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**Subject: State aid SA.37109 (2013/N) – Belgium
Football stadiums in Flanders**

Sir,

1. PROCEDURE AND SUMMARY

- (1) On 22 July 2013, following pre-notification discussions with the Commission services, Belgium notified the plan of the Flemish government to subsidize, by way of an aid scheme, the renovation and the construction of multifunctional football stadiums that are located in Flanders or the Region of Brussels Capital (hereinafter: "the measure"). In reply to a request for information of 12 September 2013 Belgium submitted further information on 7 and 9 October 2013.
- (2) I am pleased to inform you that the European Commission has assessed the notified measure and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) TFEU.

2. DESCRIPTION OF THE MEASURE

- (3) **Aim** of the scheme is to put the social role of football high on the agenda of professional football clubs, while upgrading outdated or building new infrastructure. The objective is therefore to realize multifunctional football stadiums in order to ensure that professional football in Flanders/Region of Brussels Capital generates a higher social return, while at the same time improving the quality of stadiums used for professional football by ensuring that they meet the UEFA criteria for European football games.

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- (4) **Background:** in 2008, on request of the Flemish Government, an independent international auditing firm analysed the need and feasibility of multifunctional football stadiums in Flanders and the Region of Brussels Capital. According to this analysis, there is a need of around 8 to 10 additional/renovated stadiums in Flanders, taking into account growth potential, increased media attention, a comparison with stadiums in surrounding countries and the fact that Belgium, based on current infrastructure, does no longer qualify to organize international games (UEFA or Champion league finals) and has difficulties to find a proper location for home games of the national team.
- (5) Moreover, since EURO 2000, only one stadium (for which aid was moreover promised under a previous, annulled measure, see recital (8)) was constructed/structurally renovated in Flanders. The Belgian authorities explain that banks are reluctant today to provide loans to large infrastructure projects that do not benefit from any state funding and that it is impossible for football clubs to construct or renovate a football stadium without financial support from the Flemish Government.
- (6) Potential **Aid beneficiaries** (applicants) are owners of stadiums that are located/to be constructed in Flanders or the Region of Brussels Capital and that are used by one or more football clubs, which play in first or second league in the season 2013-2014 and which are affiliated to the Flemish football federation (Voetbalfederatie Vlaanderen "VFV").
- (7) The **legal basis** of the scheme is the decision of the Flemish Government of 19 July 2013 to call for proposals for the realization of multifunctional football stadiums with social return. The total **budget** of the scheme is 8 million EUR, financed from the budget of the Flemish government.
- (8) **Duration:** Aid can be granted under the scheme between 1.1.2014 and 31.12.2019. The grant can cover works carried out in the period 2014-2017 (for renovation projects) or 2014-2019 (for new projects). Exceptionally, works carried out in the period 2013-2017 or 2013-2019 respectively can also be covered: this only concerns projects that were already selected by decision of the Flemish Government of 5 March 2010 and of 23 April 2010 in the context of a 2009 aid scheme¹, which the Council of State (Belgian highest administrative court) annulled on 28 May 2013 for lack of notification to the Commission. To be eligible, the projects concerned must still be selected under, and fulfil all criteria of, the currently notified measure.
- (9) **Selection procedure:** The applicant must submit an application under a one-off call for projects, which will be launched after approval of the measure by the Commission. When they fulfil the eligibility criteria, the submitted applications are evaluated and ranked by an evaluation committee that is composed of two representatives of the Flemish Government, Department of Culture, Youth, Sports and Media (president and Secretary of the evaluation committee respectively), one representative of the Department of Planning, one representative of the

¹ Decision of the Flemish Government of 11 December 2009 concerning the realization of multifunctional football stadiums in the Flemish Region and the Region of Brussels Capital in the light of the candidacy for the World cup football 2018/2022.

Department of Budget and Finances, one delegate of the leagues and one delegate of the Football+ foundation².

