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Judgment in Case E-8/00 *Norwegian Federation of Trade Unions and Others v Norwegian Association of Local and Regional Authorities and Others*

Collective agreements - Competition rules - Transfer of occupational pension scheme

In an advisory opinion delivered today, the EFTA Court held that provisions of a collective agreement that pursue the objective of improving conditions of work and employment fall outside the scope of Article 53 EEA, which prohibits agreements that restrict competition. Provisions of a collective agreement that pursue objectives extraneous to that of improving conditions of work and employment or that do not, in practice, operate to improve conditions of work and employment, may come within the scope of Article 53 EEA.

The advisory opinion was given in response to a request from the Labour Court of Norway in proceedings instituted by the Norwegian Federation of Trade Unions (LO) and other unions against the Norwegian Association of Local and Regional Authorities (KS) and 11 of its member municipalities. The dispute concerns the interpretation and application of contested provisions of the Basic Collective Agreement for Municipalities. At issue in the national proceedings is whether the defendant municipalities breached certain provisions of that collective agreement when they transferred their occupational pension insurance scheme from one supplier, KLP, a private mutual life insurance company, wholly owned by members of KS, to other insurance companies.

The Labour Court had formulated a series of detailed questions. The EFTA Court could not respond directly to all of the questions, but provided guidance to the national court as regards the content of EEA law in respect of the matters at issue before it.

The EFTA Court concluded that the relationship between the national law of collective bargaining between labour and management, which has not been harmonized within the EEA, and the EEA competition rules, must be assessed by applying the test established by the Court of Justice of the European Communities in the case informally referred to as *Albany*, and related cases. On that basis, the contested provisions would *prima facie* fall outside the scope of Article 53 EEA. If, however, the national court were to find that the contested provisions do not, in fact, pursue their apparent objectives, they may, in the light of the objectives actually pursued, fall within the scope of Article 53 EEA. If so, and if it is found that these provisions in effect require the municipalities to obtain supplementary pension insurance services from specific insurers, thus excluding, or severely limiting, their possibility of selecting other qualified service providers, these provisions may constitute a restriction of competition within the meaning of Article 53 EEA.

The national court will have to make its decisions on the basis of all relevant factual, economic and legal circumstances, taking into account the criteria set forth by the EFTA Court.

The EFTA Court is composed of the Judges Thór Vilhjálmsson (President), Carl Baudenbacher and Per Tresselt.

The full text of the judgment may be found on the Internet at: www.efta.int. This press release is not an official document. Please note that the Court may not comment on the case.