



Governing FIFA

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Executive Summary

Sports in general and football in particular play a fundamental role in society. They are of a considerable social (pleasure, popular health, identification in fan communities, club life, etc.), political and economic significance. International sports governing bodies act as regulators (defining the rules of the game), as event organisers (FIFA as the host of the Football World Cup [FWC]) and more recently, especially with the advent of the new media, as commercialisers. The funds generated from TV rights, sponsoring and other forms of marketing have changed the role of FIFA and comparable sports governing bodies, like the International Olympic Committee (IOC), substantially. They now dispose of annual budgets in the billions of USD. This allows them to support their constituency of stakeholders. Events like the FWC or the Olympics have obtained a highly political significance, in particular to the countries selected as hosts of competitions.

The traditional governance structure of the sports governing bodies was not adapted to this new role. Several crises and scandals in the past led to gradual structural reform. In many ways FIFA has taken considerable steps from a “gentlemen’s club” to a structure resembling professional corporate management.

Our analysis of the existing structure of FIFA rests on three pillars:

I. FIFA – even though by law still a non-profit association – is in fact a potent *corporate entity*. This calls for a sequence of particular governance measures developed in the corporate world.

In particular, *financial compliance* needs to be adapted to business dimensions. FIFA has made distinct progress by introducing international accounting standards, the COSO concept and professional auditing. Yet, there is room for further upgrading of their internal control system. *Anti-corruption compliance* is not yet at the standard of a large corporate entity. The analogy to the corporate world also implies *organisational consequences*, especially clear attribution of tasks to Committees, clear distinctions between management and supervisory or policy roles, and a sufficient upgrading of the compliance organisation as such.

II. At the same time it is generally acknowledged that FIFA encompasses a wide spectrum of stakeholders ranging from its Member Associations to players, referees, player agents, clubs, marketing professionals, the fan community and the public at large. If this general interest does not imply legal accountability to the general public, FIFA owes it to its reputation to act as a quasi-public body. The EU and the Council of Europe expect international sports governing bodies to respect the core principles of a state of law (especially the rule of law, separation of powers, transparency, accountability and democracy). This view is shared worldwide.

There are obviously overlaps between the essential governance requirements in the public and the private sector. E.g. a sound anti-corruption compliance programme benefits companies and public entities alike. Beyond the corporate requirements this report discusses specific risks linked to key decisions of FIFA bodies and elections into FIFA sub-entities. Several concrete suggestions are made to raise the level of transparency, and to reduce the risk of conflict of interest. Finally, it is proposed that the Ethics Committee conduct *due diligence* on

elected members of bodies and key personnel even if they have been appointed by Member Associations or Confederations. As indicated in the report, the detail needs to be further defined.

III. In the past, the prevalent risk in the relations between FIFA and its Member Associations was conflict of interest. The current lack of state of the art conflict rules is a clear deficit.

The financial development programmes are particularly prone to conflicts. For some (*Goal*, FAP), FIFA has adopted adequate control and audit structures. However, the governance rules of the various development programmes are quite diverse. A comprehensive strategy and aligned processes would be useful. As for the key decisions in the area of hosting and commercialisation, an overall strategy defined by the adequate policy body would considerably boost transparency and democratic participation.

Overall, if FIFA finds that the Recommendations put forward in this report head in the right direction, it would be useful to create a Task Force to develop the detailed programme of a governance reform for Congress. It would greatly help FIFA's reputation if it consulted its wider stakeholder community on the proposals before going to Congress.

I. Introduction

1. Mandate and Scope

1.1. Mandate

I have been asked by FIFA to analyse the existing governance structure, to express an opinion on its standard and, if necessary, to make Recommendations for its amendment.

This is not an investigation into past behaviour. The focus is exclusively on the institutional arrangements, the organisational structures and procedures and their ability to deal with existing risks and challenges. Transparency and accountability are the key goals of governance. Obviously, these abstract aims will need to be further operationalised (cf. below III.)¹.

1.2. The Focus of the Study

Since this report is focussing on the current status of corporate governance it will *not* deal with the wider challenges facing the world of sports – and football in particular – like:

- match-fixing, and illegal betting²;
- transfer risks³;
- doping⁴;
- money laundering through player transfers, investment in clubs and sponsorships⁵.

The study will focus on the good governance of FIFA as the global sports governing body in football. It will not deal with the governance of clubs and only marginally with the risks confronting National Associations and Confederations.

Finally, the extent to which international sports organisations domiciled in Switzerland should be subjected to local law, including Swiss tax and anti-corruption laws, will not be discussed in this report. This separate issue is currently under consideration by Swiss Government and Parliament⁶.

2. Background to the Mandate

FIFA, like comparable international sports governing bodies (e.g. the International Olympic Committee), has changed considerably over the years. It has evolved from a “gentlemen’s club” regulating the game and organising competitions in the early years to a powerful

¹ Kluka/Stier/Schilling 2005; Kaiser 2011; Pachmann 2007.

² FIFA Task Force “For the Good of the Game“, 25; cf. also the far advanced Early Warning System GmbH; Arnaut 2006, 19, 94; cf. also the recent decisions of the disciplinary commission of Italian football on an extended match-fixing scandal, NZZ 10.08.2011, 40.

³ Cf. the FIFA Transfer Matching System (TMS) as an instrument to prevent abuse.

⁴ Cf. the work of the World Anti-Doping Agency (WADA); Arnaut 2006, 42 et seq.; Bannenberg/Rössner 2006, 214 et seq.

⁵ Cf. Arnaut 2006, 90.

⁶ Parlamentarische Initiative 10.513 (Thanei); Pieth 2011a.

economic enterprise⁷. At the same time, the significance of sports and football to a wider public and to states has made FIFA and similar organisations take on a role comparable to that of an Intergovernmental Organisation. The triangle of a high profile event organiser, a powerful corporate entity and a game regulator obviously attracts a lot of public attention. Whichever its legal form, FIFA is no longer merely a private association. The challenge is to adapt its governance structure to its real significance. FIFA, as well as comparable organisations⁸, are in a process of transition, and they all have come under pressure. FIFA has held extensive discussions on governance in its own bodies⁹, public institutions have argued for good governance in sports organisations¹⁰, academics¹¹ and the media have criticised the *status quo*¹².

3. Towards a Governance Reform in Two Phases

The aim of this report is to set the stage for a further debate within FIFA on possible governance reforms. The report is written on a mid-abstract level, the Recommendations will need to be further substantiated. It is anticipated that, based on the decisions of the Executive Committee in autumn 2011, a Task Force will prepare the necessary documents for approval by Congress in spring 2012.

4. The Experts

This report has been prepared by Prof. Dr. Mark Pieth in cooperation with Mr. Damian Heller and Prof. Dr. Lukas Handschin.

Mark Pieth is Professor of Criminal Law and Criminology at the University of Basel, Switzerland. He has served for 22 years as the Chairman of the OECD Working Group on Bribery, he has been a Member of the Independent Inquiry Committee into the Oil-for-Food Programme of the UN in Iraq (Volcker Committee), he is a Member of the Board of the World Economic Forum's Partnering Against Corruption Initiative (PACI) and of the Independent Advisory Board (IAB) advising the President and the Audit Committee of the

⁷ Arnaut 2006, 18; Homburg 2008, 40 et seq.

⁸ Cf. below VII.

⁹ Cf. in particular the Seoul Congress, May 2002.

¹⁰ The *Council of Europe Resolution* on “*Principles of Good Governance in Sport*”, adopted in Budapest on 14/15 October 2004; the “*Nice Declaration*” on the Specific Characteristics of Sport (Annex IV of the Presidency Conclusions for the Nice European Council, December 2000).

¹¹ Homburg 2008, 65 et seq.; Mc Namee/Fleming 2005, 153 et seq.

