EUROPEAN
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# COMMISSION DECISION

## of 4.7.2016

## ON THE STATE AID
## SA.40168 - 2015/C (ex SA.33584 - 2013/C (ex 2011/NN))
## implemented by the Netherlands
## in favour of the professional football club Willem II in Tilburg

(Text with EEA relevance)

(Only the Dutch version is authentic)

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PUBLIC VERSION

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to Article 108(2) of the Treaty[1] and having regard to their comments,

Whereas:

## 1. PROCEDURE

(1) In 2010, the Commission was informed by a citizen that the Netherlands had implemented an aid measure for the professional football club Willem II in Tilburg. This complaint was registered under the number SA.31122. In 2010 and in 2011, the Commission also received complaints concerning measures in favour of other professional football clubs in the Netherlands, namely MVV in Maastricht, FC Den Bosch in 's-Hertogenbosch, PSV in Eindhoven and NEC in Nijmegen. By letter dated 2 September 2011 the Netherlands provided the Commission with further information on the measure concerning Willem II.

[1] Commission Decision in Case SA.33584 (2013/C) (ex 2011/NN) – Netherlands aid to certain professional Dutch football clubs in 2008-11 – Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 116, 23.4.2013, p. 19).

(2) By letter dated 6 March 2013, the Commission informed the Netherlands that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the measures in favour of Willem II, NEC, MVV, PSV and FC Den Bosch.

(3) The Commission decision to initiate the procedure (hereinafter: "the opening decision") was published in the *Official Journal of the European Union*[2]. The Commission invited interested parties to submit their comments on the measures in question.

(4) The Netherlands submitted observations within the framework of the procedure concerning the measure in favour of Willem II by letters dated 31 May 2013 and 12 November 2013. The Netherlands also replied to a request for additional information by letter dated 11 February 2014.

(5) The Commission received observations from the municipality of Tilburg (hereinafter: "the municipality") as an interested party concerning the measure for Willem II. It forwarded them to the Netherlands, which was given the opportunity to react; its comments were received by letter dated 12 November 2013 and in a meeting which took place on 20 March 2014.

(6) Following the opening decision, and in agreement with the Netherlands, the investigations for the different clubs were pursued separately. The investigation concerning the Willem II club was registered under the case number SA.40168.

## 2. DETAILED DESCRIPTION OF THE MEASURE

### 2.1. The measure and its beneficiary

(7) The national football federation Koninklijke Nederlandse Voetbal Bond (hereinafter: "KNVB") is the umbrella organisation for professional and amateur football competition. Professional football in the Netherlands is organised in a two-tier system. In the 2014/2015 season, it involved 38 clubs, of which 18 played in the top league (*eredivisie*) and 20 in the lower league (*eerste divisie*).

(8) Willem II was founded in 1898 and it has been a professional football club since the introduction of professional football in the Netherlands in 1954. Willem II plays its home matches in the *Koning Willem II Stadion* (hereinafter: "the stadium") in Tilburg. Willem II was relegated from the top league to the lower league in 2010/2011. The club was promoted again in 2012 and again relegated in 2013. In 2014 it was again promoted to the top league. 2005/2006 was the latest season in which Willem II played in a European tournament (UEFA cup).

(9) Willem II's current legal form is the *Willem II Tilburg B.V.* The entity *Willem II Tilburg B.V.* (hereinafter: "Willem II") is the beneficiary of the measure. It is owned by the foundation *Stichting Beheer Betaald Voetbalorganisatie Willem II Tilburg*. There is a separate association (*Vereniging*) Willem II. Willem II is a medium-sized enterprise with 53 employees in 2012. It had an annual turnover of EUR 11.4 million in the accounting year 2008/2009 and a turnover of EUR 9.9 million in the accounting year 2009/2010.

[2] Cf. footnote 1.