- (10) The evaluation committee gives its advice to the Flemish Minister responsible for sports. The individual granting decisions under the scheme are ultimately taken by the Flemish Government, on proposal of the Flemish Minister responsible for Sports. In case the granting decision deviates from the advice of the selection committee, it must provide thorough and substantive motivation and show that all eligibility criteria as well as the "open stadium"-requirement (see recitals (11) and (12)) are still fulfilled.
- (11) *Eligibility criteria:* When applying for a grant under the measure the applicant must demonstrate that it fulfils the criteria described in recital (6) and that the new or renovated stadium fulfils UEFA criteria³. Moreover, it must prove that there is an effective need to construct/renovate the stadium taking into account geographic dispersion in Flanders and that the aid is necessary to realize the financial plan (explanations must be provided, in particular, on the budget, portion and conditions of debt, portion of the investment made by the applicant itself, reasons why there are no alternative ways of financing the project than including the amount of the grant). Furthermore, the business plan of the applicant must establish that (taking into account the maximum possible aid under the measure as described in recital (14)) the intensity of all aid cumulated for the project does not exceed 70%⁴. Finally, the owner of the stadium (whether a local authority or a club) must commit to occasionally rent out the stadium to other clubs that wish to use it (e.g. for occasional European games). The financial plan must show that conditions of access and use of the stadium for third parties are transparent and non-discriminatory and it must be proven that the lease of the stadium (by the football club and/or other professional users occasionally renting the stadium) is comparable with a benchmark price established by the Flemish government by taking into account the rental price of comparable infrastructure, as well as real costs (depreciation and operational costs).
- (12) Proposals that fulfil these eligibility criteria, are *ranked* based on the following criteria and points:

<p>1. Social return of the stadium, demonstrating its multifunctional use for broader societal goals, as well as its "open stadium"-use. The stadium should have an added value for society and be fully used as "meeting point". This criterion is subdivided in the following 3 sub-criteria:</p> <p>1.1. <i>Multiannual plan:</i> describing how the infrastructure will be used for broad societal goals (social return of the stadium), whereby co-operation between the club and the city will be positively valued.</p>	<p>60 pts.</p>
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² Set up in 2012 as successor of "Open Stadium"; the mission of the Football+ foundation is to stimulate the social commitment in Belgian football and to communicate about it. To this effect, it offers knowledge and support, develops projects, communicates and mobilises.

³ UEFA category 3 for clubs in second league and UEFA category 4 for clubs in the first league in the season 2013-2014.

⁴ The aid under the measure can be reduced in order to comply with this 70% maximum.

1.2. <i>Programming</i> : description of the way the multiannual plan is effectively converted into concrete actions, with specific emphasis on actions to the benefit of the neighbourhood of the stadium, supporters and other stakeholders from the city/municipality concerned. Also communication on the actions is of importance.	
1.3. <i>Degree of utilization of the infrastructure by a broad target group</i> (accessibility, including for persons with disability, elderly, families with children etc.). Examples include social tariff offers, measures to ensure "public-orientation" ⁵ , youth activities within the stadium, organisation of other sports or cultural events.	
2. The footprint of the stadium : emphasis on sustainability (e.g. regarding waste policy), mobility, health, renewable energy, etc.	5 pts.
3. Feasibility of the project within the planned timing, taking into account country/city planning, mobility, possession of the necessary legal basis to carry out the work, etc.	25 pts.
4. Financial feasibility : the applicant has a business plan to which financial partners have already committed and proving financial feasibility of the project, including in the long term.	10 pts.
Total:	100 pts.

- (13) Projects are ranked in accordance with the scores reached. If a project does not reach half of the maximum amount of points in any of the four mentioned categories, it is automatically disqualified. Taking into account the size of the submitted projects, the ranking and the available budget of 8 million EUR, only the best ranked projects qualify for a subsidy⁶.
- (14) **Maximum aid amount and aid intensity per project**: Aid under the measure consists of a one-time grant of 10% of the investment amount, with a maximum of 2.5 million EUR for the construction of new stadiums and of 750 thousand EUR for renovation projects. The aid can be cumulated with aid granted outside the scheme, but the maximum aid intensity, of all aid cumulated is 70%. This is verified by the Flemish Government (see recitals (11) and (16)). The grant is paid out on the basis of invoices and claims and cannot exceed actual, proven costs.
- (15) **Reporting, transparency and control**: The granting decision is immediately published by several channels of communication, among which at least on the website www.sportvlaanderen.be as well as the website of the aid beneficiary. It is explicitly mentioned that the decision can be appealed at the Council of State.