¹² E.g. n-tv, 31.07.2011; Tages-Anzeiger, 27.07.2011; The Guardian, 26.07.2011; NZZ am Sonntag, 24.07.2011, 34; Reuters, 23.07.2011; Berliner Zeitung, 18.07.2011, 16; The New York Times, 18.07.2011; NZZonline, 05.07.2011; Press release, ZugerPolizei, 24.06.2010; The Guardian, 23.06.2011; Reuters, 22.06.2011; AFP, 06.06.2011; Handelsblatt, 06.06.2011; Associated Press, 03.06.2011; Spiegel online, 03.06.2011; BBC Sport, 01.06.2011; Spiegel online, 01.06.2011; Handelszeitung, 31.05.2011; The Guardian, 30.05.2011; The Telegraph, 30.05.2011; FIFA press release, 29.05.2011; Spiegel online, 29.05.2011; FAZnet, 29.05.2011; The Economist, 28.05.2011, 58; Spiegel online, 27.05.2011; The Guardian, 25.05.2011; Financial Times 14/15 May 2011, 5; Mail online, 12.05.2011; The New York Times Reprints, 10.05.2011; sueddeutsche.de, 10.05.2011; INTERPOL press release, 09.05.2011; WOZ, 28.04.2011, 16; Reuters, 04.02.2011; FAZ, 01.12.2010; Tages-Anzeiger, 29.11.2010; BBC Sport, 18.11.2010; The Sunday Times, 17.10.2010; Spiegel online, 26.06.2010; Daily Mail, 03.05.2006, 72 et seq.; Daily Mail, 02.05.2006, 72 et seq.; Daily Mail, 01.05.2006, 68 et seq.; Welt online, 10.03.2006.

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II. The Role and Structure of FIFA

1. The Significance of Sports and of Football in particular

The “*Nice Declaration*”¹³ puts it very eloquently:

“Sport is a human activity resting on fundamental social, educational and cultural values. It is a factor making for integration, involvement in social life, tolerance, acceptance of differences and playing by the rules.”

On an individual level, in particular in amateur sports, the popular activity, fun, challenge, club life and public health are in the foreground. On a professional level, ambition, merits and career perspectives would be more fundamental. On a collective level, sports serve as the perfect identification platform. They allow local or national pride to express itself and permit rivalry in a peaceful and fair setting. For national teams, but also for politicians and governments competitions, and even more so, the honour to organise an event, are highly important. Much of this is closely linked to the substantial rise of the economic significance of sports. With the advent of new media marketing, in particular of football, has taken on an entirely new dimension. TV rights and other forms of marketing account for billions of USD worldwide. Transparency International rightly emphasises the growing economic, political and social role of sports and its governing bodies¹⁴. Obviously, this transition has also affected the incentives and the leverage of sports governing bodies. Sports are, more than ever, linked to money and to power. One needs to be careful therefore not to expect that sports take place in a vacuum, in a better world than real life. Sports organisations reflect – just as business and politics – a world struggling to maintain fair competition and the transparent administration of wealth and power. In fact, it can be said that governance in sports is a recent ambition and achievement.

From a different vantage point, from the perspective of the global struggle against corruption¹⁵, sports are particularly well suited to help educate new generations about the advantages of a life free of corruption. Sports, like few other activities, are about achieving through merits. It is fundamental that – in particular in corruption-prone areas of the world – achievers in sports develop into role models as an alternative to corrupt politicians and businessmen. For that reason, it is crucial to keep the world of sports and sports officials clean. Programmes offering chances to young sportsmen and sportswomen, especially in

¹³ Above Fn. 10, para. 3.

¹⁴ Transparency International 2011, 2.

¹⁵ Cf. UN Convention against Corruption, General Assembly Resolution 58/4, 31.10.2003; Council of Europe Criminal Law Convention on Corruption, ETSNr. 173, 27.01.1999; EU Convention Council Act of 26 May; Inter-American Convention against Corruption (IACAC), 29.03.1996; African Union Convention on Preventing and Combating Corruption, 11.07.2003; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21.11.1997.

countries in development, should not be belittled. They can play a fundamental role in reducing corruption by themselves, provided that the money spent reaches its destination.

2. The Changing Role of FIFA

From the early days (since its founding in 1904), FIFA pursued the objectives of:

- protecting and developing the game;
- promoting football globally;
- defending and developing the Laws of the Game;
- organising international championships.

From the outset FIFA has had

- a regulatory,
- an organisational and
- a commercialising function.

Already from 1930 onward FIFA has cultivated its monopoly and has developed its key product, the “World Cup”. The name has changed over time, but the exclusivity of the tournament has remained its major asset. Amongst the various competitions organised by FIFA, the Football World Cup (FWC) is financially by far the most essential¹⁶.

The governance structure has changed with its tasks. Traditionally, the governing body worked with the means of a “*gentlemen’s club*”, assisted by a small secretariat. Especially the new forms of marketing as well as financial risks forced FIFA to conduct a major governance reform in 1961¹⁷. The General Secretariat was enlarged and professionalised. Marketing was centralised. Power shifted from Congress to the Executive Committee, in particular as the choice of location of competitions was delegated¹⁸. FIFA, as the central governing body, remained dependent on the financial success of competitions until well into the 1960s, but the new commercialisation models emerging gradually lifted this dependency¹⁹. From the 1990s, major funding was generated centrally and increasingly independently from the events, as the new marketing contracts envisaged advanced annual payments. FIFA itself turned into a crucial sponsor of Member Associations, Confederations and special projects. It utilised three major tools. With its Financial Assistance Programme (FAP), it began in 2002 to allot up to USD 250’000 per year to every Member Association, and USD 2.5 million to every Confederation. Furthermore, the *Goal* Programme allowed for tailor-made development projects, distributing very substantial amounts, e.g. USD 42.5 million in 2010. Finally, special projects as well as the so-called “*Win in...*” projects allowed for further targeted contributions. According to the financial report 2010, for the period of 2007 to 2010 a total of USD 794 million (or 26% of FIFA’s total expenditure) were spent on development programmes.

¹⁶ Homburg 2008, 36.

¹⁷ FIFA, IIIrd Extraordinary Congress, September 1961 in London.

¹⁸ FIFA, 34th Congress, October 1964 in Tokyo.

¹⁹ Homburg 2008, 44 et seq.

There may be a dispute about the extent of the financial crisis of FIFA around 2001²⁰; however, it turned out to be a crucial turning point with regard to good governance. The 2001/2 reorganisation placed bookkeeping, auditing and financial reporting on a professional basis. From the budgeting period 2003 – 2006 on, internationally accepted accounting standards (International Financial Reporting Standards [IFRS])²¹ have been introduced and professional external auditors have been retained.

FIFA (as comparable organisations like the IOC or the International Cricket Council [ICC]) is currently undergoing a transition, adapting its governance structure to the existing financial and political challenges.

On a managerial level (in particular in the Financial and Legal Directorates), decisive steps have been taken to upgrade the governance of FIFA towards the standards of large corporations or international organisations. These efforts merit our support.

3. FIFA's Current Governance Structure

3.1. Incorporation

FIFA is an association registered in the Swiss commercial register (Art. 1 FIFA Statutes).

Obviously, there is a certain tension between this legal form, best suited for NGOs and other genuine non-profit organisations, and the economic significance of FIFA. However, FIFA remains – in accordance with Swiss law – a non-profit organisation as long as it invests its surplus into the objectives of the association.

FIFA's choice of legal form could theoretically create challenges for a business venture, if the financial reporting remained on the level of a traditional association. By adopting IFRS and auditing by an internationally renowned auditor, this concern has been addressed in a first step though. As proposed in this report, further steps are recommended in terms of corporate governance and compliance.

3.2. Membership

FIFA has a very broad membership. In its Congress every Member Association has one vote (Art. 23 s. 1 FIFA Statutes). Democratic structures, combined with the concept of solidarity, are also reflected in the practice to support Member Associations and Confederations financially. The challenge is that FIFA has a responsibility for the proper use of these funds. Furthermore, democracy on the level of a global governing body does not necessarily imply democracy at grass roots level in the individual Member Associations. One of the key challenges will be what influence FIFA can have in fostering good governance and democracy also in its Member Associations.

²⁰ Related to the insolvency of two major marketing partners.

²¹ Cf. in particular the FIFA Financial Report of May 2002.

