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REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Norway's breach of Directive 2005/36 on the recognition of professional qualifications or, in the alternative, Directive 2006/123 on services in the internal market ("Directive 2006/123") and/or the free movement of workers and freedom of establishment of the EEA-Agreement (Articles 28 and 31 EEA)

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1 Introduction

1.1 Correspondence

- (1) By four letters in 2017 and 2018¹, the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had received complaints against Norway concerning issues with the recognition of their Hungarian Master’s degree in Clinical and Health Psychology (“*okleveles pszichológus*” with specialisation “*Clinical and Health Psychology*”), hereafter “*okleveles pszichológus*”, which had been obtained from the Hungarian Eötvös Loránd University (“ELTE”). This recognition was necessary in order to qualify to work as a psychologist (“*pszikolog*”) in Norway.
- (2) On 25 January 2017, the Authority sent a request for information to Norway (Doc No 834771). On 3 March 2017, Norway replied (Doc No 845211). On 16 May 2017, the Authority sent a new request for information (Doc No 856095). On 8 June 2017, Norway replied (Doc No 859557). On 12 June 2017, the Authority sent another request for information (Doc No 860489). On 7 July, Norway replied (Doc No 865090).
- (3) On 8 June 2017, the Authority received additional information from Norway that it had received from the Hungarian authorities (Doc No 860200).
- (4) On 26 October 2017, the cases were discussed at the package meeting between representatives of the Authority and of the Norwegian Government (Doc No 878916).
- (5) On 16 November 2017 and 23 November 2017, the Authority sent two further requests for information (Doc No 882739 and Doc No 883677). On 13 December 2017, the Authority received Norway’s reply to both requests for information (Doc No 888288).
- (6) On 12 June 2018, the Authority issued a letter of formal notice to Norway (Doc No 914637). The deadline to respond to the letter of formal notice was 12 September 2018. On 4 September 2018, the Norwegian Government requested an extension to the deadline to respond (Doc No 928808). On 5 September 2018, the Authority extended the deadline until 26 September 2018 (Doc No 928950). On 26 September 2018, Norway sent its reply (Doc No 931483).
- (7) On 25 October 2018, the cases were discussed at the package meeting between representatives of the Authority and of the Norwegian Government (Doc No 1039214, p. 17).

¹ Letters dated 24 January 2017 (Doc No 834771), 23 June 2017 (Doc No 862725), 23 November 2017 (Doc No 883677) and 5 February 2018 (Doc No 896460).

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- (8) On 23 November 2018, the Authority sent an additional request for information (Doc No 1038408). On 21 December 2018, Norway replied (Doc No 1044979).
- (9) On 24 October 2019, the cases were discussed at the package meeting between representatives of the Authority and of the Norwegian Government (Doc No 1096584, p.16-17).

1.2 Letter of formal notice

- (10) In its letter of formal notice, the Authority considered that Norway's handling of the applications for the recognition of the Hungarian qualification "*okleveles pszichológus*" does not comply with Directive 2005/36 on the recognition of professional qualifications ("the Directive").² In the alternative, the Authority considered that Norway had acted in breach of Directive 2006/123 on services in the internal market ("Directive 2006/123")³ and/or of the free movement of workers and freedom of establishment of the EEA-Agreement (Articles 28 and 31 EEA).
- (11) More specifically, the Authority identified three categories of breach of EEA law:
 - The Norwegian Directorate of Health ("*Helsedirektoratet*") (hereafter "Directorate") has rejected applications for recognition in a way which is inconsistent with the Directive, in the alternative with Directive 2006/123 and/or with the free movement of workers and freedom of establishment of the EEA Agreement;
 - The Directorate has, in a number of cases, exceeded the deadline set out in Article 51(2) of the Directive for deciding upon applications for recognition. In the alternative, this long processing time constitutes a breach of Articles 13 of Directive 2006/123;
 - Norway has failed to provide a system, as required by Article 51(3) of the Directive, for appealing the failure of the Directorate to take decisions upon such applications within the time limits provided in Article 51(2) of the Directive.

1.3 Norway's reply to the letter of formal notice

- (12) In its reply to the letter of formal notice, in relation to the first category of breach, Norway maintains that the complainants are not entitled to have their qualification

² Act referred to at point 1 of Annex VII to the EEA Agreement (*Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications*), as adapted to the EEA Agreement by Protocol 1 thereto.

³ Act referred to at point 1 of Annex X to the EEA Agreement (*Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*), as adapted to the EEA Agreement by Protocol 1 thereto.

recognised and are therefore not entitled to work as psychologists (“*psykolog*”) in Norway. Norway considers that there is no ground for such an entitlement in the Directive, as the Hungarian Master’s degree “*okleveles pszichológus*” does not qualify holders to pursue the same profession in Hungary as that of a “*psykolog*” in Norway.

- (13) In the alternative, Directive 2006/123 does not apply to psychologists as they pursue healthcare services, which are exempted from the scope of application of Directive 2016/123.
- (14) Finally, according to Norway, there is no breach of Articles 28 and 31 EEA as the complainants are not precluded from pursuing the same profession as “*okleveles pszichológus*” in Norway. They are simply not allowed to use the title “*psykolog*”. The refusal to allow the use of the title ‘*psykolog*’ is based on public interest grounds and is necessary to ensure quality and ensure patient safety in the Norwegian health system.
- (15) In relation to the second alleged breach, Norway does not consider that the processing of appeals has been unduly delayed, although it acknowledges that the deadlines stipulated in Article 51(2) of the Directive for the first-time consideration of applications have been exceeded in several cases.
- (16) Norway takes the view that Article 51(2) does not regulate deadlines for the processing of complaints and appeals. Moreover, it considers that long case-processing times for complaints and appeals is justified by the need for, and difficulties in obtaining, sufficient and correct factual information from Hungary.
- (17) Further, Norway recalls that it does not consider Directive 2006/123 to apply to services provided by psychologists, as these are healthcare services which are exempted from Directive 2016/123.
- (18) In relation to the third alleged breach, that Norway does not have a system in place for appealing cases where a timely decision has not been reached, as required by Article 51(3) of the Directive, Norway has now adopted regulations which provide for this⁴.

1.4 Reasoned opinion

- (19) Norway has now introduced a system to allow for the appeal of failures to reach timely decisions within the time limits provided in Article 51(2) of the Directive, as required by Article 51(3) of the Directive. The Authority recognises that while Norway has not provided any remedies to individuals who may have suffered a loss due to the lack of such a system, the breach which was referred to in its letter of

⁴ Regulations of 19 December 2016 No 1874 and Amendment Regulations of 15 August 2018 No 1261.

formal notice has been remedied. As such, the Authority is no longer pursuing this particular head of claim in this reasoned opinion.

- (20) The Authority maintains that the remaining two categories of breach still constitute breaches of EEA law as follows:
- Norway has rejected applications for recognition, which is inconsistent with the Directive. In the alternative these rejections are inconsistent with Directive 2006/123 and/or with the free movement of workers and freedom of establishment under the EEA Agreement;
 - Norway has, in a number of cases, exceeded the deadline in Article 51(2) of the Directive for deciding upon applications for recognition. In the alternative, this long processing time constitutes a breach of Article 13 of Directive 2006/123;

2 Relevant national law

- (21) The profession of psychologist (*“psykolog”*) is regulated in Norway by the Health Personnel Act⁵ (hereafter “HPA”). Section 48 HPA lists those health professionals that fall under the scope of its authorisation scheme. This includes *“psykolog”* (Section 48 litra (t)).
- (22) Under Norwegian law, an *“authorisation”* is a full and permanent approval to pursue the profession under the professional title *“psykolog”*. Persons not entitled to an authorisation may obtain a *“licence”*, which is a limited authorisation (cf. infra, para 25). Only holders of an authorisation or licence may use the protected title of *“psykolog”* (Section 74 HPA). The profession of psychologist in Norway is therefore a regulated profession in the sense of Article 3(1)(a) of the Directive (cf. infra, paras 59 and 69).
- (23) Section 48a HPA lays down the conditions for the authorisation of the health professionals listed in Section 48 HPA. One needs
- to have passed an exam in the relevant subjects at a Norwegian university, college or higher education;
or
 - to have passed a foreign exam recognised by international agreement;
or
 - to have completed education and passed a foreign exam which is recognised as equivalent to Norwegian education and examination;
or
 - to have proven to possess the necessary skills by passing an exam in health education, supplementary education or professional experience.

⁵ Lov om helsepersonell m.v. (helsepersonelloven), LOV-1999-07-02-64.

- (24) Applicants for an authorisation must be under 80 years of age and fit for the profession (Section 48a HPA).
- (25) Persons who are not entitled to an authorisation may obtain a “*licence*” pursuant to Section 49 HPA. Such a licence is usually limited in time, to a particular position or to certain types of care and may be granted to health personnel that are considered to be suited in accordance with the type of licence granted and the tasks it covers.
- (26) There is no legal provision establishing a list of activities reserved for the profession of “*psykolog*”. A psychologist in Norway can work across a broad spectrum of different positions, both more clinically-oriented, dealing with diagnosis and treatment and less clinically-oriented activities, such as prevention and health promotion. A “*psykolog*” can work in primary healthcare settings such as municipalities, private practice or in specialist healthcare services (hospitals).
- (27) The EU Database of regulated professions describes the activities of the Norwegian profession of “*psykolog*” as follows: “• Improve the quality of life of their patients. • Be familiar with how the brain works and the mechanisms behind human interaction and communication • Carry out investigations and tests which provide a basis for treatment • Have knowledge of how thinking takes place, what happens in the brain when we sense, think, feel and act • Development and mental disorders of children • Psychologists give advice and teach”.⁶
- (28) The National plan for the professional education in psychology (“*Nasjonal plan for profesjonsutdanning i psykologi*”)⁷ provides a description of the Norwegian psychology education: purpose, objectives, learning outcomes and content as well as organisation and examination. It also describes the skills graduates should possess after finishing their studies. The National plan determines that the education lasts six years and emphasises that the universities have academic freedom, meaning that there exist great possibilities to design different professional profiles.
- (29) Recently, new outcomes for psychology studies have been determined by the “*Regulation on national guidelines for psychology education*” of 3 January 2020 (cf. *infra*, para 153).
- (30) The Authority understands that, in Norway, it is common to continue psychology studies with a postgraduate specialisation. After completing this additional training, which usually lasts four years, individuals are awarded the title “*psychology*”

⁶ http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id_regprof=599

⁷ <https://www.ansa.no/globalassets/for/fag/psykologi/nasjonal-plan-for-profesjonsutdanning-i-psykologi.pdf>

specialist (“*psykologspesialist*”). This is not a separate profession as such. The profession of “*clinical psychologist*” does not exist in Norway.

3 Relevant EEA law

3.1 The Directive

- (31) In the EEA, Directive 2005/36 was recently amended by Directive 2013/55⁸, hereafter “the amended version”. This Directive 2013/55 came into force in the EEA EFTA States on 1 January 2019 and became effective in Norway on 10 December 2019⁹. At the time of the submission of the complaints in the present case, the previous version of the Directive still applied. However, as the breach persists in Norway, the amended version is also covered by the Authority’s assessment.

