

Det Kongelige Kulturedepartement  
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Zurich, 26<sup>th</sup> September 2011

Dear Sirs,

**Your reference: 2006/02171 ME/ME3 HHO:elt**  
**27 June 2011**

Attached please find FIFA's comments on the proposal for amendments to the Broadcasting Regulations (N° 153 of 28 February 1997) - listing of events of major importance for society.

We should be most grateful to you for informing us of the Ministry's decision and for communicating it to us, once the decision will have been made.

Yours faithfully,

**Fédération Internationale  
de Football Association**



Jérôme Valcke  
Secretary General

**COMMENTS BY THE FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA) ON THE NORWEGIAN CONSULTATION PAPER ON A PROPOSAL FOR AMENDMENTS TO THE BROADCASTING REGULATIONS (N° 153 of 28 February 1997) - LISTING OF EVENTS OF MAJOR IMPORTANCE FOR SOCIETY (2006/02171 ME/ME3 HHO:elt) of 27 June 2011**

**I. INTRODUCTION**

1. The Fédération Internationale de Football Association (FIFA) is grateful for the opportunity to present to the Ministry of Culture its views on the proposal to amend the Broadcasting Regulations (N° 153 of 28 February 1997), on the need to draw up a list of events of “major importance for society” and, if such a list were to be adopted, on the legitimacy and appropriateness of including therein all the matches played within the framework of the FIFA World Cup™.
2. It is FIFA’s opinion that the widespread and profound negative consequences entailed by listing largely outweigh any beneficial effect which might ensue and that, in the circumstances prevailing in Norway, there is no need for such a list.
3. Notwithstanding, in case the amendments to the Broadcasting Regulations 1997 were to be introduced, and such a list drawn up, the inclusion therein of the matches of the FIFA World Cup™ will, in FIFA’s opinion, be unwarranted, unless it can be demonstrated that they may legitimately be regarded in Norway to be “outstanding events”, as envisaged by recital 52 to Directive 2010/13<sup>1</sup> (AVMSD) and that, at least, two of the criteria held by the EU Commission to be “reliable indicators” for an event to be regarded as of “major importance for society” within the meaning of Article 14 (1)

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<sup>1</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version), OJEU L 95 of 15 January 2010, p. 1. This directive repeals Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJEC L 298 of 17 October 1989, p. 2; Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJEC L 202 of 30 July 1997, p. 60; and Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJEU L 332 of 18 December 2007, p. 27.

AVMSD (formerly article 3a (1) of Directive 89/552, as amended by Directive 97/36<sup>2</sup>), are fulfilled.

4. However, FIFA wishes to emphasise at the outset that, regardless of whether or not they may be regarded in Norway as “outstanding events”, and whether or not the criteria required for events to be deemed of “major importance for society” are fulfilled, the “prime” matches of the FIFA World Cup™, i.e. the final, the two semi-finals and the matches played by the national team, have always been broadcast live on free-to-air television with nationwide coverage and that, in their respect, FIFA has never granted, nor will grant an exclusive licence for other than such broadcasting. Indeed, although it has not been a matter of legal obligation, it has been FIFA’s constant policy to require that, in addition to the “prime” matches, many more matches of the FIFA World Cup™ be broadcast live on free-to-air television with nationwide coverage. The agreement entered into between FIFA and Sveriges Television AB relating to the broadcasting rights for the 2010 & 2014 FIFA World Cups™, which designates NRK and TV2 as “approved sub-licensees”, and which allows these companies, with FIFA’s approval, to grant sub-licences to “authorised sub-licensees”, provides that at least 22 matches, the “prime” matches included, be broadcast live on free-to-air television with nationwide coverage.

## **II. FIFA PRESENTATION**

5. FIFA is a non profit private law association incorporated under the laws of Switzerland. FIFA is the world governing body for the sport of association football, which it promotes on a worldwide basis through the funding of development programmes as well as by organising, supervising and promoting international association football competitions.
6. FIFA was founded in Paris on 21 May 1904. Its current membership comprises 208 national football associations. The national associations of the same continent are

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<sup>2</sup> In these comments, we will mainly refer to Article 14 AVMSD and, where appropriate, to Article 3a of Directive 89/552. Article 3a of Directive 89/552 was introduced therein by Directive 97/36; Article 3a was slightly amended and re-numbered Article 3j by Directive 2007/65; after small changes, it is now Article 14 of Directive 2010/13.

regrouped within six confederations, such as UEFA, which are all recognized by, but are not member of FIFA.

7. FIFA's objectives, as defined in Article 2 of its Statutes, are, *inter alia*, to improve the game of football constantly, promote it globally and to organize its international competitions.
8. All of FIFA's activities are undertaken in order to achieve the objectives as set out in its Statutes. These are:
  - (i) improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes;
  - (ii) organise its own international competitions;
  - (iii) draw up regulations and provisions and ensure their enforcement;
  - (iv) control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game; and
  - (v) prevent all methods or practices which might jeopardise the integrity of matches or competitions or give rise to abuse of association football.
9. FIFA's primary sources of revenue, which enable it to carry-out its statutory tasks, are the sale of broadcasting and marketing rights of the FIFA World Cup™ taking place every 4 years. More than half of its income derives from the former.<sup>3</sup>
10. Throughout the period 2007 to 2010, 70% of FIFA's general expenditure was devoted to the organization of the FIFA World Cup™, its other competitions and sporting events, and to the development projects such as those described below.
11. Within the framework of its Financial Assistance Programme (FAP), FIFA makes an annual grant of US\$ 250,000 to each one of its member associations, and of US\$ 2.5 million to each one of the 6 confederations (figures for the 2007/2010 period). In addition, over the same period, exceptional payments totalizing US\$ 144 million were

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<sup>3</sup> FIFA Financial Report 2010, page 16.

made, each national association receiving US\$ 550,000 and each confederation US\$ 5 million.<sup>4</sup>

12. Over the period 2007-2010, FIFA spent US\$ 1,713 million in connection with the organization of the FIFA World Cup™ and 23 other FIFA competitions,<sup>5</sup> which it has organized for the purpose of promoting the sport.<sup>6</sup> Except for the FIFA World Cup™, most of these competitions generate no or no significant profit. FIFA's budget for the period 2011-2014 allocates an increased amount of US\$ 1,860 million for the organization of all its competitions.<sup>7</sup>
13. Over the same 2007/2010 period, FIFA contributed US\$ 794 million to development projects.<sup>8</sup> These include the FAP, the *Goal* Programme, the *Win in...* projects, the Football for Hope movement, the Refereeing Assistance Programme, the Grassroots Programme, the Football Management Programme and various initiatives for the promotion of women's football, futsal and beach soccer.
14. FIFA's budget for the period 2011-2014 allocates US\$ 800 million for development projects.<sup>9</sup>
15. The FAP was launched in order to develop the sport *via* national member associations and confederations, enabling them to finance development projects and football activities, with a set proportion of the resources provided earmarked, specifically, for women's football. In total, US\$ 413 million were allocated to the associations and confederations during the period 2007-2010. FIFA's 2011-2014 budget provides for US\$ 275 million devoted to the FAP and US\$ 120 million for a new development programme.<sup>10</sup>
16. FIFA's *Goal* Programme, to which US\$ 120 million were devoted over the period 2007-2010, has allowed, since its inception, for the financing of 504 developments

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<sup>4</sup> FIFA Financial Report 2010, page 46; FIFA Activity Report 2010, pages 25-27.

