

Foundation bid 2018/2022**Holland-Belgium**

Mr. Henny Smorenburg
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The Netherlands

Zurich, 16 September 2010

Bidding Process for the 2018/2022 FIFA World Cup™**Legal matters**

Dear Mr. Smorenburg,

As you are aware, the Legal Working Group established by FIFA in relation to the bidding process for the 2018/2022 FIFA World Cups is currently in the process of assessing in detail any governmental and contractual documents submitted by each of the bidders to FIFA on the basis of FIFA requirements as set forth in the Hosting Documents provided by FIFA to each bidders as part of the bidding process. The objective of this assessment is to provide the FIFA Executive Committee with a detailed evaluation of legal risks affecting the hosting and staging of the FIFA World Cup™ in the respective country.

As announced to you on 14 May 2010, with this document, we would like to inform you on the preliminary status of legal review in relation to your bid, to make sure this can be fully taken into account by you in your on-going efforts. However, please note that FIFA in case of any material deviations will not be in a position to, at this stage, start any detailed discussions or negotiations with you or any other third parties, such as the Government.

Governmental Documents:

Please allow us to reiterate, that the FIFA templates for the Government Guarantees and the Government Declaration provided to you with the Bidding Agreement as well as the list of content for the Governmental Legal Statement as described in the Bidding Agreement contain the indispensable minimum requirements in respect of the governmental support necessary to host and stage a FIFA World Cup™. We would like to reiterate that any modifications or deviations from such FIFA templates wording or required content and the consequential lack of Government support have an effect on the manner in which the requirements on these matters are met and may therefore represent a significant shortfall from the FIFA requirements which the Legal Working Group will have to address in its evaluation report.

In the event that either (i) the Government proposes to enact legislation at a later stage after the appointment as host country; or (ii) the Government proposes to address a situation where other governmental authorities (on a state, regional or municipal level) are the responsible governmental authorities, we would like to refer you to our document "**Alternative Procedures for the Issuance of Government Guarantees**", which sets out the approach which FIFA considers appropriate in such instances. With this respect, please allow us to reiterate that any missing undertaking of the Government to enact necessary legislation by the deadline defined in the Hosting Agreement represents a legislative risk for FIFA which the Legal Working Group will have to address in its evaluation report.

Specific Remarks (applicable to the governmental documents of both countries):

1. Guarantee No. 8 – General Effect on Guarantees 1-7

- (i) In contrary to the template provided by FIFA for this guarantee ("Legal Issues and Indemnification"), the guarantee no.8 provided by the Bid Committee has been significantly changed. You have also explained the reasoning for this in your additional letter submitted with the Bid Book. However, the legal effect of Guarantees 1 to 7 is significantly reduced by Guarantee 8, as the Guarantee 8 is given priority and prevails over the content of the other guarantees. In addition, lots of the sections of guarantee no. 8 are expressly "replaced" by the wording of this guarantee. We have to hereby confirm that this can be considered a serious deviation from the standard templates requested by FIFA.

2. Government No.8 – Clause G (Required Legislative Steps)

- (i) According to Clause G of Guarantee 8, the timing for the enactment of all special laws, regulations and ordinances for complying with the Government Guarantees has been amended to "in due time" (instead of "not later than 1 June 2013").
- (ii) If the government proposes to enact legislation at a later stage after the appointment as host country, as mentioned above, we refer to our document "**Alternative Procedures for the Issuance of Government Guarantees**", which sets out the approach which FIFA considers acceptable in such context. The Guarantees should contain the clause that FIFA reserves the right to withdraw the appointment from the host country if the legislation has not been passed by 2013/2015.

3. Guarantee No. 8 – Clause G (Authority of other Governmental Authorities)

- (i) Clause G of the Government Guarantee No. 8 (and all Guarantees 1-7) contain a provision saying: "*nothing in the Government Guarantee may lead to or be interpreted as leading to a breach of Constitutional rules and principles or rules and principles of public policy applicable in Belgium/Holland, such as for example but not limited to the state structure, the separation of powers, the non-discrimination principle and the prevalence of international law*". This may affect the enforceability of the guarantees. In view of the possible impact of this addition on the enforceability of certain guarantees, at the very least the

Guarantees should of course state that the executed agreements and guarantees do not violate International, European and/or State law.

(ii) Further, if the government proposes to address a situation where other governmental authorities (on state, regional or municipal level) are the responsible governmental authorities, as mentioned above, we would like to refer to our document "**Alternative Procedures for the Issuance of Government Guarantees**", which sets out the approach which FIFA considers acceptable in such context. The Guarantees should contain the clause mentioned in the paper and refer to the additional guarantees signed by such other authorities.