- (32) Article 1 of Directive 2005/36 (Article 1, first paragraph in the amended version) sets out its purpose:

“This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.” (emphasis added)

- (33) Article 3(1) a) defines the concept of “regulated profession”:

“regulated profession”: a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;”

⁸ Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’), OJ L 354, 28.12.2013, p. 132–170. Act referred to at point 1 of Annex VII to the EEA Agreement, added by Decision No 94/2017 (OJ L 36, 7.2.2019, p. 52 and EEA Supplement No 11, 7.2.2019, p. 62), e.i.f. 1.1.2019.

⁹ As indicated in the Form 1 (Doc No 1105622), submitted by Norway to the Authority on 20 December 2019.

- (34) Article 3(1) e) defines the concept of “*regulated education and training*”:

“regulated education and training”: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice.

The structure and level of the professional training, probationary or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose;”

- (35) Article 4(1) explains that recognition of professional qualifications by the host Member State provides access to “*the same*” profession as that for which the person is qualified in the home Member State:

“1. The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.” (emphasis added)

- (36) Article 4(2) clarifies that “*the same*” profession implies that the activities of both professions should be comparable:

“2. For the purposes of this Directive, the profession which the applicant wishes to pursue in the host Member State is the same as that for which he is qualified in his home Member State if the activities covered are comparable.” (emphasis added)

- (37) The Directive provides three alternative systems of recognition of professional qualifications. First, there is the automatic recognition system (Articles 21-49) which is characterised by a minimum harmonisation of the training. Second, there is the recognition system on the basis of professional experience (Articles 16-20) which is applicable to certain activities, listed in Annex IV of the Directive. Third, there is the general system (Articles 10-15) which is at issue in the present case. The general system applies to all professions which do not fall within the scope of the other two systems (Article 10).
- (38) The main characteristic of the general system is the absence of harmonisation of training requirements. Consequently, it entails a mutual – instead of an automatic – recognition. The host EEA State can decide each case separately and may, pursuant to Article 14, as appropriate, impose compensation measures like an aptitude test or an adaptation period.
- (39) Article 11 divides professional qualifications into five levels: (a) - (e), depending on the duration and level of training to which they correspond. Level (a) is the lowest and level (e) is the highest, and the relevant level in the present case:

“For the purpose of applying Article 13, the professional qualifications are grouped under the following levels as described below:

(e) a diploma certifying that the holder has successfully completed a post-secondary course of at least four years' duration, or of an equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course.” (emphasis added).

- (40) Article 13 contains the conditions for recognition under the general system. Article 13(1), first paragraph, lays down the principle of mutual recognition. It obliges a host EEA State to recognise a qualification from another EEA State if that qualification grants the applicant the right to pursue the regulated profession in that other EEA State.
- (41) Article 13(1), second paragraph states that, in that case, the qualification must satisfy the following conditions: i) it must have been issued by a competent authority in an EEA State, designated in accordance with the legislative, regulatory or administrative provisions of that EEA State; and ii) it must attest to a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host EEA State, as described in Article 11 (Article 13(1), second paragraph) i.e. in these cases at least equivalent to level (d). The condition ii) no longer applies in the amended version of the Directive.
- (42) Article 13(2), first paragraph obliges the host EEA State to recognise a foreign qualification also in cases where the profession is not regulated in the other EEA State (such as in Hungary) if the holder has pursued his profession there on a full-time basis for two years – one year under the amended version of Directive - during the previous ten years.
- (43) The two years of professional experience can however not be required by the host EEA State if the qualification certifies “*regulated education and training*” within the meaning of Article 3(1)(e) at the levels of qualifications described in Article 11, points (b), (c), (d) or (e) (Article 13(2), third paragraph). In the amended version, the one year of professional experience cannot be required by the host EEA State if the qualification certifies “*regulated education and training*” (Article 13(2), third paragraph). There is no longer reference to the qualification levels of Article 11 in the amended version.
- (44) Despite Article 13, EEA States may impose so-called “*compensation measures*” on the applicant as a condition for recognition, under certain conditions laid down in Article 14. This means that the host EEA State can either ask applicants to complete an adaptation period of up to three years or ask them to take an aptitude test (Article 14(1)).

- (45) Article 3(g) defines “*adaptation period*” as follows:

“the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State.”

- (46) According to Article 14(1), compensation measures can only be imposed in the following cases: a) where the duration of the training the applicant has received is at least one year shorter than the training required by the host EEA State; b) where the training the applicant has received covers “*substantially different matters*” than the one covered by the required qualification in the host EEA State; or c) where the regulated profession in the host EEA State comprises one or more regulated professional activities which do not exist in the corresponding profession in the EEA State where the applicant has received his training and that difference consists in specific training which is required in the host EEA State and which covers “*substantially different matters*” from those covered by the applicant's qualification.
- (47) In the amended version of the Directive, Article 14(1) a) no longer applies. Consequently, compensation measures can only be imposed by the host EEA State in cases b) and c) above.
- (48) Article 14(4) describes “substantially different matters” as “matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the migrant shows important differences in terms of duration or content from the training required by the host Member State.”
- (49) The amended version of Article 14(4) describes “substantially different matters” as “matters in respect of which knowledge, skills and competences acquired are essential for pursuing the profession and with regard to which the training received by the migrant shows significant differences in terms of content from the training required by the host Member State.”
- (50) Article 14(2) lays down the principle in accordance with which the applicant must be offered the choice between an adaptation period and an aptitude test. Article 14(3) determines the exceptions to that principle.
- (51) Article 14(5) emphasises that the use of compensation measures must be applied in accordance with the principle of proportionality. This obliges the host EEA State which intends to impose compensation measures to ascertain first whether the knowledge acquired by the applicant in the course of their professional

experience is of a nature to cover, in full or in part, the “*substantial difference*”, referred to in Article 14(4).

- (52) Recital 30 emphasises the need for procedural rules in order to ensure the effectiveness of the system for the recognition of professional qualifications:

“In order to ensure the effectiveness of the system for the recognition of professional qualifications, uniform formalities and rules of procedure should be defined for its implementation, as well as certain details of the pursuit of the profession.”

- (53) Article 51 consequently determines the procedural rules for processing a recognition request. Competent authorities of the host EEA State shall acknowledge receipt of the application within one month of receipt and inform the applicant of any missing documentation (Article 51(1)):

“1. The competent authority of the host Member State shall acknowledge receipt of the application within one month of receipt and inform the applicant of any missing document.”

- (54) In cases like in the present case where the profession falls under the scope of the general system, competent authorities must complete the process “*as quickly as possible*” and come to a decision in any case within four months after the applicant's complete file was submitted (Article 51 (2)):

“2. The procedure for examining an application for authorisation to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months after the date on which the applicant's complete file was submitted. However, this deadline may be extended by one month in cases falling under Chapters I and II of this Title.”
(emphasis added)

3.2 Directive 2006/123

- (55) Directive 2006/123 regulates the freedom of establishment for service providers and the free movement of services in the EEA. The relevant provisions for the present case are primarily Article 2, Recital 22, Article 3(1)(d), Article 4(6), Articles 9, 10 and 11:

- (56) Article 2:

*“1. This Directive shall apply to services supplied by providers established in a Member State.
2. This Directive shall not apply to the following activities:*

(f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;”

(57) Recital 22:

“The exclusion of healthcare from the scope of this Directive should cover healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.”

(58) Article 3(1)(d):

“1. If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These include:

(d) Directive 2005/36/EC.”

(59) Article 4(6):

‘authorisation scheme’ means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof

(60) Article 9:

“1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

2. In the report referred to in Article 39(1), Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1 of this Article.

3. This section shall not apply to those aspects of authorisation schemes which are governed directly or indirectly by other Community instruments.

(61) Article 10:

“1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

- (a) non-discriminatory;*
- (b) justified by an overriding reason relating to the public interest;*
- (c) proportionate to that public interest objective;*
- (d) clear and unambiguous;*
- (e) objective;*
- (f) made public in advance;*
- (g) transparent and accessible.*

3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. The liaison points referred to in Article 28(2) and the provider shall assist the competent authority by providing any necessary information regarding those requirements.

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

5. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for authorisation have been met.”

(62) Article 11(1):

“1. An authorisation granted to a provider shall not be for a limited period, except where:

- (a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;*
- (b) the number of available authorisations is limited by an overriding reason relating to the public interest; or*
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.”*

(63) Article 13:

“1. Authorisation procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.

2. Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

7. When a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection as quickly as possible.”

3.3 EEA Agreement

(64) Articles 28 and 31 EEA guarantee the free movement of persons of nationals of an EEA State in the territory of any other EEA State.

(65) Article 28 provides for the free movement of workers. It reads as follows:

“1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of EC Member States and EFTA States for this purpose;

(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of an EC Member State or an EFTA State

after having been employed there.”

- (66) Article 31 EEA provides for the freedom of establishment:

*“1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.
2. ...”*

- (67) Article 33 EEA states:

“The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.”

4 Factual background

- (68) The Authority refers to paras 12-54 of its letter of formal notice (Doc No 914637) for the factual background of the present case. Norway commented on and added to the Authority’s factual background, as set out in its letter of formal notice on pages 4-19 of its reply (Doc No 931483) to the letter of formal notice and in its reply of 21 December 2018 (Doc No 1044979) to the Authority’s request for information of 23 November 2018 (Doc No 1038408).
- (69) For a period of 13 years until 2016, Norway’s practice was to grant licences to applicants holding an *“okleveles pszichologus”* degree from ELTE. These licences had a validity of two years and gave the right to pursue the profession of *“pszikolog”* under the supervision of an authorised psychologist. After having worked under supervision for one year and, if evaluated successfully, they were granted an authorisation to work as a *“pszikolog”*.
- (70) This previous practice was based on Norway’s assessment that both the Hungarian and the Norwegian training of psychologists *“undoubtedly aim at educating clinical psychologists”*, as was confirmed by a Norwegian expert panel with

members from the University of Oslo in 2014¹⁰: “A five-year education is one year shorter than what is required to become a psychologist in Norway. Nevertheless, both educations aim undoubtedly at educating clinical psychologists who will be prepared to be able to enter into ordinary psychological positions.”¹¹

- (71) The practice was also based on an assessment of the content and duration of the Hungarian education. The Hungarian education is one year shorter (five years) than the Norwegian (six years), did not involve practical training and had insufficient European Credit Transfer System (ECTS) credits¹² on clinical theory. Therefore, the Directorate had found it necessary to impose a compensation measure in accordance with Article 14 of the Directive (cf. *supra*, paras 44-51 and letter of formal notice, paras 82-87) i.e. the requirement to work for one year under supervision.
- (72) According to Norway, under the old practice, 19 applicants holding the ELTE-qualification “*okleveles pszichológus*” with the specialisation “*Clinical and Health Psychology*” were granted an authorisation from 2005 to 2016.
- (73) Following Norway’s practice of 13 years, the number of Norwegian students at ELTE gradually increased. These students relied on the expectation that they would be granted a licence to work as a psychologist under supervision on their return to Norway, with the objective of eventually becoming fully authorised psychologists in Norway.
- (74) According to Norway, the increasing number of Norwegian students at foreign universities raised concerns with the Norwegian universities offering the psychology education. These universities urged the Norwegian authorities to rethink their practice as they considered the assessment that led to the practice as not good enough¹³. Consequently, the Directorate took a closer look at the Hungarian qualification and immediately changed its practice, without any transitional measures or any prior announcement.
- (75) As a result of this new practice, on 22 September 2016, 52 ELTE-graduates holding the degree “*okleveles pszichológus*” had their applications for licences to work as psychologists in Norway rejected. They were not offered any compensation

¹⁰ «Vedr. søknad om autorisasjon som psykolog, utdanning fra Ungarn. Vurdering i henhold til helsepersonellovens §48” (“Application for authorisation as a psychologist, education from Hungary. Assessment according to the Health Personnel Act §48”), University Oslo, 27 May 2014, p.4 (Doc No 895737).

