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**Judgment in Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority***

**NORWEGIAN MUNICIPAL KINDERGARTENS NOT UNDERTAKINGS UNDER EEA STATE AID RULES**

Kindergarten services in Norway are provided approximately to the same extent by municipal and private day-care institutions respectively. About 80% of the costs of public as well as private kindergartens are borne by the public purse, and the fees paid by the parents are capped at a fixed rate and not connected to the actual costs of the service provided. For example, the fee does not increase for children with special needs, and parents with more than one child benefit from fee reductions.

In February 2005, the plaintiff submitted a formal complaint to the EFTA Surveillance Authority, claiming that the financing system for municipal kindergartens constitutes State aid which discriminates against private kindergartens. The EFTA Surveillance Authority, after having concluded the preliminary examination, stated that the system of financing municipal day-care institutions in Norway does not constitute State aid within the meaning of Article 61(1) EEA. Accordingly, it refrained from initiating the formal investigation procedure for new State aid.

In a judgement delivered today, the EFTA Court dismissed the application of Private Barnehagers Landsforbund to annul this decision. The EFTA Court found that municipal kindergartens in Norway are not undertakings under the EEA State aid rules, on the grounds that the Norwegian State, when establishing and maintaining a system where every child increases the costs incurred, is not seeking to engage in gainful activity but is fulfilling its duties towards its own population in the social, cultural and educational fields. Accordingly, the EFTA Court held that the EFTA Surveillance Authority did not need to entertain doubts as to whether the municipal kindergartens constitute undertakings, and did not violate its obligations under EEA law when restricting itself to the preliminary examination.

The full text of the judgment may be found on the Internet at: [www.eftacourt.lu](http://www.eftacourt.lu).

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