

Ministry of Health, Welfare and Sport

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The HollandBelgium Bid
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Sports Department

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

Our reference

S/3029892

Enclosure(s)

Your reference

16 September 2010

All correspondence addressed to the postal address quoting date and reference of this letter.

Dear Mr. B.,

Recently I received your letter, dated on 16 September 2010, regarding the Government Declaration and the Government Guarantees that have been issued by the Dutch Government in relation to the joint bid of The Netherlands and Belgium for the FIFA Confederations Cup 2017 and the 2018 FIFA World Cup™, respectively the FIFA Confederations Cup 2021 and the 2022 FIFA World Cup™. In this letter, several remarks were made by FIFA's Legal Working Group after their preliminary legal review of the joint bid. Hereby I would like to present the following government-issued statement to you.

Introduction

Before I commence addressing FIFA's remarks, I would like to emphasise the Government's unwavering support of the joint bid and all efforts put forward to gain the privilege to be the Host Country of the FIFA World Cup 2018/2022™. The fact that the Government was not able to return the Guarantee Templates unaltered, does not stem from any unwillingness to comply with requirements set forth by FIFA, but is the result of the fact that the Government is inevitably bound by its own (constitutional) laws and the rules set forth by international law. Therefore, the assessment of our joint bid should take these circumstances into account.

The Government respectfully declares that The Netherlands and Belgium possess all means necessary to arrange for and manage the organisation of the FIFA World Cup™. In this respect we would like to conjure up the memory of Euro 2000, during which both countries successfully demonstrated their organising skills. That being our precursory experience, we daresay the FIFA World Cup™ would be in great Dutch and Belgian hands.

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

As observed in remarks 1.i and 4, we hereby confirm that Guarantee 8 includes specifications regarding the meaning, interpretation, and scope of the provisions in the Government Guarantees 1 to 7, and is prevalent over all Government Guarantees. The Government Declaration and the Government Guarantees are to be read and interpreted as a whole, in which Government Guarantee no. 8, Chapter F, has absolute priority in case of conflicting provisions. This has been done to reflect the Dutch parliamentary system, and to enable (legislative) procedures to take place according to and dictated by our constitutional rules and principles of public policy, through which legislation deemed necessary can be

enacted by the most efficient and effective means. To that purpose, certain passages of Guarantee 8 contain adjustments. We kindly refer you to the Government Legal Statement, in which our parliamentary system is explained more extensively.

Sports Department

Our reference
S/3029892

2. Guarantee No. 8 – Clause G (Required legislative steps)

As per remark 2 concerning Guarantee 8, Clause G, I would like to bring to your attention that since the Government shares its legislative power with Parliament, both parties remain dependent on each other during the whole legislative procedure. The resulting level of collaboration interferes with guaranteeing a fixed deadline concerning this matter.

However, the Government stresses once again that by means of Guarantee 8, the Government guarantees that all Government endeavours will be focused on enabling all laws, regulations and ordinances necessary to successfully organise the FIFA World Cup 2018/2022™, to be enacted in due time. This commitment remains an integral part of the Guarantee.

The Government is aware of the possibility that FIFA might withdraw the appointment in the unlikely case that necessary legislation has not been passed in due time.

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

As per the remarks made in 3.i and 3.ii, it should be noted that the Parliament has been informed of all Guarantees necessary to host the FIFA World Cup™, and that it fully endorses all efforts put towards fulfilling these Guarantees.

As to the requirement of additional guarantees (remark 3.iii and 3.iv) signed by authorities on levels other than state level, the drafting of mandates as such are not deemed necessary due to the manner of attribution of Dutch executive powers to municipalities ('decentralisation'). Moreover, the Government kindly refers to the Host City Agreements, by which the appointed decentralised authorities themselves have provided FIFA with provisions to a more detailed degree.

In conformity with its state structure, the Government has included a provision protecting fundamental principles of the rule of law, so that, indeed, no Guarantee can lead to or be interpreted as a breach of constitutional rules and principles or rules and principles of public policy applicable in both respective countries, such as, but not limited to, state structure, the separation of powers, the non-discrimination principle, and the prevalence of international law. The Government presumes that more countries bidding for the organisation of the FIFA 2018/2022 World Cup™ would have to include a similar provision in their bids in order to comply with their national and international rule of law.

Apart from the uncertainty whether a confirmatory act as recommended in remark 3.iii would be in conformity with our legal framework, it is procedurally impossible to pass such an act within the remaining amount of time.

As to remark 3.iv, the Government kindly refers to the Host City Agreements, by which the appointed decentralized authorities provided FIFA with provisions to a

more detailed degree. The Host City Agreements have been assimilated to the Government Guarantees, so as to complement each other to such a degree that no legal voids remain. Although local mayors carry responsibilities within the field of public order and police matters, the Minister of the Interior will issue common guidelines to be used in all Host Cities, as was done during Euro 2000. These guidelines will include security policy, tolerance levels, hospitality, and so forth, and will be of the highest (internationally recognised) standards. Furthermore, these common standards will be incorporated into all police training, which will be coordinated on a national level. Naturally, the issuance of these guidelines will take place after consultation of all Host Cities and other parties involved in public order and police matters.