¹¹ «En fem år lang utdannelse er et år kortere enn det som kreves for å bli psykolog i Norge. De to utdanningene til sammen tar allikevel uten tvil sikte på å utdanne kliniske psykologer som skal være forberedt til å kunne gå inn i ordinære psykologstillinger.»

¹² ECTS credits are a standard means, across the EEA, for comparing the volume of learning based on the defined learning outcomes and their associated workload for higher education.

¹³ Follow-up letter of the package meeting of 26 October 2017 (Doc No 878916).

measures under Article 14 of the Directive. These graduates include the complainants in Cases No 80103, 79661 and 81375.

- (76) Furthermore, 16 persons who were already working - under supervision - with their licences were informed by the Directorate that they should not expect to be granted an authorisation after completing their licence period. The complainant in Case No 81656 belongs to this group.
- (77) 187 Norwegian students were admitted to or already studying at ELTE at the time Norway decided to change its practice¹⁴.
- (78) Seven further authorisations were mistakenly granted following the change in Norway's practice. Since 2016, the number of applicants increased and the Directorate received 123 applications from 2016 until (July) 2018.
- (79) Norway claims the reason for its sudden change of practice is not caused by any changes to the Hungarian education of "*okleveles pszichológus*" nor by the increased number of applicants, but by "*new*" information about the qualification which it had received in April 2016 (cf. letter of formal notice, para 22).
- (80) In its reply to the letter of formal notice (p. 4), Norway claims that it requested this further information from the Hungarian authorities regarding the qualification "*okleveles pszichológus*" due to concerns regarding its academic level, as expressed by the "*professional and academic community of clinical psychologists*" (cf. supra, para 74).
- (81) Norway explains that the concerns of the professional community originated from the Norwegian Psychological Association and concerned the academic level and lack of clinical practice.¹⁵ The concerns of the academic community involved alleged substantial shortcomings ("*vesentlige avvik*") in the education provided by ELTE, compared with the Norwegian universities. It appears that the concerns from both the professional and the academic community are strictly related to education and do not concern the actual practice of ELTE-trained psychologists.
- (82) On the basis of Hungary's reply of 26 April 2016 to Norway's request for information of 20 April 2016, it appeared to Norway, *inter alia*, that the profession of "*okleveles pszichológus*" was not a regulated profession. From that point on, Norway rejected all ELTE-applications, except for those seven authorisations which were mistakenly granted.

¹⁴ In the academic year 2015-2016, there were 78 Norwegian students in the Bachelor programme and 109 in the Master programme, see e-mail of Zsolt Demetrovics (Dean of ELTE) to the Authority's Directorate of Internal Market Affairs of 7 September 2016 (Doc No 895742).

¹⁵ In its request for information of 23 November 2018 (Doc No 1038408), the Authority asked for further explanations regarding the concerns, which were provided by Norway in its reply of 21 December 2018 (Doc No 1044979).

- (83) Due to a massive protest of the ELTE-graduates, the Norwegian Government searched for solutions (cf. letter of formal notice, paras 40-47). Finally, two special (voluntary) training programmes for two different groups of ELTE-graduates were created.^{16 17}
- (84) The first programme concerned the 16 candidates who had already been granted licences before Norway changed its practice. These candidates were offered a 12-month programme starting in April 2018. This programme comprised eight seminars, individual evaluations and suitability assessments. Candidates could continue to work during the qualification programme. Norway confirmed¹⁸ that all 16 candidates completed the programme in a satisfactory manner and were authorised in April 2019.
- (85) The second programme concerned candidates who started or completed their Master's degree programme at ELTE before the Norwegian practice was changed in 2016. This programme's duration is 14 months and is organised for three groups, spread in the time between November 2018 and spring 2022. It consists of an introductory course, compulsory teaching seminars and supervised practical training in the specialist healthcare service. This programme started in November 2018. In this first session, 57 persons were offered this programme whereof 55 accepted it.
- (86) Norway considers that these programmes illustrate that it has been willing to go far to offer a solution to the affected persons. Norway contests the Authority's suggestion that the creation of these programmes constitutes an implicit acknowledgment that an "*okleveles pszichologus*" and "*pszikolog*" are "*the same*" profession. It emphasises that the creation of the programmes is an extraordinary and costly one-off measure and that Norway was under no legal obligation to provide such programmes, which it offered outside the Directive's provisions on compensation measures.
- (87) Norway acknowledges the processing times in Cases No 80103, 79661 and 81375 as mentioned in the Authority's letter of formal notice and states it was not able to identify and trace the processing time in Case No 81656.

5 The Authority's Assessment: An Overview

- (88) The Authority maintains its view that Norway's practices constitute two categories of breach:

¹⁶ Cf. pages 5-7 of Norway's reply to the formal notice (Doc No 931483) and pages 7-8 of Norway's letter of 21 December 2018 (Doc No 1044979).

¹⁷ Cf. paras 40-47 of the letter of formal notice.

¹⁸ Cf. follow-up letter of 19 November 2019 after the Package meeting of 23 October 2019 (Doc No 1096584, p. 16).

- Norway has rejected applications for recognition in a manner which is inconsistent with Norway's obligations under the Directive. In the alternative, these rejections are inconsistent with Directive 2006/123 and/or with the free movement of workers and freedom of establishment under the EEA Agreement;
- Norway has, in a number of cases, exceeded the deadline in Article 51(2) of the Directive for deciding upon applications for recognition. In the alternative, this long processing time constitutes a breach of Article 13 of Directive 2006/123.

- (89) The assessment of Norway's practice in the following is broken down into two parts. The first part is based on the view that the Directive applies to the case at hand and consequently examines the Norwegian practice in light of the Directive. This assessment concerns two different practices: i) refusal of recognition applications and ii) processing time for handling recognition applications. These two practices will be examined in Section 6 and 7 respectively.
- (90) The second part, which is only relevant if the Directive does not apply to the cases at hand, considers in the alternative the Norwegian practices in light of Directive 2006/123 and/or Articles 28 and 31 EEA. This will be addressed in Section 8.
- (91) As Norway's argumentation for having rejected the applications is based on its view that the Directive does not apply, the applicability of the Directive to the present case is extensively addressed. This legal question comes down to the question of whether "*okleveles psykologus*" and "*psykolog*" are to be considered as the "same" profession, within the meaning of the Directive. The Authority maintains its view that it concerns "*the same*" profession and that, as a consequence, the Directive applies to the present case.
- (92) It is undisputed that, if the Directive applies to the present case, it is the "general system" of recognition of professional qualifications (Articles 10 – 15) which applies. The Authority refers to the corresponding part of its letter of formal notice (cf. paras 159-160).
- (93) In Section 6, the Authority first shows that the Directive applies. It then sets out why it is of the opinion that Norway is obliged to recognise the qualifications on the basis of the relevant provisions under the general system i.e. Articles 13 and 14 of the Directive.
- (94) After having assessed the content of Norway's decisions on the applications, the time needed to process these applications is assessed in Section 7. The Authority will conclude that Norway has infringed Article 51(2) of the Directive by exceeding its deadlines for processing recognition applications.

- (95) The second part of the assessment (Section 8) examines Norway's practice on the basis suggested by Norway (and as contested by the Authority) that the Directive does not apply. In that case, the Authority considers that Directive 2006/123 and/or Articles 28 and 31 EEA will be applicable. The assessment shows that even following this approach, Norway is in breach of EEA law regarding its practice with respect to the ELTE- applicants.

6 Norway's refusal of the recognition applications is a breach of Articles 13 and 14 of the Directive

6.1 Introduction

- (96) An assessment of whether there is a breach of Articles 13 and 14 of the Directive centres first around the question whether, within the meaning of Article 4, the profession of "*okleveles pszichológus*" (literally: certified psychologist) in Hungary is "*the same*" profession as the profession of "*psykolog*" (psychologist) in Norway. If these professions are to be considered as "*the same*", the Directive applies with the effect that recognition must be afforded pursuant to Article 4(1).¹⁹
- (97) More specifically for the present case, applicants are entitled to have their qualifications recognised according to Article 13. This recognition may be made subject to having successfully complied with compensation measures, according to Article 14 (cf. letter of formal notice, paras 108-119).
- (98) The Authority considers that the professions ("*okleveles pszichológus*" in Hungary and "*psykolog*" in Norway) are "*the same*" profession (cf. letter of formal notice, paras 120-158) and consequently, the applicants are entitled to have their qualification recognised. The Norwegian Government takes the opposite view. Consequently, it considers that the Directive does not apply and refuses to recognise the qualification of the applicants according to Articles 13 and 14 (cf. Norway's reply to the letter of formal notice, pages 21-29).

6.2 Applicability of the Directive: Is an "*okleveles pszichológus*" and a "*psykolog*" "*the same*" profession?

6.2.1 Introduction

- (99) The Authority recalls that the comparison between the two professions concerns the Norwegian "*psykolog*" on the one hand and the Hungarian "*okleveles pszichológus*" with specialisation "*Clinical and Health Psychology*" on the other hand. The complainants in the current case all hold this specialisation.
- (100) The Authority considers that both professions are "*the same*" and, as such, that the Directive applies. This finding is based on three arguments.²⁰ Firstly, the Directive

¹⁹ See e.g. Case C-575/11 *Nasiopoulos* ECLI:EU:C:2013:430, paras 31-32.

²⁰ See the letter of formal notice, paras 120-158.

requires a broad approach when deciding which professions are to be considered “*the same*” and Norway has *de facto* acknowledged this by its practice (cf. letter of formal notice, paras 121-131). This will be addressed in Section 6.2.2. Secondly, the activities of both professions are “*comparable*” (cf. letter of formal notice, paras 132-152). This is addressed in Section 6.2.3. Finally, the comparable structure of the psychology education in both countries supports the conclusion that the same professions are involved (cf. letter of formal notice, paras 153-158). This is addressed in Section 6.2.4.

6.2.2 The Directive’s broad approach to “*the same*” profession and Norway’s corresponding practice

- (101) Here, the Authority explains first why a narrow interpretation of the term “*the same*” profession would make the Directive and more specifically its general system of recognition (that applies to the present case) ineffective. Any potential risk relating to differences in education, experience and skills, may be overcome by compensation measures pursuant to Article 14. Second, the Authority submits that, by imposing such measures, which proved to be effective in covering what Norway considered to be a lack of independent practice in the Hungarian education, Norway has effectively demonstrated that the professions are “*the same*”.
- (102) The Authority refers to the description of the general system of recognition (cf. *supra* paras 37-51 and letter of formal notice, paras 73-87). The general system does not include the harmonisation of training requirements. Instead, it is characterised by mutual recognitions. Since these recognitions are not automatic, the host EEA State may decide each case separately. In certain cases, it may also impose compensation measures such as an aptitude test or an adaptation period, pursuant to Article 14.
- (103) The profession of psychologist falls under the scope of the general system, as the training has not been harmonised at EEA level. It is therefore natural that the professions of psychologist throughout the EEA differ to a certain extent²¹.
- (104) This is especially the case as it concerns a health profession. Health professions operate within widely differing health care systems across EEA States. This means on the one hand that the structures and modalities under which health professionals operate will vary. On the other hand, the actual activities of health care professionals, typically based on methods and training recognised by international medicine, may still be “*comparable*” and therefore the professions may be “*the same profession*” under the Directive.

