EUROPEAN
COMMISSION

Brussels, 4.7.2016
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COMMISSION DECISION

of 4.7.2016

ON THE STATE AID
SA.41612 - 2015/C (ex SA.33584 (2013/C) (ex 2011/NN))
implemented by the Netherlands
in favour of the professional football club MVV in Maastricht

(Text with EEA relevance)

(Only the Dutch version is authentic)

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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

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 that the Netherlands had implemented an aid measure for the professional football club MVV in Maastricht. In 2010 and in 2011, the Commission also received complaints concerning measures in favour of other professional football clubs in the Netherlands, namely Willem II in Tilburg, FC Den Bosch in 's-Hertogenbosch, PSV in Eindhoven and NEC in Nijmegen. By letter dated

[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 September 2011, the Netherlands provided the Commission with further information on the measure concerning MVV.

(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 MVV by letters dated 31 May 2013 and 12 November 2013. The Netherlands also replied to a request for additional information by letter dated 26 March 2014. On 13 June 2014 a meeting took place between the Commission services and the municipality of Maastricht, which was followed by a letter of 30 July 2014 from the Netherlands.

(5) The Commission did not receive observations from interested parties concerning the measures in favour of MVV.

(6) Following the opening decision, and in agreement with the Netherlands, the investigations for the different clubs were pursued separately. The investigation regarding MVV was registered under case number SA.41612.

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 consisted of 38 clubs, of which 18 played in the top league (eredivisie) and 20 in the lower league (eerste divisie).

(8) Maastrichtse Voetbal Vereniging, since 2010/2011 called Maatschappelijke Voetbal Vereniging Maastricht (hereinafter: "MVV"), was founded in 1908 and plays its home matches in the football stadium De Geusselt in Maastricht. MVV was relegated from the top league to the lower league in 2000. MVV has not played in a European tournament since 1970.

(9) The legal structure of MVV is that of a foundation, *Stichting MVV*. According to the information submitted by the Netherlands, MVV is a small enterprise[3]. In the season 2009/2010 it had 38 employees and in the season 2010/2011 it had 35 employees. Its turnover and balance sheet total remained well below EUR 10 million in both years.

(10) In the first quarter of 2010 the municipality of Maastricht (hereinafter: "the municipality") became aware that MVV faced severe financial difficulties. Its debt load had risen to EUR 6.5 million; EUR 1.7 million of this sum was owed to the municipality itself in the form of a subordinated loan. An initiative to avoid the

[2] Cf. footnote [1].

[3] In Article 2(2) of the annex of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003, p. 36), a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover does not exceed EUR 10 million.

bankruptcy of MVV was launched by supporters, companies and sponsors in April 2010 ("Initatiefgroup MVV Maastricht"). This initiative entailed a business plan to sanitise MVV's financial situation and to transform MVV into a viable professional football club. The municipality adhered to this plan. In May 2010, as part of an agreement of creditors, but not within a formal suspension of payments procedure, the municipality waived its claim of EUR 1.7 million. It also bought the stadium and the training grounds, which was used only by MVV but was under economic ownership with a third party (the foundation *Stichting Stadion Geusselt*) based on a transaction involving a long-lease, for EUR 1.85 million. This price was based on the basis of an external valuation report.

(11) The Netherlands did not notify their intention to waive a claim of EUR 1.7 million on MVV and to buy the football stadium and training grounds for EUR 1.85 million to the Commission pursuant to Article 108(3) of the Treaty.

2.2. Grounds for initiating the procedure

(12) In the opening decision the Commission arrived at the preliminary conclusion that the municipality had provided a selective advantage to MVV with the use of State resources and had, hence, provided aid to the football club. The Commission considered that both measures had been decided together and were closely interlinked. 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. As regards the remittance of debt by the municipality, the Commission was unable to conclude on the basis of the available information that the behaviour of the municipality had been that of a typical creditor in a market economy. As regards the purchase of the stadium and the training grounds from the third party, the Commission could not conclude, in the absence of a credible business plan established before the purchase, that the behaviour of the municipality had been that of a typical market economy investor. Finally, the Commission requested detailed information regarding statements made in the municipal council that the yield of the purchase of the stadium would be passed on by the third party (the foundation Stadium De Geusselt) to cover preferential parts of MVV's debts, such as contributions for pensions and taxes.

