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**Subject: State aid SA.33754 (2013/C) (ex 2013/NN) – Spain
Real Madrid CF**

Sir,

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. Procedure

- (1) In October and November 2011, press reports and detailed information sent by citizens drew the attention of the Commission to alleged State aid in favour of Real Madrid Club de Fútbol (Real Madrid), granted in the form of an advantageous property transfer. Spain was asked to comment on the complaint on 20 December 2011. Spain sent information on 23 December 2011 and 20 February 2012. Upon a further request of information of 2 April 2012, Spain supplied additional information on 18 June 2012.

2. Description of the measure

- (2) According to the information available to the Commission, State aid may have been granted by the Council of Madrid to Real Madrid through an agreement signed by the

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parties on 29 July 2011 (2011 Agreement)¹. This agreement aims to solve an open legal issue between these parties relating to an agreement of 1991 and a real property swap which was the objective of agreements between them in 1996 and 1998.

- (3) Real Madrid Club de Fútbol is a leading Spanish professional football and basketball club. It is the world's most successful football club in terms of revenue, with an annual turnover of €13million². It is one of few clubs to have never been relegated from the top division of Spanish football and regularly participates in the European Champions League.
- (4) On 20 December 1991 the Council of Madrid, the Gerencia Municipal de Urbanismo ("GMU") and Real Madrid concluded an agreement concerning the remodelling of the club's stadium Santiago Bernabeu. In this agreement, Real Madrid undertook among other things to carry out the construction of an underground parking. Real Madrid failed to comply with this obligation.
- (5) On 29 November 1996, Real Madrid concluded another agreement with the Gerencia Municipal de Urbanismo ("GMU") and the Council of Madrid. Real Madrid agreed to transfer a plot of land of 30,000 square meters located in the Ciudad Deportiva area, and in exchange, the Council of Madrid undertook to provide Real Madrid with some pieces of and rights in public land which should be determined at a later occasion.
- (6) On 29 May 1998, Real Madrid and the Council of Madrid concluded a new agreement³ (1998 Agreement) with the aim to implement the swap that was envisaged by the Agreement of 1996. Real Madrid effectively transferred the plots of land located in the area of Ciudad Deportiva, as agreed in the precedent contract of 1996, and in turn the Council of Madrid undertook to provide Real Madrid CF with land which should match its obligations towards the club: the plots of land nº 33 and 34, located in the area Julian Camarrillo Sur, and B-32, called "Las Tablas", which consists of an area of 70,815 m².
- (7) For the purpose of this swap, the value of "Las Tablas" was estimated in 1998 at EUR 595,194. The valuation was done by the administration of Madrid, on the basis of legislation which offers a technique to determine the value of urban real property (Real Decreto 1020/1993). In the annual accounts of Real Madrid the property was accounted with a value of EUR 488,000. According to Spain, in 1998 the valuation of "Las Tablas" took into account the level of development of the area, in particular the fact that just the urban planning had been concluded but not yet the urban development of the area and that no building activity had started yet.
- (8) Subsequently, the Council of Madrid transferred the plots of land 33 and 34 of Julian Camarrillo. The plot of land B-32 of "Las Tablas" was not yet transferred because by the time of the agreement the Council of Madrid was not yet holding its legal property. It was apparently still subject to an expropriation procedure. The agreement stipulated

¹ *"Convenio de regularización de los compromisos derivados de los convenios suscritos entre el Ayuntamiento de Madrid y el Real Madrid Club de Fútbol de fechas 29 de Mayo de 1998 y 20 de diciembre 1991"* .

² Deloitte Football Money League 2013. Deloitte UK, 30 January 2013.

³ "Convenio de Ejecución de la Permuta".

therefore that the transfer should be effectuated seven days after the registration of the Council of Madrid as owner in the Spanish Property Registry (*Registro de la Propiedad del Proyecto de Compensación*). On 28 July 2000, the legal property of "Las Tablas" was acquired by the Council of Madrid. Eventually, on February 11, 2003, "Las Tablas" was registered in the Property Registry as property of the Council of Madrid. In principle, from that moment the Council of Madrid should have been in a position to effectively transfer the property rights in this plot to Real Madrid. But this transfer did not take place.