3.3. The Formal Bodies of FIFA

a) The Congress (Art. 22-29 FIFA Statutes)

The Congress is the supreme and “legislative” body of FIFA (Art. 21 Statutes). The analogy to constitutional law is based on the right of the Congress to vote on proposals for amendments to the Statutes, the Regulations Governing the Application of the Statutes and the Standing Orders of the Congress. This constitutional right has a democratic basis, in that each Member has one vote. The equal voting right in the Congress contrasts with the representation of Members in the Executive Committee, which is not equal, but based on the economic and social importance of football for the respective continent/region. Except for the constitutional right to amend the Statutes, the rights of the Congress are not typically legislative, but can be compared to the rights of the general assembly in a corporation, i.e. the approval of the financial statements and the budget, appointment of auditors and election of the President. The Congress is not a standing body of FIFA: it meets once per year and Members are represented by delegates, which are appointed on an annual basis. This means a relatively low level of systematic organisation of the Congress. Compared to the shareholders in a corporation, where a small group in control of a substantial amount of shares/votes can actively influence the corporation, it is more difficult for FIFA Members to organise themselves, given that the votes are equally distributed amongst Members. In addition, many Members are economically dependent on FIFA through financial assistance and development programmes. As a result, the supreme body of FIFA has limited pro-active influence on FIFA in terms of control over management, agenda-setting and decision-making. This leaves an important role to the Confederations when it comes to opinion-making in the Congress and bundling of interests of Member Associations. Moreover, it calls for a body to independently and effectively supervise management.

b) The Executive Committee (ExCo, Art. 30-31 Statutes)

According to the FIFA Statutes, the Executive Committee is the “executive” body of FIFA (Art. 21 Statutes). The Executive Committee consists of 24 members. Only the President is elected by the Congress; the other 23 members are appointed by the Confederations and the four British Associations in accordance with the allocation system set out in Art.30 of the Statutes. The Confederations themselves are not members of FIFA. Taking into account the composition and main statutory responsibilities of the Executive Committee (appointing the Committees and Judicial Bodies, approving regulations on the internal organisation of FIFA, approval of budget and financial statements, appointment/dismissal of the Secretary General), it resembles more an assembly of member delegates (“Delegiertenversammlung”) than an executive body (“Vorstand”). The nature of the Executive Committee as an assembly of delegates is further supported by its large size (24 members) and few meetings (one 2-day meeting and one 1-day meeting in 2011, cf. page 121 of the FIFA Activity Report 2010). In order to work efficiently, the executive body of a sizeable and complex organisation like FIFA would need to be smaller and meet more often – which is indeed the case for the President, the Secretary General and the Management Board. This is not to say that the chosen organisational structure is legally disputable. However, the term “Executive Committee” and the statement that it is the executive body of FIFA can be misleading. The

Executive Committee rather has the role of a “reduced Congress”, i.e. it is more of a supervisory than of an executive nature. The question though is, whether the Executive Committee is an adequate body to independently and effectively perform supervision of management.

Executive Committee members are mostly active football officials with a vested interest in further developing football in their regions/countries. This interest is not in conflict with their governance function when it comes to FIFA’s role as a regulator of football (e.g. rules of the game, medical, anti-doping, technical). In this regard, the active football involvement of the members of the deciding body is even beneficial, since it provides for the necessary know-how to effectively regulate the game. However, when it comes to govern FIFA as an economic enterprise, the interdependence between FIFA and its members in terms of financial assistance, development programmes and realisation of tournaments raises serious independence issues. The governance systems of enterprises address such principal-agent problems by installing a board of directors, including a number of independent non-executive directors.

c) The President (Art. 32 Statutes)

Unlike other bodies (Congress, Executive Committee, General Secretariat, Standing/*ad hoc* Committees), the President is not described as a body of FIFA in Art. 21 of the Statutes. However, the President together with the Secretary General factually forms the executive body of FIFA (“Vorstand”). In addition, the President has the exclusive right to propose the appointment and dismissal of the Secretary General by the Executive Committee, which puts a great deal of executive power and responsibility in the hands of a single person. Translated into the terms of corporate governance, the President of FIFA is the chief executive of the organisation. At the same time, the President presides over the Congress and the Executive Committee, which supervise the management of FIFA. This set-up is thus comparable to a “monistic” system of corporate governance, in which the roles of the chairman of the board and the chief executive officer are combined in one person. The arrangement of the President’s function is similar to a “président-directeur général”. For a corporation, there are valid reasons to apply a monistic system; depending on the circumstances it is an adequate and efficient form of organisation. However, in order to mitigate the risk associated with the concentration of power in a monistic system (note: in some jurisdictions, the monistic system is excluded for stock companies, e.g. Germany), best practice in corporate governance has developed elements to provide for adequate checks and balances. As an example, the Swiss Code of Best Practice for Corporate Governance suggests a majority of non-executive directors in the board of directors and other adequate control mechanisms, such as the designation of a “lead director”, who has the right to autonomously convene meetings of the board of directors. The English Combined Code proposes for similar controls. The organisational structure of FIFA must provide for such checks and balances (see also IV.3.1.).

d) Standing Committees (Art. 34 Statutes)

FIFA has 22 Standing Committees with approximately 300 Committee members. There are basically three types of Committees: 1. Committees relating to FIFA tournaments, 2.

Committees relating to the rules of the game, and 3. Committees relating to corporate governance and business administration. Based on the description in Art.35et seq. of the Statutes, the latter category is comprised of the Finance Committee, the Internal Audit Committee, the Legal Committee, the Media Committee, the Strategic Committee and the Marketing and Television Advisory Board. There are written regulations in place for the Committees, which are based on a template. We have reviewed the regulations of the Finance Committee and the Internal Audit Committee in detail. Overall, those Committees are too much dependent on FIFA's administration, which is the subject of control. As an example, the Secretary General shall open the meetings and then give the floor to the President or the Chairman of the Committee. The Secretary General shall also sign the agenda of Committee meetings. The Committees do have limited access to own resources; they shall primarily use general secretariat staff to carry out work. In case they want to hire external expertise, they have to receive approval from the Executive Committee, which is a) redundant for the Finance Committee, because each Confederation already has a seat in the Committee, b) unsystematic for the Internal Audit Committee (members of the Internal Audit Committee may not belong to the Executive Committee; however, resources have to be approved by the Executive Committee) and c) impractical, because the Executive Committee is quite a sizeable body which does not meet regularly. The allocation of roles amongst the Finance Committee and the Internal Audit Committee are not completely clear (cf. below IV.3.2.)

e) The General Secretariat (Art. 67 Statutes)

According to the FIFA Statutes, the General Secretariat is the administrative body of FIFA (Art. 21 Statutes). Contrary to the Congress and the Executive Committee, which are also listed as bodies of FIFA in Art. 21 of the Statutes, the term "body" can be misleading, since the administration of an association or corporation does not constitute a formal body ("Organ"). Based on their comprehensive statutory rights and duties, the Secretary General and the President can be described as a formal executive body ("Vorstand"). This is supported by the fact that both positions are elected by the Congress and the Executive Committee respectively. Whilst the President is the chief executive, the Secretary General is the chief operating officer, overseeing the administration of FIFA, i.e. the General Secretariat with its four line and two advisory divisions. Although the Secretary General is formally appointed by the Executive Committee, he is responsible to the President, who can exclusively initiate dismissal of incumbents and proposal of successors. The influence of the President on the General Secretariat is further accentuated by his competences to appoint the next level of management including the Deputy Secretary General, i.e. the Line and Advisory Directors, to approve the salary structure (incl. bonuses and social benefits) of management and staff, and to approve the targets of the divisions. The Secretary General carries an important responsibility in that he is responsible for financial accounting, including preparation of annual and quadrennial budgets and the annual financial statements. He appoints the Deputy Directors of the divisions and engages/dismisses the other personnel of the General Secretariat. He does also exercise considerable influence on the operational activities, in that he designates project leaders for bigger projects, so-called overall projects.

The divisional organisation of FIFA's administration is clear and seems adequate to manage its complex global operations. With a total of approximately 310 staff members, the administration is lean, which stands for clear roles and responsibilities and efficient processes.

In terms of leadership, it is hierarchical and directive, focused on the President in terms of strategic decision-making, and the Secretary General in terms of administration and implementation of divisional activities.

f) Judicial Bodies (Art. 57-61 Statutes)

The Judicial Bodies of FIFA are the Disciplinary Committee, the Appeal Committee and the Ethics Committee. The corresponding rules and regulations are contained in the Disciplinary Code and the Code of Ethics. In summary, it is difficult to clearly define and separate the responsibilities of the two Committees. Associated issues, like integrity, conflict of interest and corruption, are addressed in various regulations with different scope of application. Allocation of jurisdiction to either of the Committees does not seem to be fully aligned throughout all regulations and guidelines (cf. below IV.3.4.)