(13) The Commission notes that MVV had been in a difficult financial situation for several years before 2010. In the season 2007/2008 it made a loss of EUR 0.15 million and had a negative own equity (minus EUR 2.7 million). In 2008/2009 MVV made a loss of EUR 1.1 million and its own equity was minus EUR 3.8 million. By March 2010 additional losses amounting to EUR 1.3 million had occurred and the own equity had dropped to minus EUR 5.17 million. In April 2010, MVV was no longer able to pay salaries and other current expenditure and was indeed on the brink of bankruptcy.

(14) On this basis, in the opening decision the Commission noted that MVV had been in financial difficulties at the time the aid was awarded. In order to assess the compatibility of the aid with the 2004 Guidelines on State aid for rescuing and restructuring of firms in difficulty[4] (hereinafter: "the Guidelines"), the Commission

[4] 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).

requested information on the compliance with all requirements set out in the Guidelines.

(15) 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 of the Guidelines 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

(16) As regards the measures for MVV, the Netherlands disagreed that these measures constituted State aid. In the view of the Netherlands, the municipality, having a subordinated claim on a company on the brink of bankruptcy, acted in conformity with the market economy creditor principle by waiving its claim in 2010. It stated that the mere formal application or request for bankruptcy by a creditor would have triggered immediate bankruptcy. According to the Netherlands, in the case of bankruptcy of MVV, the municipality would in all likelihood not have recovered anything of its subordinated loan in any event. The claim was subordinated and hence of lower rank than claims totalling some EUR 3 million (both preferential ('preferente') and unsecured ('concurrente') claims from other creditors). The Netherlands alleged that therefore there was no probability to obtain any compensation of the loan amount and that even the 'preferente' and 'concurrente' creditors had been willing to release their claims in the framework of the overall restructuring plan. At the same time, if the municipality had not waived its claim in May 2010 and had thereby provoked the opening of an official insolvency procedure, MVV was at risk of losing its licence to play professional football according to the rules of the KNVB. There would be no possibility to have this license transferred to another club.

(17) As regards the acquisition of the stadium De Geusselt and the training facilities used by MVV, the Netherlands argued that this acquisition had taken place at the value established by external expertise and therefore was in conformity with the market economy investor principle. This evaluation consisted of a valuation of the right to a long lease and value of the buildings on the land. The Netherlands also emphasized the strategic location of the stadium in Maastricht and the interests of the municipality in relation to the sizeable (re)development by the municipality of the zone of De Geusselt, in which the stadium and the training grounds are embedded.

(18) Alternatively, the Netherlands argued that even if the measures were to be considered as having provided a selective advantage to MVV, they would not distort competition or affect trade between Member States. The Netherlands emphasized the weak position of MVV in national professional football, which made participation in competitions at European level a very unlikely event. It was also stated that the Commission had failed to demonstrate that aid to MVV would distort competition or affect trade in any of the markets mentioned in the opening decision.

(19) As a subsidiary argument, the Netherlands stated that if the measures were to be considered to constitute State aid, they would be compatible with the internal market. These arguments were, firstly, based on the Guidelines and, secondly, by making a

compatibility assessment directly on the basis of Article 107(3)(c) and (d) of the Treaty.

4. ASSESSMENT OF THE MEASURES

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

(20) According to Article 107(1) of the Treaty, State aid is aid awarded 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 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.

(21) On the basis of the opening decision, the Commission has assessed the decision of the municipality of 25 May 2010 to waive a subordinated claim of EUR 1.7 million on MVV and to buy the stadium De Geusselt and MVV's training facilities for a sum of EUR 1.85 million. The Netherlands argue that both measures respect the market economy operator principle (MEOP), so they should not be qualified as entailing State aid.

