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## **EFTA Court rules on prohibition against alcohol advertising in Norway**

(Case E-4/04 *Pedicel AS v Directorate for Health and Social Affairs*)

The background for the case referred to the EFTA Court by Markedsrådet (the Norwegian Market Council) is the comprehensive Norwegian ban on advertising of alcoholic beverages. In 2003, “Vinforum”, a “magazine for gourmets and wine lovers” published advertisements for wine. The Directorate for Health and Social Affairs thereupon imposed a predetermined coercive fine on the publisher. The publisher challenged the decision before the Market Council and claimed that the prohibition against alcohol advertising was in breach of the provisions of the EEA Agreement on the free movement of goods and the freedom to provide services.

The EFTA Court found that the rules on product coverage of the EEA Agreement mean that its general scope differs from the EC Treaty with regard to agricultural products. In particular, wine does not fall under the EEA provisions on free movement of goods. Furthermore, the Court held that advertisement of wine, being inseparably linked to trade in wine, is not covered by Article 36 EEA on the freedom to provide services, since advertising primarily fulfils the purpose of promoting the sale of wine.

The prohibition on advertising of alcoholic beverages also relates to beer and spirits, products generally falling within the scope of the EEA Agreement. The EFTA Court found that in this respect, the ban constitutes a restriction of the free movement of goods and services under EEA law, since it potentially affects market access of products from other EEA States more heavily than domestic products. The prohibition also restricts the right of publishers to offer advertising space to potential advertisers established in other EEA States. However, such restrictions may in principle be justified on grounds of the protection of public health.

The question of whether the general prohibition against alcohol advertisements is proportionate to the aim pursued, and whether the protection of public health may be as effectively achieved by less restrictive measures, calls for an analysis of the circumstances of law and fact which characterise the situation in Norway. The EFTA Court considers the Norwegian Market Council to be in a better position to undertake such analysis and limits itself to general guidance as to which elements have to be considered. The so-called precautionary principle, as defined by the EFTA Court in its earlier case law, does not apply in a situation where there is uncertainty about the effectiveness of advertising.

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

This press release is not an official document. Please note that the Court may not comment on the case.