<sup>5</sup> Such as: FIFA U-20 World Cup™, FIFA U-17 World Cup™, FIFA Women's World Cup™, FIFA U-20 Women's World Cup™, FIFA Beach Soccer World Cup™, Futsal.

<sup>6</sup> FIFA Financial Report 2010, page 18.

<sup>7</sup> FIFA Financial Report 2009, page 38.

<sup>8</sup> FIFA Financial Report 2010, pages 18-19.

<sup>9</sup> FIFA Financial Report 2009, page 38.

<sup>10</sup> FIFA Financial Report 2009, page 40.

projects worldwide.<sup>11</sup> This programme assists national associations in the construction of headquarters, technical centers, natural and artificial turf pitches and football schools. FIFA's 2011-2014 budget allocates a total of US\$ 120 million for the *Goal Programme*.<sup>12</sup>

17. The *Win in Africa with Africa* project, which is drawing to a close four years after it was inaugurated, had total funds of US\$ 71 million.<sup>13</sup> It has been designed to support the development of African football during South Africa's preparation for the 2010 FIFA World Cup™. FIFA's aim is that the impact of the first World Cup in Africa goes beyond the economic and sporting benefits enjoyed by all World Cup hosts.<sup>14</sup> Since 2008, FIFA has invested in other *Win in...* projects (*Win in CONCACAF with CONCACAF*, *Win in Oceania with Oceania*, *Win in Europe with Europe*, *Win in CONMEBOL with CONMEBOL* and *Win in India with India*) a total of US\$ 53 million.<sup>15</sup> FIFA has invested a total of US\$ 124 million in the *Win in...* projects over the 2007-2010 period (pitches, training, equipment, youth competitions, renovation of stadiums...).<sup>16</sup> The *Win in...* initiatives will be replaced, in the 2011-2014 budget cycle, by an Assistance Fund from which each confederation will receive annually US\$ 2.5 million for its development programmes.<sup>17</sup>
18. As part of its Football for Hope movement, to which FIFA contributed US\$ 34 million over the period 2007-2010,<sup>18</sup> FIFA supports, together with other organizations, a number of social development programmes and a wide range of activities to educate, integrate and build team spirit. In 2010, within the scope of this movement, FIFA provided financial assistance to 55 programmes in order to bring about social change.<sup>19</sup> US\$ 30 million should be devoted to the Football for Hope movement during the 2011-2014 period.<sup>20</sup>

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<sup>11</sup> FIFA Financial Report 2010, pages 18 and 46; FIFA Activity Report 2010, pages 28-29.

<sup>12</sup> FIFA Financial Report 2009, page 40.

<sup>13</sup> FIFA Financial Report 2010, page 48.

<sup>14</sup> FIFA Activity Report 2010, pages 31-32.

<sup>15</sup> FIFA Financial Report 2010, page 19; FIFA Activity Report 2010, pages 31 and 33.

<sup>16</sup> FIFA Financial Report 2010, page 19; FIFA Activity Report 2010, pages 31-33.

<sup>17</sup> FIFA Activity Report 2010, page 31.

<sup>18</sup> FIFA Financial Report 2010, page 48.

<sup>19</sup> FIFA Activity Report 2010, pages 81-83.

<sup>20</sup> FIFA Financial Report 2009, page 40.

19. FIFA has also introduced the Refereeing Assistance Programme (RAP), to which US\$ 36 million were devoted between 2008 and 2010. It comprises a wide range of courses and seminars offering training to local and regional referees and technical and fitness instructors.<sup>21</sup> During the period 2011-2014, the RAP will continue to be implemented with a budget of US\$ 43 million.<sup>22</sup>
20. Other FIFA's development activities include: various initiatives for the promotion of women's football (including the requirement to allocate 15% of FAP funding to women's football, consultancy missions, courses for coaches with at least 50% women, women's football seminars, etc.);<sup>23</sup> the development of futsal, by the organization of coaching and refereeing courses in the member associations;<sup>24</sup> the promotion of beach soccer through courses, seminars and furniture of equipments;<sup>25</sup> the Football Management Programme of FIFA (called PERFORMANCE), which is designed to help member associations to acquire the skills needed in order to manage and develop football in their respective territory;<sup>26</sup> the Grassroots Programme to promote grassroots football and ensure the long-term involvement of participants in the sport.<sup>27</sup>
21. In addition, in December 2010, FIFA has set up the 2010 FIFA World Cup Legacy Trust which supports charitable projects focusing on football promotion, education, health and humanitarian work in South Africa and to which it has contributed US\$ 100 million.<sup>28</sup>
22. Together with its subsidiary Early Warning System GmbH, FIFA takes an active role in combating the risk of match-fixing by monitoring betting activities, in order to safeguard the integrity and transparency of football.<sup>29</sup>
23. FIFA also provides aid and support to member associations in case of emergency, to restore football infrastructure and pitches damaged or destroyed by natural disasters

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<sup>21</sup> FIFA Activity Report 2010, page 38.

<sup>22</sup> FIFA Financial Report 2009, page 40.

<sup>23</sup> FIFA Activity Report 2010, pages 26 and 41.

<sup>24</sup> FIFA Activity Report 2010, page 42.

<sup>25</sup> FIFA Activity Report 2010, page 43.

<sup>26</sup> FIFA Activity Report 2010, pages 44-45.

<sup>27</sup> FIFA Activity Report 2010, page 36.

<sup>28</sup> FIFA Activity Report 2010, pages 17 and 100.

<sup>29</sup> FIFA Activity Report 2010, pages 16 and 111.