(iii) This does in particular apply to **Guarantee No. 3**, as this guarantee must be given from such authorities permitted to do so.

Please note that FIFA's local counsel in this respect advised us as follows:

"Notwithstanding the foregoing, it could be argued that the indemnification commitment (in Section G of the Guarantee) would not be enforceable in case Parliament decides (for whatever reason – e.g. constitutional concerns) not to enact certain laws that provide for tax exemptions in relation to the FIFA world cup. In fact, by agreeing to indemnify FIFA (or any other beneficiary of the commitment) whenever a tax exemption (or refund) is not available (quod non), the signatories of the Government Guarantee have decided (by themselves) to provide for a tax exemption directly (by enacting new legislation) or indirectly (by paying an indemnification). However, the Belgian Constitution states that tax exemptions can only be introduced by means of a law voted by Parliament. Consequently, one would expect that the signatories were specifically mandated by their respective Parliaments to agree to certain tax exemptions. To our knowledge no such mandates were granted. Moreover, though not evident, one could argue that the specific indemnification clause (as provided for under section G) is void in itself because it does not respect the separation of powers by providing for an equivalent indemnification in case Parliament (being the only competent authority) decides not to enact the tax exemptions. In order to reduce the risk of such constitutional discussions, we would recommend that the signatories' commitment with respect to tax exemptions, refunds or indemnifications be confirmed by a confirmatory act voted by each of the respective Parliaments."

(iv) Further, this does in particular apply to **Guarantee No. 4**, as this guarantee must be given from such authorities permitted to do so.

Please note that FIFA's local counsel in this respect advised us as follows:

"In respect of Safety & Security, the respective ministers are not competent to enter into all obligations included in the Guarantee, i.e. certain obligations should be entered into by lower administrative bodies. The mayor, for example, is responsible for maintaining public order (and not the Ministry of Interior and Kingdom Relations), as a result of which the minister's authority to instruct the

police is limited. Another example is the city council's power to award the mayor authority to designate safety-risk areas wherein preventative body searches may be performed"

4. Guarantee No. 8 - Indemnification

- (i)** Clause C of the Government Guarantee No. 8 is a totally new indemnification clause. By such clause, the scope of the indemnification clauses has been narrowed, as a result of which the indemnification only applies in respect of FIFA and the FIFA Subsidiaries and only for and against justified liabilities, obligations, direct and indirect damages resulting from violation or breach by the governments.
- (ii)** The sentence "Subject to common liability law" results in the situation that the Governments will only indemnify if the normal requirements for liability are met (i.e. fault, damage, causation) and only for damage which can be claimed under tort law (which limits the possibility to obtain compensation for e.g. immaterial losses and legal costs). This would mean that, according to the Clause C of Guarantee 8, the Governments will only indemnify and hold harmless FIFA if FIFA can prove a fault/negligence of the Governments, damage and the causal link between fault/negligence and damage.

5. Guarantee No. 3 – Tax Exemption

- (i)** Government Guarantee No. 8 contains a provision superseding and limiting Government Guarantee No. 3: *"This Guarantee may never lead to any form of tax evasion or tax fraud. Government Guarantee No. 3 will be carried out in conformity with and within the existing legal framework of the relevant and applicable international law, as stated in tax conventions, legislation and regulations, including those implementing European Directives. Taxes due to the international law will be refunded by the Netherlands."*

Please note that FIFA's local counsel in this respect advised us as follows:

- The carve outs refer to international law and the fact that international law takes precedence over domestic tax legislation. Even without explicitly mentioning the precedence of international law in the Guarantees, such precedence would apply. In that sense, the reference to international law and the precedence thereof in these carve outs would seem superfluous.
- By explicitly making a carve out in these Guarantees for national rules and principles in Chapter H of Guarantee No. 3 (and for international law), the Governments appear to create the possibility to decide, by reference to said rules and principles, to not enact or implement any of the guaranteed tax exemptions.
- The reference to "tax evasion" or "tax fraud" in Chapter F of Guarantee No. 8 is unclear. These concepts are not defined in tax law and it is thus unclear what the carve out in relation thereto entails.

- The carve out for international law obligations in Chapter F of Guarantee No. 8 does not in any way clarify the Governments view as to how international law may affect the guaranteed tax exemptions. Also the statement that "taxes due to international law" will be refunded is unclear: it is not clear which taxes are meant and it is also not clear how the Dutch Government proposes to act if such refunds, if any, would potentially be prohibited by state aid rules.