III. The Governance Principles

Sports governing bodies assume – as indicated above – a dual role. They are close to international organisations, but they are also businesses. There is a certain logic in applying the standards of both worlds.

1. Private Sector Analogy

The financial sector, but also other regulated industries have established a notion of “*fit and proper conduct*” as a qualification to hold a leadership position in such an institution. National football associations have been experimenting with such standards, though with mixed results²². The concept could, however, be useful for FIFA to ensure that its officials and key personnel are made up of reliable and upright persons (cf. below V.2.).

Another key concept in the area of governance developed by the private sector is the “*due diligence*” standard. Due diligence is applied both regarding clients and customers (e.g. in the financial sector) and *vis à vis* third parties (e.g. subcontractors, suppliers, consultants, agents and other so-called *business partners*). Often, in order to efficiently control huge amounts of transactions, a risk analysis serves as the basis to determine the applied level of diligence (so-called *risk based approach*). Again this could be a model for sports governing organisations as well (cf. below IV.1.).

A third lesson to be learnt from the private sector would be the application of straightforward anti-corruption compliance rules and of conflict of interest standards, supported by a dedicated compliance function (cf. below IV.2. and VI.1.).

2. Public Sector Analogy

The Independent European Sports Review, following up on the “*Nice Declaration*”, states that

“...as with political institutions generally, the European and national sports federations adhere to a separation of powers and a system of checks and balances to ensure that decision-making is robust, independent and free from improper influence”²³.

Later the same report summarises the Council of Europe Resolution on “*Principles of Good Governance in Sport*” of 2004:

“Among other things, that resolution calls on all institutions involved in sport to implement, strengthen and support initiatives based on the principles of good governance, including as a minimum: democratic structures based on clear electoral procedures open to the membership; professional organisation and management, with appropriate procedures for dealing with conflicts of interest; accountability and transparency in decision making and financial operations; fairness in dealing with the membership and solidarity; and an equitable partnership between the public authorities

²² E.g. England, cf. Arnaut 2006, 77 et seq.

²³ Arnaut 2006, 58.

and the sports movement. The resolution specifically provides that these principles should be integrated into sports policies and practices at national level and effectively monitored”²⁴.

Of course it will be noted that FIFA is not a governmental entity, nevertheless the analogy to the public sector holds true, and in fact FIFA itself in its Statutes draws a similar conclusion when alluding to its “legislative”, “executive”, “administrative” and “judicial” bodies.

Both, the analogies to the public and to the private sector concepts allow us to assess the status of FIFA’s current governance standard. Before applying these principles to the existing governance structure yet a third overarching principle should be flagged in this theoretic overview: the relationship between FIFA and its Members.

3. FIFA and its Members

Rightly, Transparency International²⁵ points out in their recently published report that FIFA is answerable to its 208 Member Associations who in turn are recipients of funding from FIFA, and maybe financially dependent on these funds. That the supervisors may not be independent from the supervised can be a source of conflict. More generally, *conflict of interest*, a traditional topic both in the public and the private sector, becomes a particularly vital issue in the relation between FIFA and its membership. One will need to be alert to conflicts with the interest of entire *Associations* as much as between the governance role and the economic interest of *individuals* (e.g. as member of the ExCo).

The following analysis of current governance challenges of FIFA will refrain from going over the entire organisational structure; rather the report will follow the logic of the three sections discussed in this chapter and indicate how they can affect governance on a more concrete level. This should pave the way for a series of Recommendations.

²⁴ Arnaut 2006, 84 et seq.

²⁵ Transparency International 2011, 2.

IV. Assessment: FIFA as a Commercial Entity

As mentioned above (cf. II.2.), FIFA has become a powerful economic player. It seems logical therefore that FIFA would adopt the governance essentials of a typical MNE.

Where to place the key elements of a credible governance structure may be a moot point (e.g. the *conflict of interest policy* fits in all three sections discussed below). For the sake of logic, the structure introduced in section III. above is maintained. Corporate governance would as a minimum need to touch upon:

- financial compliance;
- compliance in a wider sense, in particular a credible anti-corruption compliance programme;
- issues relating to the organisational structure of FIFA.

1. Financial Compliance

1.1. Assumptions/Purpose

This report is written under the assumption that there are no financial resources to which FIFA or its bodies have access, which are not included in the consolidated financial report (for example foundations, funds or other off-balance sheet items).

As international sports governing body FIFA distributes part of its income to its Member Associations and Confederations. Further payments are made to contractors and service providers, who may be close to Member Associations or their officers. Therefore, in addition to general remarks, the following considerations address in particular the corruption risks related to such payments and the methods to reduce the risks.

1.2. Bookkeeping and Financial Reporting

The first condition of a contemporary financial compliance system is to include all financial transactions in an audited bookkeeping and financial reporting system, and to apply strict bookkeeping and auditing standards. This condition is realised at FIFA. However, it must be noted that the basis of consolidation is rather narrow and excludes many organisations whose activities may be attributed to FIFA by the general public, e.g. the Member Associations. From a legal perspective, this is correct, since neither the Member Associations nor specific organisations, which are set up in relation to the FWC or other competitions, are legal subsidiaries. The combination of a small basis of consolidation with a large scope of activities makes financial controls difficult though.

1.3. A Risk Based Approach in General

The existing internal financial controls, applying the COSO System, are on a sufficiently high standard. The applied controls are, however, primarily focused on preventing legal and tax risks and on commercial performance control. The authors of this report would like to encourage FIFA to intensify its specific anti-corruption controls within the existing COSO model.

To ensure that payments by an organisation to third parties are not furthering corruption, MNEs have introduced control mechanisms on different levels in application of a risk based approach. So-called red flag processes help to monitor transactions efficiently.

Some of the common indicators applied by such mechanisms are the following:

- payments of which the person, applying his or her professional know-how, does not understand the context;
- payments which are not at arm's length, and where the services for which the payment is made cannot be easily assessed²⁶;
- unilateral payments (payments which do not relate to a defined consideration);
- cash payments, payments to bank addresses or bank accounts which are not defined in formal agreements, and payments to bank addresses which are not in the country of residence or domicile of the payee (e.g. payments to banks in off-shore financial centres)²⁷.

1.4. FIFA-Specific Risks

FIFA is an international sports governing body. A part of its income is distributed according to specific rules and resolutions to the Member Associations. Simultaneously and on another level, the Member Associations have statutory powers within FIFA, in particular related to elections into FIFA bodies and certain decisions (venue of FWC, etc.). These Member Associations have their own officials who control the decision-making within the Member Associations and subsequently within FIFA. As already indicated, this constellation bears the risk that FIFA funds are diverted to Associations or to specific officials in order to influence their decision-making.

For this reason, payments to Member Associations and to persons and organisations, which are close to Member Associations and their officials, need to be subjected to close financial scrutiny.

1.5. How to Control General and FIFA-Specific Risks

a) Identification of potentially critical payments

First, payments that require specific attention have to be identified. They include payments to Member Associations and to other parties, where FIFA knows that they are close to Member Associations and their officials. This is notably the case if the bodies or shareholders of such organisations are partly identical to the officials of the Member Association (e.g. a company owned by the President of a Member Association, etc.).

²⁶ See Art. 2 of the ICC Rules of Conduct and Recommendations prepared by the Commission on Anti-Corruption of the ICC: *“any payment made ... represents no more than an appropriate remuneration for legitimate services rendered ...”*.

²⁷ Cf. for further red flags Pieth 2011, 78.

Potentially critical payments may therefore also include payments to contractors and service providers; as soon as they are linked to Member Associations and their officials, there is a risk that payments are made to specific officials to influence their decision-making within FIFA.

As far as we know, there is no systematic analysis of such payments at FIFA based on these criteria. Only some payments are controlled directly (cf. below IV.1.5.b)).