²¹ It shows from the EU Commission’s recent report on the profession of psychologist that the profession indeed appears to be one of significant diversity across the EEA. Yet, the profession ranks as top 16 amongst the most mobile professions, see “*Mutual evaluation of regulated professions. Overview of the regulatory framework in the health services sector – psychologists and related professions*”, GROW/E5, 11 April 2016.

- (105) The CJEU has held that the purpose of the Directive is “to facilitate the mutual recognition of diplomas, certificates and other evidence of formal qualifications.”²² If all professions that differ somewhat throughout the EEA were to be considered as not “*the same*” – and therefore excluded from the scope of the Directive, this would in practice render the Directive ineffective and defeat its clear purpose. In particular, this would be the case for recognition of professional qualifications under the general system, characterised by the absence of harmonisation. As explained in the previous paragraph, this is especially an issue for health professionals, where national systems differ widely, while the activities, methods and training of the individual professionals do not so differ (or differ to a lesser extent).
- (106) In addition to these considerations about the purpose of the Directive, the rationale for compensation measures in Article 14 is precisely to mitigate the differences in education and skills pertaining to the professions governed by the general system. It follows from Article 14(1), furthermore, that compensation measures are only allowed in certain instances, *inter alia* where “*the training the applicant has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host EEA State*”. This view was recently confirmed by the CJEU²³.
- (107) From this, three points can be drawn. First, compensation measures may only be imposed where the different matters of the training are “*substantial*”. In other words, the differences must be great or significant: there is no justification (or requirement) for compensation measures in the case of less significant or minor differences. Second, given that such measures may be imposed to compensate for ‘*substantial differences*’ in training, this means that substantial differences in training cannot automatically lead to the conclusion that the professions are not “*the same*”. Finally, the counterpoint to this is that, through its system of allowing “*substantially different matters*” in training to be compensated, the Directive clearly recognises that professions may be “*the same*”, despite significant national variances in training.
- (108) Further, the CJEU has confirmed the systemic importance of compensation measures when considering whether two professions are “*the same*” (cf. letter of formal notice, paras 126-129). It concluded that when two professions can be considered “*the same*”, the shortcomings in an applicant’s education in relation to that required in the host EEA State may be effectively made up for through compensation measures²⁴.

²² Judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03 ECLI:EU:C:2006:45, para. 23 (referring to the predecessor to the Directive).

²³ Case C-729/17, *Commission v Greece*, ECLI:EU:C:2019:534, para. 91.

²⁴ Judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03 ECLI:EU:C:2006:45, para 34 and Judgment of 27 June 2013, *Nasiopoulos*, C-575/11, ECLI:EU:C:2013:430, para 31.

- (109) If, however, the differences between the fields of activity are so great that, in reality, the applicant should follow a full programme of education and training in order to pursue the activities for which he is qualified in another EEA State, the Directive does not cover such a situation and is therefore not applicable.²⁵ In other words, such a situation concerns different professions. As noted above in Section 6.1, the situation must then be assessed under other rules, which will be done in Section 8.
- (110) The Authority considers it clear that the first scenario applies to the current case. Under Norway's old practice, for 13 years, ELTE-graduates had compensation measures imposed i.e. an adaptation period consisting of a licence period of working for one year under supervision. After successfully completing this period i.e. obtaining a positive evaluation from their supervisor, they were authorised and commenced working as a "psykolog".
- (111) In the view of the Authority, Norway's previous practice may have been appropriate as a compensation measure, given that the professions were "*the same*" under the Directive. It has proven to be effective in covering what Norway considered to be a lack of independent practice in the Hungarian education. As far as the Authority is aware, no incidents or other patient safety problems have been notified following such supervised practice. This was also stressed by the competent Hungarian Ministry and by ELTE (cf. letter of formal notice, para 26).
- (112) Even after Norway changed its practice in 2016, it continued to provide compensation measures. In this case, these compensation measures took the form of special training programmes which were created for some of the applicants (cf. supra paras 84-85 and letter of formal notice, paras 41-47). These programmes take 12 to 14 months and consist of a combination of education and practical training. These programmes can therefore be qualified as a compensation measure within the meaning of Article 14 of the Directive.
- (113) More specifically, these special programmes can be qualified as an adaptation period cf. the definition in Article 3(g) of the Directive:
- "the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State."*
(emphasis added)
- (114) In sum, both Norway's previous and its current practices show that it considers that it is possible to compensate for differences in the Hungarian training and that it is

²⁵ Judgment of 27 June 2013, *Nasiopoulos*, C-575/11, ECLI:EU:C:2013:430, para 32.

not necessary for ELTE-graduates to follow the entire Norwegian education to become “*psykolog*”. By enacting these compensation measures in line with Article 14, Norway has effectively demonstrated that the professions are “*the same*”. Any other understanding would upend the relationship between Article 4 and the general system’s compensation measures under Article 14.

- (115) Given the above, the Authority considers that Norway’s view, that two different professions are involved, cannot be maintained. Even after its change of practice, by its actions, Norway acknowledged that any differences in education can be dealt with through additional training. The fact that Norway asserts that it was not obliged to do so and that it does not consider the special programmes as a compensation measure, does not alter the implicit and *de facto* acknowledgment that the professions were “*the same*”. That Norway offered this special training programme only to some and not to all ELTE-applicants is of no relevance.
- (116) In the Authority’s view, if Norway was convinced that the professions were not “*the same*”, then it was obliged to require all ELTE-applicants to follow the entire Norwegian education from the beginning (i.e. six years). However, Norway has chosen not to do so. Nor has it provided any convincing arguments as to why it changed its position in 2016. Following the clear case law of the CJEU, this assessment (i.e. that the full training is not necessary) means that both professions must be classified as “*the same*” under the Directive.
- (117) As set out in the letter of formal notice (para 122), the broad approach of the Directive to “*the same*” profession results also from the wording of the relevant provisions of the Directive. Article 4(2) does not require the activities of both professions to be identical. It is sufficient that the activities of two professions are “*comparable*” in order to be considered as “*the same*”. This comparability of the activities of both professions will be assessed in the next Section.

6.2.3 The activities are “comparable”

6.2.3.1 Introduction

- (118) Pursuant to Article 4(2) of the Directive, two professions are “*the same*” when their corresponding activities are “*comparable*”. The CJEU has refined this comparability concept further by describing comparable activities as being “*identical or analogous or, in some cases simply equivalent*”²⁶.
- (119) The Authority considers first that, given that only the activities of a profession are relevant, the labelling at national level (such as here) of a profession as a “healthcare profession” and/or registration of the professional as a “health care professional” is not relevant. This is equally the case for national labelling of the

²⁶ Judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03 ECLI:EU:C:2006:45, para 20 and Judgment of 19 January 2006, *Malta Dental Technologists Association*, C-125/16 ECLI:EU:C:2006:45, para 40.

training and its content as a health degree or not. Under the Directive's general system, a comparison of the education in the two EEA States is only relevant for deciding whether and which compensation measures can be imposed (cf. Articles 13 and 14 of the Directive). The Authority's view on the comparability of the structure of the psychology education in both countries (cf. *infra* Section 6.2.4) serves merely as a supportive argument for the comparability of the activities.

- (120) Norway takes the view that the differences between the activities of both professions render these activities incomparable and therefore the professions are not "*the same*" (cf. reply to the letter of formal notice, pages 23-28). The Authority strongly disagrees.

- (121) Norway's argument is that an "*okleveles pszichológus*" only qualifies the holder for non-clinical professions (such as, *inter alia*, a family assistant in child welfare services, psychological advisor, methodological consultant, tutor in children temporary homes). According to Norway, the holder of such a qualification may not carry out any clinical (or healthcare) activities – or at least not independently – which is the case for a "*pszikolog*".

- (122) It is however undisputable that, in Hungary, an "*okleveles pszichológus*" is permitted to carry out clinical (or healthcare) activities (cf. description of the Hungarian system in the letter of formal notice, paras 27-39). The only condition is that the individual concerned is a candidate for the specialised clinical psychologist qualification ("*klinikai szakpszichológus*") or has committed to start such further studies within two years.

- (123) In Norway's view, it is nevertheless not sufficient - and therefore not relevant - that an "*okleveles pszichológus*" can perform clinical activities when in the position of candidate in specialised clinical psychologist ("*klinikai szakpszichológus*") studies or having committed to become one in two years' time. Norway's arguments here are twofold.

- (124) Firstly, Norway emphasises that none of the complainants have started the specialisation studies or have committed themselves to do so, and many do not speak Hungarian, which is the only language of instruction. Secondly, Norway claims that, in contrast to a "*pszikolog*", the healthcare activities cannot be provided independently but only under the supervision of a specialised clinical psychologist ("*klinikai szakpszichológus*" or psychiatrist). Additionally, an "*okleveles pszichológus*" cannot set up in private practice. According to Norway, this difference in degree of autonomy makes the activities incomparable.

- (125) Norway does not dispute that the clinical activities themselves, carried out by "*okleveles pszichológus*" are equal or at least comparable to those of a "*pszikolog*". In other words, Norway acknowledges that an "*okleveles pszichológus*" may in fact carry out the same or at least comparable clinical activities as a "*pszikolog*" while completing, or contemplating completing further specialised studies and under

supervision of a specialised clinical psychologist (“*klinikai szakpszichológus*” or psychiatrist).

- (126) In sum, the discussion between the Authority and Norway on the comparability of the activities is limited to a well-defined range of activities of a “*psykolog*” and “*okleveles pszichológus*” i.e. their clinical or healthcare activities. Furthermore, the discussion does not touch upon any substantial differences in the nature of these activities. The disagreement solely concerns potential differences in the way these activities are performed by both types of psychologists.
- (127) In the Authority’s view, the requirements of (commitment to) specialised clinical psychologist studies and Hungarian language skills are not relevant in the discussion (cf. *infra* Section 6.2.3.2).
- (128) Further, the Authority maintains its view on Norway’s allegations on the differences in autonomy between both professions when carrying out clinical activities. The Authority observes a lot of similarities. Both professions, although not to the exact same extent and although organised differently, face a considerable limitation on their autonomy. In both countries, the guidance of more specialised psychologists is crucial in the provision and organisation of clinical psychologists’ services (cf. *infra* Section 6.2.3.3).
- (129) Consequently, the Authority concludes that both professions are “*the same*”, within the meaning of the Directive.