6. Guarantee NO.6 – Protection and Exploitation of Commercial Rights

- (i)** Government Guarantee No. 8 contains a number of provisions superseding and limiting even further Government Guarantee No. 6. According to Government Guarantee No. 8, the Government's point of view is that the general legal provisions as they currently exist (trademark law, unfair competition law, tort law) provide sufficient protection and guarantees for the exploitation of commercial rights, whereas FIFA seems to request specific protection and legislation as well as fast track proceedings. In a number of cases the protection against ambush marketing and similar practices will therefore be considerably less important than what appears to be desired by FIFA and set out in Guarantee No. 6.
- (ii)** Indeed, while Guarantee No. 6 copies the FIFA template to a large extent (save the disclaimers in Section E), the substantial sections (Sections B, C and D) are actually 'replaced' by the much shorter (and more non-committal) Section F.6 of the Government Guarantee No. 8. The implication is that Sections B, C and D of the Government Guarantee No. 6 would not appear to have any autonomous binding value vis-à-vis the Government. Essentially, while Sections B-D of the Government Guarantee No. 6 ensure and guarantee that the Government will do all that is necessary to protect FIFA's IPRs and its right to exploit ticketing rights, media rights, etc., Section F.6 of the Government Guarantee No. 8 simply guarantees that the necessary legislation is in place for such protection and that no further action is needed. The 'replacement' of Sections B-D of Guarantee 6 may have important repercussions in that certain more detailed commitments are not repeated in the Government Guarantee No. 8.
- (iii)** Government Guarantee No. 8 does not repeat the commitment on the part of the Government, included in Government Guarantee No. 6, according to which *"Belgium/Holland agrees that any media, marketing, ticketing or other commercial laws or regulations which interfere with, or impinge upon FIFA's exploitation of the media rights, marketing rights, ticketing rights, and other commercial rights are suspended in respect of the Competition and that FIFA may exploit such rights unfettered in Belgium/Holland in a manner of its own choosing."* Instead Government Guarantee No. 8 provides that Holland/Belgium guarantees to FIFA that the *"exploitation of the media rights, marketing rights, ticketing rights, or other commercial rights, marks or other intellectual property of FIFA will not be restricted or prohibited provided that these activities do not infringe applicable law."* One consequence of this divergence is that Holland/Belgium do not commit itself to amend or suspend restrictions under the

existing regional media laws on the broadcasting on the Belgian market of certain key events (such as the matches of the World Cup).

7. Missing Document - Governmental Legal Statement

- (i) There is no Government Legal Statement by the Minister of Justice containing the requested summary of the legal framework both for Holland and Belgium.

Contractual Documents:

Please find attached to this letter Annex A representing a detailed chart which contains an overview of the legal matters which have been identified by FIFA to date in relation to any of such documents. In this regard, we kindly urge you to address any comments made by FIFA (such as a missing agreement, a wrong signatory, a missing signature, etc.) in due course and to provide FIFA with a revised document as necessary.

Please note that the specific remarks and topics addressed above and in Annex A do not present a conclusive statement of deviations or shortfalls comprised in all Bidding Documents or Hosting Documents provided to FIFA. In particular deviations from Bidding Documents or Hosting Documents which are not mentioned shall not deemed to be accepted by FIFA. Each bidder is kindly requested to assess whether the Bidding Documents and Hosting Documents provided to FIFA meet the requirements and standards set forth above.

Should you submit any new documents addressing the matters raised in this communication, we would like to request that such submission is done by no later than **22 October, 2010**, to enable the Legal Working Group to conduct a proper legal evaluation and finalise the report for the FIFA Executive Committee in time. Please take note that the above-mentioned date does not constitute any formal modification or change of any deadlines set out in our previous communications, in particular the Bid Registration.

Yours sincerely,

**FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION**



Jörg Vollmüller
Head of Commercial Legal

Cc: Jürgen Müller

Annex A

	Agreement	Edition	Site	Authority Name	City	Remarks	Required Action
1	Stadium	2018 / 2022	Stadium Amsterdam Olympic Stadium	Olympisch Stadion	Amsterdam	"Olympisch Stadion" signed the contract, Schedule 1 says Stadium owned by "Foundation Olympisch Stadion" and BPF (did not sign).	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement)
2	Stadium	2018 / 2022	Amsterdam Arena	Amsterdam Arena	Amsterdam	"Amsterdam Arena" signed the contract	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement)
3	Stadium	2018 / 2022	Stadium Antwerpen	Public Private cooperation represented by the Mayor Grote Markt 1	Antwerpen	Public Private Cooperation" signed the contract	Possibly Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement), BC to verify whether this legally means the city of Antwerpen or a separate legal entity which owns the Stadium.
4	Stadium	2018 / 2022	Stadium Bruges	Public-private partnership represented by the Burgomaster, Mr. Patrick Moenaert and the City Clerk Mr. Johan Coens of the city of Bruges	Bruges	Public Private Partnership" signed the contract	Possibly Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement), BC to verify whether this legally means the city of Bruges or a separate legal entity which owns the Stadium.