FIFA should consider analysing payments systematically, as a basis for its decision whether to control the payment directly or indirectly.

b) Direct control of potentially critical payments

Payments can be controlled directly or indirectly. As a rule, a direct control of the payment is more necessary, the larger the risks are. Direct control of the payments means that each payment is controlled until it reaches the ultimate payee. This can be done by FIFA entering directly into a contractual relationship with the payee and controlling its implementation and performance through its own contract management, accounting system and other internal control mechanisms. An example for direct control is the *Goal Programme*.

c) Indirect control of potentially critical payments

It might not be feasible, or too cumbersome for FIFA to directly control all payments to Member Associations, to persons and organisations, which are close to Member Associations and their officials as well as to third parties. However, such payments can also be controlled indirectly. Such indirect controls are for instance applied by FIFA with regard to the FAP.

Such *indirect controls* include:

- *access to audited financial statements* of the relevant payees, which document the proper allocation of these funds. This includes the Member Associations, but also contractors who are close to Member Associations or their bodies. This method (access to audited financial statements of payees) is an applied practice in industries which work with agents and other service providers who are paid on a success basis, where the corruption risk is similar;
- to *restrict cash payments* to the absolute minimum (such as reimbursements of expenses in small sums);
- to allow *only payments to bank addresses or bank accounts which are defined in formal agreements* with the payee or in formal resolutions regarding the payee, and to allow no payments to other persons and accounts;
- to disallow any payments to bank addresses which are not in the country of residence or domicile of the payee (e.g. payments to banks in off-shore financial centres);
- to choose contractors in an *open bidding procedure* to ensure arm's length conditions;
- to monitor the audited financial statements of payees, which document the proper allocation of these funds²⁸.

²⁸ A similar suggestion has been made by Transparency International (TI) in its report (2011, 6). Yet, the publication of the audited financial statements of Member Associations, as suggested by TI, bears the risk that responsibilities are blurred and that not everything is disclosed. Furthermore, there is a risk that these

These indirect controls can of course not fully assure financial compliance, but, if embedded in efficient internal procedures, they work as a deterrent, document the seriousness of financial anti-corruption compliance and can discharge the management. They are applied in many industries accordingly.

1.6. Specific Recommendations

FIFA applies a system of internal controls (COSO). However, controls are primarily focused on preventing legal and tax risks and on commercial performance control. There are no systematic controls related to the corruption risk. Although financial reporting is of a high standard, it covers only the consolidated companies and not all fields of activity of FIFA. Particularly, it does not include Member Associations and Confederations, since they are not under the control of FIFA. This makes control over funds distributed to Member Associations, and to persons and organisations which are close to Member Associations and their officials, an important issue. Direct controls over certain payments provide for the most efficient control over all relevant risks. Obviously though, FIFA cannot control all payments directly. A valid alternative is a system of indirect controls.

This assessment leads to the following Recommendations with regard to financial compliance:

- FIFA should work on a catalogue of criteria to a) define potentially critical payments and b) define how to best monitor and control such payments (direct or indirect controls, cf. above IV.1.5a));
- FIFA should intensify its specific anti-corruption controls within the existing COSO (cf. above IV.1.5c)).

2. Anti-Corruption Compliance

As any large corporation, FIFA needs a world-class compliance programme. This requires first of all a clear code of conduct addressing both values and integrity issues, including especially corruption-related risks. Enacting such a code is not a simple paper exercise, as the policy has to be implemented and applied. The components of such a standard have been defined by intergovernmental bodies²⁹, by business associations³⁰ and multi-stakeholder groups³¹. They are known³².

Based on the code of conduct, specific rules need to address the most important risks, notably clarify FIFA's position towards gifts and hospitality, political and charitable contributions, as

reports are not analysed systematically. We are of the opinion that it is more efficient if FIFA and its auditors (as well as the Audit Committee) have full access to this data and analyse it in depth.

²⁹ OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 26.11.2009, Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance.

³⁰ International Chamber of Commerce, Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations, Paris 2008.

³¹ UN Global Compact; World Economic Forum, Partnering Against Corruption Initiative (PACI); Transparency International, Business Principles for Countering Bribery, Berlin 2009.

³² Moosmayer 2010; Pieth 2011; Wilkinson 2010.

well as the selection, contracting and supervision of third parties. The rules have to be communicated to FIFA officials, but also to Member Associations and further stakeholders. This is, as Transparency International rightly points out, a reason to involve the stakeholder community in the preparation of the code. There needs to be training, as well as a helpline and a discrete disclosure channel.

There are recipes available how to put these standards into effect in a staged manner³³.

FIFA has a Code of Ethics, so that is a good starting point. However, there is a certain overlap between the *Code of Ethics* and the *Disciplinary Code*, which hampers the working of the relevant Committees (cf. below IV.3.4.).

It is suggested that the Code of Ethics is overhauled in the light of current best practice, and that this is done in conjunction with the reorganisation of the compliance function and the review of the *Ethics* and the *Disciplinary Committee*.

3. Organisational Structure

This again is an area where the needs generated by the quasi-public and the quasi-business roles of FIFA overlap to some extent. It is true that the wider public has an interest in FIFA's governance³⁴. However, this does not automatically make FIFA an institution owned by the public and answerable to the public in every respect. The focus of this chapter is still primarily FIFA as an economic entity.

3.1. Independent Members of the Executive Committee

As explained in sections II.3.3.a) and II.3.3.b) above, FIFA is currently lacking an independent supervision, if compared to a corporation. FIFA might thus consider installing a group of persons with the function comparable to independent directors. The group could structurally be combined with existing bodies, e.g. the Executive Committee could be completed by independent members. Ideally, these persons would be elected by the Congress, similar to the board of directors in a corporation, which is elected by the general assembly upon proposal of the board or of shareholders. They should meet independence standards for directors (i.e. no material relationship with FIFA or any of its members or the confederations either directly, or indirectly and should have adequate professional experience to perform the role, e.g. business administration, marketing and sales, finance and accounting, legal and compliance. In terms of duties and responsibilities, this group would decide on the adequate composition and organisation of corporate governance, compliance and business administration related committees, such as the Finance Committee, the Internal Audit Committee and the Ethics Committee (cf. above II.3.4.d)), in order to effectively and independently supervise management and the commercial/financial operations of FIFA. This group would be the hierarchical point of contact for typical additional governance functions, such as a compensation committee (cf. below IV.3.3.) and a compliance officer (cf. below IV.3.5.), and it would be the obvious group to designate a "lead director" (cf. above II.3.3.c)).

³³ Transparency International 2011, 3.

³⁴ Transparency International 2011, 2.

3.2. Finance Committee – Internal Audit Committee

The mandates of these two Committees are not entirely distinct and procedures not entirely clear. In both Committees the administration has a strong position (the Secretary General opens the meetings as opposed to the chair of a committee in the private sector; he signs the suggested agenda, and the Committees have primarily internal resources at their disposal; to involve external resources they need the assent of the ExCo).

Modelled after a corporate setting, the Finance Committee would be a steering committee of the board whereas the Audit Committee would have a classic internal control function. Both Committees would organise themselves, have their own budgets, and would decide autonomously whether to involve outside experts. The regulations of these Committees should be reviewed in that respect.

3.3. Compensation and Benefits Committee

There does not seem to be a committee tasked to develop a remuneration strategy to define the actual remuneration of the most senior persons. Such a committee would be standard in the corporate world.

3.4. Ethics Committee – Disciplinary Committee

The overlaps between the tasks of these two Committees mirror the uncertainties of the *Code of Ethics* and the *Disciplinary Code*. Even if the Disciplinary Code relates primarily to the rules of the game, it also references the Statutes and internal guidelines. As mentioned above, the Code of Ethics should be reformulated to match the needs of a modern corporation or an international organisation; the Disciplinary Code should be exclusively directed at sanctioning breaches of the rules of the game.

Correspondingly both Codes should be reviewed. With regard to composition, the exclusion of active football officials envisaged for the Disciplinary Committee should be extended to the Ethics Committee. FIFA should furthermore, like comparable bodies (e.g. the World Bank or the IOC), consider including external members into its Ethics Committee. Both Committees could theoretically be called to adjudicate on the behaviour of members of the ExCo; therefore the Committees should be elected by the Congress rather than by the ExCo.

The independence of the Ethics Committee should be further strengthened. It should be able to initiate proceedings *ex officio*, without referral by the President, the Secretary General or the ExCo³⁵.