(22) The Commission considers – in line with the relevant case law[5] – that there is a necessary and indissoluble link between the two measures. In order to reach this conclusion, the Commission has taken into account the chronology of the measures in question, their purpose, and MVV's situation at the time the decision to support MVV was made by the municipality.[6] The Commission notes, firstly, that both measures were presented together and were decided in the same meeting of the municipal council on 25 May 2010. The purpose of both measures was to ensure the rescue of MVV in the immediate future and both were discussed – in one proposal - as part of the position of the municipality regarding the rescue plan being formed by the 'Initiatiefgroep MVV Maastricht' . The Commission therefore comes to the view that the measures are closely linked as regards their purpose and the situation of MVV at the time, namely to ensure the rescue of MVV given its evident precarious financial situation.

(23) Both measures were decided by the municipality and they have financial consequences for this municipality (amounting to EUR 3.55 million). They thus involve the use of State resources, a conclusion not disputed by the Netherlands. 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 claims of the State and investing at other than market conditions also constitutes a transfer of State resources.

(24) Next, the Netherlands and the municipality claim that the municipality acted in compliance with the market economy creditor principle regarding the waiver of a claim and in compliance with the market economy investor principle regarding the acquisition of the stadium and the training facilities and, hence, did not provide an undue economic advantage to MVV. The Commission does not agree with this view for the following reasons.

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[5] Case T-1/12, *France v. Commission*, para 37 *et seq*. and the case law referred to therein (Case T-11/95, *BP Chemicals v. Commission*).

[6] Case *BP Chemicals*, para 171.

(25) Whenever the financial situation of an undertaking improves as a result of State intervention, an advantage is present. To assess whether this advantage is undue, the financial situation of the undertaking following the measure should be compared with its financial situation had the measure not been granted. It is undisputed that MVV's financial situation improved markedly through the measures under investigation.

4.1.1. Waiver of the subordinated loan/claim

(26) The measures adopted by the municipality and by other important creditors allowed MVV to clean its balance sheet. The Commission notes that the other important creditors of MVV, i.e. those with claims exceeding EUR 150 000, waived their claims as well, whereas smaller creditors waived part of their claims. These actions, leading to a waiver of EUR 2.25 million of claims by private parties, as well as the actions by the municipality, did not take place in the context of a formal suspension of payments procedure. The absence of a formal framework explains why in the end a minority of creditors, holding claims amounting to EUR 145 347, did not participate in the waiver, even though some of them had promised to do so. The Commission also takes note of the fact that other claims waived were not of a subordinated nature, as was the claim of the municipality. According to the Netherlands, the absence of a formal procedure did not make any material difference in the sense that the result of the debt resolution for the municipality was identical to what would have occurred in a formal suspension of payment procedure under national bankruptcy law, i.e. that other creditors could have been forced to join a creditors agreement, which, in the case of the municipality, would in any event have resulted in the entire loss of the (subordinate) loan amount.

(27) However, as already mentioned in the opening decision, the Commission notes that three creditors had not completely waived their claims, but had transformed these into a claim on possible future transfer payments paid to MVV for players leaving the club. In this regard, the Netherlands pointed out that those three creditors had preferential and secured claims amounting to EUR 1.135 million. They would therefore have stood a better chance of recovering at least some part of their claims in the case of a formal bankruptcy procedure than other creditors with unsecured claims, let alone the municipality with its subordinate claim. The Commission considers that although the loan by the municipality was not provided under the same conditions, a private investor would not have completely waived the claim or at least would have secured – or endeavoured to secure – some kind of (possible) collateral for the waiver of such a substantial loan amount, even if the chances of repayment were weak. Furthermore, the Commission notes that the municipality could possibly have secured a benefit from the other creditors, if indeed the rescue plan also hinged on the participation of the municipality. Hence, the Commission considers that the full waiver of the loan by the municipality without any condition or collateral is not in line with the market economy creditor principle.

(28) As regards the decision to participate in a creditors' agreement outside a formal suspension of payments procedure, the Netherlands pointed out that KNVB would have withdrawn MVV's licence to play professional football in the case of a formal suspension of payments. A formal suspension of payments was therefore not considered in the interest of the municipality and equally for the large majority of other creditors. Hence, this aspect in itself does not make the position of the municipality distinct from that of the other creditors.

