Panel Decision for dispute CAC-ADREU-004286

Case number	**CAC-ADREU-004286**
Time of filing	**2007-04-16 12:27:21**
Domain names	**dovolena.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**DOVOLENA**

Respondent

Organization / Name	**EURid**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

N/A

FACTUAL BACKGROUND

The Complainant filed an application for the domain name <dovolena.eu> (the "Disputed Domain Name") on 6 April 2006 under the phased registration period for prior rights holders, known as the "Sunrise Period". The Complainant's application relied on the claim that it had a "Prior Right" to the name DOVOLENA, as defined in article 10(1) of Commission Regulation EC number 874/2004 (the "Regulation"), and in particular that it was an entity incorporated in the Czech Republic.
The Complainant submitted documentary evidence supporting its Prior Right to the Respondent on 18 April 2006, before the 16 May 2006 deadline for the submission of such documentary evidence in accordance with Article 14 of the Regulation. Its application was based on a document issued by the Czech Ministry of the Interior on 3 April 2006.

The Complainant's application was rejected by the Respondent on 31 October 2006 by way of email which stated that the evidence provided was not sufficient to prove that the Complainant had a Prior Right in the Disputed Domain Name.

The Complainant sought an internal review by the Respondent of the decision made to reject the application, which the Respondent duly conducted. On 5 January 2007, following this internal review, the Respondent upheld its previous decision for the same reasons, namely that the documentary evidence provided was not sufficient to demonstrate that, at the time of the Complainant's application, the Complainant had been incorporated and could thus demonstrate Prior Rights in the Disputed Domain Name in accordance with section 16(4) of the Sunrise Rules.

On 14 February 2007, the Complainant filed a Complaint under the .EU Alternative Dispute Resolution (ADR) procedure challenging the Respondent's decision. This proceeding was terminated for non payment of fees on 9 March 2007. The Complaint subsequently paid the fees and the proceeding commenced on 20 April 2007. The Respondent filed a Response on 8 May 2007 and the Panel was appointed to decide the case on 9 May 2007. On 14 May 2007 the Complainant filed a further submission, which was then followed by another two submissions (one on 29 May 2007 and one on 12 June 2007).

A. COMPLAINANT

The Complainant contends that the rejection of the application for registration of the Disputed Domain Name was made in contradiction of the .EU Sunrise Rules on the basis that sufficient evidence was submitted to demonstrate a Prior Right in the Disputed Domain Name.

The Complainant pointed out that, according to the laws of the Czech Republic, the Complainant was a legal entity with full legal capacity at the time that the application for the Disputed Domain Name was made. According to the Complainant, the application was made in

due time and included documentary evidence proving the existence of the Complainant's Prior Right in compliance with Section 16(4) of the Sunrise Rules. The Complainant's application was the first to arrive that correctly demonstrated a Prior Right, and so in accordance with Section 22(2) of the Sunrise Rules the Disputed Domain Name should have been registered to the Complainant.

On 14 May 2007, after having considered the Respondent's Response submitted on 8 May 2007 (see summary of this below), the Complainant submitted a further submission containing various further arguments. In particular it pointed out that in the DOTACE case referred to as a precedent by the Respondent and which was decided since the Complainant's initial Complaint, the documentary evidence (ie the letter from the Ministry) was actually dated 7 April 2006. The Complainant states that the Respondent appears to have misquoted the date in its Response and referred to 3 April 2006. According to the Complainant, the application for the domain name in question was made on 6 April 2006, but the documentary evidence was in fact dated 7 April 2006, and the Complainant pointed out that this may have affected the Panel's decision. However, it argued that in the case in hand the letter from the Ministry was dated 3 April 2006, ie before the application was made.