3.5. Organisation of the Compliance Function

It is current standard (United States Sentencing Guidelines (USSG), OECD Guidance³⁶) to entrust a senior corporate officer with the overview over the compliance function. The understanding is that he or she needs to have a sufficient measure of independence from management. At the same time so-called chief compliance officers have to have direct access

³⁵ Internal FIFA Reform Proposals.

³⁶ US Federal Sentencing Guidelines Manual, 01.11.2010; OECD Recommendation 2011, Annex II.

to the Ethics Committee. Finally, their role needs to be adequately staffed and budgeted. Whereas the chief compliance officer would have the responsibility for the broader compliance, including anti-corruption compliance, oversight over financial compliance would continue to lie with the Secretary General and the Audit Committee.

Overall, FIFA has made decisive steps towards a professional management and supervision. A closer look would be needed, however, whether the current compliance structure meets the sketched requirements.

4. Recommendations

Many commentators have compared FIFA with a global corporation. One dimension of governance would be to meet the standard requirements for MNEs.

The step to introducing IFRS has been widely welcomed as an essential stage in upgrading financial compliance. After a closer analysis we have suggested that:

- FIFA work on a catalogue of potentially critical (e.g. corruption-related) payments and decide on whether direct controls are warranted or indirect control is sufficient;
- FIFA intensify its specific anti-corruption controls within the existing COSO model.
- The authors share the opinion of Transparency International that the Code of Ethics should be overhauled and a full-scale *compliance programme* introduced and implemented. The programme should be supported by a professional compliance function.
- The authors have made several concrete suggestions addressing the *organisational structure* (the relationship between the Finance Committee and the Internal Audit Committee, the creation of a compensation committee, and in particular the relation between the Ethics and the Disciplinary Committee as a function of their relative Codes). Finally they have opined on the upgrading of the compliance function.
- The report suggests electing a number of independent non-executive directors and possibly introducing the function of a lead director.

V. Assessment: FIFA as a Quasi-Public Body

In chapter III.2. above it has been mentioned that international organisations like the European Union or the Council of Europe consider sports governing bodies as quasi-public entities. As a consequence they subject them to fundamental concepts like the rule of law, the separation of powers, transparency and democracy. When transposing these high level principles into operational concepts, in our view, the following areas need closer attention:

- elections into official bodies;
- decisions, in particular in the area of bidding,
- e.g. hosting decisions;
- marketing issues.

1. Elections

1.1. The Election of the President

The (perceived or real) lack of transparency in the past has been one of the major sources of critique of election processes into FIFA bodies. The critique has very much focused on the Presidents. Since this position is highly political, linked to power and to economic benefit, this should not astonish. However, a series of arrangements could help to reduce the current measure of distrust.

One problem is that today, the candidates need to be nominated only two months prior and named to Congress only one month prior to the actual election. Furthermore, much uncertainty prevails about the sources of campaign financing. Obviously, these funds should, under the current rules, not be taken out of the FIFA treasury.

FIFA should, in our view, consider enacting a new guideline on the election of the President, clarifying the nomination, campaign financing and related matters. One option could be to restrict private financing, however to sponsor official candidates (with a certain minimum of backing from Member Associations³⁷) out of FIFA resources, controlled and accounted for by FIFA.

1.2. Due Diligence on Officials

Representatives of Member Associations and Confederations serve in FIFA bodies (the ExCo, the Standing and *ad hoc* Committees and as Delegates to the Congress). Obviously, FIFA has no direct influence on their election. FIFA can and should subject all its officials, including the representatives in its bodies, to its rules, including the ethics and compliance standards as well as the conflict of interest regulations. Should there be suspicion of wrongdoing; the *Ethics Committee* – under the suggested new regime – would have the powers to initiate an investigation *proprio motu*.

³⁷ This minimum could be raised from now one to a more qualified group of Members.

Should FIFA be obliged to tolerate potentially unreliable representatives in its bodies? Even if such representatives are elected locally, they are officials of FIFA. It is understood that their actions could have serious negative effects on the reputation of FIFA as well as its governance. As far as a representative has been sanctioned by the Ethics Committee for offences against FIFA-specific rules during his tenure, he may be excluded already under the existing regime³⁸.

Pro futuro FIFA should consider to systematically conduct due diligence on its officials as well as on employees in leadership positions. If they have a criminal record, it will be relatively easy to exclude them. Identification and review of conflicts of interest should be manageable based on a new code of conduct and corresponding regulation. It will be far more difficult to draw the line if mere past unethical behaviour is established. An even greater challenge will be to find the right balance in cases where a representative is merely under suspicion, but no decision has yet been taken by any law enforcement or sports governing body.

We therefore suggest:

- to examine *introducing a “due diligence” procedure*;
- to define *substantial reasons* preventing an elected representative from executing his office;
- to define the threshold of suspicion (e.g. official proceedings initiated?) for *temporary suspension*.

1.3. Limited Terms of Offices

In light of the recent changes made by the IOC, FIFA should consider introducing limits to the terms of office of its officials (Committee Members and President).

2. Decisions

Members of FIFA bodies as well as employees are involved in two types of high-risk decisions:

- decisions over the hosting of competitions;
- decisions related to commercialisation.

2.1. Decisions over the Hosting of Competitions

Past experience has demonstrated that the risks linked to these highly visible and politically sensitive decisions are actually a mix of corruption risk and conflict of interest concerns. Suspicion that individuals either sold their vote or profited directly from the choice of venue is combined with allegations of a strategic use of development money in order to influence decision takers of ExCo. The details on a *Conflict of Interest Policy* will be discussed below (below VI.1.), as they are closely linked to FIFA’s relationship to its Members.

³⁸ Art. 59 FIFA Statutes.

Beyond the general *anti-corruption programme* already discussed (cf. above IV.2.), FIFA has two additional strong means at its disposal to prevent the manipulation of hosting decisions. It can rely on decision related rules (e.g. recusal), or it may further develop its organisational, preventive standards for the bidding process.

The first type of measure (recusal/duty to abstain) is akin to *conflict of interest rules*. Conflicts cannot be “forbidden”; they become reality under certain circumstances and should then be identified and solved in order to ensure the integrity and credibility of the decision process.

In addition to this measure, it is advisable to apply structural and procedural means to prevent manipulation in the bidding process. Importantly, the bidding procedure needs to be reliable and decisions need to be objectively reproducible. This means that the most important, strategic elements would need to be fixed, ideally by the Congress. These elements include, amongst others, the selection body for hosting decisions, the timing of those decisions, the possibility of co-hosting and clarity on rotation amongst Confederations. Based on these strategic pillars, the formal bidding procedure needs to be established. FIFA has already introduced such a procedure, but it would need to be aligned with those strategic elements and reviewed with regard to clarifying and strengthening anti-corruption requirements. Ideally, the establishment of a bidding procedure is reviewed by external experts. On an operational level, the General Secretariat would review the bidding dossiers, perform an evaluation and assign scores based on objective criteria. Again, it would be useful to have outside procurement specialists (not necessarily football experts) who assist in this pre-selection, as the means to manipulate bidding procedures are well known in the abstract³⁹. Bidders achieving a predetermined minimum of points will be pre-selected and shortlisted. The ExCo would supervise the process and confirm the shortlist. Based on the shortlist, the final candidate would be elected by the Congress.

It should be noted that the decision taken by the 2011 Congress to charge Congress with the final decision on hosting of the FWC is a step in the right direction from a corruption prevention perspective⁴⁰.

2.2. Decisions relating to Commercialisation

Commercialisation involves in particular the marketing of TV rights, sponsorship, licensing, hospitality and ticketing. Overall it generates huge amounts of money and could in theory be a source of manipulations. FIFA, after some bad experiences, moved away from a concept of assigning marketing fully to outside partners towards an in-house solution. Management in principle decides on whom to contract with. There are some reasons to continue to outsource – especially if the specific know-how of the head office is insufficient, or if sports-politics come into play (e.g. ensuring that key games are shown on public TV channels). Naturally,

³⁹ OECD, *Bribery in Public Procurement, Methods, Actors and Counter-Measures*, Paris 2007.

⁴⁰ Notably, not only 208 Delegates of Members have a vote. As each Member may nominate three Delegates, it remains open until the last moment, who out of a pool of 624 persons is going to cast a vote.

management will seek to contract with reliable partners since its financial basis depends on them.