(29) In this context the Dutch authorities 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: the principle of equality of treatment requires to appreciate the situation in the same way as to that of the municipality of Arnhem, i.e. as being in compliance with Article 107(1) of the Treaty as the decisions of the municipality would have been in respect of a private creditor principle. In this regard the Commission notes that each case has to be assessed based on its individual merits. In the case of Arnhem/Vitesse, the conditions attached to the creditors agreement meant that the respective positions of the municipality and other creditors were fully equated (each would receive 12% of their outstanding claims), which is not so in the case of Maastricht/MVV: the other (preferential) creditors, in return for waiving their claim, could benefit from possible income from transfers of players, which was not the case for Maastricht.

(30) The other reasons advanced by the Netherlands in relation to the socio-economic consequences of the bankruptcy of MVV cannot be taken into account in the framework of assessing the market economy investor principle.

(31) Firstly, the socio-economic consequences of an eventual bankruptcy of MVV relate to the role of the municipality as a public authority, not to a position of a private investor. Although the municipality may have had a position as investor into the *De Geusselt* area, as referred to in the municipal council minutes of 25 May 2010, these interests are part of a broader interest relating to other general policy objectives, such as the infrastructural and economic development of the area, sports policy of the municipality and its municipal partnership. Hence the loan waiver – at the time it was provided – was not, or only partly, linked to a private commercial interest of the municipality as owner of the land or as an undertaking. Insofar commercial interests existed, the Netherlands has provided no detail what these would consists of. Secondly, it is noted that the loan waiver as such would not have prevented the bankruptcy of MVV: more support measures were needed, such as the purchase of the stadium and training ground which the Commission considers not to have been in line with the market economy investor principle. As explained above, the measures are to be assessed jointly.

(32) For these reasons, the Commission comes to the conclusion that the municipality, when deciding to waive its claim of EUR 1.7 million in May 2010, did not act as a market economy operator. This conclusion is also based on the fact that this loan waiver is to be assessed jointly with the purchase of the training grounds and the stadium, which the Commission concludes does not conform with the market economy investor principle, as explained in what follows.

4.1.2. Purchase of the training grounds and the stadium

(33) The municipality did not only waive a subordinated claim on MVV, it also purchased the stadium *De Geusselt* and the club's training facilities *Klein Geusselt*, this purchase also being part of the overall plan to rescue and restructure MVV. The Netherlands claims that this purchase does not constitute State aid, because it took place under market conditions. The argument is based on the Commission Communication concerning aid elements in land sales by public authorities[7] (hereinafter: "the land sales Communication"), as well as on the market economy investor principle, according to which financial acts of public authorities regarding an undertaking, where those acts would also have been acceptable to other operators

[7] OJ C 209, 10.7.1997, p. 3.

under identical conditions, cannot be held to procure an advantage to an undertaking within the meaning of Article 107(1) of the Treaty. Regarding the land sales Communication, the Netherlands acknowledges that that Communication covers the sale of land and not the purchase of real estate, but they consider that it does apply by analogy.

(34) The Commission notes that the purchase price of EUR 1.85 million was determined on the basis of an external expert's report, which was submitted to the Commission (report by surveyors Van Der Horst Taxateurs, June 2010). The Commission also notes that the municipality already owned the land on which the stadium was built. It purchased the stadium and the other assets, but also the right of long lease of the land (*recht van erfpacht*). […](*) The price of EUR 1.85 million includes the training facilities, which had not been included in the expert's report. It is noted that the expert report did not specify the identity of the buyer.

(35) The Commission notes, firstly, that the municipality's reasons for buying the stadium included considerations related to 'public health' and 'social cohesion', given that it wanted to maintain and develop a 'sports zone' in the *De Geusselt* area.[8] Such policy objectives would not be part of an investment decision of a market investor and hence the municipality cannot be equated with a market economy operator. Secondly, the Commission does not agree that a market economy operator would have been willing to purchase the football stadium at its replacement value. Different from land or other commodities, a football stadium is a productive asset, which can be used to generate revenue, but which also entails maintenance cost. A market economy operator would only purchase such a stadium on the basis of a business plan demonstrating the strong likelihood of a sufficiently profitable exploitation. This business plan would also determine the price at which an investor would be willing to purchase the stadium. The municipality did not have such a business plan, neither before the purchase, nor when it decided to purchase the stadium. In fact, in May 2010 the municipal council was informed by the municipal executive that a plan for the future exploitation of the stadium as a multifunctional facility would be drawn up. Such a plan was indeed presented to the council, but in December 2010. The Commission notes that in May 2010, when the decision to purchase the stadium was taken, the municipality estimated that the annual cost of maintaining the stadium would amount to EUR 380 000, whereas the annual rent charged to MVV was EUR 75 000[9]. The difference of EUR 305 000 would be financed by income from rent from other events or would have to be covered by the municipality. Whilst the purchase price was established to take account of the potential losses as a result from the low rental price to MVV, one cannot conclude that a private market operator would have engaged in a contract that carried an identified strong risk of being loss-making. The report presented to the municipal council in December 2010 confirms that "in the current situation a commercial or cost-covering exploitation of the stadium is not possible". In June 2012 a report drawn up by the municipal Court of Audit[10] found that the exploitation of the stadium remained loss-making.