(10) In 2004 the municipality and Willem II concluded a contract, by which the municipality became the full owner[3] of the stadium and by which Willem II obtained a lease for the use of the stadium. The lease contract specified that the municipality let the stadium to Willem II, for which the latter was to pay an annual rent of EUR 1 001 731, plus VAT and variable cost. The rent was based on the investment cost, a depreciation period of 30 years and the interest rate of 5.5 % used by the municipality at the time the contract was concluded. The conditions in the 30-year lease were designed to ensure an exploitation of the stadium that would be budgetary neutral for the municipality. The Commission stated in point 51 of the opening decision that the parameters agreed at the time guaranteed that Willem II paid a rent covering all costs, thus avoiding any operating aid to the football club. The rent was within the bandwidth of rent paid by others, albeit above the average. In the years 2004 to 2008 Willem II was able to pay the rent.

(11) In the football season 2009/2010, Willem II faced financial difficulties, and in May 2010 it announced that it was on the brink of bankruptcy. The municipality, which had previously suspended the payment of rent for 2009, decided on 31 May 2010 to lower the rent and other cost due with retroactive effect till 2004. The effect of this decision was a decrease by EUR 0.4 million of the annual amount due by the football club during a period of six years, leading to a payment – in two tranches - of EUR 2.4 million to Willem II, a sum from which the outstanding rent for 2009 was deducted. A new lease, replacing the 2004 lease, was concluded on 31 October 2011.

(12) The decision of the municipality of 31 May 2010 was based on the condition that Willem II fulfils obligations contained in a restructuring plan which aimed at restoring long term viability of Willem II. The conditions of this plan included quarterly financial reporting obligations, a balanced budget for the next football season, finding a way to clean up its balance sheet, the need to respect the national football association's norms for salaries of players, the introduction of a new management and supervision structure. The measures taken by Willem II to fulfil those conditions were subsequently considered satisfactory by the municipality which therefore released the second tranche of the EUR 2.4 million.

(13) The Netherlands did not notify their plan to award EUR 2.4 million to Willem II to the Commission pursuant to Article 108(3) of the Treaty. The Commission had also not been informed of the decision taken in 2009 to suspend the payment of the annual rent for the season 2009/2010.

### 2.2. Possible effect of the aid

(14) The Netherlands has questioned the impact of possible aid on the internal market for clubs not playing football at European level. However, professional football clubs are considered to be undertakings and are subject to State aid control. Football takes the form of gainful employment and provides services for remuneration; it has developed a high level of professionalism and thereby increased its economic impact[4].

(15) Professional football clubs deploy economic activities in several markets, other than participating in football competitions, which have an international dimension, such

[3] Before the contract was concluded, the municipality was the legal owner of the stadium and the land on which it stands, whereas Willem II had economic ownership of the stadium, in which it had invested with its own money.

[4] Case C-325/08 *Olympique Lyonnais* ECLI:EU:C:2010:143, points 27 and 28; Case C-519/04 P *Meca-Medina and Majcen* v *Commission* ECLI:EU:C:2006:492, point 22; Case C-415/93 *Bosman* ECLI:EU:C:1995:463, point 73.

as the transfer market for professional players, publicity, sponsorship, merchandising or media coverage. Aid to a professional football club strengthens its position on each of those markets, most of which cover several Member States. Therefore, if State resources are used to provide a selective advantage to a professional football club, regardless of the league in which it plays, such aid is likely to have the potential of distorting competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty[5].

### 2.3. Grounds for initiating the procedure

(16) In the opening decision, the Commission arrived at the preliminary conclusion that the municipality had provided a selective advantage to Willem II with the use of State resources and had, hence, provided aid to the football club. The Commission also took the position that aid measures to professional football clubs are likely to distort competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty.

(17) In the opening decision the Commission noted that Willem II had been in financial difficulties at the time the aid was awarded. In order to assess the compatibility of the aid with the Guidelines on State aid for rescuing and restructuring of firms in difficulty[6] (hereinafter: "the Guidelines"), the Commission requested information on the compliance with all requirements set out in the Guidelines.

(18) The Commission was notably unable to verify whether the conditions in points 34-37 of the Guidelines concerning the nature and fulfilment of a restructuring plan had been respected. The Commission was also unable to verify whether adequate compensatory measures within the meaning of points 38-42 had been taken. It furthermore needed to be demonstrated that the aid had been limited to the minimum necessary, that the beneficiary itself had paid an adequate own contribution to its restructuring and that the "one time last time" principle would be respected.