Agreement	Edition	Site	Authority Name	City	Remarks	Required Action
5.	Stadium 2018 / 2022	Stadium Brussels	Freddy THIELEMANS - Mayor Charles PICQUE - Minister President Brussels	Brussels	Contracting Party unclear, as it directly refers to "the mayor" and does not specify the Stadium Authority itself	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement)
6.	Stadium 2018 / 2022	Stadium Charleroi	Jean-Jacques VISEUR - Mayor	Charleroi	Contracting Party unclear, as it directly refers to "the mayor" and does not specify the Stadium Authority itself	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement)
7.	Stadium 2018 / 2022	Stadium Eindhoven	Philips stadium	Eindhoven	Contracting Party unclear, as it directly refers to "Philips stadium" while the Schedule list PSV NV as the owner of the Stadium	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement)
8.	Stadium 2018 / 2022	Stadium Enschede	Grolsch Veste	Enschede	Contracting Party unclear, as it directly refers to "Grolsch Veste" while the Schedule list Twente 65 as the owner of the Stadium	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement) - to be corrected to clear that Twente 65 is contracting party to the SAC
9.	Stadium 2018 / 2022	Stadium Genk	Herbert HOUBEN - President of KRC Genk	Genk	Contracting Party unclear, as it directly refers to "Herbert HOUBEN - President of KRC Genk" as the party to the agreement while the Schedule list VZW KRC GENK as the owner of the Stadium	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement) - to be corrected to clear that VZW KRC GENK is contracting party to the SAC
10.	Stadium 2018 / 2022	Stadium Heerenveen	Abe Lenstra stadium	Heerenveen	Contracting Party unclear, as it directly refers to "Abe Lenstra stadium" while the Schedule list the club S.C. Heerenveen as the owner of the Stadium	Re-execution of document (BC to ensure that Stadium Owner fully executed as contracting party and signatory the agreement) - to be corrected to clear that SC Heerenveen B.V. is contracting party to the SAC

Agreement	Edition	Site	Authority Name	City	Remarks	Required Action
11. Stadium	2018 / 2022	Stadium Rotterdam new Stadium	Name to be decided	Rotterdam	References to contracting party (Stadium Feijenoord NV) to be changed.	References to contracting party (Stadium Feijenoord NV) to be changed.
1.	2018 / 2022		Patrick JANSSENS	Antwerpen	Inaccurate Reference to contracting party	References to contracting party (City of Antwerpen) to be changed.
2.	2018 / 2022		Patrick MOENAERT	Bruge	Inaccurate Reference to contracting party	References to contracting party (City of Bruge) to be changed.
3.	2018 / 2022		Freddy THIELEMANS	Brussels	Inaccurate Reference to contracting party	References to contracting party (City of Brussels) to be changed.
4.	2018 / 2022		Jean-Jacques VISEUR	Charleroi	Inaccurate Reference to contracting party	References to contracting party (City of Charleroi) to be changed.
5.	2018 / 2022		Wim DRIES - Mayor	Genk	Inaccurate Reference to contracting party	References to contracting party (City of Genk) to be changed.
6.	2018 / 2022		Daniel TERMONT	Ghent	Inaccurate Reference to contracting party	References to contracting party (City of Ghent) to be changed.
7.	2018 / 2022		Willy DEMEYER	Rotterdam	Inaccurate Reference to contracting party	References to contracting party (City of Liege) to be changed
1.	2018 / 2022		Roland Duchatalet		Roland Duchatalet - Glossary of Terms is missing -	To be added to signature version
2.	2018 / 2022		Sen R Rotterdam		Sen R Rotterdam/ no signature	To be signed
3.	2018 / 2022		Besthur AFL '34		Besthur AFL '34/ no signature	To be signed
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Confirmation Agreement	2018 / 2022		Both MAs		BC did not use the version for Joint Bids, but the standard version, with some wording deleted.	Member Associations to re-execute the confirmation agreement based on FIFA template for joint bids