⁵ In Dutch: "publiekswerking". This refers to a range of activities in the stadium for supporters, local inhabitants, associations, schools, specific target groups etc., i.e. it must be ensured that the broader public can enter the stadium for numerous activities. Examples are fitness and health projects (such as "start to run") educational projects (such as assistance to children with learning difficulties), integration projects (such as Belgian homeless cup) etc.

⁶ If after granting the aid to the first selected applicant the budget of 8 million EUR is not entirely exhausted, the remaining means can be attributed to other selected files, whereby it is endeavoured to grant an amount as close as possible to 10% of the investment amount, without ever exceeding this percentage.

- (16) For a period of at least 5 years as of commissioning, aid beneficiaries must report yearly to the Flemish Government (Department for Culture, Youth, Sports and Media, the "Department"), who verifies that the beneficiary continues to fulfil the criteria. To that effect the report must at least describe how the aid amounts are invested, which measures have concretely been taken to ensure the open-stadium/multifunctional character of the stadium, provide information on any lease of (parts of) the stadium and its conditions, as well as on how it is ensured in practice that access is granted under transparent, non-discriminatory conditions and according to a benchmark. The Department can moreover request any further information or evidence from the beneficiary and conduct on-site inspections in order to verify correct use of the aid granted. In case the aid beneficiary does not or no longer fulfil the eligibility criteria, the Flemish government can recover the aid. Fines can moreover be imposed in case other agreed commitments (e.g. selection criteria) are not fulfilled or if false information is provided.
- (17) All details on the aid (beneficiary, amount, intensity, access and lease conditions) must moreover be largely communicated by the aid beneficiary (through its internet site, the press, social media, supporters' magazines, etc.) as well as on the website www.sportvlaanderen.be.

3. ASSESSMENT

3.1. Existence of aid

- (18) According to Article 107 (1) TFEU, “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. It follows that in order for a measure to qualify as state aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.

State resources and imputability to the State

- (19) The aid to be granted under the scheme is fully financed by public funds (from the budget of the Flemish Government) and imputable to the State.

Economic Advantage to undertakings

- (20) The Court has defined the term “undertaking” broadly to include “*every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*”⁷.
- (21) According to the Court’s case law⁸, not only the operation and management of an infrastructure constitutes an economic activity but also the construction of

⁷ Case 41/90 *Klaus Höfner and Fritz Elser v Macroton GmbH* [1991] ECR I-1979, para. 21.

⁸ See for instance Case C-82/01P *Aéroports de Paris v Commission* [2002] ECR I-9297, case T-196/04 *Ryanair Ltd v Commission* [2008] ECR II-3643, Joint Cases T-443/08 and T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission and Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission* [2011] ECR II-1311.

infrastructure, which cannot be separated from its later (commercial) operation. Since the market of professional sport is characterized by high level of competition with significant private and commercial investments, the exploitation of a sport infrastructure used by a professional sport club constitutes an economic activity and its financing by the State is therefore subject to State aid control.⁹

- (22) As regards the users of the infrastructure, football clubs shall be considered undertakings to the extent they carry out economic activities e.g. by selling tickets to the sport events, selling broadcasting rights or concluding sponsoring or advertising agreements¹⁰.
- (23) This is evidently the case for first and second league football clubs. There is thus clearly an advantage for *owners* of stadiums used by such clubs. As regards *users* of the stadiums, to the extent they perform an economic activity, they may enjoy an advantage if the fee they pay for the use of the stadium does not correspond to the market price for such use¹¹. The measure requires that owners of subsidised stadiums charge prices based on benchmarking when renting out the stadium to professional users. The Flemish government reviews the (proposed) prices both *ex ante*, before granting the aid and *ex post*, in the framework of regular reporting obligations. It compares the rental price with benchmarks (taking into account rental price for similar infrastructure, as well as depreciation and operational costs, see recitals (11) and (16)). This benchmarking is however not sufficiently precise to allow the Commission to guarantee that users performing an economic activity will always pay prices that adequately reflect costs for the use of the stadium. An advantage to such users can therefore not be excluded.

Selectivity

- (24) The measure targets only stadiums used by first and second league football clubs located in Flanders or in the Region of Brussels Capital (see recital (6)). The owners of the stadiums concerned therefore benefit from a selective advantage compared to other stadiums which do not qualify for support (the same applies for the users of the stadiums to the extent that they are undertakings and do not pay a market price).