## 3. COMMENTS FROM THE NETHERLANDS

(19) The Netherlands disagreed that the measure to restructure the stadium lease agreement constituted State aid. In the view of the Netherlands, the municipality as the owner of the stadium applied market conditions and acted in conformity with the market economy investor and creditor principle by suspending the rent for the main user of the stadium in 2009 and by lowering the rent and other contractual conditions with retroactive effect in 2010. In the case of bankruptcy of Willem II, the club would have lost its licence to play professional football. The municipality would have been stuck with a football stadium that could only be made useful for other

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5 Commission Decisions regarding Germany of 20 March 2013 on *Multifunktionsarena der Stadt Erfurt* (Case SA.35135 (2012/N)), point 12, and *Multifunktionsarena der Stadt Jena* (Case SA.35440 (2012/N)), summary notices in OJ C 140, 18.5.2013, p. 1, and of 2 October 2013 on *Fußballstadion Chemnitz* (Case SA.36105 (2013/N)), summary notice in OJ C 50, 21.2.2014, p. 1, points 12-14; Commission Decisions regarding Spain of 18 December 2013 on possible State aid to four Spanish professional football clubs (Case SA.29769 (2013/C)), point 28, Real Madrid CF (Case SA.33754 (2013/C)), point 20, and alleged aid in favour of three Valencia football clubs (Case SA.36387 (2013/C)), point 16, published in OJ C 69, 7.3.2014, p. 99.

6 Communication from the Commission - Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2). The application of those guidelines was prolonged by the Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004 (OJ C 296, 2.10.2012, p. 3)..

activities at substantial investment cost. The Netherlands claimed that the lower rent was in line with the rent paid elsewhere for other stadia and that it therefore was in conformity with market conditions.

(20) Alternatively, the Netherlands argued that even if the measure were to constitute aid, it would be compatible with the internal market. These arguments were, firstly, based on a letter sent by the Commission to the Netherlands on 11 July 2002 concerning sports infrastructure. In this letter the Commission described certain conditions under which it would consider the financing of sport infrastructure not to constitute state aid. Secondly, the arguments are based on the Guidelines and Article 107(3)(c) of the Treaty.

(21) Regarding the restructuring of Willem II, the Netherlands described the financial situation of the club. In the accounting year 2008/2009[7] Willem II made a loss of EUR 3.9 million on a turnover of EUR 11.4 million and its own equity [*eigen vermogen*] decreased from EUR 4.1 million to EUR 0.2 Million. In 2009/2010[8] Willem II made a loss of EUR 4.4 million on a turnover of EUR 9.9 million. Despite the award of EUR 2.4 million by the municipality, its own equity decreased further from EUR 0.2 million to *minus* EUR 2.1 million.

(22) Each Dutch professional football club needs a licence from the KNVB, which it receives only if it complies with various obligations. One of the obligations under the system relates to the financial sanity of the club. Each season, a club is obliged to submit financial reports by 1 November, 1 March and 15 June, depicting *inter alia* its current financial situation, as well as the budget for the next season. On the basis of these reports, clubs are scaled in three categories (1: insufficient, 2: sufficient, 3: good). Clubs in category 1 may be obliged to present a plan for improvement in order to reach category 2 or 3. If the club fails to comply with the plan, sanctions may be imposed by the KNVB, including an official warning, a reduction of competition points and – as ultimate sanction – withdrawal of the licence. A professional football club in the Netherlands, which is declared bankrupt, loses its licence. If a successor club is founded, it would not be admitted to the professional football leagues directly, but it would have to start in the second-highest amateur league. With its difficulties, Willem II risked to lose its licence to participate in professional competitions. It was scaled in the category 1 in 2010.

(23) The Netherlands advised that in view of these difficulties the decision of the municipality to award EUR 2.4 million to Willem II was subordinated to a number of conditions set out in the restructuring plan drawn up by Willem II[9]. The plan was designed to lead to a healthy financial position over a period of 3 years. It was also the aim of the plan to meet the requirements of the KNVB to obtain the category 2 status (sufficient) by the end of its financial year 2012/2013. Already in December 2011 the category 2 status was awarded by KNVB.

(24) The restructuring plan entailed a new management, cuts in staff and in the group of players. It foresaw that the number of contract players is reduced. Several players will be transferred, existing contracts prolonged for lower pay, new contracts will be either concluded free of transfer payments or players be rented from other clubs. It was the plan's objective to reduce the cost of personnel and players from 77 % to below 55 %.