* Confidential information.

8 Minutes of the municipal Council of 25 May 2010, under point 10. Also, under point 5, even though the municipality provided as grounds of buying the stadium securing its position in real estate, it also refers to other economic and societal effects it wishes to achieve.

9 A new lease was concluded with MVV on 21 June 2010.

10 Rekenkamer Maastricht: De relatie tussen de gemeente Maastricht en MVV.

(36) Furthermore, in the case of a sale in the urgency that presented itself in regard of MVV, one might have expected a market operator to use the timing aspect as leverage to obtain a better price than the value estimated by a surveyor. This was not the case for the municipality, which simply took the value of the surveyor as 'realistic'.

(37) This conclusion is not altered by the specific interest the municipality had in relation to the development plans of the *De Geusselt* area. In the rescue plan as formulated in 2010, the Netherlands did not point to any plan for the purchase or calculation prior to June 2010 of a potential purchase by the municipality. Such assessment prior to a purchase is, however, something that one might expect of a market investor.

(38) For all these reasons the Commission concludes that the municipality in 2010, when deciding measures for the purchase of the stadium and training grounds, did not act as a market economy operator would have done.

4.1.3. Impact of the aid on MVV

(39) The advantage to MVV was, firstly, that it was freed of its debt load and, secondly, that it could continue playing football in its home stadium De Geusselt. The monthly rent for the non-exclusive use of both facilities after their purchase by the municipality amounted to 3% of MVV's budget or a minimum of EUR 75 000[11]. The Commission also notes that according to the terms of the purchase contract, the sum of EUR 1.85 million paid by the municipality would be used by the seller, the third party *Stichting Stadion De Geusselt*[12], to cover the debts of MVV in taxes, salaries to players and pension obligations; those debts fell outside the agreement of creditors. This sum of EUR 1.85 million is indeed booked as extraordinary income in MVV's accounts for the season 2009/2010 with the explanation "contribution municipality of Maastricht" (*Bijdrage Gemeente Maastricht*). The proceeds of the sale accruing to the Stichting Stadion De Geusselt were indeed to be used for the debt relief and restructuring of MVV (see letter of the foundation to the municipality of 9 June 2010).

(40) The Netherlands have questioned the impact of any aid on the internal market for clubs not playing football at European level and more especially for MVV. In this regard, the Commission points out that MVV is a potential participant in European football tournaments each year. Even as a second league club it is in principle able to influence the contest for the national football cup and to win the cup, which would allow it to play for the European cup the year after. Over a short period of time, even a low ranking football club can advance to a higher level[13]. The Commission further points out that professional football clubs deploy economic activities in several markets other than participating in football competitions, 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, if State resources are used to provide a selective advantage to a professional football club, such aid is likely to

11 The new rent was pegged to MVV's turnover with a minimum of EUR 75 000; if MVV should prosper, the rent will increase. The rental income from the stadium for other uses would also accrue to the municipality.

12 A foundation, which according to the Netherlands is independent from both MVV and the municipality of Maastricht.

13 This has in fact been demonstrated by another Dutch professional football club, PEC Zwolle, which also played in the second league in 2010/2011. PEC was promoted to the first league in 2012/2013 and in 2013/2014 it won the national football cup entitling it to play at European level in 2014/2015.

have the potential of distorting competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty[14]. More specifically regarding MVV, during 2010 several players of MVV had the nationality of other Member States, notably the Belgian nationality.