In addition, the Complainant pointed out that in the present case it acquired full legal capacity on the day following the date of the filing of the proposal on 31 March 2006, ie 1 April 2006. This was as a result of Section 9a (1) of Act No. 83/1990, Coll, which reads as follows:

“§ 9a (1) A trade-union or employer organization shall become a legal entity on the day following the date on which the competent ministry (Section 7 (1)) has received the proposal for recording of such an organization.”

The Complainant pointed out that, as far as the specific entities referred to above were concerned (ie trade-union organizations or employer organizations), the certificate proving incorporation was in the form of the documentary evidence provided. The Complainant was therefore not able to provide the Respondent with any other certificate of incorporation, as no other certificate existed. The Complainant had asked the Ministry for confirmation of this and the original letter dated 6 December 2006 (in Czech) was attached to the Complaint. The Complainant attached an English translation of the letter to the further submission, which reads as follows:

"Pursuant to the stipulations of Section 9a of Act No. 83/1990, Coll., on association of citizens, as amended by Act 300/1990, Coll., a trade-union organization and an employer organization become legal entities as of the day following the day on which the competent ministry had received the application for its incorporation.

In order to document this, the Ministry of the Interior issues a certificate of the application for incorporation indicating other identification data such as name, registered office, reference and identification numbers of a trade-union organization or an employer organization."

The Complainant therefore states that the Respondent had erred by failing to examine the wording of the relevant Czech law which was referred to in the documentary evidence supplied. In addition, the Complainant argued that the Respondent's reference to the additional cases filed by the Complainant's authorised representative was irrelevant.

Finally, the Complainant points out that the Panel in the DOTACE case referred to by the Respondent made no reference to the law of the Czech Republic and the Panel appeared not to be familiar with it. Instead the Panel stated that the documentary evidence supplied was a proposal for the recording of DOTACE as a company, and in the Complainant's view this was incorrect. The second sentence of the document provided was the same as in the present case, namely "The recording was made under the file number: #file number#, identification number: #id no#". According to the Complainant it was therefore clear that the proposal had been approved and the complainant in the DOTACE case was a legal entity at the time that the application in question was filed.

On 29 May 2007, the Complainant filed a further submission reiterating that the letter submitted as documentary evidence was in compliance with Section 16(4)(iii) of the Sunrise Rules as it was a signed declaration from a competent public authority. The second sentence stated that "The recording was made under the file number: #file number#, identification number: #id no#" and therefore was evidence that the legal entity had already been registered (recorded) as well as that it had come into existence. The Complainant further pointed out that the allocation of an identification number in the Czech Republic meant that a legal entity had come into existence and possessed full legal capacity. Finally, the Complainant asserted that the four decisions that had so far been issued in similar cases upholding the Respondent's decision were incorrect and as a result it was preparing to file a civil lawsuit against EURid. On 12 June 2007, the Complainant made a further submission simply stating that "On 7 June 2007, in a similar case, HRY (ADR 4284), the Complaint was accepted."

B. RESPONDENT

The Respondent contends that the documentary evidence submitted by the Complainant consisted of a letter from the Ministry of the Interior of the Czech Republic showing that the Complainant had delivered a proposal for the incorporation of a company that would be

called Dolovena. According to the Respondent, the Complainant did not therefore sufficiently demonstrate that it was the holder of a Prior Right that was in full force and effect on the date that the application for the Disputed Domain Name was made.

The Respondent also points out that the Complainant's authorised representative had filed ten identical ADR complaints on behalf of other similar Czech entities which had applied for the registration of .EU domain names based on similar documentary evidence and whose applications had been refused by the Respondent. One such case had already been decided (ADR 04281 DOTACE) in the Respondent's favour, and the Respondent remarked that this was a highly relevant precedent as it was based on similar facts and similar documentary evidence. The Respondent also notes that the ten cases all concerned generic Czech words (for example "hotels", "games", "accommodation", "maps" etc) and that "Dovolena" is a generic word meaning "holiday" in Czech.