(such as devastating earthquakes and hurricanes). In 2010, it allocated a total of US\$ 6.4 million to four member associations.<sup>30</sup>

### III. GENERAL REMARKS

24. Pursuant to the Article 14 (1) AVMSD, Member States are entitled to draw up a list of “events of major importance for society” in order to ensure that such events will not be broadcast, on an exclusive basis, in such a way as to deprive a substantial proportion of the public in the State concerned of the possibility of following them on free-to-air television. Events of “major importance for society” are those “outstanding events which are of interest to the general public in the Union or in a given Member State or in an important component of a given Member State” (recital 52, AVMSD).<sup>31</sup> The measures taken should be “in accordance with Union law” (Article 14 (1), AVMSD)<sup>32</sup> and, as is emphasised in recital 49 AVMSD,<sup>33</sup> should be “compatible” with European Union law. In recital 16 of Directive 97/36, it was emphasised that “free and fair competition between firms in the same industry” should be preserved.
25. Listing, as the EU Commission has acknowledged, is a solution of an “exceptional nature” (CC TVSF (97) 9/3). On account of the multifarious negative consequences entailed by listing, the events to which the national measures apply “must genuinely be of major importance for society in all or part of the relevant Member State” (CC TVSF (97) 9/3, emphasis added).
26. Measures thus adopted and notified to the EU Commission are subject to “a close scrutiny” (CC TVSF (97) 9/3) and to “a comprehensive assessment of compatibility with Community law” (CC TVSF (97) 9/3), i.e. “with provisions of the Broadcasting Directive (as amended)...., primary Community law and, if applicable, other pieces of secondary Community law” (CC TVSF (97) 9/3) and with the “Member States’ obligations, in particular under Articles 5, 6, 59 and 90 of the EC Treaty in the light of the case-law of the Court of Justice of the European Communities” (CC TVSF (97) 9/3)

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<sup>30</sup> Haiti: US\$ 3 million; Chile: US\$ 1.2 million; Pakistan US\$ 2 million; Poland US\$ 0.2 million; FIFA Activity Report 2010, page 88.

<sup>31</sup> Recital 21, Directive 97/36.

<sup>32</sup> Directive 89/552, Article 3a (1), as amended by Directive 97/36.

<sup>33</sup> Recital 18, Directive 97/36.



(now, respectively, Article 4 (3) TEU and Articles 18, 56 and 106 TFEU). The General Court has emphasised, in this respect, the “thoroughness” of the verification required and the imperative of a “detailed assessment” of compatibility with European Union law,<sup>34</sup> and held that “the provisions of the directive and the rules on the freedom to provide services and competition law” must be complied with.<sup>35</sup> These are the standards which should apply before an events’ list could be drawn up.

27. The Consultation paper is flawed in several respects. It does not allow the consulted bodies to adequately formulate their comments. In failing to substantiate the alleged need for the measures envisaged and to provide any explanation as to the basis on which the events listed have been selected, and the criteria upon which they have been retained, the Consultation paper does not appear to comply with the requirements laid down in Section 35 of the Public Administration Act 1967. This provision imposes an obligation on administrative authorities, prior to the adoption of their decisions, to provide the consulted bodies with sufficient information in order to allow them to properly comment on the decision envisaged, in the present case, on the need to introduce the proposed amendments to the Broadcasting Regulations 1997 and to draw up a list of major events. Moreover, in such a case, it cannot be said that the list of events included in the Consultation paper has been adopted in a “clear and transparent manner”.
28. Although it is acknowledged (at page 6) that “comprehensive justifications must be provided for all the events on the list”, none of the relevant matters which should be addressed before an events’ list may be adopted, such as the structure of the Norwegian television market, the number of Norwegian households taking pay-TV services other than the basic tier, the effect of listing on rights’ holders and on the sports concerned, on competition on the market for the acquisition of broadcasting rights, on the freedom to provide service, on technological development and innovation and on consumers’ welfare, is discussed therein.
29. The Consultation paper (at page 6) refers to the fact that, when selecting events for inclusion on the list, the State concerned should “ensure that regulatory measures have minimal competitive effects”. Yet, there is no discussion, in the Consultation paper, of

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<sup>34</sup> Case T-33/01, *Infront v. Commission*, [2005] ECR II-5897, § 97.

<sup>35</sup> *Ibid.*

the effects on competition of listing and of the granting of special rights (Article 106 TFEU) to qualified broadcasters. Since, unless they decline to do so, only qualified broadcasters will be allowed to broadcast the listed events on an exclusive basis, the proposed amendments to the Broadcasting Regulations reserve for the qualified broadcasters a more favourable treatment than to their competitors which, under EU law, is tantamount to the granting of “special rights” within the meaning of Article 106 TFEU.<sup>36</sup>

30. The selection of the events to be listed is nowhere explained. Although the criteria which, according to the EU Commission, should be met for an event to be deemed of “major importance for society” are reproduced (Consultation paper, page 5), there is no indication which of these criteria are considered by the Ministry of Culture to be fulfilled by the events retained. The reminder, in the Consultation paper, that “viewing figures are one of the factors to which the EU Commission has given weight when deciding whether an event is important enough for a Member State to have it approved for listing” (page 5), is followed by a sweeping and laconic statement (page 7) according to which: “the proposed list is based on current viewing figures”, a statement which is neither supported by evidence nor substantiated by any data.
31. The Consultation paper contains (at page 3) an incomplete and partial indication. Although it is true that 8 EU Member States have drawn up lists of major events and that “these lists primarily feature major sports events such as the Olympic Games and the FIFA World Cup and UEFA European Cup”, it is nowhere mentioned that, as far as the FIFA World Cup™ is concerned, no State, except the United Kingdom and Belgium, has included the entire FIFA World Cup™ competition in its list. Only the “prime” matches have been included in the lists of 6 of these countries (Italy has listed only the final match and the matches played by the Italian team). Austria, Germany, France, Finland and Ireland have included the opening match and Finland has also added the matches of the quarter-final. Moreover, several plausible hypotheses and scenarios relating to the procedure for determining, in case of disagreement between the parties, the price at which non-qualified broadcasters might be legally compelled to sell their exclusive rights to qualified broadcasters, are nowhere discussed in the Consultation paper.

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<sup>36</sup> Opinion of Advocate General Kokott, case C-49/07, *MOTOE*, [2008] ECR I-4863, at § 78.

#### **IV. THERE IS NO NEED FOR AN EVENTS' LIST IN NORWAY**

32. It is FIFA's view that the governing bodies of sport are best placed to make the balanced judgment between broadcast exposure of their sports and the need to develop their sports and their grassroots.
33. Listing distorts competition on the market for the acquisition of broadcasting sports rights and has implications for investment in sport and competition between broadcasters and broadcasting technologies. It should, therefore, take place only sparingly. Market forces should be allowed to operate freely with resulting benefits to the rights holders and to the development of broadcasting in Norway. Qualified broadcasters should not be shielded from competition.
34. Listing involves interference with sports organisations' property rights and, in limiting the categories of broadcasters to whom they may sell exclusive rights, these organisations will be unable to maximise the value of their rights and will suffer financially. This will be to the detriment of the sport itself and to consumer welfare. Moreover, the original rights' holders to the listed events are placed in a disadvantageous position as compared to other rights' holders.
35. In its 2011 communication "Developing the European Dimension in Sport", the EU Commission has remarked, that "exploitation of intellectual property rights in the area of sports, such as licensing of retransmission of sports events or merchandising, represent important sources of income for professional sports. Revenue derived from these sources is often redistributed to lower levels of the sports chain".<sup>37</sup> The EU Commission there emphasised that "subject to full compliance with EU competition law and Internal Market rules, the effective protection of these sources of revenue is important in guaranteeing independent financing of sport activities in Europe. The licensing of sport media rights should respond to different market demands and cultural preferences while ensuring that Internal Market and competition law is respected".<sup>38</sup> This echoes previous statements by the EU Commission, such as the one in its White paper on sport presented on 11 July 2007, where it remarked that "Issues concerning the

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<sup>37</sup> Communication from the European Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions, COM(2011) 12 final, 18 January 2011, page 8, paragraph 3.2.