(41) In view of the above the Commission comes to the conclusion that the loan waiver and the purchase of the training grounds and the stadium (totalling EUR 3.55 million), constitute State aid in the sense of Article 107(1) of the Treaty. Their compatibility with the internal market will be assessed in the following.

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

(42) The Commission must assess whether the aid measures to MVV can be considered to be compatible with the internal market. According to the jurisprudence of the Court, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met[15].

(43) None of the derogations mentioned in Article 107(2) of the Treaty applies to the aid measure in question. The Netherlands has also not claimed that this would be the case.

(44) 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. Also, the aid measures in question do not promote an important project of common European interest, nor do they serve to remedy any serious disturbance in the Dutch economy as per Article 107(3)(b) of the Treaty.

(45) As regards the derogation in Article 107(3)(c) of the Treaty, i.e. aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Netherlands has argued that this derogation could be applied if the Commission were to find that the measures in question constitute State aid. In this regard, the Netherlands also argued that Article 107(3)(d) of the Treaty for aid to promote culture or heritage conservation in combination with Article 165 of the Treaty should be taken into account in the Commission's analysis.

(46) In its assessment of the notion of "development of economic activities" in the sports sector, the Commission takes due account of Article 165(1) of the Treaty and the last indent of Article 165(2) of the Treaty, which provide that the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function. However, the Treaty distinguishes between the notions of sport and culture; therefore, Article 107(3)(d) of the Treaty cannot serve as basis for the assessment of the compatibility of the aid to MVV.

(47) For its assessment of the 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 MVV faced financial difficulties at the time the measures were taken and that the aid was awarded by the municipality to address those

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[14] 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.

[15] Case C-364/90, *Italy v Commission*, ECLI:EU:C:1993:157, point 20.

difficulties, the Commission believes that it is appropriate to assess whether the criteria laid down in the Guidelines[16] might apply. In this regard the Commission notes that the Guidelines do not exclude professional football. This economic activity is, hence, covered by the Guidelines.

(48) In July 2014, the Commission published new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[17]. They are, however, not applicable to this non-notified aid granted in 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. Therefore, in the present case, the Commission will base its analysis on the 2004 Guidelines (see paragraph (14) above).

(49) According to point 11 of the Guidelines, a firm is considered to be in difficulties where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. As indicated in recital (13) above, MVV had negative equity since the season 2007/2008 and in the first quarter of 2010 the own equity reached minus EUR 5.1 million, while MVV's debts totalled EUR 6.4 million. As pointed out by the Netherlands, MVV was in the spring of 2010 virtually bankrupt. MVV therefore clearly was a company in difficulty within the meaning of the Guidelines. This fact is not disputed by the Netherlands. Therefore, the compatibility of the State aid to MVV must be assessed under the Guidelines.

(50) In section 3.2, the Guidelines require that the grant of the aid must be conditional on the implementation of a restructuring plan. However, in accordance with point 59 of the Guidelines, for SMEs (like it is the case of MVV) the restructuring plan does not need to be endorsed by the Commission, although it must meet the requirements laid down in points 35, 36 and 37 of the Guidelines and be approved by the Member State concerned and communicated to the Commission. The Commission notes that the Netherlands has communicated a restructuring plan which addresses the conditions set out in points 34 to 37 of the Guidelines. The overall restructuring costs were nearly EUR 6 million. In this regard, the Commission notes that the decision of the municipality to award aid to MVV was subordinated to a number of conditions. These conditions were laid down in the business plan of 2010 referred to in recital (10).

(51) In this regard, the Commission notes that the decision of the municipality to wave its loan and pay for *De Geusselt* followed an analysis on the nature and the causes of the difficulties of MVV. The transaction was based on a number of conditions which aim at restoring the long-term viability of the club within a reasonable time-scale of three years and at meeting the requirements of the KNVB to continue licensing MVV for professional competitions. The restructuring plan entailed a new management, cuts in

[16] Cf. footnote [4].

[17] 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).

staff and in the group of players. The restructuring plan does not rely on external factors which MVV can pursue but not entirely control, such as finding new sponsors and an increase in the number of spectators. 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 as set out in the recital below shows that the plan was indeed realistic.