6.2.3.2 The requirements of (commitment to) specialised clinical psychologist studies and Hungarian language skills are not relevant

- (130) Norway has emphasised that none of the complainants have started the specialisation studies or have committed themselves to do so, and many do not speak Hungarian, which is the only language of instruction. In so doing, Norway seems to suggest that the complainants are not qualified to perform healthcare activities.
- (131) The Authority maintains its view (cf. letter of formal notice, para 137) that these requirements of further study as a specialist psychologist and speaking Hungarian are purely formal, and are therefore not relevant to the present case. In the Authority’s view, the complainants in the present case are, at any rate, fully qualified to perform healthcare activities.
- (132) It remains indisputable that holders of the qualification “*okleveles pszichológus*” with the specialisation “*Clinical and Health Psychology*” have full access²⁷ to the

²⁷ In contrast with “*okleveles pszichológus*” with other specialisations, they are not required to complete extra courses in psychodiagnostics and clinical psychology (see letter of formal notice, para 31) but can immediately start the specialisation training.

specialisation training and thus are fully qualified to perform healthcare activities. One reason why the complainants do not commit themselves to such a training in Hungary is simply because they want to pursue a career in Norway (see letter of formal notice, para 137).

- (133) Although in practice, Hungarian is the most common working language in Hungary, there is no language requirement under Hungarian law²⁸ to enter specialisation training or to perform healthcare activities. Therefore, Norway's argument that the ELTE-applicants mostly do not speak Hungarian must be dismissed.

6.2.3.3 The differences in autonomy do not make the activities incomparable

- (134) Norway's main argument as to why their activities are not comparable concerns the difference in the degree of autonomy between a "*psykolog*" and an "*okleveles pszichológus*" in performing healthcare activities.
- (135) According to Norway, an "*okleveles pszichológus*" cannot provide these healthcare activities independently, but only under the supervision of a specialised clinical psychologist ("*klinikai szakpszichológus*") or psychiatrist, contrary to a "*psykolog*". This also means that, as a consequence, an "*okleveles pszichológus*" cannot set up in private practice, in contrast to a "*psykolog*".
- (136) The Authority first reiterates that differences in the degree of autonomy in performing activities do not affect the nature of these healthcare activities and that equality or at least the comparability of the nature of the healthcare activities themselves of both types of psychologists was not disputed by Norway.
- (137) Furthermore, as the Authority has already set out in its letter of formal notice (cf. paras 142-144), the Authority considers that Norway overestimates the lack of autonomy and therefore the need for supervision on an "*okleveles pszichológus*". At the same time, it overestimates the autonomy of a "*psykolog*" (cf. letter of formal notice, paras 145-152).
- (138) The Authority acknowledges that there is a supervision requirement for "*okleveles pszichológus*" when they perform healthcare activities, as set out in Hungarian legislation. In the view of the Authority, this does not however amount to the reservation of healthcare activities in Hungary only to specialised clinical psychologists, as claimed by Norway (cf. Norway's reply to the letter of formal notice, p. 25). The Authority will therefore first comment on the specific nature of the supervision by examining closer how this works in Hungary and thereafter how

²⁸ Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 30 July 2018 and forwarded by Norway in its reply of to the Authority's letter of formal notice (Doc No 931439).

this works in Norway. Then, the Authority will discuss the CJEU's judgment in the case *Malta Dental Technologists Association*²⁹.

- (139) In the Authority's view, it is necessary to take into account the actual characteristics of the supervision in practice, as there is no legally prescribed form of supervision set out in Hungarian law³⁰.
- (140) Statements of the Hungarian authorities demonstrate that the supervision requirement is in reality much "lighter" than how it is presented by Norway. The supervision should not be seen as the total disruption of the "*okleveles pszichológus*" autonomy, but rather as assistance and support (even after obtaining the specialist's certificate, it is part of the working culture) and merely on request of the "*okleveles pszichológus*". Activities can be implemented independently by the "*okleveles pszichológus*" and the responsibility is shared between them and their supervisors.
- (141) The Hungarian authorities describe the supervision as a "*formal control by the institution*" and "*not as a guided activity*"³¹ (cf. letter of formal notice, para 37). They also describe the supervision as:

"a possibility for the supervised person to consult with a senior colleague in any issues in which he/she needs professional support. Supervision in this regard may include the provision of consultation opportunities in all professional issues which might be relevant for the supervised, participation in case study discussion groups; provision of professional assistance if and when it is required by the supervised."³² (emphasis added).

- (142) The Hungarian authorities explain further:

"The aim of the supervision is to provide an institutional and professional support to the psychologist before he/she gets the specialist certificate. It is usually provided by a specialist clinical psychologist or a psychiatrist. This type of support is part of the working culture of health care settings and it helps the psychologist to get integrated into the system" (emphasis added)

²⁹ Judgment of 21 September 2017, *Malta Dental Technologists Association*, C-125/16, ECLI:EU:C:2017:707.

³⁰ Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 30 July 2018 and forwarded by Norway in its reply of to the Authority's letter of formal notice (Doc No 931439).

³¹ Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 30 May 2017 and forwarded by Norway in its letter of 8 June 2017 to the Authority, p. 2 (Doc No 860200).

³² Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 30 July 2018 and forwarded by Norway in its reply of to the Authority's letter of formal notice (Doc No 931439).

“Supervision in practical terms means that when a psychologist enters the health care system a senior staff member (specialist clinical psychologist or psychiatrist) is assigned to help his/her work if necessary. It also means that the institutional responsibility is shared this way, though all the professional activities are implemented by the psychologist him/herself.” (emphasis added)

“Psychologists can carry out independently all the necessary activities stemming from needs of the clientele. The consultancy options are always available for them. All forms of these consultancy opportunities remain available after the specialist certificate was obtained as this type of professional support is the inherent characteristic of health care settings dealing with psychological problems.”³³ (emphasis added)

- (143) The above was confirmed again by the Hungarian authorities in their correspondence with the Authority³⁴:

“The supervision in practice means that when a psychologist enters the healthcare system, a senior staff member (a specialized clinical psychologist or a psychiatrist) is assigned to help his/her work. The aim of the supervision is to provide psychologists with an institutional and professional support in order to integrate them into the system before their obtaining a specialist certificate. It may include consultation opportunities on all professional matters which might be relevant for the supervised candidate; participation in case study discussion groups; provision of professional assistance. This type of support is part of the working culture of healthcare settings dealing with psychological problems and even though all the professional activities are implemented by the psychologist, the institutional responsibility is shared.” (emphasis added)

- (144) Norway has therefore overestimated the lack of autonomy and therefore the need for supervision of an “okleveles pszichológus”. At the same time, the Authority also submits that Norway has overestimated the independence of a “psykolog”:

“the psychologists in Norway have the right to perform a wide range of different healthcare services. This includes invasive healthcare to patients with severe mental disorders. Furthermore, the psychologists have a special role in the Norwegian healthcare sector that is highly independent and with an extensive responsibility to determine and deliver healthcare services on an independent basis. This means that the psychologist can make independent decisions concerning diagnoses and treatment without supervision and without any requirement of being part of a medical team.”³⁵

³³ Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 30 July 2018 and forwarded by Norway in its reply of to the Authority’s letter of formal notice (Doc No 931439).

³⁴ Letter of the Hungarian Ministry of Human Capacities to the Norwegian Ministry of Health and Care Services of 18 June 2019 to the Authority (Doc No 1077719).

³⁵ Reply of Norway of 23 December 2017 (Doc No 888288) to the letters of the Authority of 16

- (145) The Authority refers to its letter of formal notice (cf. paras 145-151) in which it has listed a number of factors *inter alia* in Norwegian legislation that weaken this statement from Norway and which indicate that a “*psykolog*” is not fully autonomous. Just as for an “*okleveles pszichológus*”, so does a “*psykolog*” also require assistance from a psychology specialist on many occasions.
- (146) In its reply to the Authority’s letter of formal notice (p.27), Norway acknowledges for the first time that a “*psykolog*” in practice does not diagnose autonomously but that either a medical specialist or psychology specialist should be involved in the diagnosis. Norway claims however this restriction applies only to the specialist healthcare services (hospitals) and not to primary healthcare services (including work in the municipalities and their own private practice).
- (147) The Authority disagrees with Norway’s claim that a “*psykolog*” requires the supervision of a psychology specialist in special healthcare services, but is fully independent when performing in primary healthcare services Norway has not provided any evidence that such a difference exists. To the Authority, it is clear that the requirement of a “*psykolog*” for professional support from a psychology specialist is a general principle that applies to all settings in which psychologists perform clinical activities, for the following reasons.
- (148) This is *inter alia* clearly reflected in the ethical guidelines³⁶ of the Norwegian Psychological Association (cf. letter of formal notice, para 148). These guidelines do not differentiate between specialist healthcare and primary healthcare services. As the Authority understands it, conduct, which is contrary to ethical rules of the profession, can be considered as “irresponsible conduct” which may constitute a potential ground for the supervising authority, the Norwegian Board of Health Supervision (“*Helsestilsynet*”), to withdraw a psychologist’s authorisation³⁷.
- (149) As set out in the Authority’s letter of formal notice, the view of the Norwegian Board of Health Supervision is that “diagnosis is a specialist task” and “where a patient is assessed by health personnel without special competence, it must be documented that a specialist has been involved in the diagnostic evaluation” (cf. letter of formal notice, para 146).
- (150) The supervision of the Norwegian Board of Health Supervision is not restricted to specialist healthcare services. According to its website, it is a supervisory authority, supervising social and health services “*irrespective of whether they are provided by*

November 2017 and 23 November 2017, p. 1-2.

³⁶ “A psychologist must practice within the limits of their competence following training, education and experience.” (emphasis added) They should also “seek professional advice and support in difficult situations”. (emphasis added). See *Etiske prinsipper for nordiske psykologer* («Ethical guidelines for Norwegian psychologists»), <https://www.psykologforeningen.no/medlem/etikk/etiske-prinsipper-for-nordiske-psykologer>

³⁷ Ot.prp.nr. 13 (1998-1999), p. 175-176.

*municipalities, private providers, publicly owned hospitals and residential child care institutions or health care personnel who run their own practice*³⁸.

- (151) The fact that a “psykolog” working in primary healthcare services must rely on the expertise of a specialist - just as is the case for a “psykolog” working in specialised healthcare services - was further demonstrated by the Norwegian Minister of Education’s announcement on new training outcomes for psychologists (whether in primary or specialised healthcare). New outcomes for psychologists’ training were considered necessary as the outcomes differ around the country.
- (152) One of the objectives of these new guidelines is to equip students to work “*independently in preventing and treating mental disorders in the municipalities*” (emphasis added).³⁹
- (153) The new outcomes were recently adopted in the “*Regulation on national guidelines for psychology education*” of 3 January 2020⁴⁰. The Regulation entered into force on 1 February 2020 and applies to students who are admitted as of admission to the academic year 2021-2022 (Section 24). “Independence” runs through these guidelines as a common thread, see more general in Section 2 (and further on, more concretely in *inter alia* Sections 8, 14, 15, 17 and 13):

“§ 2. Purpose of the education

... The candidate should be able to independently use this broad competence to understand, investigate, diagnose, treat and evaluate psychological problems in “individuals, families and groups, as well as to conduct health-promoting and preventive work.