What are the risks? Allowing Member Associations or Confederations to market FIFA events has proven problematic, as officials of at least one Confederation commingled their personal business interests with FIFA marketing. Furthermore, when marketing agents are involved, they should not be chosen on the basis of personal friendship; rather there needs to be a clear procurement procedure. After the ISL episode, FIFA changed its policy and developed rules.

As with hosting, we suggest that *beyond procedural rules* on commercialisation FIFA should, through the relevant Committee, review its existing *marketing strategy* in order to address specific corruption-related risks, including the following issues:

- which rights should under all circumstances be directly conferred to contractual partners, and under which circumstances agents or third parties may be involved;
- FIFA should clarify whether Member Associations or Confederations are to be involved in marketing, i.e. whether rights should be transferred for commercialisation to Member Associations.

3. Recommendations

- FIFA has, for its economic, political and social significance, been compared with a public body. Like for international organisations, fundamental principles of public governance are held to apply (the rule of law, separation of powers, transparency, accountability and democracy).
- On a more concrete level, based on the analysis of possible abuses, the authors have made suggestions for *election* procedures:
 - Regarding the *Presidential* election, the timing of the announcement of candidacy, campaign financing and related matters are in need of further regulation. The proposed extension from two to four months might not be sufficient in view of our proposal to regulate the financing of campaigns. In addition, a duty to abstain from any funding, or other behaviour potentially influencing the election body, should be introduced.
 - This report advocates that (beyond the investigation of misbehaviour during one's tenure), the Ethics Committee should have the power and the duty to perform "due diligence" on FIFA officials and leadership personnel. The substantive threshold for possible refusal or exclusion needs to be further determined, as well as the procedural measures to be applied in cases of founded suspicion.
- As far as *decisions* are concerned, the report has touched upon *hosting* and *commercialisation* decisions. The risks in these two areas are high, even if they digress. The authors propose two types of means: on the one hand, the recusal/duty to abstain in cases of (risk of) conflict of interest, on the other hand structural means. Here they suggest for both areas the development of an overall *strategy* as well as the upgrading of existing substantive criteria and procedural rules.

VI. Assessment: The Relation between FIFA and its Members

FIFA is organised bottom-up; it is answerable to its Members, the National Associations. In between National Associations and FIFA are the Confederations, representing the Associations of the respective continent. As indicated above, Members own FIFA, but at the same time they are the principle beneficiaries. This is an important source of conflicts of interest. For that reason, we are placing the issue of conflict in a separate chapter on the relationship between FIFA and its Members.

1. Conflict of Interest

Conflict of interest, as in the corporate world and the public sector, is a general issue. Hence the first suggestion would be for FIFA to introduce a *general conflict of interest regulation*, based on models developed in the public or the private sector, applicable to all members of staff and to officials of all bodies.

As with the compliance rules, the issue whether the conflict of interest standards apply directly to Member Associations and Confederations arises. We are of the opinion that FIFA – exactly because it is organised bottom-up – may not have the direct power to force National Associations to follow its rules⁴¹. It may, however, make its financial contributions (cf. below VI.2.) dependent upon the application of compliance and conflict of interest standards. FIFA has done this already, when contributing to the expenses of FWCs (South Africa, Brazil), or when requiring local entities to account for the use of funds under the FAP.

Conflict of interest issues can arise on an individual level or between FIFA and its Members.

Individuals could be tempted to mix their commercial interest and their governing role as an official of FIFA. This may have an adverse effect on elections and on hosting decisions, as well as on participation in development programmes (cf. below VI.2.).

Likewise, entire Associations, especially when small and dependent upon contributions, may be influenced in the way they use their democratic rights within the bodies of the organisation.

Conflicts will arise in particular in the high-risk areas discussed already (cf. above V.).

It has been mentioned that conflicts cannot be “forbidden”; conflicts are a reason to notify and disclose the situation, and to recuse oneself in substantial cases. The detail again is in need of further clarification.

2. Development Programmes

FIFA is, for all its income, still a non-profit organisation, since it reinvests its funds into the promotion of the game. It does this to a large extent through a series of development programmes, in particular:

⁴¹ Slightly different emphasis: Transparency International 2011, 7.

- The *FAP*, a generalised support programme benefiting all Member Associations with up to USD 250'000 p.a., and Confederations with up to USD 2.5 million p.a. The Associations, however, have to account for the use of these funds;
- the *Goal* Programme, a project based development programme with a substantial volume of funds going to Associations;
- the “*Win in...*” programmes, supporting specific activities (like providing artificial lawns to African Associations), and
- other forms of actual football related development aid.

According to the financial report 2010, for the period of 2007 to 2010 a total of USD 794 million (or 26% of FIFA’s total expenditure) were spent on such development programmes.

Linked to the policy of subsidising activities of National Associations and Confederations are possible risks as well as benefits: the downside is that the Associations may be influenced in the use of their statutory rights within FIFA. There is however a positive counter side: FIFA is able to influence its Members with the help of subsidies (motivational aspect of subsidising). They could be used in a targeted manner to foster good governance in line with the new FIFA standards, also in Member Associations and Confederations.

A close reading of the different regulations, though, reminds us of their historic origin. They are governed by different bodies and according to diverging principles. The “*Football for a Better World Fund*” is governed by the “*Committee for Fair Play and Social Responsibility*”, a Standing Committee whose Members are elected by the ExCo. The *Goal* Programme in turn, is a so-called “*Presidential Programme*”, managed by a specific “*Goal Bureau*”, whose Members are proposed by the President. *FAP*, finally, is governed by the FIFA management. The various “*Win in...*” programmes are difficult to reconcile in terms of strategic purpose, funding and timing.

All this creates the impression of an array of highly fragmented and historically grown programmes. Given the very substantial amounts and the potential risks involved, it would seem adequate to consolidate FIFA’s development programmes under a comprehensive strategy. This strategy should be approved by the Congress. Again, in terms of good governance, this would make the process reliable, and specific decisions would become objectively reproducible. It would also facilitate alignment of governance processes and risk management. The governance of the programmes should be harmonised and the controls (ICS) raised to the current level of *Goal* and *FAP*. This would reduce the risk of haphazard decisions unduly influenced by individuals; it would raise the level of transparency and accountability. And finally, National Associations will be in a better position to understand the decisions (democratic element).

3. Recommendations

- FIFA finds itself in a challenging situation, as it is the main sponsor of its Members. A key instrument to reduce risk is the introduction of a state of the art *conflict of interest regulation*.
- While this conflict of interest regulation will be generally applicable, it will be particularly helpful to reduce the risk of manipulation in certain high-risk areas (elections and decisions).
- Further work will need to be done on defining the exact consequences of conflict, e.g. defining the threshold of mandatory recusal from certain decisions.
- Further preventive measures could greatly alleviate the risk of abuse in so-called development programmes (FAP, *Goal, Win in...*, the “*Fund*”, etc.). An overall strategy suggested by the ExCo and enacted by Congress as well as harmonised governance structures, procedures and controls are suggested.

VII. Models for Change: The IOC Experience

The other major sports governing body, the International Olympic Committee (IOC), faced similar challenges in the past, which culminated in the Olympic Winter Games in Salt Lake City of 2002. Local media were the first to allege abuses during the selection process⁴². Shortly afterwards much wider, systemic critique was voiced⁴³.

Then President of the IOC, Antonio Samaranch, reacted by setting up an “*Ad Hoc Commission to Investigate the Conduct of Certain IOC Members and to Consider Possible Changes in the Procedures for the Allocation of the Games of the Olympiad and the Olympic Winter Games*”⁴⁴ under the Chairmanship of Richard Pound. This procedure led to six exclusions, five resignations and several other sanctions against IOC Members⁴⁵. It will be noted, though, that the President nominated the members of the investigative committee.

In the run up to the 1999 Congress, a further *ad hoc* committee termed “*IOC 2000 Commission*” was charged with preparing a governance reform project⁴⁶. It suggested in particular restricting the term of office of the President, and lowering the age limit for Members from 80 to 70 (even though this measure remained restricted to new Members).