- (9) Under town planning rules, "Las Tablas" is designated for sport use; it is classified as "*equipamiento básico deportivo*". This restriction derives from the classification by the Partial Plan (*plan parcial*) of the territory "UZI 0.08 Las Tablas" of 28 July 1995 and subsequently the *Plan General de Ordenación Urbana de Madrid* (Land use plan of Madrid), which was approved on 17 April 1997 by the Council of Madrid and the Government of the region of Madrid. Although the plan was modified in 2001 by the Council of Madrid, the classification of this plot of land remained the same. The Law 9/2001 of July 17 of the Land of the Community of Madrid (*del Suelo de la Comunidad de Madrid*), adopted by the Commune of Madrid, established in Article 64 that, from the moment the Land Plan is approved, all plots of land, facilities, constructions and buildings will be used in accordance with their qualification, classification, or urban legal status.
- (10) The parties to the 1998 Agreement were aware of the classification of "Las Tablas". According to Spain, the parties were of the opinion that the classification for sport use of "Las Tablas" would not exclude its transfer to private ownership. In 1998, Real Madrid had the intention to erect sport infrastructure on these premises. The Council of Madrid assumed that they could be transferred if the sport use classification of the plot of land was assured and respected by Real Madrid.
- (11) However, in 2003, by the time when the Council of Madrid had been registered as owner and therefore obliged to transfer the plot, it had changed its interpretation of the law and was of the opinion that "Las Tablas" had to be qualified as public good and to be owned compulsorily by a public entity and could therefore not be transferred to Real Madrid.
- (12) According to Spain, the Law 9/2001 of July 17 of the Land of the Community of Madrid, which established that all plots of land will have to be used according to their classification, would also require the compulsorily public ownership of a plot which is designated for basic sport use. The transfer to a private entity would be excluded because the public nature of the plot (*bien de naturaleza demanial*) would make it unalienable. This led the Council of Madrid to consider that by introducing the public nature of the plot of land the law of 2001 caused a legal impossibility of transferring it in 2003 which could not have been foreseen when the agreement was concluded in 1998.
- (13) However, the elements of the law to which the Spanish authorities refer are silent about the question of possible public or private ownership of the classified plots of land. Therefore the law itself is apparently not leading to a change in the legal situation regarding the transferability of the land in question. Following the information provided by Spain, it appears to be more likely that the jurisprudence led to a change of the interpretation of the legal situation. In 2004, an administrative court

clarified that the classification made by urban plans, like by the Urban Plan of Madrid of 1997, would prevent any private entity from holding the legal property of an area classified like "Las Tablas"⁴. Apparently, this case law is not changing a legal situation but clarifying the existing one.

- (14) In any case, when Real Madrid and the Council of Madrid concluded the 1998 Agreement, they supposed that the land in question would be transferable. Later it turned out, that this interpretation of the law was at least controversial and eventually declared erroneous by the jurisprudence. As a consequence, "Las Tablas" was not transferred to Real Madrid. Neither the club nor others ever made use of the land.
- (15) The 2011 Agreement firstly determined that, as compensation for its non-compliance with the contractual obligation of 1991, Real Madrid would owe the Council of Madrid an amount of EUR 2,812,735.03. Secondly it addresses the issue of the impossibility to transfer the "Las Tablas" property to the club. The Council of Madrid assumes that it has to compensate Real Madrid for this impossibility with an amount which represents the current (2011) value of the non-transferred land. Therefore, the parties settled in the agreement to replace the transfer of the plot of land B-32 "Las Tablas" by the transfer of several other plots of land. They consisted in an estate located between the street Rafael Salgado, Paseo de la Castellana and Concha Espina of 3,600 m², several pieces of the "Mercedes Arteaga, Jacinto Verdaguer" areas in the neighbourhood of Carabanchel of together 7966 m², and an area of 3,035 m² in the "Ciudad Aeroportuaria Parque de Valdebebas". These areas together were valued at EUR 19,972,348.96. The evaluation was done by the City of Madrid, apparently without an independent expert evaluation.
- (16) The value of land of the "Las Tablas" estate in 2011 was established by the administration of Madrid to be EUR 22,693,054.44, according to the same general criteria for determining the value of Municipal Assets which were already applied in 1998, taking account of the identical land classification and the current situation of this plot of land⁵.
- (17) On the basis of the thus determined land values, the 2011 Agreement aimed to offset the mutual debts. The parties added to the alleged claim of Real Madrid of EUR 22,693,054.44 an amount of EUR 92,037.59 of property taxes which Real Madrid has been paying since 2002 for "Las Tablas". Furthermore they deducted the EUR 2,812,735.03 of outstanding debts of Real Madrid described in paragraph 15 above. This led to a claim of Real Madrid of EUR 19,972,357.00, to be offset against the value of the estates compensating for "Las Tablas" of EUR 19,972,348.96. The result was a remaining net claim of Real Madrid of EUR 8.04.
- (18) The Mercedes Arteaga/Jacinto Verdaguer properties, which formed part of the Real Estate Assets transferred to Real Madrid CF by the July 2011 Agreement, became three months later subject of another real estate transaction between Real Madrid and the Council of Madrid. This transaction involves their transfer back, a payment of EUR 6.6 million, and the transfer of a shopping mall to the Council of Madrid. In consideration for this Real Madrid would receive an area of 5,216 square meters in

⁴ Judgment of the Sala de lo Contencioso-Administrativo de Tribunal Superior de Justicia de Madrid (Seccion 2a) of 6 October 2004.