(Potential) distortion of competition

- (25) Concerning the distortion of competition, the intervention of the State will alter existing market conditions, as a number of new/upgraded infrastructures will be available in Flanders/Region of Brussels Capital that would allow the operators and the users of the infrastructure (including professional football clubs) to benefit from facilities that would not be available on market terms. Hence the measure distorts competition. These operators, the professional football clubs

⁹ See also Commission Decision of 9 November 2011, Case SA.31722 Hungary – Supporting the Hungarian sport sector via tax benefit scheme, point 73.

¹⁰ See Case T-313/02 *David Meca-Medina and Igor Majcen v. Commission* ECR [2004] II-3291 and Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission* ECR [2006] I-6991.

¹¹ Non-professional users do not qualify as undertakings within the meaning of Article 107 TFEU. Offering a stadium for rent to such users (even at lower than market price/conditions) therefore would not constitute aid.

concerned and at least some of the other users of the new/upgraded infrastructure are in competition with other undertakings.

Effect on trade

- (26) Competition between professional football clubs clearly has an international dimension and many tournaments have a European or world-wide dimension. The measure is moreover aimed at adapting stadiums to UEFA criteria for European football games. Therefore, the measure could have an effect on intra-EU trade.

Conclusion

- (27) On the basis of foregoing, the measure constitutes State aid within the meaning of Article 107(1) TFEU at least insofar as it benefits owners of the supported infrastructures, (first and second league) football clubs and other users, that rent it at prices below market conditions. The compatibility of this aid therefore has to be assessed.

3.2. Compatibility

- (28) As there are no horizontal or sectorial guidelines covering this type of aid, the Commission considers that the assessment of the compatibility of the notified subsidy scheme with the EC state aid rules needs to be based directly on Article 107(3)(c) TFEU, which states that: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered to be compatible with the common market.

- (29) In order to assess whether a measure is compatible under Article 107(3)(c) TFEU, the Commission balances positive and negative effects of the aid. In applying the balancing test, the Commission assesses the following questions:

- (a) Is the aid measure aimed at a well-defined objective of common interest, i.e. does the proposed aid address a market failure or other objective?
- (b) Is the aid well designed to deliver the objective of common interest? In particular: (i) is State aid an appropriate policy instrument, i.e. are there other, better placed instruments? (ii) is there an incentive effect, i.e. does the aid change the behaviour of undertakings? (iii) is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (c) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

- (a) *Does the aid address a market failure or an objective of common interest?*

- (30) The construction (or renovation) of venues for sport (football) and supporting different types of activities which benefit the general public can be considered a

State responsibility towards the general public¹². The Amsterdam Declaration on Sport and article 165 TFEU moreover both acknowledge the social significance of sport: "*The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function*".

- (31) The Commission highlighted¹³ that the sport sector has enormous potential for bringing the citizens of Europe together. Sport has an educational role, as well as a social, cultural and health dimension. There is an overall European need to better use the potential of sport as an instrument for social inclusion in the policies, actions and programmes of the European Union and the Member States.
- (32) The objective of the measure is to put the social (including educational) function of football high on the agenda of professional football clubs, while upgrading outdated infrastructure. The aim is thus to realize multifunctional football stadiums in order to ensure that professional football in Flanders/Brussels Capital Region generates a higher social return, while at the same time improving the quality of stadiums used for professional football (see recital (3) above).
- (33) In ranking and selecting construction/renovation projects that are eligible for aid, great importance¹⁴ is attached to the social return of the stadium, i.e. proof of multifunctional use of the football stadium for broader societal goals, as well as its "open stadium"-character. The stadium should have an added value for society and be fully used as a "meeting point". Also the utilization of the infrastructure by a broad target group (taking into account, e.g., accessibility, social tariffs, the organisation of activities for schools, locals, associations, specific target groups etc., youth activities or other sports or cultural events) and the footprint of the stadium (in terms of sustainability, mobility, health, renewable energy, etc.) are evaluated (see recital (12) above).
- (34) The social, cultural and educational return of the football stadium thus plays a central role in the decision whether the stadium qualifies for aid under the measure. The general public will therefore be an important beneficiary of the measure. Hence, the measure must be regarded as satisfying policy objectives of common interest.