One essential change to the governance structure was the creation of an “*IOC Ethics Commission*” by the Executive Board in 1999⁴⁷. It is composed of nine Members (4 IOC Members and 5 non-Members). One Member has to represent the community of active athletes. Several issues remain questionable, though. The Members are designated by the President and approved by the Executive Board. They are exclusively entitled to investigate upon request by the President. The Commission’s powers are finally limited to express Recommendations to the Executive Board (Statutes B. 1. a.).

The IOC has furthermore introduced a new *Code of Ethics* and corresponding implementing provisions. Whilst this was a major achievement in itself, the concrete regulation would probably not pass the state of the art test. Instead of preventing, it intends to “prohibit” conflict (Art. 2 s. 2 of the COE-IP). The methodology raises further questions. It cannot simply serve as a model for other sports governing bodies. Finally the role of the President, Vice President and the Executive Board remains prominent in dealing with conflict (cf. Art. 6 and 7 COE-IP).

A third major element of the governance reform was the creation of new “*Rules of Conduct Applicable to All Cities Wishing to Organise the Olympic Games*”⁴⁸. They regulate the preparation of the hosting decision by a 16 member Evaluation Commission, charged with

⁴² In particular local TV channel KTVX.

⁴³ Jennings 2000; Weinreich 2000.

⁴⁴ See also the simultaneous proceedings of the United States Olympic Committee (USOC), the Salt Lake Organising Committee (SLOC) and the US Department of Justice.

⁴⁵ Further sanctions followed in a second extraordinary session.

⁴⁶ Report by the IOC 2000 Commission to the 100th Session, Lausanne, 11/12 December 1999.

⁴⁷ Cf. IOC, XIII Olympic Congress, Fact sheet, Theme 3: The Structure of the Movement, September 2009, 3; cf. Olympic Charter, BLR 21.2., Rule 22 and BLR 22 and Statutes of the IOC Ethics Commission.

⁴⁸ These Rules are also part of the Implementing Provisions of the Code of Ethics.

selecting two finalists from a shortlist of six. They hold the candidate cities to respect the Olympic Charter and the Code of Ethics, regulate media relations etc. prior to decisions, gifts and advantages, as well as conflict of interest. Finally the Rules restrict visits of IOC Members to candidate cities. Certain (relatively soft) sanctions can be imposed on cities. The Rules are only effective, though, from 2020. Finally, it has to be considered problematic that the Members of the Evaluation Committee are appointed by the IOC President.

Overall, the IOC has – confronted with similar challenges as FIFA – taken essential steps. In many respects the reform remained, however, unfinished. FIFA should learn from this experience and approach its governance reform uncompromisingly.

VIII. Recommendations

This chapter extracts the Recommendations made in the body of the text. They are overall on a mid-abstract level and in need of further elaboration by a Task Force. Before going into the substantive Recommendations, the authors wish to suggest that the governance reform package be subjected to a consultation procedure with the wider stakeholder community prior to adoption by Congress.

1. Recommendations in Analogy to the Corporate World

1.1 FIFA could further upgrade its existing *financial governance*, in particular by:

- a) developing a catalogue of potentially critical payments, and by deciding whether direct controls are warranted or whether indirect controls could be sufficient;
- b) intensifying its specific anti-corruption controls within existing COSO.

1.2. FIFA should *upgrade its compliance system* to meet the requirements of a state of the art corporate anti-corruption compliance programme (including a review of the Code of Ethics, the risk analysis, the detailed rules on contributions etc. and the hiring of third parties, education and training as well as notification channels). Particular emphasis needs to be placed on the credible implementation of the programme. Member Associations and Confederations should be encouraged to adopt comparable standards.

1.3. On an organisational level,

- a) FIFA should consider electing independent members into the ExCo.
- b) The competences of the Financial Committee and the Audit Committee should be clearly distinguished. The Audit Committee, in order to act as a genuine internal control body, needs to be sufficiently independent from the administration (the agenda should be set by the Chair, the Committee should have access to external resources under its own authority, if need be).
- c) Likewise, the Ethics Committee and the Disciplinary Committee should obtain clearly distinct tasks. This will require a reform of the underlying Codes (Ethics Code and Disciplinary Code). The Ethics Committee needs to be transformed into an independent body with a mix of external and internal members and the power to initiate investigations based on its own assessment.
- d) A Compensation and Benefits Committee should decide over benefits of officials of FIFA bodies and senior staff.

2. Recommendations Derived from FIFA's Public Role

2.1. Elections into FIFA's Bodies

a) Presidential Election

- Candidates should announce their wish to stand sufficiently ahead of the election.
- FIFA should examine a system of campaign financing which provides officially announced candidates with sufficient backing (a certain number of Member Associations) with FIFA funding, ruling out further private campaign contributions.

b) Term of Office

- FIFA should consider limiting terms of office of its officials.

c) Due Diligence on Members of FIFA Bodies

FIFA should consider introducing regular due diligence checks by the Ethics Committee on elected Members of its bodies. A regulation should specify cases of incompatibility with the FIFA function. The regulation should also define the procedure, and clarify under which circumstances an official would be temporarily suspended from his function.

2.2. Decisions

Decisions on hosting and on commercialising would greatly benefit, beyond a review of the actual procedures, of an overall abstract strategy, defined by relevant Committees and ratified by Congress.

3. Recommendations Reflecting FIFA's Relations to its Members

3.1. Conflict of Interest Regulation

An institution of the size and significance of FIFA needs a state of the art conflict of interest regulation, indicating cases of conflict and specifying the procedures (up to a possible recusal). While a conflict of interest regulation is a general requirement, it will be particularly useful to prevent abuses and adverse publicity in FIFA's relations to Members.

3.2. Development Funding

Additional preventive measures ensuring transparency and accountability in its relations with Members should be taken in the area of financial contributions for the development of football in countries and regions. An overall strategy should be adopted for the multitude of historically grown funds. They should be governed in a comparable manner, and expenditure as well as uses audited on the standard of the *Goal* Programme and FAP.

Prof. Dr. Mark Pieth

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Attachment: CV Mark Pieth



is **Professor of Criminal Law and Criminology** at the University of Basel, Switzerland and has served in this function since 1993. Having completed his undergraduate degree and his PhD in criminal law and criminal procedure at this university, he spent an extensive period of time abroad, most notably at the Max Planck Institute for Criminal Law and Criminology in Germany and the Cambridge Institute of Criminology in the United Kingdom. After practising for a time as a barrister (*'Advokat'*),

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From 1989 to 1993, Prof. Pieth was **Head of Section – Economic and Organised Crime at the Swiss Federal Office of Justice** (Ministry of Justice and Police). In this role, he drafted legislation against money laundering, organised crime, drug abuse, corruption and the confiscation of assets. As a government official and later as an independent consultant, he also acquired extensive experience in international fora, serving as Member of the Financial Action Task Force on Money Laundering (FATF), Member of the Chemical Action Task Force on Precursor Chemicals and Chair of an intergovernmental expert group charged by the United Nations with determining the extent of the illicit traffic in drugs.

From the mid-1990s to the present, Prof. Pieth has undertaken a range of functions at the international level. Since 1990, he has **chaired the OECD Working Group on Bribery in International Business Transactions**, also participating in the Wolfsberg AML Banking Initiative as a facilitator and serving as a Board Member of the World Economic Forum's Partnering Against Corruption Initiative (PACI). In spring 2004 he was appointed by the UN Secretary General to the **Independent Inquiry Committee into the Iraq Oil-for-Food Programme**. More recently, in autumn 2008, Prof. Pieth was made a member of the **Independent Advisory Board of The World Bank Group (IAB)**, advising the President of the Bank and the Audit Committee on integrity issues.

Prof. Pieth has served as an expert witness in several landmark **arbitration** cases, namely IPOC (ad hoc tribunal), Fraport/Philippines (ICSID) and Piatco/Philippines (ICC).

Within Switzerland, Prof. Pieth has assumed various presidencies and memberships of national commissions, including the Expert Group of the National Research Programme on Violence and Organised Crime, the Federal Commission on Data Protection in the Medical Profession, the Swiss Federal Gaming Commission and the Consultative Commission to the Federal Administration of Finances on the Prevention of Money Laundering. He continues to consult corporations, international organisations and foreign governments on issues related to governance and he publishes extensively in the field of economic and organised crime, money laundering, corruption, sanctioning and criminal procedure. He has formerly served as Dean of the Faculty of Law at the University of Basel.