(52) The measures taken were necessary to restore the viability of MVV. The club's financial health was indeed restored. As a result of those measures, over the whole season 2009/2010, MVV booked a profit of EUR 3.9 million and for the first time in several years had a positive own equity of EUR 0.051 million. The following season 2010/2011 ended with a profit of EUR 0.021 million and MVV's own equity amounted to EUR 0.072 million. MVV broke even in 2011/2012. KNVB upgraded the financial status of MVV from category 1 (insufficient) to 3 (good) in the beginning of the season 2011/2012.

4.2.1. Compensatory measures

(53) Points 38 to 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. However, according to point 41 of the Guidelines this condition does not apply to small enterprises, such as MVV.

4.2.2. Aid limited to a minimum

(54) 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, in accordance with points 43 and 44 of the Guidelines. Several private entities had agreed to waive their debts as well. The overall contribution of the creditors and the municipality to the refinancing of MVV was around EUR 5.8 million (combined debt waivers and stadium and long lease purchase). The contribution by debt waivers of private entities other than the State was EUR 2.25 million and thus higher than the 25% required for small enterprises.

(55) The amount of the aid was necessary. According to the restructuring plan it should lead to smaller losses in the 2011/2012 and 2012/2013 seasons and moderate positive results later. This would not have allowed MVV to buy new players or attract them with higher salaries.

(56) The plan was designed to enable a slimmed-down MVV to make a fresh start, without its debt load, but with a new structure. The measures should lead to a healthy financial position of MVV, also meeting the requirements of the KNVB. In this regard the Commission recalls that each Dutch professional football club receives a licence from the KNVB, under which it has to comply with various obligations. One of the obligations 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 categories 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.

(57) The restructuring plan entailed a new management, a new structure, a new name, cuts in salaries and in staff, including the group of players. Several players were transferred, existing contracts were either terminated or prolonged for lower pay, new contracts were either concluded free of transfer payments or players were rented from other clubs, some amateur contracts were concluded; this entailed a reduction of cost of personnel and players of 40%. As described in recitals (26) *et seq.*, other creditors than the municipality waived claims on MVV totalling EUR 2.25 million. MVV was thus almost entirely freed of its debt.

(58) The Commission finds that the restructuring plan tackles the causes of the financial difficulties of MVV, especially the cost of players in the form of wages and transfer payments. A professional football club cannot be expected to diversify into other markets in the sense of the Guidelines; it can however be expected to make savings on its core activity and this MVV has done. The Netherlands also provided a list of measures taken by MVV to cut other costs in the exploitation of the club. The restructuring plan does not rely on external factors which MVV can pursue but not entirely control, such as finding new sponsors and an increase in the number of spectators. The Commission therefore finds that implementation of the plan allows MVV to continue to operate on a healthy basis in Dutch professional football, as was also recognised by KNVB, which awarded the category 3 status. 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. This meets the requirement in point 44 of the Guidelines that for a small company like MVV at least 25% 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.

(59) The Netherlands has furthermore supplied information on additional activities of the restructured MVV in favour of society, including a number of schools in Maastricht and in the Euregio. These activities can be said to contribute to the social and educational function of sports, as mentioned in Article 165 of the Treaty.

Monitoring and annual report and one-time/last-time principle

(60) 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. In accordance with the Guidelines, the Netherlands committed to sending a final report on the completion of the restructuring plan.

(61) Points 72-77 of the Guidelines refer to the "one time, last time" principle, according to which restructuring aid should be granted only once in a period of ten years. The Netherlands has specified that MVV did not receive rescue or restructuring aid in the ten years before the grant of the present aid. The Netherlands has also committed not to award any new rescue or restructuring aid to MVV during a period of ten years.

5. CONCLUSION

(62) The Commission concludes that the Netherlands has failed to respect its obligations under Article 108(3) of the Treaty by not notifying in advance State aid amounting to

EUR 3.55 million, which was awarded to MVV in 2010, when it was in financial difficulty. This aid can, however, be considered compatible with the internal market as restructuring aid within the meaning of the Guidelines, as all conditions for such aid set out in the Guidelines are met,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Netherlands has implemented in favour of the football club MVV in Maastricht, amounting to EUR 3.55 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