitions. Therefore, International Federations cannot prevent any betting operator from offering bets on their own competitions in Switzerland and, consequently, do not have a possibility to analyze upfront which operators will offer duly authorized bets. International Federations are compelled to observe the market and identify which bets are offered in their field of competition, even bets they have not agreed to. Also, it is worth mentioning that an International Federation, or any other sports organization concerned by a manipulated event, would *prima facie* not be admitted as a claimant to claim damages in a criminal proceeding against individuals that would have committed actions of corruption in view of falsifying the outcome of a competition. The Swiss Federal Tribunal may clarify this issue in the future and open such possibility, and consider that the integrity of a sports "belongs" to the sports organization. Such a view may be in contradiction with the absence of International Federations' rights over the competitions, which they could negotiate with betting operators. This aspect will require more political activism than court battles.

Comment

The efficiency of the Macolin Convention mechanism (limited to the Member States of the Council of Europe) will be appreciated when and if this Convention enters into force and if all its signatories ratify it. Switzerland's efforts to date with the enacting of FAMG go in the right direction, but need to be supported by equivalent legislation in other jurisdictions. The absence of a legal nexus between sports organizations and betting operators has a major impact in the fight against match fixing. As long as sports organizations cannot forbid bets on their competitions, they cannot be held responsible for the lack of "reasonable measures" taken to prevent match fixing. And as long as they do not get any benefits therefrom, International Federations' incentives to fight it are limited to (the already important issue of) integrity considerations.

In view of the above, International Federations based in Switzerland should in the author's view:

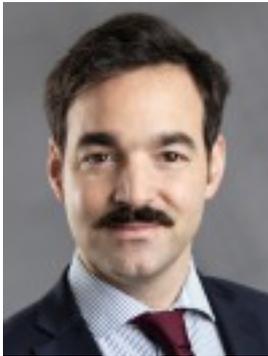
1. Carefully assess, with their corresponding members or event organizers abroad, the extent to which they are deemed to be considered to organize, conduct or monitor competitions under FAMG. This is a difficult task and it will be interesting to see what the practice of the Lottery Commission will be.

2. Observe whether such competitions are offered on the betting market in Switzerland; and
3. Ensure they have an efficient fraud detection system to cope with the requirements of the new regulation (e.g. be able to report a suspicion of competition manipulation within 5-7 days). Those that do not have such a system should seek guidance as to how to establish one and set it so that it includes the relevant information to be reported.

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