The Respondent underlines that the burden of proof was on the Complainant to demonstrate that it was the holder of the relevant Prior Right. The question was not whether the Complainant actually held a Prior Right, but whether the Complainant had correctly demonstrated to the validation agent that it held a Prior Right. Section 21.2 of the Sunrise Rules clearly stated that the validation agent must examine whether the applicant had a Prior Right exclusively on the basis of a prima facie review of the first set of documentary evidence received.

In this case the Respondent pointed out that the documentary evidence received only demonstrated that the Complainant had filed a proposal for the recording (or incorporation) of a company that would be called Dovolena. The Respondent also attached an English translation of the certificate, which reads as follows:

"The Ministry of the Interior hereby certifies that on 31 March 2006, a proposal for recording of
DOVOLENA
Having its seat: #address#, in accordance with Art. 9a of the Act No. 83/1990 Coll. on association of citizens, wording of the Act No. 300.1990 Coll. was delivered to the Ministry of the Interior.

The recording was made under the file number: #file number#, identification number: #id no#."

The Respondent pointed out that a prima facie review only served to demonstrate that the Ministry had received an application for the incorporation of Dovolena and did not demonstrate that the company was duly incorporated on the day of the application for the Disputed Domain Name (6 April 2006).

In the Respondent's view its decision to reject the Complainant's application did not conflict with the Regulations and so the Complaint should be denied.

On 17 June, the Respondent responded to the Complainant's non standard communication of 12 June 2007, in which the Complainant refers to the case 04284 HRY, which is similar to the present case and which resulted in transfer of the domain name in question to the Complainant.

The Respondent stated that it disagreed with this decision, as although the Panel annulled the Respondent’s decision, it stated that the initial rejection for the registration of the domain name was correct. The Respondent points out that Article 22(1)(b) of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation. According to the Respondent, verification is the only task for the Panel, and such proceedings may not serve as a “second chance” for applicants to remedy their imperfect original application that was rejected during the Sunrise Period. According to the Respondent, the decision may not be considered as a valid precedent. Instead, the Respondent refers to seven other similar cases which were, in its opinion, correctly decided and denied the Complaint's complaint : 04283 HOTELY, 04287 UBYTOVANI, 04288 MAPY, 04289 AKCIE, 04290 ZAKONY, 04292 ZAJEZDY and 04293 KURZY.

DISCUSSION AND FINDINGS

Firstly, the Panel notes that the Complainant filed three additional submissions after the Complaint was filed. In this regard the .EU ADR Rules provide that the Panel may decide whether or not to consider late or additional filings in its sole discretion. In the interests of a fair hearing the Panel has decided to take the additional documents into consideration, in particular because when the initial Complaint was drafted none of the decisions referred to by the Respondent had been decided. The Panel therefore thinks it only fair that the Complainant should be allowed to respond to the reasoning put forward in these decisions.

Article 22(11) of the Regulation states that, in the case of a procedure against the Registry, as is the case here, the Panel must decide whether the Registry's decision conflicts with the Regulation and with Commission Regulation EC number 733/2002 (together referred to as "the Regulations"). The Panel must therefore decide, from a purely objective standpoint, whether the Respondent's actions were in

accordance with the Regulations. In this regard, the Sunrise Rules are helpful in clarifying the meaning of the Regulations, and set down detailed procedures for applicants to follow.

Article 10(1) of the Regulation states as follows:

"Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts.

'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works."

Article 12(2) of the Regulation goes on to state as follows:

"Phased registration shall be comprised of two parts of two months each.

During the first part of phased registration, only registered national and Community trademarks, geographical indications, and the names and acronyms referred to in Article 10(3), may be applied for as domain names by holders or licensees of prior rights and by the public bodies mentioned in Article 10(1).

During the second part of phased registration, the names that can be registered in the first part as well as names based on all other prior rights can be applied for as domain names by holders of prior rights on those names."

Finally, Article 14 of the Regulation states as follows:

"All claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists.

