

## **EFTA COURT**

### **Request for an Advisory Opinion from the EFTA Court by Oslo tingrett dated 25 September 2017 in the case of Henrik Kristoffersen v the Norwegian Ski Federation**

**(Case E-8/17)**

A request has been made to the EFTA Court by a letter dated 25 September 2017 from Oslo tingrett (the Oslo District Court), which was received at the Court Registry on 25 September 2017, for an Advisory Opinion in the case of Henrik Kristoffersen v the Norwegian Ski Federation on the following questions:

- 1. Which legal criteria shall be particularly emphasised in the assessment of whether a national sports federation's system of prior control and consent for individual sponsorship contracts of this type – before the rights to such markings are transferred from the federation – shall be deemed a restriction on the athlete's freedom to provide services pursuant to Article 36 EEA or Directive 2006/123/EC (the Services Directive)?**
  - a) To what extent is the restriction test previously described by the Court of Justice of the European Union for the regulatory framework governing sports, inter alia, in Case C-51/96, applicable? Does Article 16 of the Services Directive or other provisions of that directive entail changes to the restriction test?**
  
- 2. Which legal criteria shall be particularly emphasised in the assessment of whether a national sports federation's concrete refusal to approve professional national team athletes' individual sponsorship contracts for such markings – so that the rights to such markings remain with the federation – shall be deemed a restriction on the athlete's freedom to provide services pursuant to Article 36 EEA or Directive 2006/123/EC (the Services Directive)?**
  - a) What bearing will it have on the assessment that the national sports federation had already entered into a valid contract with the national team's main sponsor for logo exposure of the marking in question on helmets/headgear? Is this of significance in the assessment of whether a restriction exists, alternatively in the assessment of whether there are objective and sufficient grounds for the refusal?**

**Provided that a restriction is deemed to exist;**

- 3. Can the national sports federation's Joint Regulations (approval scheme) for the potential utilisation by athletes of the marking in an individual contract constitute an authorisation scheme within the meaning of Article 4(6) of Directive 2006/123/EC (the Services Directive)?**
  - a) In such case, is the approval scheme regulated by Articles 9 and 10 in Chapter III – on freedom of establishment for service providers – for a Norwegian citizen selected for the national team who engages in financial activity in connection with his participation in the national team subject to the regulatory framework of the national sports federation? Or is the scheme regulated by Article 16; alternatively, what is the legal test for correct classification?**
- 4. In the assessment of the scheme's lawfulness – either pursuant to Article 36 EEA or Articles 9, 10 or 16 of the Services Directive – must the national court consider the provisions of the regulations and the refusal seen in isolation, or shall it also take into consideration:**
  - The federation's grounds for retaining the marketing rights, including consideration for funding of the national teams and what the income is otherwise used for?**
  - The overall possibilities for the athlete to engage in financial activity, including rights to enter into sponsorship contracts with equipment manufacturers and any other marketing contracts?**
  - Whether, in light of this, the approval scheme or refusal to grant consent appears to be legitimately justified and proportional?**
- 5. What bearing does it have on the legality assessment that approval of individual contracts regarding these markings is subject to the free discretion of the federation?**
- 6. What procedural requirements, if any, do Article 13 of Directive 2006/123/EC or Article 36 EEA stipulate for the proceedings and the decisions under a national sports federation's approval scheme for individual marketing contracts (sponsorship contracts) for commercial markings, and what is the consequence under EEA law of failure to comply with any such procedural requirements?**