⁵ The Ministry of Economy and Finance considers that the market value of Las Tablas is even EUR 25,776,296.

front of its stadium in which the company will construct a bigger shopping mall and a hotel. This would nearly double its total building capacity in the area. The Commission has no information how the evaluation of the area in front of the Bernabeu Stadium was made. It has also no explanation about the reasons why an area that had been transferred to Real Madrid is transferred back a few months later. The Commission notes from press reports that the Council of Madrid altered the Plan General de Ordenación Urbana de Madrid (Land use plan of Madrid) to enable the commercial use of the area in front of the stadium by Real Madrid.

3. Assessment of the aid

3.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

- (19) The described specific situation constitutes State aid within the meaning of Article 107(1) TFEU, if it supports, through State resources, a certain economic activity which derives thereby a selective advantage which could affect competition and trade between Member States. The concept of State aid covers both, financial expenditure and foregone income by any public authorities in favour of undertakings.

3.1.1. Sport clubs may be subject to competition rules

- (20) Firstly, the supported activities have to be of a commercial nature. Professional sport clubs may qualify as commercial undertakings. Having regard to the objectives of the European Union, sport is subject to European Union competition law in so far as it constitutes an economic activity⁶, which is undoubtedly the case for professional football or basketball, in particular when they are active and conduct marketing activities on an international level, like in the case of the Real Madrid FC.

3.1.2. Existence of an advantage

- (21) In order to determine whether Real Madrid has obtained an advantage which it could not have obtained under market conditions, it is necessary to examine if the various real estate swaps described have provided such an economic advantage to the club. Prima facie, Real Madrid appears to enjoy an economic advantage from the fact that a plot of land, which at the time of its acquisition was valued at EUR 595,194 and kept in the books with a value of EUR 488,000, appears 13 years later, in an operation to offset mutual debts, with a value of more than EUR 22 million.
- (22) According to Spain, due to the legal impossibility of fulfilling its obligation from the 1998 Agreement to transfer the plot of land of "Las Tablas" to Real Madrid, the City of Madrid was obliged to compensate Real Madrid for this non-fulfilment with the current value of the plot of land in question. It is also not clear whether the conditions

⁶ Case C-415/93 *Bosman*, paragraph 73, Case C-519/04 P *Meca-Medina and Majcen v Commission*, paragraph 22 and C-325/08 *Olympique Lyonnais*, paragraph 23.

under which Real Madrid acquired the area in front of the Bernabeu Stadium do reflect market conditions.

- (23) This raises several questions: (i) was it indeed not possible to transfer the land to Real Madrid? Did the impossibility exist at the time of the conclusion of the 1998 agreement or did it occur later? (ii) Does in the case of this impossibility Spanish law impose the compensation obligation (this includes the question whether the impossibility is imputable to one of the parties)? What point in time is relevant for determining the value of the property? (iii) In any case, has a correct value of "Las Tablas" and other plots of land involved been established?

3.1.2.1. Impossibility to transfer the land

- (24) It appears that in 1998 the parties assumed that the land classified for basic sport use could be transferred. But at the latest following the judgment of 2004, cited in paragraph 13, the Spanish authorities assumed that for legal reasons "Las Tablas" cannot be transferred to a private person or entity. This legal impossibility would derive from the classification of the land by urban planning as being reserved for basic sport use. This classification was done by the responsible bodies of the Commune of Madrid, the Council (Ayuntamiento) and the Government (Consejo de Gobierno).
- (25) It could be questioned if there is really impossibility, considering that these bodies are likely to have the capacity to revise the urban planning classification. According to press reports, it has shown this capacity when modifying in November 2011 the Plan General de Ordenación Urbana de Madrid to allow the reclassification of the area between the Bernabéu Stadium and the Paseo de la Castellana. The Spanish authorities did not explain why they did not consider an amendment to the classification of "Las Tablas", given that this could have saved the City of Madrid obligations worth EUR 22 million and that the area was still empty.
- (26) Supposing a transfer is impossible, it may well be that this impossibility existed already at the time when the 1998 agreement was concluded. The land classification was definitive already in 1997. The Spanish authorities argue that in 1998 they assumed that the transfer of the classified land into private hands would be possible - provided the land would be used for sport activities. Only a later court judgment clarified that this would not be possible. From the information provided by Spain it remains unclear whether the impossibility is the result of an actual change of the law after 1998 or whether, and this seems to be more likely, the court just interpreted the rules of law which already applied in 1998. In that case, the parties just erred in the interpretation of law, which means that already in 1998 a plot of land classified for basic sport use was not transferable from public to private ownership, without this being the fault of one of the parties. This would suggest that the fulfilment of the 1998 agreement with regard to "Las Tablas" was already impossible at the time of its conclusion.