The Registry, upon receipt of the application, shall block the domain name in question until validation has taken place or until the deadline passes for receipt of documentation. If the Registry receives more than one claim for the same domain during the phased registration period, applications shall be dealt with in strict chronological order.

The Registry shall make available a database containing information about the domain names applied for under the procedure for phased registration, the applicants, the Registrar that submitted the application, the deadline for submission of validation documents, and subsequent claims on the names.

Every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question. The documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected.

Validation agents shall time-stamp documentary evidence upon receipt.

Validation agents shall examine applications for any particular domain name in the order in which the application was received at the Registry.

The relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name. If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this.

If the validation agent finds that prior rights exist regarding the application for a particular domain name that is first in line, he shall notify the Registry accordingly.

This examination of each claim in chronological order of receipt shall be followed until a claim is found for which prior rights on the

name in question are confirmed by a validation agent.

The Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure set out in the second, third and fourth paragraphs."

The Complainant applied for the Disputed Domain Name during the second part of the Sunrise Period. It can therefore be seen from the above that it was able to base its claim on any of the Prior Rights listed in Article 10(1).

The question for the Panel to consider is twofold. First, what Prior Right was the Complainant's application based on, and secondly, did the Complainant correctly demonstrate that it possessed that particular Prior Right in accordance with the Regulations, in particular Article 14 above? Incidentally, the Panel would point out that the Complainant submitted the documentary evidence to the Respondent on 18 April 2006, before the 16 May 2006 deadline, and so the dates on any of the documentation are of no particular significance in this case (contrary to what the Complainant may have suggested in its Complaint).

The Panel is of the opinion that this is a complex case requiring detailed knowledge of the .EU ADR Rules and of Czech law. Although the Panel considers that it has a throrough knowledge of the .EU ADR Rules and the Regulations, it is well aware that it is not a qualified Czech lawyer. Thus in the interest of fairness and thoroughness it has therefore consulted two different Czech lawyers on the subject of the Complainant's Prior Right. As a result the Panel is satisfied that an entity of the type referred to in the documentary evidence filed to support the Complainant's application for the Disputed Domain Name is not in fact a company in accordance with the ordinary meaning of the word. As the Complainant itself points out, the entity in question is an association of citizens, in particular a trade union or employer organisation, the incorporation of which is dealt with by a particular Czech law (No. 83/1990, Coll.). The Panel has been reliably informed that this law is not concerned with the foundation and management of companies, which is dealt with by the Czech Commercial Code. Furthermore, companies and associations of the type in question are registered on different registers.

The Complainant refers to Section 16(4) of the Sunrise Rules in its Complaint, which deals with the documentary evidence required to demonstrate that an applicant is the holder of a company name. In view of the fact that the entity in question is NOT a company and that companies are subject to a different legal regime in the Czech Republic, the Panel finds that Section 16(4) is not particularly relevant. Similarly in the Panel's opinion the discussion by the Complainant, the Respondent and various previous Panels in the cases upon similar facts as to whether the certificate provided indicates that a proposal for incorporation had been recorded with the Czech Ministry of the Interior or whether it indicates that the entity itself had been recorded is therefore somewhat misleading.

In view of this the Panel has considered the type of Prior Right that an association of citizens such as the one in question could in fact be said to represent. When applying for domain names during the Sunrise Period, applicants had to select the type of Prior Right from a drop down list. Company names, trade names and business identifiers were categorised together, which is also evidenced by the fact that the Respondent's WHOIS Sunrise database for the Complainant's application for the Disputed Domain Name states "Company Name / Trade Name / Business Identifier" in the "Prior Right" field.