... The education provides the basis for being able to practice independently as a psychologist in Norway with responsibility for patients in accordance with current legislation within specialist and municipal health services, in research institutions, as well as within other health and welfare services and at various organizational levels in public and private activities.” (emphasis added, translation by the Authority)

- (154) To the Authority, these new guidelines demonstrate clearly that a “psykolog” currently is not performing independently and that this also involves primary care settings (which include work in the municipalities). The Authority cannot see why Norway would have considered these new outcomes - which concentrate on enhancing independence - as necessary if a “psykolog” were already totally

³⁸ Website Helsestilsynet, <https://www.helsetilsynet.no/en/introduction-to-the-supervisory-authorities-and-the-supervision-of-child-welfare-services-social-services-and-health-and-care-services-in-norway/>

³⁹ <https://www.nrk.no/norge/nye-retningslinjer-for-helsespesialister-1.14857307> See also Press Release of the Norwegian Ministry of 13 January 2020, «Nye nasjonale minstekrav til helseutdanningene» (“New national minimum requirements for health education”), <https://www.regjeringen.no/no/aktuelt/nye-nasjonale-minstekrav-til-helseutdanningene/id2685227/>

⁴⁰ Forskrift om nasjonal retningslinje for psykologutdanning, FOR-2020-01-03-16.

independent today. The Authority notes that the National plan for the professional education in psychology ("*Nasjonal plan for profesjonsutdanning i psykologi*")⁴¹, providing the outcomes of the Norwegian psychology education for current students does not mention any references to independence (cf. supra, paras 28-29).

- (155) In relation to Norway's argument that only a "*psykolog*" (and not an "*okleveles pszichológus*") can conduct psychotherapy and can diagnose and treat children on an independent basis, the Authority considers it sufficient to refer to the above and to the relevant parts of its letter of formal notice (paras 145-151) that indicate clearly that a "*psykolog*" is actually never performing (entirely) independently.
- (156) In the Authority's view, none of the arguments raised by Norway in its response to the letter of formal notice alter its fundamental finding that the activities of a "*psykolog*" and an "*okleveles pszichológus*" are "*the same*" profession.
- (157) While there are some minor differences in the concrete modalities and organisation of clinical psychologists' services, in both countries these services consist of an interplay of specialists and non-specialists. As in Hungary, the role of specialised psychologists in Norway is significant and undermines the argument that psychologists in Norway work mainly autonomously.
- (158) In support of its arguments about the autonomy of the Norwegian "*psykolog*", Norway submits that a "*psykolog*" has an independent referral right to the specialist health service, meaning they can "*write referrals that lead to reimbursement from the State*" (Norway's reply to the letter of formal notice, page 9).
- (159) An assessment of Norway's reimbursement system for the services of psychologists however reveals that the services of a "*psykolog*" can never be reimbursed by the social security system, which only reimburses services that are provided by (some⁴²) specialised psychologists.
- (160) The role of a "*psykolog*" in the reimbursement policy is therefore limited to being one of the professionals – alongside medical doctors and leaders of child welfare administrations - who can refer patients to specialised psychologists. This referral is needed for the reimbursement of the services of specialised psychologists. However, for the reimbursement of a patient's first three consultations or examinations with a specialised psychologist, such a referral is not required.

⁴¹ <https://www.ansa.no/globalassets/for/fag/psykologi/nasjonal-plan-for-profesjonsutdanning-i-psykologi.pdf>

⁴² i.e. specialised clinical psychologists that have entered into an operating agreement with the regional health authorities cf. Norway's reply of 21 December 2018 (Doc No 1044979) to the Authority's request for information of 23 November 2018 (Doc No 1038408).

- (161) The Authority further notes that this referral role for any “*psykolog*” was only introduced in 2015⁴³. In the legislative proposal, the Ministry noted that the proposal could entail particular challenges for psychologists who do not primarily work as health care personnel, such as psychologists in the educational-psychological service of the municipalities (in Norwegian “*PP-tjenesten*”) and in the child care services.⁴⁴ Contrary to what Norway has argued, the role of a “*psykolog*” with respect to referrals and reimbursements therefore does not at all indicate any particular degree of autonomy.
- (162) The above shows that the differences in autonomy between a “*psykolog*” and an “*okleveles pszichológus*” when providing healthcare activities are not as large as presented by Norway. Although the degree and the organisation of the required supervision or intervention of a specialised psychologist might not be identical, both professions are in their own way to a considerable degree dependent on specialised psychologists. For these reasons, the Authority cannot see that the difference in autonomy characterises the professions to such a degree that it must lead to the conclusion that it concerns two different professions.
- (163) The same issue was at stake in the CJEU’s Case *Malta Dental Technologists Association*. The CJEU compared the profession of clinical dental technologist (CDT) with that of dental technician (DT).⁴⁵ A CDT is an expert in the field of dental appliances that practices independently and is in direct contact with patients. A DT by contrast, although being also an expert in the field of dental appliances, works under the supervision of a dentist.
- (164) In his Opinion in that case, the Advocate-General stated: ⁴⁶

“11. *There are two possibilities.*

12. Either the fact that CDTs are able to practise without the supervision of a dentist and in direct contact with patients characterises the profession of CDT to such a degree that it must be regarded as a separate profession from that of dental technician, in which case it is clear that Directive 2005/36 is not applicable and that EU law does not require Member States to recognise professions which they do not wish to recognise.

13. Or, ..., the professions of CDT and dental technician were regarded as the ‘same profession’, ...” (emphasis added)

⁴³ See Prop.59 L (2014–2015) Endringer i folketrygdloven (henvisning fra psykolog) (available at <https://www.regjeringen.no/no/dokumenter/prop.-59-l-2014-2015/id2395715/>) .

⁴⁴ *Ibid*, p. 13 («Forslaget til lovendring kan by på særlige utfordringer for psykologer som ikke primært jobber som helsepersonell, men som jobber under annet regelverk, for eksempel psykologer i PP-tjenesten og i barnevernet.»).

⁴⁵ Judgment of 21 September 2017, *Malta Dental Technologists Association*, C-125/16, ECLI:EU:C:2017:707.

⁴⁶ Opinion AG Mengozzi, 1 June 2017, *Malta Dental Technologists Association*, Case C-125/16 *Ibid*., paras 11-13, ECLI:EU:C:2017:421.

- (165) The CJEU concluded that differences in the degrees of autonomy between two professions do not necessarily lead to the conclusion that such professions cannot be considered “*the same*” profession, if their activities correspond to one another:

“42. [...] *it is clear from the documents submitted to the Court that [...] the competent Maltese authorities are not denying CDTs access to the profession of dental technologist, bearing in mind that the activities of CDTs and their professional qualifications correspond to those of dental technologists in Malta.*”

43. *In those circumstances, and subject to the checks which the referring court must carry out in accordance with the criteria set out in paragraph 41 above, it is possible that the profession of dental technologist and that of CDT may be considered to be the same profession, for the purposes of the first subparagraph of Article 13(1) of Directive 2005/36.*

44. *Furthermore, the fact, referred to in the order for reference, that the qualifications for a CDT required by a home Member State exceed the qualifications required for a dental technologist whose profession is regulated in the host Member State is not relevant in that respect.*⁴⁷
(emphasis added)

- (166) This judgment supports the Authority’s view that the Hungarian supervision requirement for pursuing certain healthcare-related activities does not render an “*okleveles pszichológus*” a different profession than a “*pszikolog*” for the purposes of the Directive. It must be emphasised that the difference in degree of autonomy between a CDT (completely autonomous) and DT (under full supervision of a dentist) is much larger than the difference between a “*pszikolog*” and an “*okleveles pszichológus*”, as the Authority has shown above.
- (167) The Authority also notes that the CJEU explicitly stated that it is not relevant that the applicant’s qualification obtained in their home State (CDT) exceeds the required qualification in the host State (DT). The Authority reads this as support for the proposition that, even if the required qualification in the host State exceeds the qualification of the home State (which is Norway’s view on the “*okleveles pszichológus*” qualification), the professions could still be considered as “*the same*” profession.
- (168) In the light of the above, the Authority maintains its view that the requirement in the Hungarian legislation for supervision of an “*okleveles pszichológus*” does not entail a relevant difference in the degree of autonomy between that profession and a

⁴⁷ Paras 42-44. See also para 41, where the CJEU held that it fell to the referring court “*to take account of each of the activities covered by the profession in question in both Member States concerned, that is to say the profession of dental technologist in Malta and the profession of CDT in another Member State, in order to determine whether it actually is the same profession for the purposes of the first subparagraph of Article 13(1) of Directive 2005/36.*”

“psykolog”. Even if there were any such difference, it would not preclude the Authority’s conclusion that the professions are *“the same”* within the meaning of Article 4 of the Directive because the healthcare activities they cover are *“comparable”*.

6.2.4 The structure of both psychology educations is comparable

- (169) In its letter of formal notice, the Authority showed that both Norway and Hungary have structured their psychology education in a similar way, which served to support the Authority’s conclusion that the professions were *“the same”* (cf. letter of formal notice, paras 153-158).
- (170) In its reply to the letter of formal notice (p. 28-29), Norway disputes the Authority’s comparison. Norway claims the education for *“okleveles pszichológus”* should not be compared to *“psykolog”*, which is a healthcare degree, but should instead be compared with the Norwegian Bachelor and Master Degree in psychology, which is not clinically oriented and which is a humanist degree. Additionally, Norway claims that the education of *“psykolog”* should be compared to the Hungarian education for *“specialised clinical psychologist”* (*“klinikai szakpszichológus”*).
- (171) The Authority strongly disagrees. *“Okleveles pszichológus”* and *“psykolog”* can and should be compared, as both educations are clinically oriented. The Authority recalls that in the present case the qualification *“okleveles pszichológus”* with specialisation *“Clinical and Health Psychology”* is at issue. Moreover, both educations are a prerequisite for entering the education for psychology specialists. In comparison, the Norwegian Master Degree in psychology does not provide access to the education for *“psychology specialist”* (*“psykologspecialist”*).
- (172) As set out above, although not organised identically, clinical psychology in both countries involves an interplay between psychologists and specialised psychologists. Also for this reason, Norway’s claim that the education of *“psykolog”* should be compared to the Hungarian education for *“specialised clinical psychologist”* (*“klinikai szakpszichológus”*) cannot be accepted. Additionally, it is not convincing that an education of 6 years (*“psykolog”*) should be compared to an education of ten years (*“klinikai szakpszichológus”*).

6.2.5 Conclusion

- (173) In order to assess whether Norway has refused the recognition applications of the ELTE-graduates in a manner which is not in compliance with the Directive, the question of whether the Directive applies had to be examined first.
- (174) In order to be within the scope of the Directive, the profession the applicant wishes to pursue, i.e. *“psykolog”*, must be *“the same”* as the one for which they are qualified in the home EEA State, i.e. *“okleveles pszichológus”* (Article 4(1)).