<sup>38</sup> Ibid.

relationship between the sport sector and sport media (television in particular) have become crucial as television rights are the primary source of income for professional sport in Europe. Conversely, sport media rights are a decisive source of content for many media operators”.<sup>39</sup> Similarly, in the Conclusions of the European Council held in Nice on 7-10 December 2000, it is acknowledged that “the sale of television broadcasting rights is one of the greatest sources of income today for certain sports”.<sup>40</sup>

36. A competitive market for sport broadcasting rights greatly increases their value and results in additional funds being brought back to the development of the sport concerned. Reduced revenue will, inevitably, impact on the amounts which may be dedicated to the development of the sport and to the improvement of the broadcasting’s quality.<sup>41</sup>
  
37. The development of new methods of television delivery which benefit consumers who have an interest in a diverse, innovative and improved sports coverage, is the product of competition. Moreover, exclusive sports contents allow penetration by new operators, including from other States, into the Norwegian television market. Sport has been a driving force behind the emergence of new media and interactive television services. As a former EU competition commissioner has remarked: “TV rights for sport events are highly important for TV channels. Sport programmes are the driving force not only for the development of pay-TV, where they serve as a very good means of attracting

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<sup>39</sup> COM(2007) 391 final, page 17, paragraph 4.8.

<sup>40</sup> European Council, Nice 7-10 December 2000, Conclusions of the presidency, Annex IV – Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies, paragraph 15.

<sup>41</sup> As regards the FIFA World Cup™, whose basic and additional feeds are produced and delivered to the TV rights holders by the host broadcaster retained by FIFA, between 29 and 32 cameras were deployed at each one of the matches of the 2010 FIFA World Cup™. All the 64 matches of the 2010 FIFA World Cup™ were aired in HD, increasing the quality of the pictures, and a live international feed in stereoscopic 3D HDTV was produced (the 2010 FIFA World Cup™ was the biggest-ever live sports production in 3D). In addition to the 90 minutes of live match action, 60 minutes of “colour material” from the stadium and 30 minutes of post-match coverage were provided to the broadcasters. The number of film crews deployed increased from 14 in 2006 to 32 in 2010 (FIFA Activity Report 2010, pages 104-107). The basic feed is the live and continuous international broadcast quality moving image video signal of each match and ceremony incorporating slow motion replays, titles and any graphics selected by FIFA, with integrated international ambient sound and audio on a separate track, which is produced by the host broadcaster. The additional feeds are all digital moving image video signals produced by the host broadcaster other than the basic feed.

subscribers, but also for free-to-air TV broadcasters, because they can help to increase advertising revenues”<sup>42</sup>.

38. The supposed need to introduce a list of events of “major importance for society” arises, according to the Consultation paper (page 2) from the assertion that: “Many important events are in recent years sold to free television services. This has taken place because those holding the rights to important events often have an interest in securing a broadest possible coverage for such events. In the last few years the prices for television rights to a number of sports-events have risen. A possible explanation may be the increase in the number of pay-tv following the migration to digital television. Competition between broadcasters has increased and there is a higher risk that free television will lose to pay-tv in the contest for rights to televise productions of important events. Free television services have limited chances of success in a bidding-war. There is thus a risk that transmissions of certain major sports-events will be offered exclusively by pay-tv services. The Ministry of Culture therefore, on this basis, finds that it is appropriate to propose a list of important events in accordance with Article 3a. The objective of the list is to ensure that important events may continue to be televised also in the future on free television that covers a significant proportion of the population”.
39. In other words, the reason advanced in the Consultation paper for the alleged need to draw up a list of events of major importance for society is that the price of broadcasting rights of these events might, sometime in the future, reach a level which the qualified broadcasters will not be able to afford. This will entail, in turn, the “risk that transmissions of certain major sports-events will be offered exclusively by pay-tv services” (page 2), a circumstance which, according to the Consultation paper, will deprive a substantial proportion of the Norwegian public of the possibility of following such events on free television.
40. The proposed list is, therefore, a measure designed, essentially, to impact on the price at which broadcasting rights could be sold. Although it is contended in the Consultation paper, page 11, that “the objective of the regulatory measure is not to reduce prices for the rights”, the Ministry of Culture is bound to concede, on the same page, that “it may not be ruled out that the regulatory measure may to some degree affect market prices...”

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<sup>42</sup> M. Monti, Sport and Competition, speech given at a Commission-organised conference on sports, on 17 April 2000, Commission SPEECH/00/152.

41. The drawing up of a list of major events for society is regarded, by the Ministry of Culture, as a sort of “an anticipatory, preventive measure” in a hypothetical situation which purports to shield qualified broadcasters from competition. It rests on the assumption that, unless a list is drawn up, qualified broadcasters would be unable to successfully compete with non-qualified broadcasters for the acquisition of broadcasting rights to the listed events and on the further assumption that, as a result, a significant proportion of the Norwegian population would be deprived of the possibility of watching the broadcasting of “events of major importance” for Norwegian society.
42. These are unsubstantiated non-demonstrated assertions. No explanation is given as to the circumstances which would warrant holding the designated events to be of “major importance” for Norway’s society. Furthermore, there is no mention in the Consultation paper of either the price at which broadcasting rights to the listed events have been sold, or the level it might reach in the future or, indeed, why the latter would be prohibitive so as to exclude qualified broadcasters from acquiring them directly from the original rights’ holders.
43. It should be recalled that proposals in 2006 and in 2009 for a television events’ list in Norway have been shelved. No reason is given in the Consultation paper for reintroducing in 2011 an events’ list, the need for which was discarded as recently as 2009.
44. It may also be recalled that only 8 States member of the EU have adopted events’ lists, that no EFTA Member State and no Scandinavian country has drawn up such a list.<sup>43</sup> When the Ministry of Culture wishes to adopt a markedly different position, it should fully explain the reasons for it.
45. The proposed amendments to the Broadcasting Regulations 1997 would reduce competition on the market for the acquisition of broadcasting rights for the listed events. They provide, in substance, that only qualified broadcasters will, effectively, be entitled to broadcast, on an exclusive basis, the listed events. It is specified (at page 6) that listing does not require qualified broadcasters to acquire rights to, or broadcast the listed

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<sup>43</sup> Denmark notified an events list to the EU Commission (OJEC C 14 of 19 January 1999, p. 6) which included, as far as the FIFA World Cup™ is concerned, only the “prime” matches. The Danish measures were repealed and the list has been later withdrawn (OJEC C 47 of 19 February 2002, p. 7).

events. The Consultation paper does not address the question as to whether, having acquired exclusive rights from the original rights' holder, the qualified broadcasters who decided not to use them, may offer them to non-qualified broadcasters and, if they were entitled to do so, whether they can sell their rights at a price higher than the one originally paid by them.

