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**Judgment of the Court in Case E-9/19 *Abelia and WTW AS v EFTA Surveillance Authority***

**ACTION BROUGHT BY ABELIA AND WTW AS TO ANNUL ESA'S DECISION ON STATE AID DISMISSED**

In a judgment delivered today, the Court dismissed as unfounded an application brought by Abelia and WTW AS (“WTW”) for the annulment of an EFTA Surveillance Authority (“ESA”) decision. Abelia, which is a Norwegian trade and employers association, represents inter alia IT and IT-technology companies. WTW is a software developer and a member of Abelia.

Abelia and WTW sought the annulment of Decision No 57/19/COL of 10 July 2019. Following a preliminary examination, ESA found that the public financing of digital health infrastructure in the Norwegian healthcare system did not constitute State aid. ESA requested the Court to dismiss the application as inadmissible or, in the alternative, as unfounded.

The Court held that for Abelia as an association to have legal standing, it is sufficient if WTW has standing. Further, the Court found that WTW was an interested party and was seeking to safeguard its procedural rights. Therefore, the application was admissible.

ESA is required to initiate the formal investigation procedure unless it overcomes all doubts or difficulties on a measure's compatibility with the EEA Agreement. Therefore, the legality of the contested decision depended on whether ESA should have had doubts as to whether Norsk Helsenett SF (“NHN”) and the Norwegian Directorate of eHealth (“NDE”) carried out economic activities when providing the digital health infrastructure.

On evaluating whether an entity carries out economic activities, it must be assessed whether the nature, aim and rules that apply to the activity, are connected with the exercise of public powers or that they have an economic character. Additionally, if a public entity engages in an economic activity that cannot be detached from other activities connected to the exercise of public powers that activity will also be considered as an exercise of public powers.

The Court concluded that ESA did not have to entertain doubts whether NHN and NDE might carry out economic activity and thus constitute an ‘undertaking’ within the meaning of Article 61(1) of the EEA Agreement. Therefore, ESA did not have to entertain doubts whether the measures constituted State aid. Accordingly, the application was dismissed as unfounded.

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

This press release is an unofficial document and is not binding upon the Court.