7 30/06/2008 – 01/07/2009.

8 30/06/2009 – 01/07/2010.

9 Plan van aanpak Willem II of 23 July 2010.

(25) Nine private entities had agreed to altogether lend EUR 2.25 million to Willem II in 2009, when the financial difficulties arose. In 2010, they could be persuaded to extend the duration of the loans, not to pursue their claims until the restoration of sufficient liquidity of Willem II, and to accept a lower interest on these claims; six of them went further and dropped 10 % of their claims. Aim of the restructuring plan was to enable Willem II to achieve within three years a moderate operating profit. The plan tuned out to be realistic. Willem II made a profit of around EUR 0.3 million in 2010/2011 and in 2011/2012. and smaller amounts in 2012/2013; it improved its own equity position to minus EUR 1.4 million per 30 June 2012, minus 1.3 per 30 June 2013, and turned it into positive with the accounting year 2013/2014.

## 4. COMMENTS FROM INTERESTED PARTIES

(26) The municipality submitted observations under the procedure which were largely identical with the observations submitted by the Netherlands. The municipality also provided specific information on the financial situation of Willem II in 2009 and submitted a study, conducted in November 2013 by Deloitte Financial Advisory Services, concerning the cost of the various options open to the municipality in 2010, in order to support its view that the measures decided in 2009 and 2010 had been rational.

## 5. ASSESSMENT OF THE MEASURE

### 5.1. Presence of State aid according to Article 107(1) of the Treaty

(27) According to Article 107(1) of the Treaty, State aid is awarded by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by providing an economic advantage to certain undertakings or the production of certain goods in so far as it affects trade between Member States. The conditions laid down in Article 107(1) of the Treaty are cumulative and therefore, for a measure to be qualified as State aid, all the conditions must be fulfilled.

(28) On the basis of the opening decision, the Commission assesses with regard to the presence of aid the decision of the municipality in 2009 to suspend the payment of rent for the use of the stadium by Willem II and the decision of the municipality taken in May 2010 to lower, with retroactive effect, the rent and other cost for the use of the stadium. The Commission notes that both actions are closely linked as regards their chronology, their purpose and the situation of Willem II at the time and should therefore be examined together.

#### *5.1.1. Financing through State resources*

(29) Both measures were decided by the municipality and they have direct financial consequences for its budget; they thus involve the use of State resources. The transfer of State resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of enterprises and benefits in kind. Waiving revenue which would otherwise have been paid to the State also constitutes a transfer of State resources.

#### *5.1.2. Economic advantage*

(30) The measures need to provide an economic advantage to Willem II which it would not have had under normal market conditions. The Netherlands and the municipality claim that the municipality acted in compliance with the market economy investor

principle and the market economy creditor principle and, hence, did not provide any advantage to Willem II. The Commission does not agree with this view for the following reasons.

(31) Whenever the financial situation of an undertaking is improved as a result of State intervention, it can be assumed that an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been introduced. Without the intervention, the club would have remained in financial difficulty, with the danger to go bankrupt and be relegated to a lower league. It is undisputed that Willem II's financial situation improved markedly through the measures under investigation.

(32) This would not constitute an undue advantage if the municipality can demonstrate that it acted in compliance with the market economy investor principle and the market economy creditor principle. The Commission notes that in 2004 the municipality had acquired full ownership of the stadium. For this acquisition it paid the economic value of the stadium, which had been established on the basis of outside expertise. The 2004 lease with Willem II was concluded by the municipality in the full knowledge that the stadium was not a multifunctional arena, but a football stadium with Willem II as captive user and with only limited possibilities for use for activities outside football. The municipality therefore knew that the exploitation of the stadium depended on Willem II's continued ability to pay the rent and other costs specified in the contract. A market economy investor would either not have assumed this risk at all, or only have assumed it in return for a corresponding profit margin and insurance against any possibility of insolvency of the captive user.

