

V

(Announcements)

COURT PROCEEDINGS

EFTA COURT

JUDGMENT OF THE COURT

of 16 November 2018

in Case E-8/17

Henrik Kristoffersen

v

The Norwegian Ski Federation (*Norges Skiforbund*), supported by the Norwegian Olympic and Paralympic Committee and Confederation of Sports (*Norges idrettsforbund og olympiske og paralympiske komité*)

(Freedom to provide services — Article 36 EEA — Directive 2006/123/EC — Professional athletes — Sports associations — Marketing rights — Restriction — Proportionality — Suitability — Necessity)

(2019/C 107/04)

In Case E-8/17, Henrik Kristoffersen v The Norwegian Ski Federation (*Norges Skiforbund*), supported by the Norwegian Olympic and Paralympic Committee and Confederation of Sports (*Norges idrettsforbund og olympiske og paralympiske komité*) — REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Oslo District Court (*Oslo tingrett*) concerning the interpretation of Article 36 of the Agreement on the European Economic Area and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, the Court, composed of Páll Hreinsson, President (Judge-Rapporteur), Per Christiansen and Martin Ospelt (ad hoc), Judges, gave judgment on 16 November 2018, the operative part of which is as follows:

1. 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.
2. If such a system of prior control and consent for individual sponsorship contracts constitutes a restriction, the same will apply to a concrete refusal of an application to enter into an individual sponsorship contract under that system.
3. 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.
4. 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 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.