46. The Consultation paper further provides that non-qualified broadcasters, who acquired exclusive rights to any of the listed events, may be compelled to sell all or part of these rights to qualified broadcasters. However, it does not say whether all the rights acquired by non-qualified broadcasters should be sold to one qualified broadcaster or, in case several qualified broadcasters expressed an interest, whether, and how, these rights could be split between them. The proposed amendments to the Broadcasting Regulations 1997 thus endow qualified broadcasters with a right to obtain broadcasting rights for listed events acquired by non-qualified broadcasters. This constitutes compulsory licensing and discrimination of non-qualified broadcasters, since they have no reciprocal right to obtain a sub-licence from qualified broadcasters who acquired exclusive broadcasting rights for any of the listed events even when the latter do not wish to broadcast all or any of the matches.
47. In these circumstances, if an events' list were to be drawn up and the measures envisaged in the Consultation paper implemented, they may lead to a perverse result: Qualified broadcasters, who are not obliged to bid for rights for any of the listed events, might refrain from doing so, and non-qualified broadcasters, knowing that they might be constrained to sell their rights to qualified broadcasters, at a price which they will not be able to freely determine, will stay away from the bidding process. In such circumstances, a designated event which, by the very existence of the list, is deemed to be of major importance for Norwegian society, will not be broadcast at all in Norway.
48. Another situation which will defeat the very purpose of listing would arise when qualified broadcasters, having acquired exclusive rights, wished to sell all or part of them to non-qualified broadcasters (as was the case in 2010 when NRK sold exclusive broadcasting rights of matches of the FIFA World Cup™ to Viasat who broadcast 16 matches on Viasat Fotball, which is a pay-TV channel, i.e. a non-qualified broadcaster). If the proposed amendments to the Broadcasting Regulations 1997 were to be carried

out, qualified broadcasters will be unable to do that and, unwilling to broadcast the event themselves (or to sell their rights to other qualified broadcasters), no broadcast of the event (or part of the event) in question will take place in Norway. The Consultation paper does not envisage this situation and does not contemplate the introduction of an obligation on the qualified broadcasters to sell, or at least offer the rights which they do not intend to exploit, to other qualified broadcasters or, in case none of them is willing to acquire them, to other non-qualified broadcasters.

49. Furthermore, television companies with nationwide coverage and who offer, both, free and pay-TV services will lose the option they currently enjoy, i.e. to broadcast some matches on their free channels and some other on their pay-TV channels. This lack of flexibility might lead to some matches not being broadcast at all in Norway.
50. Moreover, the premise upon which the scheme devised in the Consultation paper rests is, both, unsound and unrealistic. Non-qualified broadcasters will have neither interest nor incentive to acquire exclusive broadcasting rights for any of the listed events when they are exposed to the risk, deriving from contingent circumstances on which they have not control, of not being able to exploit them on an exclusive basis or at all.
51. The likelihood of the eventuality that, in case the proposed amendments to the Broadcasting Regulations 1997 were to be implemented, events deemed to be of “major importance for society” may not be broadcast at all in Norway, is compounded by the procedure set-up for determining the price at which non-qualified broadcasters will have to sell their rights to qualified broadcasters.
52. In case of disagreement between the parties, the matter could be brought before the Norwegian Media Authority (NMA) who shall be empowered to make a recommendation as to what should be regarded as “a reasonable market-price” (Consultation paper, page 9). It is not clear that the NMA is an appropriate body for making such a recommendation. The parties are under no obligation to accept the NMA’s recommendation and the matter could then be brought before the courts (Consultation paper, page 9).
53. The procedure and the time scale for the determination of the price at which non-qualified broadcasters will, in some circumstances, have to sell their exclusive rights to



qualified broadcasters are inadequate and impracticable. On the assumption that exclusive broadcasting rights to the listed events were acquired by non-qualified broadcasters more than 10 months before the event is due to take place, the Consultation paper entitles the qualified broadcasters to apply to these non-qualified broadcasters, at the latest 10 months before the event is due to commence, for acquiring all or some of the said rights. Only if they fail to do so, will the non-qualified broadcasters be allowed to exercise their exclusive rights.

54. Having received a request from a qualified broadcaster, at the latest 10 months before the event is due to commence, the non-qualified broadcaster must, within one month (i.e. 9 months prior to the event) either make a proposal to the qualified broadcaster or show how it will ensure that the event concerned will be otherwise broadcast on free television allowing a substantial proportion of the population to view it. The qualified broadcaster, having received an offer, must notify the non-qualified broadcaster within one month (i.e. 8 months before the event is due to commence) whether or not it is prepared to accept it. In case of disagreement on the price, each party may bring the matter before the NMA. The NMA's price recommendation should be made 6 months before the start of the event, at the latest. Each party may then bring the matter before the courts. It is not made clear in the Consultation paper whether the matter could be brought directly before the courts without first referring it to the NMA, although the use of the term "may" indicates that such a course of action would be possible.
55. This procedure, on which the parties consulted are specifically invited to give their opinion (Consultation paper, page 9), is unworkable and wholly inappropriate. In case any party declines to accept the NMA's recommendation and the disagreement between the parties as to the rights' price persists, the judicial proceedings, eventually before three successive instances, will not be concluded prior to the commencement of the event. Even if they did, no sufficient time will be left for the broadcasters concerned to make the necessary arrangements, preparations, including staffing and investment, for the broadcasting of the event.
56. Moreover, the procedure creates uncertainty for all parties concerned, and the price ultimately determined by the courts is, for both parties, unpredictable. It may also produce an absurd result, gravely detrimental to the non-qualified broadcasters, in that

the courts may impose a price which is lower than the one paid by the latter to the original rights holders. For this reason, too, non-qualified broadcasters will be dissuaded from taking part in the bidding process for the acquisition of the rights from the original rights' holders.

57. Furthermore, although this hypothesis is not envisaged by the Consultation paper, it would appear that, in case the price determined by the courts is considered by the qualified broadcaster to be unacceptable, it might simply withdraw the request for the acquisition of the rights from the non-qualified broadcaster, since he is under no obligation to purchase the rights at all. Such an option is not available to the non-qualified broadcaster who will be legally bound to sell its rights to the qualified broadcaster at whatever price determined by the courts, however disadvantageous it might be to it. This creates further discrimination between the qualified and the non-qualified broadcasters.
58. All in all, the introduction of an events' list and the procedure for determining the price at which non-qualified broadcasters will be obliged to sell their rights to qualified broadcasters is liable to create great uncertainty which will be unacceptable for, both, qualified and non-qualified broadcasters, resulting in the event not being broadcast at all in Norway.
59. In case exclusive rights were acquired by non-qualified broadcasters less than 10 months prior to the date on which the event is scheduled to start, qualified broadcasters may request the granting of a licence from these non-qualified broadcasters, at any time "up to the time at which the event commences" (Consultation paper, page 9). No procedure is set up in the Consultation paper for the settlement of disputes concerning the price at which the qualified broadcasters will be entitled to acquire the rights.