- (175) As set out above, the applicability of the Directive has the effect that applicants are entitled to have their qualification recognised (Article 4(1)). For professions under the general system such as psychologist, this recognition can require the fulfilment of compensation measures (Articles 13 and 14).
- (176) When the activities of both professions are be “*comparable*”, they will qualify as “*the same profession*” (Article 4(2)). This entails that the activities are “*identical or analogous or, in some cases simply equivalent*”⁴⁸. The formal labelling of a professional as a “health care” professional, or of the training as a “healthcare degree”, is not relevant for the determination of whether the activities are “*comparable*”.
- (177) The Authority’s arguments for claiming that “*okleveles pszichológus*” and “*psykolog*” are “*the same profession*” are based, first, on the Directive’s broad approach to what constitutes “*the same profession*”. The Directive – and more specifically the general system - would be deprived of meaning if differences between professions would lead too easily to the conclusion that these differences render the professions different. Also, Norway has, through its actions, clearly *de facto* accepted that the professions are “*the same*” as it has demonstrated that it is possible to overcome the differences in training with compensation measures.
- (178) Secondly, as prescribed by Article 4(2) of the Directive, the Authority has compared the way in which both professions carry out clinical activities.
- (179) The Authority maintains its view that the requirements of (commitment to) studying for specialised clinical psychologist and speaking Hungarian are not relevant in that discussion. The applicants are allowed to commence the specialisation study, but chose not to as they wish to start a career in Norway. Speaking Hungarian is not a legal requirement to pursue the psychologist’s profession in Hungary.
- (180) One particular aspect which has been examined in order to determine whether the two professions are “*the same*” is the relevance and degree of differences in the autonomy of the psychologist professions in Norway and Hungary. Contrary to what Norway has argued, the Authority has demonstrated that the requirements relating to supervision by a specialised psychologist of an “*okleveles pszichológus*” and “*psykolog*” respectively are not so different. There are clear similarities, as in both Norway and Hungary specialised psychologists are strongly involved in the provision of clinical psychologist’s services.
- (181) This supervision might be more explicitly foreseen in the Hungarian legislation than in Norwegian law, but the Authority emphasises the importance of considering the actual extent of this supervision in practice in both countries. Correspondence from

⁴⁸ Judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03 ECLI:EU:C:2006:45, para 20 and Judgment of 19 January 2006, *Malta Dental Technologists Association*, C-125/16 ECLI:EU:C:2006:45, para 40.

the Hungarian authorities show that the supervision in reality is much lighter than as presented by Norway.

- (182) The Hungarian supervision is part of the local working culture of healthcare settings, and in large part comes down to the possibility for the supervised psychologist to seek support and assistance from a specialised psychologist or psychiatrist. It does not prevent the professional activities from being carried out by the “*okleveles pszichológus*” themselves.
- (183) At the same time, the Norwegian “*psykolog*” is not as autonomous as presented by Norway, whether carrying out clinical work in specialised healthcare services (see also letter of formal notice, paras 145-152) or in primary healthcare settings. This can be seen *inter alia* from the ethical guidelines for psychologists, the view of the Norwegian Board of Health Supervision, the reimbursement system for clinical psychologist’s services and the need for new outcomes of the psychologists’ training.
- (184) Finally, the Authority recalls the CJEU’s judgment in *Malta Dental Technologists*, where it held that a difference in the degree of supervision between two professions does not necessarily make these two professions different from each other. This may be so even where one profession is completely unsupervised, while the other requires full supervision. As shown above, the difference in degree of supervision between the two professions in the present case is much more subtle.
- (185) Thirdly and finally, and in support of the above conclusions, the Authority has found that there are similarities between the education of both professions.
- (186) On the basis of above, the Authority maintains its view that the activities of a psychologist in Hungary (“*okleveles pszichológus*”) are comparable to those of a psychologist in Norway (“*psykolog*”). Therefore, both professions are “*the same*” within the meaning of Article 4(1) of the Directive. Consequently, the Directive applies.

6.3 Norway’s obligation to recognise the qualifications

- (187) As the Authority considers the Directive applicable, by refusing to recognise the “*okleveles pszichológus*” qualifications, Norway’s administrative practice is in breach of Articles 13 and 14 of the Directive.
- (188) Article 13 of the Directive lays down the principle of mutual recognition (cf. letter of formal notice, para 77). Notwithstanding Article 13, which obliges Norway to recognise the Hungarian qualification, there is the possibility for Norway to make use of the so-called “*compensation measures*” under Article 14. This is due to the fact that the Hungarian education is one year shorter than the Norwegian one.

- (189) The Authority notes that the amended version of the Directive no longer allows compensation measures to be imposed solely on the basis of differences in the duration of the respective educations. However, compensation measures can still be imposed where the applicant's training covers "substantially different matters" than the training in the host State. It is undisputed that the training of "*okleveles pszichológus*" lacks some practical training elements which are present in the Norwegian "*psykolog*" education.
- (190) Consequently, Articles 13 and 14 of the Directive allow Norway to either require applicants to complete an adaptation period of up to three years or to take an aptitude test. In principle, applicants should be offered the choice between an adaptation period and an aptitude test. The Authority notes that Norway has never provided such a choice to applicants, whether under its old practice or when creating the newer special programmes.
- (191) Norway's new practice of refusing the recognition of the "*okleveles pszichológus*" qualification without offering any compensation measures is in clear breach of Article 13 of the Directive. Norway has emphasised that it was not obliged to create the special training programmes and that these are restricted to a well-defined group of ELTE-applicants i.e. only those that were already graduated or were in their Master's degree in September 2016, when Norway decided to change its practice.
- (192) By initially refusing the authorisation to the 16 persons who had already started their adaptation – i.e. licence – period at the moment when Norway changed its practice, Norway has breached Article 13, read together with Article 14. Before changing its practice, Norway had already imposed a compensation measure on them i.e. one year of supervised work.
- (193) When examining Articles 13 and 14 of the Directive in light of each other, it becomes clear that the use of compensation measures implies a conditional recognition. Article 13 sets out the obligation to recognise the qualification while Article 14 allows for the use of compensation measures, despite Article 13. This must lead to the conclusion that if applicants have fulfilled the requirements of the compensation measure, recognition can no longer be refused for qualification reasons.
- (194) In other words, the decision of the Directorate to grant a temporary licence to the 16 individuals who had already begun their adaptation period entitled these persons to be granted an authorisation after having successfully completed their one-year licence period⁴⁹. Despite this entitlement, none of the 16 persons was granted an authorisation on the basis of having successfully completed their licence period.

⁴⁹ Or at least the assurance that the authorisation would not be refused for professional qualification reasons (cf. letter of formal notice, paras 61-62 on the conditions for receiving an authorisation under the Norwegian legislation).

- (195) Instead, Norway imposed further supplementary training requirements on these 16 persons by creating a special programme of an additional full year. The Authority is of the opinion that this practice is a violation of Articles 13 and 14 of the Directive and that the persons who had completed their one- year licence period successfully were immediately entitled to an authorisation.

7 Norway's exceeding of the deadline for processing recognition applications is a breach of Article 51(2) of the Directive

- (196) The Authority refers to the relevant parts of its letter of formal notice (paras 172-181). Norway has already acknowledged that it has regularly exceeded the Directive's four-month deadline for processing the applications for licences and authorisations in order to work as "*psykolog*".⁵⁰
- (197) In its reply to the letter of formal notice, Norway does not dispute the facts as presented in that letter (p. 37-38). Norway however claims that the processing times should be qualified as the time it took to make a decision after all the relevant documents were handed in is considerably shorter i.e. four months in Case No 80103, three and a half months in Case No 81375 and six months in Case No 81656. Norway also claims not to be able to confirm the facts related to Case No 81656 as it could not identify the applicant.
- (198) Norway adds that the processing time took 10-11 months in respect of applications from those students who graduated in spring 2017 and applied for recognition in autumn 2017⁵¹. Norway explains that such a long period was necessary to gather information from the Hungarian authorities.
- (199) The Authority finds this latter explanation rather surprising as Norway had already decided to change its practice in September 2016. Since then, it had already investigated numerous other applications in respect of the same ELTE-training.
- (200) The Authority refers to the facts in its letter of formal notice (cf. paras 172-181) regarding the processing times of the complaint and appeal procedures in the present cases. The Authority reiterates that long waiting times in complaint and appeal procedures such as in the present cases are not in line with the purpose of the Directive, although the Directive only imposes a deadline for deciding upon recognition applications and not for the processing of complaints and appeals against these decisions.
- (201) In its reply to the Authority's letter of formal notice, Norway disputes this and emphasises that Article 51(2) of the Directive only applies to the processing of recognition applications and not to appeals. Norway also claims that the long times

⁵⁰ Reply of Norway of 8 June 2017 (Doc No 859557) to the letter of the Authority of 16 May 2017.

⁵¹ On p. 38 of its reply to the letter of formal notice of the Authority, Norway claims that most of these applications were received in "autumn 2017" and were only processed in "June/July 2018".

are justified because of the complexity of the matter. Norway does not make submissions in relation to the processing times for complaint procedures, which are the first step in the complaint process, before the actual appeal procedure before the Appeal Board for Health Personnel.

- (202) The Authority refers to Recital 30 of the Directive, which emphasises that uniform procedures are necessary to ensure the effectiveness of the system for the recognition of professional qualifications. As set out in the letter of formal notice, it took a total of 18-23 months for the applicants in the present cases to receive a final decision. The Authority does not consider that effectiveness can be guaranteed when the complaint and appeal procedures take such an unreasonably long time.
- (203) The Authority points in this regard to the Report of 18 June 2019 of the Norwegian Auditor General on the Norwegian system for mutual recognition of professional qualifications⁵². The report highlights various deficiencies in the Norwegian system and the Auditor General emphasises *inter alia* that the Norwegian authorities have not sufficiently provided for efficient case handling.
- (204) Finally, and as set out in its letter of formal notice, the Authority again records the very significant consequences for the applicants. While waiting for (a final decision on) their recognition, they were unable to gain any (additional) relevant work experience and were encouraged to start looking for a job outside the field of psychology in which they had obtained their Master's degrees over a period of five years.
- (205) On the basis of the cases described above, the Authority maintains its view that Norway's administrative practice does not comply with Article 51(2) of the Directive.

8 Assessment on the basis of Directive 2006/123 and Articles 28 and 31 EEA

8.1 Introduction

- (206) The Authority disagrees with Norway's assessment that Directive 2006/123 is not applicable. However, to the extent that the Directive does not apply, the Authority in the alternative submits that Directive 2006/123 and/or the EEA Agreement apply.

8.2 Directive 2006/123

- (207) The Authority maintains its view that Directive 2006/123 applies to the present case. According to the Authority, the services of a "*psykolog*" cannot be considered as healthcare services which are exempted from the scope of its application by Article 2(2)(f): "*healthcare services whether or not they are provided via healthcare*

⁵² <https://www.riksrevisjonen.no/rapporter-mappe/no-2018-2019/undersokelse-om-godkjenning-av-utdanning-og-yrkeskvalifikasjoner-fra-utlandet/>

facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private". The Authority refers to its letter of formal notice (cf. paras 186-191).

- (208) In that letter, the Authority referred to Recital 22 in the preamble to Directive 2006/123, which defines healthcare services as follows: "...*healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.*" (emphasis added).
- (209) The Authority also refers to p. 11 of the Commission's Handbook on the implementation of the Services Directive, which provides, in relation to the activities excluded from the scope of Article 2(2)(f) Directive 2006/123: "*Furthermore, the exclusion of health services only covers activities which are reserved to a regulated health profession in the Member State where the service is provided. Services which can be provided without specific professional qualification being required have thus to be covered by implementing measures.*"
- (210) As the activities of a "*psykolog*" are not reserved to psychologists, the Norwegian profession of psychologist is only regulated by protection of the title "*psykolog*". Therefore, as the activities performed by a "*psykolog*" are not "reserved" to that profession, they do not fall within the exclusion for "*healthcare services*" within the meaning of Article 2(2)(f).
- (211) Norway disagrees that Directive 2006/123 applies to the present case, on the basis that the services of a "*psykolog*" should be considered as healthcare services and therefore excluded from its scope. Norway claims that the reservation of activities to a health profession cannot be a requirement for activities to be qualified as healthcare services, as this would be contrary to the CJEU's judgment in Case *Femarbel*⁵³.
- (212) The Authority disagrees with Norway's understanding of this judgment. It is correct that the CJEU observed that the concept of healthcare services in Article 2(2)(f) is broad. The discussion in that case however concerned the definition of "*healthcare services*" and more precisely whether the care activities of day-care and night-care centres providing assistance and care to elderly people could be qualified as such, i.e. whether they were provided "*to patients to assess, maintain or restore their state of health*".
- (213) As argued in its letter of formal notice, the Authority considers that, for Article 2(2)(f) to apply, it is not sufficient that an activity assesses, maintains or restores a patient's health. The activity must also be *reserved* to the health professional performing it. This requirement was not at stake in the *Femarbel* case, and was as such not

⁵³ Judgment of 11 July 2013, *Femarbel*, C-57/12, ECLI:EU:C:2013:517.

addressed by the CJEU. Consequently, Norway's conclusion that the CJEU does not consider the reservation as a requirement, although this is explicitly formulated in Recital 22 to the preamble to Directive 2006, is incorrect.