3.1.2.2. Possible consequences of an impossibility to transfer "Las Tablas"

- (27) This original impossibility, by error not known to both parties, is not obviously imputable to one of the parties. The information supplied by the Spanish authorities suggest that in such a case the provisions of nullity of contracts in the Código Civil (Articles 1300 to 1314) do not provide for a compensation or damages claim but rather

for a situation where the mutual obligations did not arise, including a restitution of what has already been given in consideration of the contract. With regard to the separable part of the 1998 agreement concerning "Las Tablas", nothing has yet been fulfilled by the Council of Madrid that could be refunded⁷. As a result, there would be still the original claim of Real Madrid in exchange of which the plot ought to have been transferred. To this original claim should logically be attached a value which reflects the value which was assumed for this plot in 1998. It is surprising that the Spanish authorities did not use this argument in an attempt to avoid a claim of more than EUR 22 million.

- (28) Supposed that the impossibility of the land transfer arose only after 1998, it could be argued that it would be imputable to the City of Madrid which is responsible for its urban planning regulations. This may, according to the Spanish authorities, entitle the party of the contract to which the land should have been transferred to compensation and damages. The compensation would consist in the "current" value of the land. The 2011 agreement established the value of "Las Tablas" in 2011. It is, however, not clear whether the claim under Spanish civil law has to be based on the value at the moment when the transfer became due – this was seven days after the registration of the Council of Madrid in the property register in 2003 – or at the moment at which the creditor chooses at its discretion to claim the damages. It would also seem reasonable that the decisive moment is the one when the obligation became due. According to the conditions in the 1998 agreement this happened in 2003⁸.

3.1.2.3. The value of "Las Tablas" and other properties

- (29) Whatever the decisive point in time for determining the value of the "Las Tablas" area, the remarkable increase of the alleged value of the land raises serious doubts. It is true that the Spanish real estate market rose considerably after 1998. But real estate started going down sharply already in 2008. The classification of the area had not changed in the meantime. Although situated in an undeveloped area in 1998, the urban planning was already adopted and this would already be reflected in an evaluation.
- (30) A real estate transfer between a public authority and a private party, or any contract which is based on the value of land involved in it, may implicate a financial advantage for the private party. In order to exclude this risk, it should be ensured that the underlying value of the land is the market value. Regarding the sale of land by public authorities, this is explicitly stated in the Commission Communication on State aid elements in sales of land and buildings by public authorities⁹. Sale without an unconditional bidding procedure would require an independent expert evaluation of the land value.
- (31) As described in paragraphs 6 and 7 above, the 1998 agreement to transfer "Las Tablas" to Real Madrid was not accompanied by an independent evaluation. Also at the occasion of the 2011 agreement, there was no independent evaluation that could demonstrate convincingly that the value underlying the agreement reflected a market price. In order to support that the 2011 price of "Las Tablas" is realistic, the Spanish

⁷ Restitution in kind is also excluded because the Council of Madrid had sold the land it acquired from Real Madrid.

⁸ According to Article 1100 of the Código Civil, in case of reciprocal obligations the obligation of one party becomes automatically due once the other party has fulfilled its obligation.

⁹ OJ C 209, 10.7.1997, p. 3.

authorities submitted valuation reports of a real estate evaluation, stating the high value of allegedly comparable plots of land, designated e.g. for mixed and (also private) healthcare services and for education use. However, the comparability is hampered because the areas contained already buildings or appear at least to be transferable to private parties and thus marketable.