## **V. THE MATCHES OF THE FIFA WORLD CUP™ DO NOT SATISFY THE REQUIRED CRITERIA FOR LISTING**

60. It is doubtful that the FIFA World Cup™ can be regarded as an "outstanding event of major importance" for Norway's society within the meaning of the AVMSD. However, since FIFA invariably requires of all its licensees to broadcast nationwide live the

“prime” matches of the FIFA World Cup™ on free-to-air television, the observations which follow concern the “non-prime” matches only.

61. As has been remarked previously, the Consultation paper does not explain the reasons for which the FIFA World Cup™ may be regarded, in Norway, as an “outstanding event”, and fails to indicate which of the criteria retained by the EU Commission for an event to be held of “major importance for society”, are considered by the Ministry of Culture to be met by the FIFA World Cup™, in particular, by the “non-prime” matches of that competition. Yet, it acknowledges (at page 6) that “on notification to the EFTA Surveillance Authority, comprehensive justifications must be provided for all the events on the list...” (emphasis added).
62. Moreover, the absence in the Consultation paper of any reason on account of which the FIFA World Cup™ should be listed, precludes any finding that, in this regard, the list has been drawn “in a clear and transparent manner”, as required by Article 14 (1) AVMSD.
63. It is FIFA’s view that before designating the “non-prime” matches of the FIFA World Cup™ as events of “major importance” for Norway’s society, a close scrutiny, a detailed and thorough assessment of such designation’s compatibility with EU law should be carried-out by the Norwegian authorities. This is the intensity which the EFTA Surveillance Authority should deploy and the standards against which it would carry out the verification of the compatibility with EU law of the measures notified to it. It is, therefore, incumbent on the Norwegian authorities to assess with the same intensity and to the same standards the measures and the inclusion of the entire FIFA World Cup™ in the list proposed in the Consultation paper.
64. It may be worthwhile noting that, although it was not followed by the UK authorities, the unanimous recommendation of the independent Advisory Group dated 2 March 1998, was that “only the final, semi-finals and matches involving the Home Nations possess sufficient national resonance to justify full protection of live coverage”. And, as the Advisory Group remarked: “the fact that one has to pay for access to such a service should not be more offensive to the devotee of the sport than the fact that an admission charge would be made for entry to the event itself”.

65. As previously indicated, in its decisional practice, the EU Commission has retained 4 “reliable indicators” which are used as criteria for determining whether or not an “outstanding event” may be regarded as of “major importance” for society. At least two of these criteria should be met to justify listing: The event: i) has a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; ii) is of a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; iii) has traditionally been broadcast on free television and has commanded large television audiences; and iv) the national team participates in the event in the context of a competition or tournament of international importance.
66. No indication is given in the Consultation paper as regards the criteria which would warrant, according to the Ministry of Culture, the inclusion of the FIFA World Cup™ in the contemplated events’ list. It may not be contended that the FIFA World Cup™ is of a generally recognised, distinct cultural importance for the Norwegian public, in particular as a catalyst of culture society. Norway has hitherto participated in 3 FIFA World Cups™ (1938, 1994 & 1998) and the FIFA World Cup™ neither pertains to, nor enhances Norway’s cultural identity.
67. The EU Commission has accepted<sup>44</sup> that the events included in the German list (as regards the FIFA World Cup™ these are the “prime” matches and the opening match), “have a generally recognised, distinct cultural importance for the German population, given their important contribution to understanding between peoples, as well as the importance of sport for the German society as a whole and for the national pride, as they provide the occasion for the top German sportsmen to succeed in these most important international competitions”. Identical considerations appear in the decision relating to the Italian list<sup>45</sup> which includes only the final match of the FIFA World Cup™ and the matches played by the Italian team and not the semi-finals.<sup>46</sup>

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<sup>44</sup> Decision of 25 June 2007, OJEU L 180 of 10 July 2007, p. 8, at point 8.

<sup>45</sup> Decision of 25 June 2007, OJEU L 180 of 10 July 2007, p. 5, at point 6.

<sup>46</sup> The criterion relating to the cultural importance of the event: Ireland seems to have relied on this criterion as regards the matches of the national team. In its decision, the Commission has noted that “Ireland’s games in the World Cup and in the European Championship have a generally recognised, distinct cultural importance as a catalyst of Irish cultural identity. Those games act as a focal point for society at large, helping to create a sense of national identity and pride in being Irish.” (Decision of 25 June 2007, OJEU L 180 of 10 July 2007, p. 17, at point 6).

68. The above considerations, retained by the EU Commission as regards the German and the Italian lists, cannot, in FIFA's view, be adopted in the case of Norway.
69. The criterion relating to the national team's involvement can only be used if the FIFA World Cup™ could be said to be an event of "international importance" in Norway. If such were the case, and since the national team's matches are, in all circumstances, part of the category of "prime" matches of the FIFA World Cup™, this criterion would be regarded as automatically fulfilled. Indeed, each one of the four matches played by the Norwegian's team in the 1998 FIFA World Cup™ was watched by over 1 million (albeit by less than 1.5 million) viewers: 1,237,000 for the match Norway/Italy, on 27 June 1998; 1,394,000 watched the match between Norway and Scotland on 16 June 1998; 1,466,000 viewed the match between Norway and Morocco on 10 June 1998; and 1,491,000 followed the broadcasting of the match between Norway and Brazil on 23 June 1998).<sup>47</sup>
70. As regards the first limb of the criterion relating to the event having been traditionally broadcast on free television and having commanded large television audiences, it should be noted that out of the 61 "non-prime" matches played within the framework of the 2010 FIFA World Cup™, 20 such matches were broadcast live in Norway only by non-qualified broadcasters (16 on Viasat Fotball, 4 on TV2 Sport). It cannot, therefore, be contended that the "non-prime" matches have traditionally been broadcast on free television and that the first limb of this criterion is satisfied.
71. As to the second limb of this criterion, i.e. the size of the Norwegian audiences which the free-to-air broadcastings of the FIFA World Cup™ have attracted, FIFA has commissioned from TNS Gallup, Oslo, surveys and analysis of the viewing figures of the 2006 and 2010 FIFA World Cups™<sup>48</sup> in Norway. These surveys, and the viewing

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<sup>47</sup> Figures provided by Sponsorship Research International, London, Report prepared for FIFA in June 1999 (the data sources were EBU/Eurodata TV/Mediametrie). This Report contains viewing figures for all the 7 "prime" matches and for 54 out of 57 "non-prime" matches of the 1998 FIFA World Cup™ (live broadcasting on free-to-air television for 53 "non-prime" matches and deferred broadcasting on free-to-air television for 1 "non-prime" match). No viewing data is available for 3 "non-prime" matches which, it would appear, were not broadcast.