(33) When the municipality informed the municipal council in 2010 that Willem II was on the brink of bankruptcy, it also found that the exploitation of the stadium since 2004 had only been neutral for its budget. If however the 2004 lease did not generate a reasonable profit, 2010 the amendment with retroactive effect of the leasing conditions was done in the knowledge that it makes the exploitation since 2004 loss making. This excludes that the 2010 decision to reduce the rent would meet the market economy investor principle. No commercial actor would agree to the retroactive modification of a rent which does not have any perspective to assure a return on investment.

(34) The Netherlands and the municipality, however, also claim that the decision of the municipality which eased the debt burden on the club, complied with the market economy creditor principle. In this context, they refer to the fact that several large creditors waived part of their claims on Willem II. They also refer to the part in the opening decision in which the Commission concluded that the measures of the municipality of Arnhem in favour of the football club Vitesse did not constitute State aid.

(35) In this respect the Commission would firstly note that the decisions taken in 2009 to suspend the payment of rent and in 2010 to decrease, with retroactive effect, the rent and other payment obligations for the use of the stadium were not taken simultaneously with corresponding measures by other creditors. Furthermore, in 2010 the municipality conceded an amount of EUR 2.4 million to Willem II, more than twice its claim of one year rent on Willem II. The municipality did require that Willem II should negotiate with other creditors to clean up its balance sheet, but without setting conditions for those negotiations which would match the conditions of its own intervention. The argument that a bankrupt professional football club

would lose its licence and that the municipality would have been stuck with a football stadium that could only be made useful for other activities at substantial investment cost, is also not convincing. In case of bankruptcy, a successor club could have been founded as a user of the stadium. Certainly, it would not be admitted to the professional football leagues directly, it would have to start in the second-highest amateur league. But it would have the perspective to use the stadium and to return in a foreseeable future to the professional league, thus contributing to stadium lease revenues.

(36) The Netherlands also referred to the Commission's letter of 11 July 2002 in which it described certain conditions under which it would consider the financing of sport infrastructure not to constitute state aid. These conditions would include the multifunctional character of the arena, the non-discriminatory access to it and the appropriateness of user fees.

(37) However, in the present case these observations cannot lead to a conclusion that Willem II did not obtain an undue advantage. It could already be disputed whether the arguments set out in the letter of 11 July 2002 are still of relevance, in view of the jurisprudence of the Court of Justice which considered the public investment in infrastructure which is made available for public use State aid[10]. In the present case it is however decisive that the municipality and Willem II concluded in 2004 a contract by which they agreed on an annual rent of EUR 1 001 731. If the payment of this agreed rent is first suspended in agreement with the municipality and if the rent amount is thereafter retroactively lowered, the municipality confers a financial advantage to Willem II which it normally would not have had and which in any case a private operator would normally not have granted.

(38) For these reasons, the Commission is not convinced that the municipality acted like a market economy operator, be it as an investor or a creditor or both. Therefore it concludes that it provided financial support to avoid the bankruptcy of Willem II, which a private market actor would not have provided and which thus constitute an advantage.

### *5.1.3. Effect on trade and competition*

(39) The Netherlands has questioned the impact of possible aid on the internal market for clubs not playing football at European level. In this regard, as pointed out in recital 14, the Commission recalls that professional football clubs are considered to be undertakings and are subject to State aid control. Football takes the form of gainful employment and provides services for remuneration; it has developed a high level of professionalism and thereby increased its economic impact.

(40) Furthermore, Willem II is a potential participant in European football tournaments and it has, in the past, actually participated in a European tournament. As a professional football club it deploys economic activities in several markets other than participating in football competitions which have an international dimension, such as the transfer market for professional players, publicity, sponsorship, merchandising or media coverage. Aid to a professional football club strengthens its position on each of those markets, most of which cover several Member States. Therefore, as set out in recital 15, if State resources are used to provide a selective advantage to a professional football club, regardless of the league in which it plays, such aid is

10 For instance Judgment of 19 December 2012 in Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH* v *Commission* ECLI:EU:C:2012:821.

likely to have the potential of distorting competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty.