- (32) For both value determinations in 1998 and 2011 the Council of Madrid used the same valuation system and considered the same urban planning restrictions for the land. The restriction to basic sport use is probably a reason to lower the expectations in its commercial exploitation. In fact, the circumstance that at least in 2011 the land is not any more transferable should rather imply a much lower value of the land. In any case it does not allow a comparison with differently classified and transferable plots. One complainant suggests that in case of non-restricted land in the neighbourhood of the "Las Tablas" property real estate prices grew between 1998 and 2011 by around 250%. Assuming the alleged value of "Las Tablas" in 1998 was EUR 595,194, as described by the Spanish authorities, the increase in value until 2011 would be around 3700%.
- (33) This seems to indicate that the supposed value of the property is far too high in 2011, unless it can be established that the supposed value of the property was far too low in 1998. In both cases Real Madrid would have obtained an economic advantage from this transaction which would not be justified under market terms. The actual advantage would depend on the difference between the value assumed by the parties and the market price which would still need to be determined.
- (34) It could be argued that under the hypothesis that the advantage to Real Madrid accrued in 1998, because the land was undervalued at that time, such aid would fall under the limitation period of ten years pursuant to Article 15(1) of Council Regulation No 659/1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (Procedural regulation)¹⁰. However, according to Article 15(2) of this regulation, the limitation period shall begin on the day on which the unlawful aid is effectively awarded to the beneficiary, and this award was not completed until the parties settled in 2011 to finally implement or supplement the elements of the 1998 agreement. In any case, Real Madrid did benefit from the value of the land in 2011 only.
- (35) The Commission considers finally the possibility that the evaluation of the plots of land transferred to Real Madrid by the 2011 agreement and of the area in front of its stadium could lead to an economic advantage of Real Madrid.

3.1.3. The aid also fulfils the remaining conditions of Article 107(1) TFEU

- (36) Furthermore, the State measure is selective as it is for the benefit of a single undertaking. As a result, Real Madrid enjoyed an advantage which derives from State resources, as the State forgoes possible revenues. The advantage for a club playing in their national first league may furthermore have an effect on competition and trade between Member States. These clubs compete for presence in European competitions and are active on the markets for merchandising and TV rights. Broadcasting rights, merchandising and sponsoring are sources of revenue for which premier league clubs

¹⁰ OJ L 83, 27.03.1999, p. 1.

compete with other clubs within and outside their home country. The more money clubs have available to attract top players the more success they may have in sport competitions, which promises more revenue from the activities mentioned. Furthermore, the ownership structure of the clubs is international.

- (37) Therefore, financial State support providing an advantage to the professional sport club Real Madrid CF would constitute State aid in the meaning of Article 107(1) TFEU.

3.2. Compatibility of the aid

- (38) Article 165 TFEU underlines the specific nature of sport which needs to be taken into consideration by the Commission when dealing with cases in this sector, as sport fulfils educational, public health, social, cultural and recreational functions. On the other hand, the economic importance of sport is growing constantly.
- (39) The Commission has not adopted guidelines on the application of the State aid rules of the Treaty to commercial sport activities. Spain does also not claim any public service mission of the professional sport clubs which could be assessed under Article 106(2) TFEU. An assessment has therefore to be based directly under Article 107(3)c TFEU. According to that provision, aid may be considered compatible with the internal market if it facilitates, in the common interest, the development of certain economic activities or of certain economic areas.
- (40) However, the Commission at this moment doubts that there is an objective of common interest which could justify selective support to a very strong actor in a highly competitive economic sector. Also Spain does not forward arguments which could support the compatibility of the aid under Article 107(3)c TFEU.

4. Statement of the Commission's doubts

- (41) Accordingly, the Commission cannot exclude that the agreement of July 2011 which undertook to solve the issue of the non-transfer of the "Las Tablas" property from the Council of Madrid to Real Madrid comprises an element of State aid which is not compatible with Article 107(3)c TFEU. This is based on the following doubts on which the Commission invites Spain to provide relevant and concise information.
- (42) The Commission doubts whether it was indeed impossible for the Council of Madrid to transfer the "Las Tablas" property to Real Madrid. This concerns the alleged legal impossibility on the basis of the land classification for this plot; if the impossibility existed in 1998 already, it is doubtful that the impossibility is imputable to the Council of Madrid. This concerns also the impossibility for the Council to amend this classification, also in order to avoid the alleged high claim of Real Madrid.
- (43) The Commission doubts that a market value of the "Las Tablas" plot of land has been determined. Neither in 1998 nor in 2011 did an independent evaluation take place. It

has also doubts with regard to the market conformity of the value of the properties which were transferred to Real Madrid by the 2011 Agreement and at the occasion of the subsequent further exchange of land around the Bernabeu Stadium.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Spain to submit its comments and to provide all such information as may help to assess the aid within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to draw the attention of Spain to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient. The Commission warns Spain that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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State aid registry
1049 Brussels
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Yours faithfully
For the Commission

Joaquín ALMUNIA
Vice-president

