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Case No: 68577
Event No: 622986



EFTA SURVEILLANCE
AUTHORITY

Ministry of Government Administration, Reform and Church Affairs
Akersgata 59
0030 Oslo
Norway

Subject: New scheme on the financing of private kindergartens in Norway

Dear Sirs,

The Authority refers to the documents informally submitted by Norway on 13 July 2010 (event number 564406), 23 November 2011 (event number 622872) and on 8 December 2011 (event number 622877) concerning the reform of the legal framework for the financing of private kindergartens in Norway. The Norwegian authorities seek guidance on whether they are obliged under State aid rules to notify the envisaged legal framework. Since the measure has not been made subject to a formal notification, the Authority will only give a preliminary view based on the information at hand.

In that regard the Authority notes that the nature of the activity of *public* kindergartens has been subject to the ruling of the EFTA Court in *Private Barnehagers Landsforbund*.¹ In its judgement the EFTA Court observed that about 80% of the costs of municipal kindergartens are borne by the public purse and there is no connection between the actual costs of the service provided and the fee paid by the parents whose child is attending the kindergarten. The Court further observed that municipalities have a statutory duty to ensure that sufficient kindergarten places exist and that kindergartens have important social, cultural, educational and pedagogical purposes in Norway. The Court concluded that the element of remuneration is absent in the activity of municipal kindergartens in Norway.² Consequently, the activity of public kindergartens in Norway is non-economic and as such not subject to State aid rules.

Based on the information at hand, the above considerations of the EFTA Court also seem to apply to *private* kindergartens under the envisaged legal framework, in particular, since the parents' fees constitute only a fraction of the true costs of the service of private kindergartens and do not seem to qualify as a *quid-pro-quo vis-à-vis* the private kindergartens. They only seem to serve as a contribution to a system which is predominantly financed by the public purse. Moreover, under the proposed law the State seems to control the essential parameters of the activity of private kindergartens (i.e. State compensation, fees, salaries, quality of service, etc.) to an extent that leaves very little

¹ Case E-05/7 *Private Barnehagers Landsforbund* [2008] EFTA Ct.Rep. 64.

² Case E-05/7 *Private Barnehagers Landsforbund* [2008] EFTA Ct.Rep. 64, Para. 83-84.

room for commercial discretion. Based on the information at hand the Authority comes to the preliminary conclusion that the activities of private kindergartens in Norway should a priori be considered as non-economic in nature. This also seems to be in line with the recently revised rules on public service compensation adopted on 25 January 2012 which refer to the above mentioned judgement.³

The Authority further notes that – even if their activity were to be considered as economic in nature – the compensation of private kindergartens as described by Norway would seem to comply with Altmark criteria.⁴ In particular, offering kindergarten places can constitute a service of general economic interest. Furthermore, the proposed law establishes the level of compensation in advance. Moreover, the envisaged rules seem to provide elaborate safeguards to ensure the absence of overcompensation. Finally, the proposed legal framework seems to fix the compensation at a level, which would correspond to a well-run kindergarten under the given legal setting in Norway. Based on the above, the compensation granted to private kindergartens under the new rules would a priori not seem to imply the granting of an advantage within the meaning of State aid rules.

On the basis of the information at hand the preliminary conclusion is that the envisaged legal framework does a priori not contain State aid. Consequently, the Norwegian authorities do not seem to be obliged by Article 1 (3) of Part I of Protocol 3 to notify the envisaged measure.

Yours faithfully



Oda Helen Sletnes
President

³ See Part 6 of the State aid guidelines, Rules on public service compensation, State ownership of enterprises and aid to public enterprises, para. 27.

⁴ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.