## 5.2. Assessment under Article 107(3)(c) of the Treaty

(41) The Commission must assess whether the aid measure in favour of Willem II can be considered to be compatible with the internal market. None of the derogations mentioned in Article 107(2) of the Treaty applies to the aid measure in question. As regards the derogations provided for in Article 107(3) of the Treaty, the Commission notes that none of the Dutch regions falls under the derogation in Article 107(3)(a) of the Treaty. The aid measure in question does not promote an important project of common European interest, nor does it serve to remedy any serious disturbance in the Dutch economy within the meaning of Article 107(3)(b) of the Treaty. The aid measure can also not be said to promote culture or heritage conservation within the meaning of Article 107(3)(d) of the Treaty.

### *5.2.1. Applicable guidelines*

(42) As regards the derogation in Article 107(3)(c) of the Treaty in favour of aid to facilitate the development of certain economic activities, such aid could be compatible where it does not adversely affect trading conditions to an extent contrary to the common interest.

(43) For its assessment of aid measures under Article 107(3)(c) of the Treaty, the Commission has issued a number of Regulations, Frameworks, Guidelines and Communications concerning aid forms and horizontal or sector purposes for which aid is awarded. Given that Willem II faced financial difficulties at the time the measures were taken and that the aid was awarded by the municipality to address those difficulties, it is appropriate to assess whether the criteria laid down in the Guidelines[11] apply and are fulfilled.

(44) In July 2014, the Commission published new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[12]. They are, however, not applicable to this non-notified aid granted in 2009 and 2010. According to point 137 of the new guidelines, this would only be the case for any rescue or restructuring aid granted without prior authorisation if some or all of the aid is granted after the publication of those guidelines in the *Official Journal of the European Union*. According to point 138 of the new guidelines, in all other cases the Commission will conduct the examination on the basis of the guidelines which applied at the time the aid was granted, and therefore, in the present case, those applicable before 2014.

### *5.2.2. Willem II as company in difficulty*

(45) According to point 10(a) of the Guidelines, a limited liability company must be considered to be in difficulty if more than half of its registered capital has disappeared and more than one quarter of that capital has been lost in the preceding 12 months. In the accounting year 2008/2009[13] Willem II made a loss of EUR 3.9 million on a turnover of EUR 11.4 million and its own equity [*eigen vermogen*] decreased from EUR 4.1 million to EUR 0.2 million. In 2009/2010[14] Willem II made a loss of EUR 4.4 million on a turnover of EUR 9.9 million. Despite the award of

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[11] See footnote 6.

[12] Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

[13] 30/06/2008 – 01/07/2009.

[14] 30/06/2009 – 01/07/2010.

EUR 2.4 million by the municipality, its own equity decreased further from EUR 0.2 million to *minus* EUR 2.1 million. Willem II therefore clearly was a company in difficulty. This fact is not disputed by the Netherlands. Therefore, the compatibility of the State aid to Willem II will be assessed under the Guidelines.

*5.2.3. Restoration of long term viability*

(46) In section 3.2, the Guidelines require that the grant of the aid must be conditional on the implementation of a restructuring plan (see points 34-37 of the Guidelines), which must restore the long-term viability of the firm within a reasonable time-scale. In this regard, the Commission notes that the decision of the municipality to award 2.4 million to Willem II was subordinated to a number of conditions, as mentioned in recital 12. These conditions were the core of the restructuring plan drawn up by Willem II[15].

(47) The plan was designed to lead to a healthy financial position over a period of 3 years, also meeting the requirements of the KNVB to continue licensing Willem II for professional competitions and to obtain the category 2 status by the end of its financial year 2012/2013.

(48) The restructuring plan entailed a new management, substantial cuts in staff and in the group of players. Several players were transferred, existing contracts were prolonged for lower pay, new contracts were concluded free of transfer payments. This entailed a reduction of cost of personnel and players of 30 % over the two years following the adoption of the plan. In addition to the EUR 2.4 million from the municipality, Willem II could secure the continued contribution of EUR 2.25 million from the private sector.

(49) The Commission finds that the restructuring plan tackles the causes of the financial difficulties of Willem II, especially the cost of players in the form of wages and transfer payments. Willem II envisages savings on its core activity. The restructuring plan does not rely on external factors which Willem II can pursue but not entirely control, such as finding new sponsors and an increase in the number of spectators. Although the financial position and especially the negative own equity of Willem II remain a cause for concern, the continued improvement of the financial situation of the club is envisaged as well as its continued operation as a professional football club. The development shows that the plan was indeed realistic. The KNVB awarded the category 2 status already in December 2011. Willem II was able to achieve an operating profit of EUR 0.3 million in 2010/2011 and again in 2011/2012, thus improving its own equity position to *minus* EUR 1.4 million per 30 June 2012.