It therefore seems to the Panel that the Complainant could potentially argue (although it did not) that an association of the type in question was a trade name or business identifier. It should be noted that the Panel is not familiar with Czech law and is therefore exploring all possible options in the interests of fairness. Given that the Panel must decide whether the Respondent's decision conflicts with the Regulations, it is relevant that Article 12(2) of the Regulation states as follows:

"The request to register a domain name based on a prior right under Article 10(1) and (2) shall include a reference to the legal basis in national or Community law for the right to the name, as well as other relevant information, such as trademark registration number, information concerning publication in an official journal or government gazette, registration information at professional or business associations and chambers of commerce."

Section 16(5) of the Sunrise Rules sets out the detailed requirements for the fulfilment of the above in relation to trade names and business identifiers, and reads as follows:

"Unless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16(2) respectively 16(3): (sic)

(i) where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is
located):
a. an extract from that official register, mentioning the date on which the trade name was registered; and

b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state);
(ii) where registration is not obligatory, the Documentary Evidence referred to in Section 12(3) hereof.

The Documentary Evidence for a trade name or a business identifier must clearly indicate that the name for which the Prior Right is claimed is the trade name or business identifier of the Applicant."

Section 12(3) of the Sunrise Rules (referred to above) states:

"If, under the law of the relevant member state, the existence of the Prior Right claimed is subject to certain conditions relating to the name being famous, well known, publicly or generally known, have a certain reputation, goodwill or use, or the like, the Applicant must furthermore submit

(i) an affidavit signed by a competent authority, legal practitioner, or professional representative, accompanied by documentation supporting the affidavit or
(ii) a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states

stating that the name for which a Prior Right is claimed meets the conditions provided for in the law (including relevant court decisions, scholarly works and such conditions as may be mentioned in Annex 1(if any)) of the relevant member state in relation to the type of Prior Right concerned."

It therefore seems to the Panel that, even if the Complainant could argue that DOVOLENA was in fact a trade name or business identifier of an association of the type in question, it could not be said to have fulfilled the conditions set down in the Sunrise Rules in order to demonstrate this. A certificate of the kind supplied, whether it evidences incorporation or not, falls far short of what is required to demonstrate a trade name or business identifier, as referred to above.

This being said, the Complainant could also argue (although it did not) that the Prior Rights listed at Article 10(1) are non exhaustive, and so it could be said to have a sui generis right of a kind not referred to therein. If this was the case then such a Prior Right would still have to have been proved in accordance with Article 14 of the Regulation. Articles 12(1) and (2) of the Sunrise Rules set down detailed provisions in relation to the demonstration of Prior Rights not specifically referred to in Article 10(1), and reads as follows:

"1. Unless otherwise provided under Sections 13 to 18 of these Sunrise Rules, the Applicant must submit Documentary Evidence containing

(i) an affidavit signed by a competent authority, legal practitioner or professional representative declaring that the type of Prior Right claimed by the Applicant is protected under the laws of the relevant member state, including
a. references to the relevant legal provisions, scholarly works and court decisions and
b. the conditions required for such protection; and
(ii) proof that the complete name for which a Prior Right is claimed meets all of the conditions set forth in such laws, including the relevant scholarly works and court decisions, and that such name is protected by the relevant Prior Right claimed.

2. It is in any case sufficient to submit a copy of a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states stating that the Applicant has protection for the complete name for which a
Prior Right is claimed."

Once again, a certificate from the Czech Ministry of the Interior, whether it evidences incorporation of an entity or not, falls far short of the above.

In the light of the above, the Panel therefore concludes that the Respondent's decision to reject the Complainant's application for the Disputed Domain Name did not conflict with the Regulations because the documentary evidence submitted did not demonstrate that it was the holder of a Prior Right in accordance with Article 14 of the Regulation.

The Panel is aware that it has been found in a similar case that, although the validation agent was correct to reject a similar application because the documentary evidence submitted did not correctly evidence the Prior Right in question, the complainant did in fact possess

a valid Prior Right and so transfer should be ordered. The Panel would disagree with this analysis because, as stated above, it must decide whether the Respondent's actions were in accordance with the Regulations, in particular Article 14 quoted in its entirety above. Whether or not the Complainant was in possession of a valid Prior Right at the time of the application is not the issue.