- (214) Given the above, Directive 2006/123 applies to the present case to the extent and in the alternative that the Directive does not apply.
- (215) As set out in its letter of formal notice (paras 192-200), the Authority has established several breaches of Directive 2006/123 by Norway.
- (216) Norway has breached Article 11, as it grants authorisations to psychologists that are only temporary ("licences"). Norway's practice is also not in compliance with the procedural requirements for authorisation schemes in Article 13(1), 13(2), 13(3), 13(7), nor with the criteria of Article 10, which precludes competent authorities from exercising their assessment powers concerning authorisation schemes in an arbitrary manner, such as the obligations to make assessment criteria clear and unambiguous, to be made public in advance and to be transparent and accessible, cf. Article 10(2)(d), (f) and (g).
- (217) Additionally, Norway's practice does not comply with the requirements that it be justifiable and proportionate (Article 10(2)(b) and (c)). As set out in the Authority's letter of formal notice, this assessment is covered in the next section, which considers the additional and alternative breach of Articles 28 and 31 EEA.

8.3 Articles 28 and 31 EEA

8.3.1 The existence of a restriction

- (218) Norway disputes that there is a restriction of the freedoms guaranteed by Articles 28 and 31 EEA. It considers that the fact that the authorisation scheme for psychologists applies without discrimination on the basis of nationality means there is no restriction.
- (219) This reasoning cannot be accepted. Both Norway's persistent refusal to recognise the qualifications of ELTE-graduates and to impose supplementary educational requirements on those 16 persons that were already licenced when Norway changed its practice obviously constitute a restriction of the free movement of workers and the freedom of establishment within the meaning of Articles 28 and 31 EEA.
- (220) In that respect, it remains sufficient to refer to the judgment in *Nasiopoulos*, where the CJEU stated that such requirements are "*a factor which is liable to discourage the party concerned from pursuing those activities in the host Member State*", which

leads to circumstances where “*there is likely to be an infringement of Article 49 TFEU*”.⁵⁴

- (221) Moreover, the Authority maintains its view that, due to the excessive delays in processing recognition applications (including their corresponding complaint and appeal procedures), Norway has acted in breach of Articles 28 and 31 EEA, interpreted in light of fundamental rights, in particular the principle of effective judicial protection⁵⁵ and the principle of access to justice as “*an essential element of the EEA legal framework*.”⁵⁶

8.3.2 Justification of the measures

- (222) Norway disputes there is a restriction, but claims, to the extent there is a restriction, that its measures are necessary and proportional to safeguard public health and patient safety in particular.
- (223) In its reply (p. 37) to the Authority’s letter of formal notice, Norway uses the precautionary principle to justify the restrictions on free movement on the basis of public health. Norway argues more specifically that the principle makes it possible to justify restrictions, even where there is no immediate risk for patient safety, but rather “as a general concern with a longer perspective”. Norway refers to the fact that it had put the recognition applications on hold upon receiving new information from Hungary on the psychologist’s profession.
- (224) The Authority acknowledges the role of the precautionary principle in the case law of the CJEU and EFTA Court⁵⁷ when it comes to public health, but rejects Norway’s argument that it could serve to justify the restrictions in the present case.
- (225) Firstly, the Authority recalls that the precautionary principle does not alter the principle that any derogation from the principle of free movement must be interpreted strictly and that the burden of proof is on the defendant state (cf. letter of formal notice, para 206). Norway has not provided any evidence that demonstrates a potential risk for patient safety.
- (226) Secondly, the precautionary principle, in the case law of the EFTA Court, applies when there is scientific “uncertainty” as to the existence or extent of risks to human health. In that case, protective measures can be taken without having to wait until the reality and seriousness of those risks become fully apparent⁵⁸.

⁵⁴ Judgment of 27 June 2013, *Nasiopoulos*, C-575/11, ECLI:EU:C:2013:430, para 32.

⁵⁵ Case E-15/10 *Posten Norge v. EFTA Surveillance Authority* [2012] *EFTA Ct. Rep.* 246, para. 86.

⁵⁶ Case E-2/02 *Technologien Bau- und Wirtschaftsberatung GmbH and Bellona Foundation v EFTA Surveillance Authority*, [2003] *EFTA Ct Rep* 52, paras 36 and 37 and Case E-3/11 *Pálmi Sigmarsson v. Seðlabanki Íslands*, [2011] *EFTA Ct. Rep.* 430, para 29.

⁵⁷ Case E-16/10 *Philip Morris* [2011], paras 82-83.

⁵⁸ See e. Case E-16/10 *Philip Morris* [2011], para 82 and Case C-157/96 *National Farmers’ Union and Others* [1998] ECR I-2211, para 63.

- (227) In the present case, the Authority takes the view that there is no uncertainty as to the existence of patient safety risks posed by ELTE-graduates. Norway has not provided any evidence as to why there would be such uncertainty. In this case, one could even argue the opposite i.e. that there is certainty as to the *absence* of such risks, as practice has shown that ELTE-graduates working as a “*psykolog*” perform well. Presumably, Norway takes the same view since it continues to allow ELTE-graduates to operate in Norway.
- (228) Prior to the changes introduced in 2016, Norway had a consistent practice of 13 years during which it granted authorisations to (at least 26) ELTE-applicants after a successful licence period of supervised practice of one year (cf. *supra*, para 69). Experts in the field evaluated these persons’ performance on an individual basis after having supervised them for an entire year. Norway has failed to provide any evidence indicating that the abovementioned ELTE-trained psychologists have ever constituted a threat to patient safety and has not seen any reason to act against them on the basis of the precautionary principle.
- (229) The Authority notes that under the Norwegian Health Personnel Act, there is the possibility to withdraw authorisations from psychologists (cf. *supra*, para 148). Any person (e.g. patients, relatives or employers) can request the supervisory authority to examine a case, which may result in withdrawal of the authorisation of a psychologist. One basis for such a withdrawal is “*gross lack of professional insight*”. Norway has confirmed that none of the ELTE-psychologists has been involved in such a procedure⁵⁹.
- (230) Norway claims that the restriction upon newly qualified ELTE- trained psychologists is necessary from a public health perspective, yet allows all previously qualified ELTE-trained psychologists to retain their authorisations, even those seven that were mistakenly granted right after Norway’s change of practice (cf. *supra*, para 78) - as far as the Authority is aware, without any further examination.
- (231) This practice does not appear to be in accordance with the principle of consistency. As the Court held in Case E-1/06: “In accordance with this principle, a State must not take, facilitate or tolerate measures that would run counter to the achievement of the stated objectives of a given national measure.”⁶⁰
- (232) The Authority draws attention to the only concrete argument of Norway in this matter i.e. the “concerns from the professional and academic community” regarding the ELTE-trained psychologists (cf. *supra* paras 80-81). The Authority notes that both “concerns” are purely hypothetical and exclusively concern the education of these persons. Any connection with actual job performance is lacking. Consequently,

⁵⁹ P. 5-7 of Norway’s reply of 21 December 2018 (Doc No 1044979) to the Authority’s request for information of 23 November 2018 (Doc No 1038408).

⁶⁰ Case E-01/06, *EFTA Surveillance Authority v. Norway*, [2007] EFTA Ct. Rep. 8, para. 43.

these concerns not only lack evidence but do not specify any concrete risks – even hypothetical ones - that may occur when treating patients.

- (233) Finally, it should be emphasised that the precautionary principle does not affect the principle of proportionality⁶¹. Consequently, EEA States must confine any chosen measures to that which is strictly necessary to ensure the safeguarding of public health, and the measures must be proportional to the objective thus pursued, which could not have been attained by measures which are less restrictive. Additionally, as mentioned above, these measures must be in accordance with the principle of consistency.
- (234) To the Authority, it is clear that Norway's practice does not respect the proportionality principle. Instead of simply refusing applications from holders of the ELTE-qualification "*okleveles pszichológus*", Norway could have taken less restrictive measures. Such measures could, for example, consist of imposing additional theoretical and/or practical training, as was the case for some ELTE-graduates. Alternatively, Norway could have checked first whether there was a real patient safety issue by requiring applicants to sit a test (both such measures would be "compensation measures" within the meaning of the Directive).
- (235) Instead, Norway simply rejected the ELTE applications (except for a limited group for which special programmes were created cf. *supra*, paras 84-85) and has not even evaluated first the performance of those ELTE psychologists that were already working with an authorisation, based on its old practice. The same is true for those seven that were mistakenly granted an authorisation right after Norway's change of practice (cf. *supra*, para 78).
- (236) For the above reasons, the Authority considers Norway's practice of refusing the recognition of applications from ELTE-graduates and of imposing supplementary educational requirements on those who were already licenced as neither necessary nor justified to safeguard patient safety. The fact that it has taken the Norwegian authorities such a long time to come to conclusive decisions adds to the finding that patient safety was never at stake.
- (237) The Authority considers Norway's practice to be not only unnecessary to safeguard patient safety. It is also not consistent and proportionate to that goal, as less stringent measures could serve the same goal in an effective manner.
- (238) The Authority concludes that Norway's practice constitutes a breach of Articles 28 and 31 EEA.

FOR THESE REASONS,

⁶¹ See inter alia judgment of 2 December 2004, *Commission v. the Netherlands*, ECLI:EU:C:2004:762, para 46.

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THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Norway the opportunity of submitting its observations,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by

- refusing to recognise the Hungarian qualification of Master's degree in Clinical and Health Psychology ("*okleveles pszichológus*", specialisation "*Clinical and Health Psychology*"), in order to work as a psychologist ("*pszikolog*") in Norway, Norway has failed to fulfil its obligations arising from Articles 13 and 14 of the Act referred to at point 1 of Annex VII to the EEA Agreement (*Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications*), as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that Norway has thereby failed to fulfil its obligations arising from the Act referred to at point 1 of Annex X to the EEA Agreement (*Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.

- exceeding on a regular basis the four-month deadline when processing recognition applications, Norway has failed to fulfil its obligation arising from Article 51(2) of the Act referred to at point 1 of Annex VII to the EEA Agreement (*Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications*), as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that, due to the excessive delays in processing recognition applications, Norway has failed to fulfil its obligations arising from Article 13 of the Act referred to at point 1 of Annex X to the EEA Agreement (*Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.

Pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority requires Norway to take the measures necessary to comply with this reasoned opinion within *four months* of its receipt.

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Done at Brussels, 29 April 2020

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
Responsible College Member

Högni Kristjánsson
College Member

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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.