Sports Department

Our reference
S/3029892

4. Guarantee No.8 – Indemnification

The Netherlands respectfully submits that indemnification can only be acquired if and when all legal requirements are met in accordance with tort law or liability rules. It should be noted that Guarantee No. 8 in no respect mitigates liability on grounds of indemnification due under the rule of law.

5. Guarantee No. 3 – Tax exemption

As to remark 5.i, the Government confirms the precedence of international law over domestic tax legislation. In that respect, Guarantee no. 3 does not change the scope of applicable national and international tax legislation and regulations. It merely confirms that the interpretation of tax legislation shall at all times be conducted under the rule of law, and without infringement on applicable national and international tax legislation.

Furthermore, the Government would like to stress that in case the organisation of the FIFA World Cup™ is awarded to The Netherlands and Belgium, the Government will endeavour to secure the aforementioned tax exemptions through legal modification of national tax legislation. In the event that tax exemptions cannot be effectuated as such, the Government will seek to compensate FIFA otherwise, for example by issuing a refund of sorts.

Moreover, in Government Guarantee no. 3, the Government inserted the phrase that "this Guarantee may never lead to any form of tax evasion or fraud". FIFA has indicated that the reason why we added this phrase is not clear. Tax fraud and tax evasion are general terms for efforts to evade taxes by illegal means. Although these concepts are not defined in the context of tax law, the Government adheres to mentioning these principles explicitly, since they relate to underlying principles of our tax legislation. These are embedded in the European fiscal tradition and upheld in our conduct of business and the practice of levying taxes at all times. Therefore, they will also apply when carrying out Guarantee nr. 3.

As far as state aid is concerned, the Government will address the issue immediately after certainty has been achieved that the organisation of the FIFA World Cup™ is being awarded to The Netherlands and Belgium, on which grounds provisions for tax exemptions are to be realised. Where necessary, the Government will then notify the European Commission of any and all proposed state aid measures, as dictated by Article 108 of the Treaty on the Functioning of the European Union. Should the European Commission decide that any of those

measures are incompatible with the internal market the Government will seek alternative ways to deal with these issues in close consultation with FIFA. In this respect, the Government would like to respectfully remark on the fact that all Member States of the European Union are bound by the same state aid rules.

Sports Department

Our reference
S/3029892

6. Guarantee No.6-Protection and Exploitation of Commercial Rights

As The Netherlands and Belgium are Member States of the European Union, FIFA can rest assured that the European Union laws and regulations regarding unfair competition and intellectual property laws apply to all parties. For example, the Dutch legal system provides protection against unfair business-to-consumer commercial practices and the protection of intellectual property. Another way to address ambush marketing is by exerting Dutch tort law.

However, these regulations are currently governed almost exclusively by European Union laws, due to the workings of (amongst others) the Directive on Services in the Internal Market (Directive 2006/123/EG) and the Unfair Commercial Practices Directive (Directive 2005/29/EG). Worth mentioning are also the national intellectual property laws, which are based on European Directives and international law. Within the boundaries of these directives and national laws, FIFA enjoys maximum protection from both national and international laws against all risks mentioned under Guarantee No. 6. Of course, their interpretation shall at all times be conducted under the rule of law, and without infringement on applicable national and international legislation, as the Member States remain bound by the direct force of European legislation.

In regard of trademarks, it is worth mentioning that the Benelux Convention on Intellectual Property established a speedy procedure especially for that purpose, which is used throughout The Netherlands and Belgium.

Also worth mentioning is that The Netherlands has several fast track judicial procedures in place that can be put into action. These are called 'summary proceedings'. These proceedings were devised for swift litigation, and are proven to be highly effective in putting into effect all sorts of legal measures, such as executing seizures.

7. Missing Document

I kindly refer you to the Government Legal Statement of The Netherlands of 28 April 2010, which was submitted to FIFA on 29 April 2010 as an attachment to the letter of the Minister of Justice of the same date (no. 5652346/10/6).

Conclusion

The Netherlands and Belgium both have a long standing tradition of hosting large scale international events, during which they acquired the necessary experience in protecting the rights of all parties, organisations, athletes, and sponsors alike. For example, between them, The Netherlands and Belgium have already hosted The Tour de France, Giro D'Italia, Formula 1, European Cup Finals, and World Cup Finals of several international sports. All of these events were deemed fully satisfactory and successful by all parties involved.

With this additional statement, the Government once again expresses its full support of the HollandBelgium Bid, and hopes to have successfully answered any remaining questions on the side of FIFA concerning these legal matters.

Sports Department

Our reference
S/3029892

We are looking forward to putting all efforts into a fruitful collaboration with FIFA on FIFA World Cup 2018/2022™. Working together, we have full confidence in fulfilling and achieving all measures and goals set forth to host a magnificent FIFA World Cup™!

Yours sincerely,

mrs. drs. E.I. Schippers
Minister of Health,
Welfare and Sport