(b) *Is the aid well designed to deliver the objective of common interest?*

- (35) Concerning the *appropriateness and incentive effect of the aid instrument* in the current case, Belgium claims that most of its football stadiums are outdated and that they cannot be renovated without financial support of the government. Financial institutions would be more inclined to provide a loan when the government finances (a small) part of the investment costs (see recitals (4)-(5) above).
- (36) Aid applicants must moreover specifically prove the need for the new infrastructure/the renovation (taking into account spreading, thus avoiding duplication of infrastructure) and prove the necessity/incentive effect of the aid,

¹² Cf. Commission decision C4/08 *Netherlands, Investment in Ahoy sports palace by Rotterdam* OJ L 248 of 22.9.2009, p. 28, para. 67.

¹³ Commission staff working document on the EU and Sport: Background and context – accompanying document to the White Paper on Sport (COM (2007) 391 final).

¹⁴ 60 out of 100 evaluation points (see recital (11) above).

including that there are no means to finance the project other than including the aid (see recital (11) above). This is taken into account in the evaluation and selection of the proposal and in case the government would not entirely follow the advice of the selection committee, this must also be specifically motivated in the granting decision, which is published and can be appealed at the courts (see recitals (10), (11) and (15) above).

- (37) The aid is therefore well-targeted as it addresses the specific problem of under-investment in football infrastructure. The public financing of infrastructure is moreover limited to existing (outdated) or new infrastructure for which it is proven that the renovation/construction cannot take place without financial support (see recital (11)).
- (38) Moreover, support to any construction/upgrade of stadium infrastructure is only granted if the social return of the football stadium and its "open stadium"-use is established. The stadium should have an added value for society and be fully used as meeting point (see recitals (3), (12) point 1 and (16) above). Without jeopardising the primary football objective, the subsidised infrastructures should thus be opened to the general public. This will ensure that several different types of users and sectors should be able to benefit from the subsidized facilities.
- (39) As regards the *proportionality* of the measure, the measure is based on a call for proposals and a selection mechanism as described in recitals (9) and following, ensuring that the aid is granted to selected projects with the highest social return on public investment and only where the necessity of the aid is established. The aid intensity of any aid to be granted under the measure is limited to 10% of the investment (while the total aid intensity, including any possible aid outside the measure cannot exceed 70%). Finally, the fact that the aid is only paid out based on invoices and claims, the transparency requirements and the control mechanisms and potential sanctions (see recitals (14) to (17)) exclude overcompensation and incite the beneficiaries to submit realistic plans and use the subsidy only for well-founded needs. Insofar as the aid also benefits the users of the stadiums, the benchmarking requirements should ensure that the aid remains limited.

(c) *Are the distortion of competition and the effect on trade limited, so that the overall impact of the measure is positive?*

- (40) The risk of crowding out private investment is limited as the measure requires that the need for the stadium (also taking into account its spreading, i.e. absence of duplication/overcapacity) be proven. The aid can be recovered if this condition is not fulfilled (see recitals (11) and (16)).
- (41) Furthermore, the measure prescribes a high degree of transparency (see recitals (15) and (17)) to further enhance accountability of funds and enable third parties (including competitors) to verify whether the aid was justified and its conditions fulfilled. Finally, Belgium explained that the football clubs are in most cases not owners of the infrastructure concerned and they will have to pay a price set by benchmarking for the use of the infrastructure (see recital (11)). Therefore, a part of the advantage they receive may be clawed back in the form of higher rents. Moreover, this pricing mechanism (benchmarking) will serve to limit distortion of

competition vis-à-vis privately owned and funded football infrastructures¹⁵. The aid therefore does not affect trade and competition between Member States to an extent contrary to the common interest.

3.3. Conclusion

- (42) The public financing of the construction/renovation of football stadiums under the measure therefore pursues acknowledged public policy objectives, is necessary and proportionate, and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107(3)c TFEU.

4. CONCLUSION

- (43) The Commission has accordingly decided not to raise objections to the measure on the ground that the aid scheme for the construction and renovation of multifunctional football stadiums in the Region of Flanders and of Brussels Capital is compatible with the internal market pursuant to Article 107(3)c of the Treaty on the Functioning of the European Union.

- (44) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

¹⁵ It will also limit distortion of competition towards undertakings in competition with other professional users that occasionally rent (parts of) the stadium. It should also be recalled that, when they pay a market price for this use, these other professional users don't benefit from any aid.