<sup>48</sup> As regards the 2006 FIFA World Cup™, TNS Gallup's surveys and analysis are based on viewing data of all the 3 "prime" matches and of all the 61 "non-prime" matches of the 2006 FIFA World Cup™ (live broadcasting on free-to-air television). As regards the 2010 FIFA World Cup™, TNS Gallup's surveys and analysis are based on viewing data of all the 3 "prime" matches and of 45 out of the 61 "non-prime" matches (broadcast on free-to-air television): data of live broadcasting for 41 "non-prime" matches and data of deferred broadcasting for 4 "non-prime" matches (these 4 matches were broadcasted live on TV 2 Sport (pay-TV) for which no viewing

figures of the 1998 FIFA World Cup™,<sup>49</sup> show that the FIFA World Cup™, especially the “non-prime” matches, have never attracted large television audiences. Although the “prime” matches of the FIFA World Cup™ may be regarded as having attracted relatively large television audiences (on average: in 1998: 1,295,000 viewers out of a viewing public of approximately 4,350,000;<sup>50</sup> in 2006: 1,066,000 viewers out of a viewing public of approximately 4,334,000;<sup>51</sup> in 2010: 1,037,000 viewers out of a viewing public of approximately 4,510,000<sup>52</sup>), this cannot be said about the “non-prime” matches of the FIFA World Cup™. These “non-prime” matches were viewed, on average, in 1998 by 495,000 viewers; in 2006 by 425,000 viewers; and in 2010 by 387,000 viewers). This second limb of the criterion may, therefore, eventually be relied upon only as regards the “prime” matches, and FIFA has no reservation about the fact that, in case an events’ list was at all deemed necessary, the “prime” matches of the FIFA World Cup™ be included therein, regardless of the size of the actual viewing figures.

72. Whether the criterion relating to the “special general resonance” in Norway is fulfilled is highly questionable, especially in the case of “non-prime” matches. The viewing figures of the 2006 and the 2010 FIFA World Cups™ provided in the TNS Gallup (Oslo) report indicate that “non-prime” matches of the FIFA World Cup™ command only a small number of “non-fans” viewers<sup>53</sup> (on average, approximately 55,000 in 2006 and 56,000 in 2010); and that the “prime” matches attracted somewhat higher but not large number of “non-fans” (on average, approximately 231,000 viewers in 2006 and 258,000 viewers in 2010). In this context and in the light of the numbers of “non-fans” who watched the matches of the FIFA World Cup™, it cannot be contended that either the “prime” or the “non-prime” matches of the FIFA World Cup™ are

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figures are available); 16 “non-prime” matches were broadcasted live on Viasat Fotball (pay-TV) for which no viewing figures are available.

<sup>49</sup> Report prepared for FIFA by Sponsorship Research International, London, June 1999.

<sup>50</sup> Viewing public: male and female above 3 years of age. In the 1998 FIFA World Cup™, 1,271,000 watched the final match (Brazil/France), 1,089,000 watched the first semi-final (Brazil/Holland) and 1,119,000 watched the second semi-final (France/Croatia).

<sup>51</sup> Viewing public: male and female above 4 years of age.

<sup>52</sup> Viewing public: male and female above 4 years of age.

<sup>53</sup> In order to define football “fans” and “non-fans”, TNS Gallup looked at the broadcasting of all football programs in Norway in 2006 and 2010 (including the Norwegian Premier League, International games, UEFA Champions League and more) which were unrelated to the FIFA World Cup™. For each one of these two years, they defined the 50% cumulative reach point based on watching 30 consecutive minutes football programs unrelated to the FIFA World Cup™. For both 2006 and 2010, the 50% cumulative reach point was 4 programs. For both, 2006 and 2010, “non-fans” were defined as those who watched less than 4 programs and “fans” were those who watched 4 programs or more.

particularly popular with the general public and that they to have “a special general resonance” within Norway’s general population. However, as indicated previously, FIFA will have no objection, the low viewing figures notwithstanding, if the “prime” matches of the FIFA World Cup™ were to be included in the events’ list, if the adoption of such a list were deemed necessary.<sup>54</sup> On account of the viewing figures, it may not be contended that large numbers of “non-fans” watched the “non-prime” matches of the FIFA World Cup™ and, consequently, that these matches have “a special general resonance” within Norway or that they are of significance to other than “those who ordinarily follow” football.

73. A breakdown according to the viewers’ gender adds an additional element which corroborates the finding that the FIFA World Cup™ (especially the “non-prime” matches) has no “general resonance” in Norway.
74. On average 279,000 men watched the “non-prime” matches of the 2006 FIFA World Cup™. This represents 13% of the Norwegian male viewing population. On average 146,000 women watched the “non-prime” matches of the 2006 FIFA World Cup™. This represents 6.8% of the Norwegian female viewing population and 52% of the average number of men who watched “non-prime” matches. As regards the 2010 FIFA World Cup™ the “non-prime” matches were viewed, on average, by 259,000 men. This represents 11.5% of the total male viewing population. On average, 129,000 women watched the “non-prime” matches. This represents 5.8% of the total female viewing population and 50% of the average male viewers of “non-prime” matches. These circumstances also establish the fact that the “non-prime” matches cannot be regarded of being of interest to the Norwegian general public.
75. FIFA will recall that, as far as its own competition is concerned, only the “prime matches” of the FIFA World Cup™ were retained in the Norwegian list of major events drawn-up in, respectively, 2006 and 2009.

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<sup>54</sup> FIFA has no breakdown of the viewing figures “fans”/“non-fans” for the 1998 FIFA World Cup™. However, since the average number of viewers (“fans” and “non-fans”) of the “non-prime” matches of the 1998 FIFA World Cup™ is approximately 495,000, and that it can be assumed that the ratio between “fans” and “non-fans” viewing in 1998 is similar to those in 2006 and 2010 (approximately 19% “non-fans”, 81% “fans”), it may be thought that approximately 94,050 “non-fans” watched, on average, the “non-prime” matches of the 1998 FIFA World Cup™.

76. As stated previously, even if the final, the semi-finals and the matches of the Norwegian team did not satisfy the required criteria, FIFA will not object to their inclusion in the list of major events, if such a list were to be adopted. Whatever the circumstances, FIFA will secure, as it has always done, the live nationwide broadcast of these matches, and many more, on free-to-air television.
77. As has been previously recalled, 8 States member of the EU (mentioned at page 3 of the Consultation paper) have included matches of the FIFA World Cup™ in their respective list. 6 of these States (Austria, Finland, France, Germany, Ireland and Italy) have listed only “prime-matches” (i.e. the final, the two semi-finals and the matches of the national team), Austria, Finland, France, Germany and Ireland having added the opening match, Finland included the quarter-finals also, and Italy listed only the final match and the matches of the Italian national team. In the Danish list, which was subsequently withdrawn, the prevailing pattern was followed and only the “prime” matches were designated as events of major importance for society. Only the United Kingdom and Belgium have listed the entire FIFA World Cup™ competition.
78. It cannot be concealed that the judgments of the EU General Court in Case T-68/08<sup>55</sup> and T-385/07<sup>56</sup> came as a disappointment to FIFA. These judgments are, at present, subject to appeal before the EU Court of Justice.<sup>57</sup>
79. In this regard, FIFA wishes to remark that the indication, at page 5 of the Consultation paper that, amongst others, the FIFA World Cup™ is mentioned in the preamble to the AVMSD has no bearing on whether the FIFA World Cup™, its “prime” and/or “non-prime” matches could be lawfully included in the proposed list.
80. This has been made clear by the General Court who noted that Article 3a of Directive 89/552 (now Article 14, AVMSD), envisaged by recital 18 in the preamble to Directive 97/36 (now recital 49, AVMSD), “does not refer to specific events which are liable to be included in national lists”.<sup>58</sup> The Court has further stated: “recital 18 in the preamble

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<sup>55</sup> Case T-68/08, *FIFA v. Commission*, judgment of 17 February 2011, not yet reported in ECR.

<sup>56</sup> Case T-385/07, *FIFA v. Commission*, judgment of 17 February 2011, not yet reported in ECR.

<sup>57</sup> Case C-204/11 P & Case C-205/11 P. Since the two judgments of the General Court are drafted in similar terms, references will be made here only to the judgment in Case T-68/08, relating to the EU Commission’s approval of the UK’s list.

<sup>58</sup> Case T-68/08, § 55.



to Directive 97/36 cannot be construed as meaning that the inclusion of the World Cup in a national list is automatically compatible with Community law. *A fortiori*, that recital cannot be understood as indicating that the World Cup may, in any event, be validly included in its entirety in such a list, irrespective of the interest in World Cup matches in the Member State concerned".<sup>59</sup> And the General Court emphasised that "neither recital 18 in the preamble to Directive 97/36 nor Article 3a of Directive 89/552 addresses the question of whether the World Cup in its entirety may legitimately be included in a list of events of major importance for society irrespective of the interest in the matches, particularly 'non-prime' matches, in the Member State concerned".<sup>60</sup>

81. In view of these statements, it is FIFA's submission that there is no evidence to suggest, and none has been given in the Consultation paper, that there is, in Norway, a sufficient interest in the "non-prime" matches of the FIFA World Cup™ which warrants their inclusion on the proposed events' list.
82. Paragraph 71 of the General Court's judgment<sup>61</sup> implies that, where the relevant statistics show that only a negligible number of viewers watch the "non-prime" matches of the FIFA World Cup™, detailed reasons for including them on the list should be supplied by the State concerned.
83. The General Court held, in substance, that the FIFA World Cup™ could reasonably be regarded by the United Kingdom as a "single event". This holding has been accompanied by the rider that such a finding "may be called into question on the basis of specific factors showing that 'non-prime' matches are not of such importance for the society of that Member State".<sup>62</sup>
84. It is worth noting that, in its judgment,<sup>63</sup> the General Court looked into the actual viewing figures of the matches of the FIFA World Cup™ in the UK.
85. In its appeal to the Court of Justice, FIFA contends that the General Court erred in reversing the burden of proof. Since listing entails distortion of competition, restrictions

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<sup>59</sup> Ibid., § 56, emphasis added.

<sup>60</sup> Ibid., § 114, emphasis added.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., § 113, emphasis added.

<sup>63</sup> Ibid., at § 120 & §§ 122-130.

on the freedom to provide services and interference with the rights holders' property rights, it is for the State which wishes to list the "non-prime" matches of the FIFA World Cup™ to show that they are of "major importance for society".

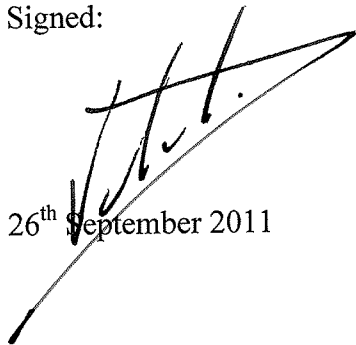
86. Notwithstanding, it is FIFA's submission that the viewing figures of the "non-prime" matches of the FIFA World Cup™ in Norway constitute "specific factors" which establish that these matches may not be regarded as of major importance for Norway's society, since their broadcast has never commanded large audiences and has never elicited a special general resonance within Norway. Moreover, the "non-prime" matches of the FIFA World Cup™ can be held neither to have a recognised distinct cultural importance for Norway's population, nor to be a catalyst of Norway's cultural identity. As regards the matches played by the Norwegian team within the framework of the FIFA World Cup™, these are, by definition, "prime" matches and, therefore, do not call for a discussion.
87. FIFA wishes to recall that, with the aim of achieving a balanced allocation of the 64 matches amongst potential broadcasters in each country and of ensuring maximum coverage of the FIFA World Cup™, the 2010 & 2014 FIFA World Cups™ - Invitation to Tender - European Media Rights has provided for four distinct packages. This allows FIFA to offer different media rights packages to a variety of broadcasters operating in the relevant territory on the basis, not only of the financial terms offered, but also of the broadcasters' experience and commitment to football programming, securing the live broadcast of all the 64 matches of the FIFA World Cup™ at the highest international broadcasting standard. Pursuant to this scheme (which is also implemented in the rest of the World), all the "prime" matches of the FIFA World Cup™, and many more, are broadcast live on free-to-air television with nationwide coverage.
88. Since the bulk of FIFA's income is generated by the sale of media rights to the FIFA World Cup™, the price of which largely depends on the degree of competition for their acquisition, the listing of the entire FIFA World Cup™ is a disproportionate measure which will, inevitably, depress FIFA's ability to raise revenue and, consequently, reduce its capacity to assist financially its member associations and the confederations, to invest in grassroots football, to contribute funds for the programs and projects referred

to at §§ 11-23 above, and to invest in state-of-the-art technology, in order to achieve best quality broadcast of the FIFA World Cup™ for the benefit of television viewers.

## VI. CONCLUSION

89. It is FIFA's view that, on account of the large scale and of the numerous negative effects and disadvantageous consequences which the proposed amendments to the Norwegian Broadcasting Regulations 1997 will entail, there is a need neither to introduce the contemplated amendments nor to draw up a list of events of "major importance for society". The Consultation paper issued by the Ministry of Culture gives no cogent reasons for it, is based on unsubstantiated assertions, omits consideration of highly relevant and crucial issues, organises a defective and lacunary procedure for determining the price at which non-qualified broadcasters will, in certain circumstances, be obliged to sell their rights to qualified broadcasters, and does not demonstrate the existence of such a need. It is, further, FIFA's view that, in case the amendments to the Broadcasting Regulations 1997 were to be carried-out, and the measures envisaged by the Consultation paper implemented, only the "prime" matches of the FIFA World Cup™ may be included on the proposed list.

Signed:



Jérôme Valcke  
Secretary General

26<sup>th</sup> September 2011

FIFA Legal Contract Approved
26. Sep. 2011 26
By: _____