In this regard the Panel would point out that, in view of the sheer scale of the launch of the .EU extension, from a practical point of view it was necessary to insist that applicants complied with the relevant procedures set down in the Regulation. In the Panel's view those applicants who failed to do so should have not have any recourse against the Respondent (in the event that the Respondent correctly applied the Regulations), and to find otherwise would render the system uncertain for all concerned. The documentary evidence submitted by the Complainant to the Respondent did not correctly demonstrate the Complainant’s right to the Disputed Domain Name, and so the Respondent correctly rejected the Complainant’s application.

The Panel therefore concludes that the Respondent's decision to reject the Complainant's application for the Disputed Domain Name does not conflict with the Regulations. As the Respondent's decision is in accordance with the relevant texts, the Panel is therefore obliged to uphold it and deny the Complainant's request that the Disputed Domain Name be awarded to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint be denied

PANELISTS

Name	David Taylor

DATE OF PANEL DECISION 2007-06-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel had to decide, from a purely objective standpoint, whether the Respondent's actions were in accordance with the Regulations. The Complainant applied for the Disputed Domain Name during the second part of the Sunrise Period. It was therefore able to base its claim on any of the Prior Rights listed in Article 10(1).

The question for the Panel to consider was therefore twofold. First, what Prior Right was the Complainant's application based on, and secondly, did the Complainant correctly demonstrate that it possessed that particular Prior Right in accordance with the Regulations, in particular Article 14?

The Panel consulted two different Czech lawyers on the subject of the Complainant's Prior Right and was satisfied that an entity of the type referred to in the documentary evidence filed to support the Complainant's application for the Disputed Domain Name was not in fact a company in accordance with the ordinary meaning of the word. As the Complainant itself pointed out, the entity in question was an association of citizens, in particular a trade union or employer organisation, the incorporation of which is dealt with by a particular Czech law (No. 83/1990, Coll.).

The Complainant refered to Section 16(4) of the Sunrise Rules in its Complaint, which deals with the documentary evidence required to demonstrate that an applicant is the holder of a company name. In view of the fact that the entity in question was NOT a company and that companies are subject to a different legal regime in the Czech Republic, the Panel found that Section 16(4) was not particularly relevant. Similarly in the Panel's opinion the discussion by the Complainant, the Respondent and various previous Panels in the cases upon similar facts as to whether the certificate provided indicated that a proposal for incorporation had been recorded with the Czech Ministry of the Interior or whether it indicated that the entity itself had been recorded was therefore somewhat misleading.

In the Panel’s opinion, the Complainant could have potentially argued (although it did not) that an association of the type in question was a trade name or business identifier. Section 16(5) of the Sunrise Rules sets out the detailed requirements in relation to trade names and business identifiers, but the Complainant could not be said to have fulfilled these conditions. A certificate of the kind supplied, whether it evidenced incorporation or not, fell far short of what was required to demonstrate a trade name or business identifier, as referred to in the Sunrise Rules.

The Complainant could also have argued (although again it did not) that the Prior Rights listed at Article 10(1) were non exhaustive, and so it could be said to have a sui generis right of a kind not referred to therein. If this was the case then such a Prior Right would still have to have been proved in accordance with Article 14 of the Regulation. Articles 12(1) and (2) of the Sunrise Rules set down detailed provisions in relation to the demonstration of Prior Rights not specifically referred to in Article 10(1), but once again, a certificate from

the Czech Ministry of the Interior, whether it evidenced incorporation of an entity or not, fell far short of the above.

The Panel therefore concluded that the Respondent's decision to reject the Complainant's application for the Disputed Domain Name did not conflict with the Regulations because the documentary evidence submitted did not demonstrate that it was the holder of a Prior Right in accordance with Article 14 of the Regulation.