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Judgment in Case E-8/17 *Henrik Kristoffersen v the Norwegian Ski Federation*

A NATIONAL SPORTS FEDERATION'S SYSTEM OF PRIOR CONTROL AND CONSENT FOR INDIVIDUAL SPONSORSHIP CONTRACTS MAY RESTRICT AN ATHLETE'S FREEDOM TO PROVIDE SERVICES

In a judgment delivered today, the Court answered questions referred to it by Oslo District Court (*Oslo tingrett*) in a case concerning the interpretation of Article 36 EEA and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (“the Services Directive”).

Mr Henrik Kristoffersen, a member the Norwegian national alpine skiing team, wished to enter into an individual sponsorship contract with Red Bull relating to helmet and headgear worn in races organised under the auspices of the Norwegian Ski Federation (“NSF”) and the International Ski Federation. However, NSF refused Mr Kristoffersen permission to sign the contract, since it had already decided to include advertising on helmet and headgear in the contract with its main sponsor. Mr Kristoffersen challenged that refusal before the Oslo District Court.

The District Court referred six questions to the Court, which concerned essentially two issues. The first issue was whether rules, such as those in the NSF Joint Regulations, on prior control and consent for individual sponsorship contracts regarding commercial markings on the national team’s equipment, or the application of those rules, constitute a restriction pursuant to Article 36 EEA or the Services Directive. The second issue was whether a restriction on an athlete’s right to enter into sponsorship contracts could be justified.

The Court held that the system at issue fell to be considered under Article 36 EEA, on the freedom to provide services. The legal criterion for the assessment of whether a national sports federation’s system of prior control and consent for individual sponsorship contracts constitutes a restriction under Article 36 EEA is whether the system renders less attractive the exercise of an athlete’s freedom to provide a marketing service. If such a system constitutes a restriction, the same will apply to a concrete refusal of an application to enter into an individual sponsorship contract under that system.

The Court further held that a system of prior control and consent for individual sponsorship contracts – and a concrete refusal under that system – will be lawful provided that the system and the refusal pursue a legitimate aim that is justified by an overriding reason in the general interest, are suitable to attain that aim and do not go beyond what is necessary to attain it. In that assessment, the system and the concrete refusal cannot be considered in isolation but must be seen in light of the overall possibilities for the athletes or athlete to engage in individual marketing activity. A concrete decision taken under a national sports federation’s system of prior control and consent for an individual sponsorship contract must be based on a fair balance between the interests of the federation and the athlete concerned. The decision must be reasoned and communicated to the athlete within a reasonable time. Moreover, a review procedure before a body independent of the federation (e.g. a court) should be available. Subject to these procedural guarantees, the sports federation may exercise discretion in the assessment of

applications for individual sponsorship contracts. The consequences of a failure to comply with these requirements must be determined by the national court, subject to the principles of equivalence and effectiveness.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.