*5.2.4. Compensatory measures*

(50) Points 38-42 of the Guidelines require that compensatory measures be taken by the beneficiary in order to minimise the distortive effect of the aid and its adverse effects on trading conditions. In point 80 of the opening decision the Commission noted the peculiar nature of professional football in this regard and suggested a number of measures that could, for professional football, be interpreted as compensatory measures within the meaning of the Guidelines, such as the limitation of its registered players within the limits allowed by the national association, the acceptance of a cap on wages below the usual standards in the sector, a ban on paying transfer cost for new players for a certain period, or an increase in activities to the benefit of society. By accepting a cap on the number of players or their wages a

[15] See footnote 9.

club would also accept a competitive disadvantage compared to other clubs without those limitations. A ban on transfer fees limits the choice for new competitive players.

(51) The Commission notes that Willem II has indeed, according to the plan, reduced the number of employees and players. The number of employees went down from 79 in the season 2009/2010 to 61 in 2010/2011 and 53 in 2011/2012. The number of registered players was decreased from 31 to 27. The cost of wages[16] was brought to a level of 48 % of turnover, which is well below the UEFA standard of 70 % for players only. No transfer payments are made for new players during the restructuring period. Those measures weakened the team of the club and, hence, contributed to the relegation of Willem II to the second league at the end of the 2010/2011 season and again in 2012/2013. The Commission also notes more expenditure of the club for public benefit by the training of amateurs. The Commission concludes that the compensatory measures required by the Guidelines were taken, which had the effect of weakening Willem II's competitive position in professional football.

*5.2.5. Aid limited to a minimum*

(52) The Commission also notes that the restructuring plan is to a considerable extent financed by external private entities in addition to the internal savings made. Nine private entities had agreed to altogether lend EUR 2.25 million to Willem II in 2009, when the financial difficulties arose. In 2010, they were persuaded to continue leaving these amounts with the club and to agree not to pursue their claims until Willem II will be able to pay them back. They also accepted a lower interest rate of 3 %. Six of them were persuaded to drop 10 % of their claims altogether. This meets the requirement in point 44 of the Guidelines that for a medium-sized enterprise like Willem II at least 40 % of the cost of the restructuring should be met by the own contribution of the beneficiary, including external financing demonstrating a belief in the viability of the beneficiary.

(53) The amount of the aid was necessary. According to the restructuring plan it should lead to a moderate positive result in the 2010/2011 and 2011/2012 seasons and slowly improve the equity. This would not have allowed Willem II to buy new players or attract them with higher salaries.

*5.2.6. Monitoring and annual report*

(54) Point 49 of the Guidelines requires that the Member State communicates on the proper implementation of the restructuring plan through regular detailed reports. Point 51 sets out less stringent conditions for small and medium sized enterprises where the transmission of yearly copies of the balance sheet and profit-and-loss accounts is normally considered sufficient. The Netherlands has committed to submit these reports.

*5.2.7. One time, last time*

(55) In accordance with points 72-77 of the Guidelines, the Netherlands specified that Willem II did not receive rescue or restructuring aid in the ten years before the grant of the present aid. It also committed not to award any new rescue or restructuring aid to Willem II during a period of ten years.

[16] The accounts of Willem II do not distinguish between wages of players and of other employees.

## 6. CONCLUSION

(56) The Commission finds that the Netherlands has unlawfully implemented the aid to Willem II in breach of Article 108(3) of the Treaty. However, the State aid amounting to EUR 2.4 million, which was awarded to Willem II in 2009 and 2010, meets the conditions for restructuring aid in the Guidelines and can be considered compatible with the internal market in accordance with Article 107(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which the Netherlands has implemented in favour of the football club Willem II in Tilburg, amounting to EUR 2.4 million, is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

*Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

If the decision 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 the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Fax: +32 2 296 12 42
Stateaidgreffe@ec.europa.eu

Done at Brussels, 4.7.2016

*For the Commission*

*Margrethe VESTAGER*
*Member of the Commission*

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION