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Case No: 80103, 79661, 81375,
81656
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Decision No: 162/18/COL

EFTA SURVEILLANCE
AUTHORITY

Ministry of Health and Care Services
PO Box 8011 Dep
0030 Oslo
Norway

Dear Sir/Madam,

Subject: Letter of formal notice to Norway concerning the recognition procedure of Hungarian qualifications of psychologist

1 Introduction

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 regarding the recognition of the Hungarian qualification of Master’s degree in Clinical and Health Psychology (“*Okleveles pszichológus*” with specialisation “*Clinical and Health Psychology*”), obtained at the Hungarian Eötvös Loránd University (“ELTE”), in order to work as a psychologist (“*Pszykolog*”) in Norway.

2. The Authority considers that Norway’s handling of the applications for the recognition of the Hungarian qualification of Master’s degree in Clinical and Health Psychology does not comply with Directive 2005/36 on the recognition of professional qualifications (“the Directive”)² or, in the alternative, Directive 2006/123 on services in the internal market (“Directive 2006/123”)³ and/or the free movement of workers and freedom of establishment of the EEA-Agreement (Articles 28 and 31 EEA).

3. This letter details the nature of the alleged breaches in more detail. In essence, they relate to three categories of breach:

- The Norwegian Directorate of Health (“*Helsedirektoratet*”) has rejected applications for recognition in a way which is inconsistent with the Directive, Directive 2006/123 and with the free movement of workers and freedom of establishment of the EEA-Agreement;

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).

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.

- The Norwegian Directorate of Health 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 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 Norwegian Directorate of Health to take decisions upon such applications within the time limits provided in Article 51(2) of the Directive.

4. This Letter of Formal Notice proceeds as follows: Section 2 provides a summary of the Authority's assessment. Section 3 describes the factual background of the case, including Norway's administrative practice and how this practice suddenly changed, as well as an overview of the profession of psychologist in Hungary. Section 4 lists the correspondence in the case so far. Sections 5 and 6 set out the relevant Norwegian and EEA law respectively. Section 7 contains the Authority's assessment. Section 8 concludes.

2 Summary of the Authority's assessment

5. The Authority has examined Norway's practice regarding the recognition of the Hungarian qualification of Master's degree in Clinical and Health Psychology obtained at ELTE. This examination has been carried out in light of three alternative legal grounds: 1) the Directive, 2) Directive 2006/123 and 3) Articles 28 and 31 of the EEA Agreement concerning the right of free movement of workers and the freedom of establishment respectively.

6. The key question with respect to the applicability of the Directive is whether the psychology profession in Norway ("*psykolog*") and in Hungary ("*okleveles pszichológus*") are "*the same*" professions in the sense of Article 4(1) of the Directive. It follows from Article 4(2) of the Directive that two professions are "*the same*" if the activities covered are "*comparable*".

7. The Authority has carried out a thorough comparison of the two professions and has come to the conclusion that, while there are minor differences with respect to how these professions are pursued, the activities as such are undoubtedly "*comparable*" within the meaning of the Directive. The professions are therefore to be considered "*the same*" professions in the sense of Article 4(1). Consequently, the Authority is of the opinion that the Directive applies.

8. The key principle of the Directive is the right for EEA nationals to pursue their profession on the territory of EEA States other than the one in which they obtained the necessary qualification in order to pursue that profession. As required by Article 13, Norway must therefore recognise the Hungarian education that leads to the qualification of psychologist in that country.

9. Article 14 of the Directive allows for a limited use of compensation measures by the host EEA State if the training received in the home EEA State covers "*substantially different matters*" than those required in the host EEA State. These measures can take the form of either an adaptation period or an aptitude test. The choice between the measures should be left to the applicant. To date, Norway has on numerous occasions required compensation measures beyond those allowed for by Article 14.

10. Since the Directive applies, the Authority also considers that Norway has infringed the deadline for processing the recognition applications under Article 51(2) and has failed to put in place an appeal procedure as required by Article 51(3).

11. Norway has argued that the Directive is not applicable. If that were to be accepted, the Authority argues that Directive 2006/123 and/or Articles 28 and 31 of the EEA Agreement would apply. If so, the Authority is of the opinion that the same facts that lead to the infringement of the Directive would lead to an infringement of numerous provisions of Directive 2006/123. Furthermore, these facts would also entail a breach of Articles 28 and 31 of the EEA Agreement.

3 Factual Background

3.1 Norway's change of administrative practice regarding the recognition of ELTE- qualifications

12. The Norwegian legislation regulates the profession of psychologist by protection of the title ("*psykolog*"). As for many other health professions, there is an authorisation scheme. 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*". Such a licence is usually limited in time, to a particular position or to certain types of care (cf. *infra*, para 60).

13. 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).

14. For a period of 13 years until 2016, the consistent practice of the Norwegian Directorate of Health was to grant licences to applicants holding a Master's degree in Clinical and Health Psychology from ELTE. These licences had a validity of two years and gave the right to pursue the profession under supervision of an authorised psychologist. After having worked under supervision for one year and if evaluated successfully, they were granted an authorisation.

15. This 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 2014⁴: "*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.*"⁵

16. Moreover, the practice was based on an assessment of the content and duration of the Hungarian education. The Hungarian education is one year shorter (five years) than the

⁴ «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).

⁵ «En fem år lang utdanning 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.»

Norwegian (six years), did not involve practical training and had insufficient ECTS⁶ on clinical theory. Therefore, the Norwegian Directorate of Health had found it necessary to impose a compensation measure in accordance with Article 14 of the Directive (cf. *infra*, paras 82-87) i.e. the requirement to work for one year under supervision.

17. Psychology education in Norway is highly sought after⁷ and is limited to 321 students annually, spread across four universities⁸. Following Norway's consistent practice of 13 years, the number of Norwegian students at ELTE had 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.

18. According to Norway, the increasing number of Norwegian students at foreign universities raised concerns with the Norwegian universities offering the psychologist's education. These universities urged the Norwegian authorities to rethink their practice as they considered the assessment that led to the practice as not good enough⁹. Consequently, the Norwegian Directorate of Health took a closer look at the Hungarian qualification and immediately changed its practice without any transitional measures or any prior announcement.

19. As a result of this new practice, in 2016, 50 ELTE graduates with Master's degrees in Clinical and Health Psychology had their applications for licences to work as psychologists in Norway rejected. They were not offered any compensation measures under Article 14 of the Directive. These 50 graduates included the complainants in Cases No 80103, 79661 and 81375.

20. Furthermore, 16 persons who were already working - under supervision - with their licence faced the consequences of Norway's sudden change of practice. The Norwegian Directorate of Health announced that these persons should not expect to be granted an authorisation after completing their licence period. The complainant in Case No 81656 belonged to this group.

21. 187 Norwegian students were admitted to or already studying at ELTE at the time Norway decided to change its practice¹⁰.

22. Norway claims the reason for its sudden change of practice is not caused by any changes to the Hungarian education of "*okleveles pszichológus*" but by "*new*" information about the qualification which it received in April 2016¹¹.

23. Although the Norwegian Directorate of Health claims to have changed its practice immediately after having received this new information, it has decided positively upon

⁶ European Credit Transfer System (ECTS) credits are a standard means for comparing the volume of learning based on the defined learning outcomes and their associated workload for higher education across the EEA.

⁷ In 2016, there were for example 1200 applicants competing for 87 spots at the University of Bergen, see Letter of the Universities of Bergen, Oslo, Tromsø and the Norwegian University of Science and Technology to the Norwegian Directorate of Health of 3 November 2016 (Doc No 844494).

⁸ Universities of Bergen, Oslo, Tromsø and the Norwegian University of Science and Technology.

⁹ Follow-up letter of the package meeting of 26 October 2017 (Doc No 878916).

¹⁰ 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 Norwegian Directorate of Health of 7 September 2016 (Doc No 895742).

¹¹ Reply of Norway of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017, p.3.

seven licence applications received after April 2016. According to Norway, that happened “*mistakenly*” and it was decided to uphold these decisions. In the opinion of Norway, they however set no precedent for other applications¹².

24. According to Norway’s interpretation of the information received from Hungary in April 2016, the Hungarian qualification “*okleveles pszichológus*” does not grant the right to provide healthcare services, nor to work independently as a psychologist unlike the Norwegian qualification “*psykolog*”. Norway claims this is contrary to what it had assumed before¹³.

25. Given this interpretation concerning the differences in responsibility and tasks, Norway considers the Hungarian psychologist’s profession as not “*the same*” as the Norwegian profession within the meaning of Article 4(1) of the Directive (cf. *infra*, paras 71-72). Consequently, Norway argues that the Directive does not apply¹⁴.

26. The Hungarian authorities¹⁵ and ELTE¹⁶ were surprised by Norway’s change of practice.

3.2 The profession of psychologist in Hungary

27. Unlike in Norway, the profession of psychologist (“*okleveles pszichológus*”) in Hungary is not a regulated profession within the meaning of Article 3(1)(a) of the Directive (cf. *infra*, paras 61 and 69)¹⁷. However, the education of “*okleveles*

¹² Reply of Norway of 7 July 2017 (Doc No 865090) to the letter of the Authority of 12 June 2017, p. 3.

¹³ Reply of Norway of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017, p. 2-3.

¹⁴ Reply of Norway of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017, p. 2.

¹⁵ The Norwegian Ministry of Health and Care Services asked the Hungarian Ministry of Human Capacities whether the psychologists with an ELTE Master’s degree in Clinical and Health Psychology, alternatively supplemented with a period of supervised practice, could access and pursue the same profession in Hungary as the authorized psychologists in Norway. The Hungarian Ministry’s reply was: “*Considering information provided in your enquiry, that holders of a psychologist title (who have already completed requirements of the supervised practice) in Norway are “qualified and entitled to work independently and clinically with patients in the health sector and to provide health services in Norway. They work clinically and have an extensive independent responsibility to diagnose and treat mental disorders in patients” we can assure that the same is true for psychologists with a “Master degree in Clinical and Health Psychology” from ELTE after fulfilling the above mentioned “supervised practice”. The length of the above mentioned “supervised practice” makes the difference between the two educations (since the Hungarian education contains only shorter supervised practice). In the practice of the Norwegian authorities this was supplemented for those with a Master’s degree in Clinical and Health Psychology from ELTE by being licenced for working in the Norwegian healthcare system, however they got their authorisation to use the title of psychologist after fulfilling the one year period of supervised practice in Norway*” (emphasis added). See 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. 1 (Doc No 860200).

¹⁶ Zsolt Demetrovics (professor in psychology and dean of ELTE) highlighted in a letter to the Norwegian Directorate of Health that ELTE graduates have been licenced in Norway for many years (also recently: 8 in 2014 and 18 in 2015) and up until 2016, the Norwegian authorities have never identified nor reported any problems, see letter of Zsolt Demetrovics, dean of ELTE, to the Norwegian Directorate of Health of 2017, precise date unknown, p.7 (Doc No 895744).

¹⁷ Information provided by Hungary to Norway through the IMI-system, enclosed to the reply of Norway of 6 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017. It shows also out of the EU database of regulated professions <http://ec.europa.eu/growth/tools-databases/regprof/>

pszichológus” is regulated by Regulation No. 18/2016 (VIII. 5.)¹⁸. It takes five years at university level and ends with the student obtaining a Master’s degree.

28. Holders of the qualification of “*okleveles pszichológus*” are trained as generalists with the option to pursue any of the following specialisations in their education: “*Clinical and Health Psychology*”, “*Cognitive Psychology*”, “*Social and Organisational Psychology*”, “*Work and Organisational Psychology*”, “*Counselling and Educational Psychology*”, “*Developmental and Clinical Child Psychology*”, and “*Interpersonal and Intercultural Psychology*”¹⁹.

29. The complainants in Cases No 80103, 79661, 81375 and 81656 hold the specialisation “*Clinical and Health Psychology*”.

30. The qualification “*okleveles pszichológus*” is a prerequisite for entering the postgraduate specialist training of “*specialised clinical psychologist*” (“*klinikai szakpszichológus*”)²⁰. This specialist training takes another 36-48 months, depending on the type of specialisation²¹.

31. All holders of the qualification “*okleveles pszichológus*” can enter the specialist training, regardless of their chosen specialisation. However, those who chose the specialisation “*Clinical and Health Psychology*” have an advantage in the admission procedure as others are required to complete extra courses in psychodiagnostics and clinical psychology²².

32. The “*specialised clinical psychologist*” (“*klinikai szakpszichológus*”) profession is regulated by protection of the title. There are no activities reserved for this profession²³. There is a compulsory registry and licence system for specialised clinical psychologists and an obligation on continuous professional development, leading to a licence renewal every five years²⁴.

33. The Hungarian employment regulation of healthcare establishments sets two conditions for persons holding an “*okleveles pszichológus*” qualification when pursuing healthcare-related activities i.e. work in healthcare establishments.

¹⁸ Statement of 12 October 2016 of the Hungarian Psychological Association (Doc No 834741) and acknowledged by Norway, see reply of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017.

¹⁹ National Report of Hungary as part of the EU Commission’s mutual evaluation exercise, p. 1, enclosed to the reply of Norway of 6 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017.

²⁰ 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. 4 (Doc No 860200).

²¹ There are 4 postgraduate specialisations: Applied health Psychology, Adult clinical and mental health psychology (with 2 subspecialisations: Clinical addictology and Psychotherapy), Children and youth clinical psychology and Neuropsychology, see National Report of Hungary as part of the EU Commission’s mutual evaluation exercise, p. 2, enclosed to the reply of Norway of 6 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017.

²² 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. 4 (Doc No 860200).

²³ 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).

²⁴ National Report of Hungary as part of the EU Commission’s mutual evaluation exercise, p. 4-5, enclosed to the reply of Norway of 6 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017.

34. They must either have started the training of specialised clinical psychologist (“*klinikai szakpszichológus*”)²⁵ or commit themselves to start the training within two years.²⁶
35. Additionally, they need supervision of a specialised clinical psychologist (“*klinikai szakpszichológus*”) or a psychiatrist.
36. The above mentioned (cf. supra, para 33) healthcare-related activities include²⁷:
- the examination of the causative factors of psychopathological phenomena, the patterns in their course and the effects on human actions;
 - the examination of distinctive features and the development of individual psychological expressions as well as the underlying mechanisms of social institutions or group dynamics;
 - psychotherapy.
37. According to the Hungarian authorities, the supervision requirement (cf. supra, para 35) must be seen simply as a “*formal control by the institution*” and “*not as a guided activity*”²⁸.
38. In this context, the Hungarian authorities refer to Amendment No 1 to the Regulation No. 18/2016. (VIII.5) of the Hungarian Ministry of Human Resources:
- “a psychologist with a master specialisation in clinical and health psychology is able to work independently and carry out multilateral and critical analysis in the field of clinical and health psychology, to use practical methods, analytical and intervening procedures applied in clinical and health psychology and to apply basic diagnostic and intervening procedures professionally”*. (emphasis added)²⁹.
39. Both types of Hungarian psychologists (“*okleveles pszichológus*” and “*klinikai szakpszichológus*”) can be registered as “*health professionals*”³⁰.

²⁵ Which means they are a specialised clinical psychologist “*candidate*” (“*klinikai szakpszichológus jelölt*”).

²⁶ 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).

²⁷ 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).

²⁸ 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).

²⁹ 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).

³⁰ Statement of 12 October 2016 of the Hungarian “*College of Health Professionals*”, Division Clinical Psychology and Psychotherapy (Doc No 834743).

3.3 The development of the situation in Norway

40. There was a massive protest of the ELTE graduates which was also spread out in the Norwegian media³¹. The Norwegian Parliament urged the Government to search for solutions^{32 33}.

41. On 4 July 2017, the Norwegian Ministry of Health instructed the Directorate of Health to explore the possibility of supplementary training programmes for ELTE graduates. The Directorate of Health asked the four Norwegian universities offering the psychology education to formulate suggestions. On 13 October 2017, the universities replied to that request³⁴.

42. For ELTE graduates that have unsuccessfully applied for a licence, the universities suggested that they should follow 2.5 years of supplementary university training i.e. the last 2.5 years of the ordinary Norwegian training³⁵. On 15 February 2018, the Norwegian Ministry of Health decided not to follow this proposal and asked the Norwegian Directorate of Health to create a one-year programme by 20 March 2018 instead^{36 37}. According to the Ministry, the universities' proposal required too much resources from the

³¹ See e.g. «*Psykologene Norge ikke vil ha*» («*The psychologists Norway does not want*»), Dagbladet, 29 May 2017, <https://www.dagbladet.no/nyheter/her-er-psykologene-norge-ikke-vil-ha/67612812>.

«*Utdanningen kvalifiserer ikke til norsk praksis*» («*Education does not qualify for Norwegian practice*»), Dagens medisin, 30 May 2017, <https://www.dagensmedisin.no/artikler/2017/05/30/Kvalifiserer-ikke-for-selvstendig-utovelse/>.

«*Her forklarer hun hvorfor staten sier nei til studentene*» («*Here she explains why the state says no to the students*»), Dagbladet, 17 October 2017, <https://www.dagbladet.no/nyheter/her-forklarer-hun-hvorfor-staten-sier-nei-til-studentene/68796033>.

³² «*Kultur for kvalitet i høyere utdanning*

Meld. St. 16 (2016-2017), Innst. 364 S (2016-2017), Vedtak 767

Stortinget ber regjeringen sørge for at studenter som søker studiestøtte for utdanning i utlandet, blir informert om hvorvidt den aktuelle utdanningen kvalifiserer til autorisasjon eller andre godkjenninger som er nødvendige for å utøve yrket i Norge.»

«*Kultur for kvalitet i høyere utdanning*

Meld. St. 16 (2016-2017), Innst. 364 S (2016-2017), Vedtak 770

Stortinget ber regjeringen foreta en vurdering av mulige kompensierende tiltak som kan bidra til at studenter som har avsluttet profesjonsstudier i utlandet, men som ikke får autorisasjon i Norge som følge av endret praksis i Helsedirektoratet etter at de har påbegynt studiet ved den aktuelle utdanningsinstitusjonen, kan oppnå autorisasjon i Norge.»

³³ «*Ber egen regjering finne løsning for Ungarn-psykologene*» («*Requests own government to find a solution for the Hungarian psychologists*»), Dagbladet, 7 June 2017, <https://www.dagbladet.no/nyheter/ber-egen-regjering-finne-losning-for-ungarn-psykologene/67662897>.

³⁴ «*Vurdering av mulig kompletterende utdanningsprogramme for personer som har psykologiutdanning uten klinisk opplæring og praksis fra land innenfor EØS*» («*Assessment of possible supplementary education programmes for persons with psychology education without clinical education and practice from countries within the EEA*»), Letter of the four universities to the Norwegian Directorate of Health, 13 October 2017 (Doc No 895384).

³⁵ «*Universitetene foreslår ekstrautdanning i 2,5 år for ELTE-utdannede*» («*The universities propose supplementary education for 2.5 years for ELTE graduates*»), Dagens medisin, 21 November 2017, <https://www.dagensmedisin.no/artikler/2017/11/21/utredning-foreslar-ekstrautdanning-i-25-ar-for-elte-utdannede/>.

«*Mener forslaget til universitetene fremstår «fullstendig useriøst*» («*The universities' proposal appears to be completely unserious*»), Dagens medisin, 21 November 2017, <https://www.dagensmedisin.no/artikler/2017/11/21/mener-forslaget-til-universitetene-er-fullstendig-useriost/>

³⁶ «*Tilleggsoppdrag nr. 6 – Kompletterende tiltak for ELTE-utdannede*» («*Supplementary assignment No. 6 - Complementary measures for ELTE graduates*»), Letter of the Norwegian Ministry of Health and Care Services to the Norwegian Directorate of Health, 15 February 2018 (Doc No 898423).

³⁷ «*Departementet skisserer nytt tiltak i ELTE-saken*» («*The Ministry outlines new measures in the ELTE case*»), Dagens medisin, 15 February 2018 <https://www.dagensmedisin.no/artikler/2018/02/15/departementet-skisserer-nytt-tiltak-i-elte-saken/>.

state and from the individuals. As far as the Authority is aware, the programme is not finalised yet.

43. According to the Ministry, the requested one-year programme should remedy the “shortcomings”³⁸ in ELTE’s education and therefore has to involve both clinical theory and practice. Throughout the one-year programme, the graduates should be able to work under supervision.

44. This programme would be offered only to the 50 ELTE graduates and to ELTE students that had started their Master’s degree at the time when Norway decided to change its practice (April 2016). ELTE students who started their studies after that date or ELTE students who were only in their Bachelor’s degree in April 2016 will not be able to enter the programme.

45. The Norwegian Ministry was of the opinion that it was not obliged by EEA law to create such a programme, primarily because it considers that the Directive is not applicable³⁹.

46. In addition, the universities also formulated a proposal for the 16 persons – among them the complainant in Case No 81656 – who were already working with a licence when Norway changed its practice⁴⁰. Consequently, on 13 November 2017, the Norwegian Directorate of Health offered them the possibility of entering a programme specially conceived for these individuals. This programme started in April 2018 and is organised at all four Norwegian universities. It is an educational one-year programme with eight seminars, individual evaluations and suitability assessments. On the request of the participants who perceive this programme as a repetition of their education in Hungary, ELTE examined the programme and has declared that 90% of the programme has already been covered by the ELTE-education⁴¹.

47. Upon successful completion of this programme, an authorisation would be granted to those graduates already working under a licence. The applicants may continue their work while attending this programme. The validity of their licences was already extended until 31 December 2018 and will be further extended so that they can continue to work throughout the whole programme.

³⁸ «Tilleggsoppgdrag nr. 6 – Kompletterende tiltak for ELTE-utdannede» («Supplementary assignment No. 6 - Complementary measures for ELTE graduates»), Letter of the Norwegian Ministry of Health and Care Services to the Norwegian Directorate of Health, 15 February 2018, p. 2 (Doc No 898423).

³⁹ «Psykologiutdannede fra ELTE-universitetet kan få norsk autorisasjon» («Psychology graduates from the ELTE University may get a Norwegian authorisation»), Norwegian Ministry of Health and Press release, 15 February 2018.

<https://www.regjeringen.no/no/aktuelt/psykologiutdannede-fra-elte-universitetet-kan-fa-norsk-autorisasjon/id2589837/>.

⁴⁰ «Godkjenningstrøbbel for 200 norske psykologstudenter. Nå kan 16 av dem juble» («Authorisation problem for 200 Norwegian psychology students. Now 16 of them can celebrate»), Dagbladet, 25 October 2017, <https://www.dagbladet.no/nyheter/godkjenningstrøbbel-for-200-norske-psykologstudenter-na-kan-16-av-dem-juble/68819823>.

⁴¹ See Letter of of Zsolt Demetrovics, dean of ELTE, to the Norwegian Directorate of Health of 7 May 2018, (Doc No 914162).

3.4 The time taken by Norway to deliver its decisions

48. The time taken to decide upon the applications for a licence of the complainants in Cases No 80103, 79661 and 81375 ranged between two and seven months.

49. The complainant in Case No 80103 applied for a licence on 24 February 2016. On 22 September 2016, the Norwegian Directorate of Health rejected this application. The complainant in Case No 79661 applied for a licence on 28 July 2016. On 28 September 2016, the application was refused. The complainant in Case No 81375 applied for a licence on 24 February 2016. On 22 September 2016, this application was refused.

50. All these complainants appealed the negative decisions of the Norwegian Directorate of Health on 2 November 2016. Eight months later - in July 2017 - the Norwegian Directorate of Health confirmed these decisions, respectively on 21 July 2017 (in Case No 80103), on 3 July 2017 (in Case No 79661) and on 13 July 2017 (in Case No 81375).

51. On 15 December 2017, the Norwegian Appeal Board for Health Personnel ("*Nasjonalt klageorgan for helsetjenesten (Helseklage)*") unanimously rejected four out of 49 appeals, including that of the complainant in Case No 80103. The Norwegian Appeal Board for Health Personnel had confirmed the position of the Norwegian Directorate of Health, considering the Hungarian profession of psychologist ("*okleveles pszichológus*") as not "*the same*" as the Norwegian one ("*psykolog*") and therefore outside the scope of application of the Directive.⁴²

52. The other 45 appeals were rejected on 14 March 2018, including those of the complainants in Cases No 79661 and 81375⁴³.

53. The complainant in Case No 81656 was granted a licence on 10 September 2015, according to Norway's "*old*" practice (cf. supra, para 14). After having completed the licence period successfully, the complainant applied for an authorisation on 17 October 2016. To date, more than two years later, the complainant still has not received the authorisation.

54. As one of the 16 persons who was already working - under supervision - as a psychologist with a licence at the moment when Norway changed its practice, the complainant in Case No 81656 has started the one-year educational programme (cf. supra, paras 46-47). The validity term of their licence was prolonged twice⁴⁴. The complainant has now been working as a licenced psychologist in Norway since September 2015 i.e. over 2.5 years.

⁴² «*Fattet vedtak i saker om psykologikandidater fra Ungarn*» ("*Decisions in cases of psychology candidates from Hungary*"), communication on the website of the Norwegian Appeal Board of Health Personnel, 15 December 2017, see <http://helseklage.no/aktuelt/fattet-vedtak-i-saker-om-psykologkandidater-fra-ungarn/>

⁴³ "*Unanimous decision in the ELTE cases*" ("*Enstemmig avgjørelse i ELTE-sakene*"), communication on the website of the Norwegian Appeal Board of Health Personnel <http://helseklage.no/aktuelt/enstemmig-avgjorelse-i-elte-sakene/>

⁴⁴ On 6 July 2017, the licence was prolonged until 31 December 2017 and on 18 October 2017, it was further prolonged until 31 December 2018.

4 Correspondence

55. 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).

56. On 8 June 2017, the Authority received additional information from Norway that it had received from the Hungarian authorities (Doc No 860200).

57. 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).

58. On 16 November 2017 and 23 November 2017, the Authority sent two more requests for information (Doc No 882739 and Doc No 883677). On 13 December 2017, the Authority received the reply of Norway to both requests of information (Doc No 888288).

5 Relevant national law

59. The profession of psychologist (“*psykolog*”) is regulated under the Health Personnel Act⁴⁵ (hereafter “HPA”). Section 48 HPA lists the health professionals that fall under the scope of the authorisation scheme, among which “*psykolog*” (Section 48 litra (t)).

60. Persons who are not entitled to an authorisation may obtain a “*licence*” pursuant to Section 49. Licences are usually limited in time, to a particular position or to certain types of care. Only holders of an authorisation or licence may use the protected title of “*psykolog*” (Section 74 HPA).

61. 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 in passing an exam in health education, supplementary education or professional experience.

62. The applicant must also be under 80 years of age and fit for the profession (Section 48a HPA).

63. There is no legal provision establishing a list of activities reserved for the “*psykolog*”. A psychologist in Norway can work across a broad spectrum of different positions, both more clinical oriented, dealing with diagnosis and treatment and less clinically oriented activities, such as prevention and health promotion.

⁴⁵ Lov om helsepersonell m.v. (helsepersonelloven), LOV-1999-07-02-64.

64. The EU Database of regulated professions describes the tasks 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*”.⁴⁶

65. The National Plan for the professional education in psychology (“*Nasjonal plan for profesjonsutdanning i psykologi*”)⁴⁷ provides a description of the Norwegian psychology education: purpose, objectives, learning outcomes, content as well as organization and exam. It also describes the skills graduates should possess after finishing their studies.

66. 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.

67. In Norway, it is common to continue psychology studies with a postgraduate specialisation. The title one gets after having completed this additional training, which usually lasts four years, is the title of “*psychology specialist*” (“*psykologspesialist*”). It is not a separate profession as such. The profession of “*clinical psychologist*” does not exist in Norway.

6 The applicable EEA law

6.1 The Directive

68. Article 1 of Directive 2005/36 sets out the purpose of the Directive:

“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)

69. 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;”

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

⁴⁶ http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id_regprof=599

⁴⁷ <http://www.ansa.no/globalassets/for/fag/psykologi/nasjonal-plan-for-profesjonsutdanning-i-psykologi.pdf>.

“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;”

71. 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)

72. 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)

73. The Directive provides three alternative systems of recognition of professional qualifications. First, there is the automatic recognition system (Articles 21-49) which is characterized 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.

74. Third, there is the general system (Articles 10-15) which is at issue in the present cases. The general system applies to all professions which do not fall within the scope of the other two systems (Article 10).

75. Characteristic for the general system, is the absence of harmonisation of training requirements and, consequently, 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 (cf. *infra*, paras 82-87).

76. 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)

77. 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.

78. 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).

79. 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) when the holder has pursued his profession there on a full-time basis for two years during the previous ten years.

80. This obligation applies where the qualification is i) being issued by a competent authority in an EEA State in accordance with the applicable legislation of that State; ii) attesting 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 and iii) attesting that the holder has been prepared for the pursuit of the profession in question (Article 13(2), second paragraph).

81. 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 in 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).

82. 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 the applicant to complete an adaptation period of up to three years or ask them to take an aptitude test.

83. 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.*”

84. 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;
- 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.

85. 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*”.

86. 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.

87. 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).

88. 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.”

89. 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.”

90. In cases like in the present cases 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)

91. Finally, the EEA States must have an appeal system for the decisions but also for the failure to reach a decision within the deadline of Article 51(2) (Article 51(3)):

“3. The decision, or failure to reach a decision within the deadline, shall be subject to appeal under national law.”

6.2 Directive 2006/123

92. 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, Article 3(1)(d), Article 4, Articles 9-11, Article 13 and Article 14.

6.3 The EEA-Agreement

93. 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.

94. 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.

...”

95. 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. ...”

96. Article 33 EEA stipulates:

“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.”

7 The Authority's assessment

7.1 Introduction

97. The Authority has assessed the factual situation as well as the Norwegian law, in light of the relevant provisions of EEA law. In the following sections the Authority will explain its assessment in further detail.

98. The first part of the assessment examines the Norwegian practice in light of the Directive. As will be explained below, the Authority is of the opinion that the Directive applies and that it has been breached on three independent grounds.

99. Firstly, the content of the decisions of the Norwegian Directorate of Health is examined. It is the view of the Authority that the Norwegian Directorate of Health has rejected the applications for recognition in a way which is inconsistent with Articles 13 and 14 of the Directive. This Section is divided into four subsections.

100. In the introduction, Norway's arguments for rejecting the applications were set out.

101. As Norway's argumentation for having rejected the applications is based on its view that the Directive does not apply, the central legal question on the applicability of the Directive ("*the same*" profession or not) is addressed in the next subsection. The Authority is of the view that the Directive is applicable for three reasons: a) the Directive's broad approach to the concept of the "*same*" profession, b) the comparability of the activities of both professions and c) the comparability of the structure of both psychology educations.

102. The third subsection sets out which system of recognition of professional qualification of the Directive applies in this case i.e. the general system.

103. The fourth subsection sets out why the Authority 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. The situation of a) the 50 ELTE graduates and b) the 16 persons already working with a licence are dealt with separately.

104. Secondly, the Authority has found that the Norwegian Directorate of Health has exceeded the four-month deadline in Article 51(2) of the Directive for deciding upon applications for recognition.

105. Thirdly and finally, Norway has failed to provide a system for appealing the failure to take decisions upon such applications within the deadline provided in Article 51(2) of the Directive, as required by Article 51(3) of the Directive.

106. The second part of the assessment 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 will have acted in breach of EEA law regarding its practice with respect to the ELTE applicants.

107. The assessment ends with the Authority's view on how Norway's practice constitutes an infringement on Articles 28 and 31 EEA. It explains why the practice is a

restriction on the freedom of establishment and the free movement of workers which in the view of the Authority cannot be justified.

7.2 The Directive

7.2.1 *Infringement of Articles 13 and 14: Norway's unlawful refusal of the recognition applications*

7.2.1.1 *Introduction*

108. According to Norway⁴⁸, the motivation for changing its previous practice was that it had found out in April 2016 that the Hungarian diploma does not provide the right to work independently as a psychologist in Hungary, contrary to what it had assumed before. This information eventually led Norway to the conclusion that the Hungarian and Norwegian professions of psychologist are not «*the same*» in the sense of Article 4(1) and that the Directive therefore does not apply.

109. The applicability of the Directive will be addressed below (cf. *infra*, Section 7.2.1.2). The Authority will first assess Norway's first argument to reject the applications for a licence i.e. by requiring two years of professional experience. It will also explain how Norway shifted from the latter argument to its main argument i.e. that the Directive does not apply.

110. Unlike in Norway, the profession of psychologist is not regulated in Hungary. When Norway first rejected the licence applications from ELTE graduates in 2016, its refusal was based on Article 13(2), first paragraph of the Directive to require two years of work experience from applicants⁴⁹. The ELTE graduates that applied for a licence were unable to show this experience. Consequently, their applications were rejected.

111. The Authority does not consider this approach to be in accordance with the Directive. In this respect, it is sufficient to refer to Article 13(2), third paragraph of the Directive. This provision prohibits Norway from requiring two years of professional experience if the Hungarian 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).

112. The Hungarian qualification does certify “*regulated education and training*” within the meaning of Article 3(1)(e) at the level of qualifications described in Article 11, point (e)⁵⁰. Therefore, the Authority does not see how the Directive could provide Norway with any legal ground to require two years of professional experience.

113. To the argument that the qualification certifies “*regulated education and training*” within the meaning of Article 3(1)(e) at the level of qualifications described in Article 11, point e) and therefore the two years of experience cannot be required (according to Article

⁴⁸ Reply of Norway of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017, p. 2-3.

⁴⁹ See rejections of the applications for a licence; see e.g. the decision of 22 September 2016 of the Norwegian Directorate of Health to reject the application of the complainant in Case No 80103 (Doc No 834740).

⁵⁰ The Hungarian qualification “*okleveles pszichológus*” requires five years of university education (cf. *supra*, para 27) and therefore corresponds to Article 11, point (e) of the Directive.

13(2), third paragraph), the Norwegian Directorate of Health developed the reasoning set out below.

114. As set out in full in paragraph 70 above, Article 3(1)(e) defines “*regulated education and training*” as follows: “*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.*” (emphasis added).

115. According to the Norwegian Directorate of Health, the phrase “*specifically geared to the pursuit of a given profession*” implies that the regulated education must provide the necessary qualification for the pursuit of those activities that are “*central*” to the regulated profession of psychologist in Norway.

116. According to the Norwegian Directorate of Health, the Hungarian education does not qualify graduates for the activities that are “*central*” to the psychologist profession in Norway. This argument is based on the premise that a holder of the Hungarian qualification is not granted the same responsibility and does not perform the same tasks as a psychologist in Norway. This was Norway’s understanding of the information that it had received in April 2016.

117. Consequently, having started from the definition of “*regulated education and training*” in Article 3(1)(e) when rejecting the licence applications of the ELTE graduates, Norway appears to have shifted its initial argument of requiring two years of professional experience. Now instead, it argues that the Hungarian psychologist profession and the Norwegian profession are simply not “*the same*” within the meaning of Article 4(1) of the Directive and therefore the Directive would not apply.

118. Since the Norwegian Directorate of Health therefore considers that the Directive does not apply, it has simply refused the licence applications without granting any compensation measures under Article 14 of the Directive. It has also not granted authorisations to persons who were already granted a licence under the “*old*” practice, although they had completed their licence period successfully.

119. Given the above, the primary legal question that needs to be assessed is whether the Directive applies or not. This requires an assessment of whether the profession of psychologist in Hungary (“*okleveles pszichológus*”) is “*the same*” profession as the profession of psychologist in Norway (“*psykolog*”) or not. If it turns out to be “*the same*” profession, the Directive is applicable.

7.2.1.2 *Applicability of the Directive (“the same” profession or not)*

120. The Authority considers both professions as “*the same*” and is therefore of the opinion that the Directive applies. Firstly, the Directive requires a broad approach regarding which professions are to be considered “*the same*”, as will be elaborated below. Secondly, the activities of both professions are “*comparable*”, as will be assessed in detail. Finally, the comparable structure of the psychology education in both countries reinforces the fact that it concerns the same profession.

a) *The Directive’s broad approach to the concept of “the same” profession*

121. There are numerous factors indicating that the Directive requires a broad approach to determine what “*the same profession*” is within the meaning of Article 4(1).

122. This results first of all 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 consider the professions as “*the same*” (cf. *supra*, para 72).

123. The broad approach also results from the characteristics of the general system (cf. *supra*, para 75). The Authority observes that it is normal that the activities of psychologists throughout the EEA to a certain extent differ⁵¹ as the profession has not been harmonised at the EEA level. To consider all professions that differ somewhat throughout the EEA as “*different*” professions – and therefore exclude them from the scope of the Directive – would make the Directive ineffective and deprive it of any meaning, the general system in particular.

124. Furthermore, the *rationale* of compensation measures under the general system as described in Article 14 of the Directive is precisely to overcome differences in education and skills. In most EEA States, including Hungary, the psychology studies last five years. Often, graduates are required to complete an internship or another practical training immediately after their studies⁵². In Norway by contrast, the education lasts six years and already includes this practical training, which is mainly organised in the sixth year.

125. In the view of the Authority, Norway’s previous practice of 13 years of imposing a period of one year of supervised work on ELTE graduates in order to teach them to work independently, seemed therefore coherent. It had been demonstrated to be effective in covering the lack of independent practice in the Hungarian education. As far as the Authority is aware, no incidents or other patient safety problems were notified. This was also stressed by the competent Hungarian Ministry and by ELTE (cf. *supra*, para 26).

126. The broad approach of the concept of “*the same*” profession under the general system is also supported by the Court of Justice of the European Union (“CJEU”). Its case law clearly distinguishes between two situations. On the one hand, if 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 measures, both professions can be considered as “*the same*”⁵³.

127. If however on the other hand, 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 applicable⁵⁴. In other words, such a situation concerns entirely different professions.

⁵¹ 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.

⁵² “*Mutual evaluation of regulated professions. Overview of the regulatory framework in the health services sector – psychologists and related professions*”, GROW/E5, 11 April 2016, p. 17.

⁵³ 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.

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

128. The Norwegian Ministry of Health has entrusted the Norwegian Directorate of Health with the task of exploring the possibility of supplementary training programmes, specifically for ELTE graduates (cf. supra, para 41). By allowing for such a period of specifically created supplementary training, the Ministry implicitly acknowledged that the professions are comparable and that any differences can be dealt with through this additional training.

129. If Norway were to maintain that the professions are different, then this would require applicants with Hungarian psychology degrees to follow the full Norwegian education from the beginning. In light of the case law of the CJEU, this assessment (i.e. that the full training is not necessary) therefore classifies both professions as “*the same*” under the Directive.

130. Finally, the broad approach is strikingly illustrated in the EU Commission’s User Guide on Directive 2005/36. Explaining what could be considered as “*not the same profession*”, it provides the example of an estate agent and a lawyer⁵⁵.

131. Taken together, the above arguments demonstrate that the Directive requires a broad approach when considering professions as “*the same*”. Therefore differences between the professions’ activities should be substantial in order to consider them as not “*the same*” profession.

b) *The comparability of the activities of both professions*

132. Norway’s reasons for considering the professions as different is limited to emphasising the fact that holders of the qualification “*okleveles pszichológus*” are not entitled to pursue certain healthcare-related activities on an independent basis due to the Hungarian employment regulation. In order to pursue these activities, they need the supervision of a specialised clinical psychologist or a psychiatrist.

133. Norway claims that the Norwegian “*psykolog*” by contrast is highly independent as “*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.*”⁵⁶

134. Before examining the content of the Hungarian requirements for pursuing healthcare-related activities, the Authority makes the following general observation. It is notable that the Hungarian requirements referred to by Norway in its argumentation are part of the employment regulation (concerning healthcare establishments) and not part of the regulation of the psychologist’s profession as such.

135. In the Authority’s understanding, the requirements therefore concern an organisational matter at the workplace, rather than a patient safety issue. Moreover, as the Hungarian requirements concern regulations that apply to healthcare establishments, they

⁵⁵ “*User Guide. Directive 2005/36/EC. Everything you need to know about the recognition of professional qualifications, 66 questions, 66 answers*”, p. 13.

⁵⁶ Reply of Norway of 23 December 2017 (Doc No 888288) to the letters of the Authority of 16 November 2017 and 23 November 2017, p. 1-2.

seem not to apply to other institutions in which psychologists may work, such as private practices.

136. The first requirement of the Hungarian employment regulation of healthcare establishments for an “*okleveles pszichológus*” in order to pursue healthcare related activities is that they must have either started the training of specialised clinical psychologist or have committed themselves to start it within two years.

137. To the Authority, it is clear that this requirement is purely formal and does not affect in any relevant manner the comparability of the activities. As any “*okleveles pszichológus*” has the right to commit themselves to such a training and therefore is entitled to work in the Hungarian healthcare system even without having obtained the title of specialised clinical psychologist (“*klinikai szakpszichológus*”), the applicants already possess the necessary qualification to work in the Hungarian healthcare system. The obvious reason why they do not wish to commit to such a training is because they want to pursue a career in Norway.

138. The second requirement of the Hungarian employment regulation of healthcare establishments in order to pursue healthcare related activities is the need for supervision by a specialised clinical psychologist or a psychiatrist. The Authority acknowledges that because of this requirement, the degree of responsibility of a Hungarian trained psychologist – at least for those subject to the employment regulation - could be perceived as slightly different from the responsibility of a Norwegian trained psychologist.

139. However, the Authority is of the opinion that the Hungarian supervision requirement for pursuing certain healthcare-related activities does not render these activities “*other*” activities and by consequence does not make both professions “*different*” for the purposes of Article 4(1) of the Directive. The supervision requirement simply concerns the *modality* of the pursuit of the same activities and does not affect in any relevant manner the *nature* of the activities themselves.

140. This is even more so as the supervision requirement originates in labour law and not in health law. Consequently, it does not cover all situations in which psychologists work and therefore does not affect the essential characteristics of the profession. Hungary could have reserved the healthcare-related activities to the specialised clinical psychologist but has chosen not to.

141. It should be reiterated that Norway’s argumentation to consider both professions as not “*the same*” is restricted to the requirement of supervision on the activities and does not comment on the nature of those activities.

142. Additionally, in the view of the Authority, the supervision requirement – and consequently the degree of dependence of the Hungarian trained “*okleveles pszichológus*” - is significantly overestimated by Norway.

143. According to the Hungarian authorities, the supervision must be seen simply as a “*formal control by the institution*” and “*not as a guided activity*”⁵⁷.

⁵⁷ 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).

144. In light of Hungarian legislation, the supervision requirement appears to be of even less relevance for these purposes as it explicitly states that a psychologist with a master specialisation in clinical and health psychology is entitled to work independently (cf. supra, para 38).

145. It seems moreover that Norway has not only overestimated the lack of independence of the Hungarian trained psychologist but also the independence of the Norwegian trained one. In fact, Norwegian trained psychologists are not entitled to work independently in every clinical situation or setting. This weakens the statement of the Norwegian authorities regarding their high degree of independence (cf. supra, paras 24 and 135).

146. For example, the Norwegian Board of Health Supervision (“*Helsestilsynet*”) considers that “*diagnosis is a specialist task*”⁵⁸ 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*”⁵⁹ (emphasis added).⁶⁰

147. This point of view was confirmed in the report⁶¹ of a recent inspection conducted at a healthcare establishment with clinical psychology institutions. The report concluded that it considers a psychologists’ independent diagnosis - without supervision of a specialist – a violation of responsible conduct for health professionals.

148. This understanding of the Norwegian Board of Health Supervision is in accordance with the ethical guidelines⁶² of the Norwegian Psychological Association according to which “*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*”⁶³. In this perspective, it is likely that newly educated psychologists face difficult situations in their early career, especially if they set up their own private practice without colleagues to consult.

149. Even the Norwegian Mental Healthcare Act⁶⁴ emphasises the importance of the role of specialists. Section 1-4 first subparagraph states: “*The professional responsible for making decisions and deciding on specific measures pursuant to this the Act shall be a physician with relevant specialist approval or a clinical psychologist with relevant practice and further education as stipulated in regulations*”^{65 66} (emphasis added).

⁵⁸ «*Diagnostisering er en spesialistoppgave.*»

⁵⁹ «*Der pasienten utredes av personell uten spesialistkompetanse må det dokumenteres at spesialist har vært involvert i diagnostisk vurdering.*»

⁶⁰ Presentation given by the County Governor (“*Fylkesmannen*”) from the County of Sør-Trøndelag, Nord-Trøndelag and Møre og Romsdal «*Landsomfattende tilsyn Spesialisthelsetjenester til pasienter med psykiske lidelser og mulig samtidig ruslidelse*», p.13, 26 October 2017 (Doc No 895745).

⁶¹ «*Rapport fra tilsyn med Helse Stavanger HF, Klinikk psykisk helsevern voksne, Stavanger DPS allmennpsykiatrisk poliklinikk – spesialisthelsetjenester til pasienter med psykisk lidelse og mulig samtidig ruslidelse*”, 14 June 2017 (Doc No 895746).

⁶² «*Etiske prinsipper for nordiske psykologer*» («*Ethical guidelines for Norwegian psychologists*»), <https://www.psykologforeningen.no/medlem/etikk/etiske-prinsipper-for-nordiske-psykologer>.

⁶³ «*Psykologen praktiserer innenfor de grensene for sin kompetanse som følger av utdanning, trening, erfaring og personlig styrke og begrensning, og søker profesjonell hjelp og støtte i vanskelige situasjoner.*»

⁶⁴ Lov om etablering og gjennomføring av psykisk helsevern (psykisk helsevernloven), LOV-1999-07-02-62.

⁶⁵ «*Den faglig ansvarlige for å treffe vedtak samt beslutte nærmere angitte tiltak etter loven her, skal være lege med relevant spesialistgodkjenning eller klinisk psykolog med relevant praksis og videreutdanning som fastsatt i forskrift.*»

⁶⁶ Unofficial translation by the Authority.

150. This is further elaborated on in the Mental Healthcare Regulation⁶⁷ in Section 5: “A psychologist who is to be professionally responsible according to section 1-4 of the Mental Healthcare Act shall be a specialist in clinical psychology with a field of specialisation in clinical adult psychology or child and adolescent psychology”^{68 69} (emphasis added).

151. Further, it appears common for psychiatric institutions to apply guidelines for new graduates that start their careers as a psychologist. These guidelines mention the need to have a specialist as a supervisor (“veiledning”).⁷⁰

152. In the light of the above, the Authority concludes that the requirements of the Hungarian employment regulation of healthcare establishments do not make the activities of a Hungarian trained psychologist (“okleveles pszichológus”) “different” from those of a Norwegian trained psychologist (“psykolog”) in such a way that they would no longer be “comparable” within the meaning of Article 4(2) of the Directive.

c) *The comparability of the structure of both psychology educations*

153. Another element that adds to the comparability of both professions is the comparable way of structuring the psychology education in both countries. Although Norway and Hungary have different views on organising the education of psychologists, they seem to agree on the fact that there are two different education levels for the pursuit of clinical psychology activities.

154. In both countries, there is a basic, more general psychology education composed of five (“okleveles pszichológus”) or six (“psykolog”) years of university education. Afterwards, both countries offer a comparable possibility to specialise. In both countries the “basic” psychologists’ qualification is a prerequisite to enter the specialist’s education, which takes place afterwards and typically as part of professional work.

155. The specialisation studies result in “specialised clinical psychologist” (“klinikai szakpszichológus”) in Hungary and in “psychology specialist” (“psykologspesialist”) in Norway. Both qualifications require respectively nine to ten years and ten years of training in total.

156. It is therefore clear that both “basic” trainings aim at educating clinical psychologists, authorised to pursue the typical activities of a psychologist, as was also the conclusion of the University of Oslo in 2014 (cf. supra, para 15). This is even more apparent for those “okleveles pszichológus” with the specialisation “Clinical and Health Psychology” (all complainants in this case) who have an advantage in the admission procedure for the training of “specialised clinical psychologist” (cf. supra, para 31).

157. The dean of ELTE has also compared the Hungarian “specialised clinical psychologist” (“klinikai szakpszichológus”) with the Norwegian “specialised

⁶⁷ Forskrift om etablering og gjennomføring av psykisk helsevern m.m. (psykisk helsevernforskriften), FOR-2011-12-16-1258.

⁶⁸ «Psykiolog som skal være faglig ansvarlig etter psykisk helsevernloven § 1-4, skal være spesialist i klinisk psykologi med fordypningsområde i klinisk voksenpsykologi eller barne- og ungdomspsykologi.»

⁶⁹ Unofficial translation by the Authority.

⁷⁰ See the internal guidelines from the University Hospital of Oslo, “Prosedyreopplæring psykolog ARA” of 1 June 2016 (Doc No 895747).

psychologist” (“*psykologspesialist*”): “*The title might be different but the content is the same*”. Equal to the Hungarian “*specialised clinical psychologist*”, the Norwegian qualification of “*psykologspesialist*” takes an additional education of four years after the “*basic*” studies of psychologist i.e. in Hungary “*okleveles pszichológus*” and “*psykolog*” in Norway⁷¹.

158. On the basis of above arguments, the Authority concludes 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.

7.2.1.3 *Applicability of the general system of the Directive*

159. The conditions for taking up the profession of psychologist have not, thus far, been the subject of harmonisation at EEA level. This means that the EEA States remain free to define the educational and other professional requirements. In doing so, they must evidently respect the fundamental freedoms guaranteed by the EEA Agreement.

160. It will be recalled that the Directive provides three alternative systems for recognition of a profession. Because the training of the psychologist’s profession has not been harmonised, the profession does not fall under the scope of the automatic recognition system. It also does not fall under the system of recognition on the basis of professional experience⁷². Consequently, it falls under the scope of the general system (Articles 10-15 of the Directive) as explained above (cf. *supra*, para 74).

7.2.1.4 *Norway’s obligation to recognise the qualifications*

161. As the Authority considers the Directive applicable, it is the Authority’s view that by simply refusing to recognise the Hungarian qualifications, Norway’s administrative practice is in breach of Articles 13 and 14 of the Directive.

162. Article 13 of the Directive lays down the principle of mutual recognition (cf. *supra*, para 77).

163. Notwithstanding Article 13, which obliges Norway to recognise the Hungarian qualification, Norway might be allowed 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.

a) *The case of the 50 ELTE graduates*

164. Articles 13 and 14 of the Directive imply that Norway could either ask applicants to complete an adaptation period of up to three years or to take an aptitude test if the conditions of Article 14 are fulfilled. In principle, the applicant should be offered the choice between an adaptation period and an aptitude test.

165. However, simply refusing the recognition without offering the applicants the choice of such compensation measures constitutes a clear breach of Article 13 of the

⁷¹ E-mail of Zsolt Demetrovics, dean of ELTE, to the Norwegian Directorate of Health of 6 October 2016 (Doc No 895743).

⁷² As the activities of a psychologist are not listed in Annex IV of the Directive (cf. *supra*, para 73).

Directive in the Authority's view. Norway has taken such decisions for the 50 ELTE graduates and has declared it will take the same decision for graduates who began their (Master's) studies at ELTE after April 2016 (cf. supra, para 44).

166. For the 50 ELTE graduates, a "solution" has been announced in the meantime but is, to the Authority's knowledge, not yet created (cf. supra, para 42).

167. The Authority is of the opinion that such practices gives rise to a clear violation of Articles 13 and 14 of the Directive. All ELTE graduates should be entitled to have their qualification recognised by Norway. When all conditions of Article 14 are fulfilled, Norway can impose compensation measures by offering the applicants the choice between an adaptation period of up to three years or an aptitude test.

b) The case of the 16 persons who applied for an authorisation

168. The refusal of the Norwegian Directorate of Health to grant an authorisation to the 16 persons who had already started their adaptation – licence – period at the moment when Norway changed its practice constitutes a breach of 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.

169. When examining Articles 13 and 14 of the Directive in light of each other, it becomes clear for the Authority that the use of compensation measures leads to 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 the applicants have fulfilled the compensation measure, recognition can no longer be refused for qualification reasons.

170. In other words, the decision of the Norwegian Directorate of Health to grant a temporary licence to the 16 individuals who had already begun their adaptation period implied that they would be granted an authorisation after having successfully completed their one year licence period⁷³. Despite this expectation, none of the 16 persons has received an authorisation, long after having successfully completed their licence period.

171. Moreover, Norway imposed further supplementary educational requirements also on these persons. The Authority is of the opinion that that practice is a violation of Articles 13 and 14 of the Directive and that the persons who have completed their one-year licence period successfully are entitled to an authorisation.

7.2.2 Infringement of Article 51(2): exceeding the deadline for processing recognition applications

172. Norway has acknowledged that it regularly exceeds the Directive's four-month deadline for processing the applications for licences and authorisations in order to work as a psychologist⁷⁴.

173. The facts have shown this was also the case for the complainants in Cases No 80103 and 81375, who had to wait seven months for a decision of the Norwegian Directorate of Health on their application for a licence.

⁷³ Or at least the assurance that the authorisation would not be refused for professional qualification reasons (cf. supra, paras 61-62 on the conditions for receiving an authorisation under the Norwegian legislation).

⁷⁴ Reply of Norway of 8 June 2017 (Doc No 859557) to the letter of the Authority of 16 May 2017.

174. Although the Directive only imposes a deadline for deciding upon recognition applications and not for the processing of appeals against these decisions, it is the Authority's view that long waiting times in complaint and appeal procedures are not in line with its clear purpose either⁷⁵.

175. It took the Norwegian Directorate of Health eight months to confirm its decisions. It took another five months for the Norwegian Appel Board for Health Personnel to decide upon the appeal in Case No 80103. In the Cases 79661 and 81375, the Norwegian Appeal Board for Health Personnel has reached a decision only eight months after the confirmed decisions of the Norwegian Directorate of Health.

176. Altogether, it took a period of 20 months waiting time for the complainant in Case 80103 to receive a final decision i.e. seven months to receive a decision, eight months to have this decision confirmed and another five months to receive an appeal decision.

177. For the complainants in Cases 79661 and 81375, this period took 18 months (i.e. two months to receive a decision, eight months to have this decision confirmed and a further eight months to receive an appeal decision) and 23 months respectively (seven months to receive a decision, eight months to have this decision confirmed and eight months to receive an appeal decision).

178. These considerably long waiting times have far-reaching consequences for the complainants and other applicants in the same position. While waiting for a licence, they are unable to gain any (additional) relevant work experience and are encouraged to start looking for a job outside the field of psychology in which they have obtained their Master's degrees over a period of five years.

179. Furthermore, the reputation of the holders of Hungarian qualifications is at stake as the Norwegian Directorate of Health has widely communicated that their qualifications are "not good enough" to perform as a psychologist. The longer it takes to clarify the issue, the more suspicion it will create with colleagues, employers and patients. This is precisely what the strict deadline in Article 51(2) of the Directive was designed to avoid.

180. The Directive's four-months-deadline was also not met in Case No 81656. The complainant has presently been waiting for an authorisation for over two years now. As the complainant could only recently start the educational one year-programme, it is not expected an authorisation will be granted shortly.

181. On the basis of the cases described above, the Authority takes the view that Norway's administrative practice does not comply with Article 51(2) of the Directive.

7.2.3 *Infringement of Article 51(3): the lack of appeal procedure for failure of meeting the deadline*

⁷⁵ See Preamble (30) of the Directive that 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.'

182. Norway has also acknowledged that it does not have a system in place to allow for appeals where there is failure to reach a decision within the given deadline of Article 51(2) of the Directive⁷⁶, although this is required by Article 51(3) of the Directive.

183. The Authority therefore takes the view that Norway's legislation does not comply with Article 51(3) of the Directive.

7.3 Directive 2006/123 and Articles 28 and 31 EEA

184. As Norway considers the Directive as not applicable, it has instead sought to justify its practice in the light of the free movement principles.

185. The Authority disagrees with Norway's assessment and considers the Directive applicable. However, to the extent and in the alternative that the Directive would not apply, the Authority observes that Directive 2006/123 and/or the EEA Agreement would be applicable.

7.3.1 Directive 2006/123

186. Directive 2006/123 applies to services supplied by providers established in a Member State (Article 2(1) Directive 2006/123). It does not apply to *“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”* (Article 2(2)(f) of Directive 2006/123).

187. Recital 22 in the preamble to Directive 2006/123 defines healthcare services as follows: *‘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.’* (emphasis added).

188. The Authority refers in this context to the Commission's Handbook on the implementation of the Services Directive⁷⁷ (p.11) which reiterates the importance of the reservation of the activities in order to be 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.”*

189. As discussed above, the activities of a Norwegian psychologist are not reserved to psychologists (cf. supra, paras 12 and 63). The Norwegian profession of psychologist is only regulated by protection of the title *“psykolog”*. Therefore, as the activities performed in those profession are not “reserved” to that profession, they are not encompassed by the exclusion expressed by the term *“healthcare services”* within the meaning of Article

⁷⁶ Reply of Norway of 7 July 2017 (Doc No 865090) to the letter of the Authority of 12 June 2017.

⁷⁷ The Handbook was, for instance, cited by the CJEU in the context of the concept *“healthcare services”* in Case C-57/12 *Femarbel* [2013] ECLI:EU:C:2013:517 para 37. In this case, the CJEU explicitly used the definition of Recital 22 when determining the scope of Directive 2006/123 in the light of healthcare services within the meaning of Article 2(2)(f), see para 36.

2(2)(f). Therefore, Directive 2006/123 applies to the services of Norwegian trained psychologists.

190. The same reasoning goes for the activities of an “*okleveles pszichológus*” which cannot be considered as healthcare activities. As in Norway, their activities are not reserved to holders of the qualification in Hungary (cf. supra, para 32).

191. Given the above, Directive 2006/123 applies to the present case to the extent and in the alternative that the Directive does not apply.⁷⁸

192. An authorisation scheme within the meaning of Article 4(6) of Directive 2006/123 is 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.

193. Without a licence or an authorisation, it is not possible to work under the protected title “*psykolog*” in Norway (cf. supra, paras 12-13 and 59-60). To be permanently and fully entitled to work as a “*psykolog*”, an authorisation is needed. In the view of the Authority, it is clear that the Norwegian authorisation scheme for psychologists falls under the scope of Directive 2006/123.

194. Article 11 of Directive 2006/123 states that, save for in certain narrow situations, authorisations granted to service providers shall not be for a limited duration. The Authority is therefore of the opinion that the temporary validity of the permission to pursue the profession (the so-called “*licence*”) for ELTE graduates is in breach of Article 11 of Directive 2006/123.

195. Furthermore, the Authority takes the view that Norway’s administrative practice does not comply with the procedural requirements for authorisation schemes in Article 13 of Directive 2006/123. According to this provision, authorisation procedures and formalities must 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 (Article 13(1) Directive 2006/123).

196. The fact that seven cases have been approved “*mistakenly*” (cf. supra, para 23) implies a breach of this provision. Additionally, Norway’s change of administrative practice was not announced before it went into practice (cf. supra, para 18).

197. The procedures shall not unduly complicate or delay the provision of the service (Article 13(2) Directive 2006/123). Applicants must have 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 (Article 13(3) Directive 2006/123). Failing a response within the time period set, authorisation shall be deemed to have been granted (Article 13(4) Directive 2006/123). 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 (Article 13(7) Directive 2006/123).

⁷⁸ Article 3(1) of Directive 2006/123 regulates conflicts between provisions of that directive and the provisions of other, specifically mentioned European Union legislative instruments “governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions”. In the event of such a conflict, those other provisions shall prevail. Article 3 (1) subparagraph (d) refers in this context to Directive 2005/36/EC (i.e. the Directive), the provisions of which shall therefore prevail and apply in case of a conflict with the provisions of Directive 2006/123.

198. The facts which entail a breach of these procedural requirements have been elaborated on extensively above (cf. paras 48-54).

199. Article 10 of Directive 2006/123 sets out numerous criteria to preclude competent authorities from exercising their assessment powers concerning authorisation schemes in an arbitrary manner. The Authority is of the opinion that Norway's practice does not comply with these requirements, such as the obligation 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) of Directive 2006/123.

200. The Authority notes that Norway's practice does not comply with the requirements to be justifiable and proportionate (Article 10(2)(b) and (c) Directive 2006/123). As the Authority sees it, this assessment under Directive 2006/123 will be covered by the additional and alternative breach of Articles 28 and 31 EEA, which will be demonstrated in the next section.

7.3.2 Articles 28 and 31 EEA

7.3.2.1 The existence of a restriction

201. Without a licence or an authorisation, it is not possible to work using the title “*psykolog*” in Norway (cf. *supra*, paras 12-13 and 59-60), either as a self-employed person or as an employee. To be permanently and fully entitled to work as a “*psykolog*”, an authorisation is needed.

202. In the Authority's view, both Norway's decisions to refuse to recognise applications from holders of an ELTE qualification and to impose supplementary educational requirements on them therefore constitute a restriction of the free movement of workers and the freedom of establishment within the meaning of Articles 28 and 31 EEA. In that respect, it is sufficient to refer to the judgment of the CJEU in *Nasiopoulos*, 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*”.⁷⁹

203. The intention, expressed by the Norwegian Minister of Health not to offer any solution at all for ELTE students who have not started their Master's studies in 2016 (cf. *supra*, para 44) will evidently constitute a restriction on the free movement principles as well, if put in practice once they apply for a recognition of their qualification in Norway.

204. Moreover, due to the excessive delays in processing recognition applications, and by not having a system in place for appealing against the failure to reach a decision within a reasonable time, Norway has acted in breach of Articles 28 and 31 EEA, interpreted in light of fundamental rights, in particular the principle of effective judicial protection⁸⁰ and the principle of access to justice as “*an essential element of the EEA legal framework*.”⁸¹

7.3.2.2 Justification of the measures

⁷⁹ Judgment of 27 June 2013, *Nasiopoulos*, C-575/11, ECLI:EU:C:2013:430, para 32.

⁸⁰ Case E-15/10 *Posten Norge v. EFTA Surveillance Authority* [2012] *EFTA Ct. Rep.* 246, para. 86.

⁸¹ 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.

205. According to Norway, its practice to refuse the recognition applications of the holders of an ELTE qualification and to impose supplementary educational requirements on them are in compliance with the free movement principles. Norway considers these measures as necessary and proportionate to safeguard public health and patient safety in particular.

206. Article 33 EEA allows EEA States to derogate from the principle of free movement of workers and the freedom of establishment on grounds of public health. Such derogations should be interpreted strictly,⁸² and the burden of proof is on the defendant state⁸³. EEA States must put forward precise evidence capable of establishing the existence of a derogation. General assertions are not sufficient⁸⁴.

207. In the Authority's view, Norway has failed to demonstrate the necessity of a public health derogation. Norway has not provided any evidence indicating that ELTE trained psychologists constitute a threat to patient safety such as e.g. incidents or complaints from patients treated by them. On the contrary, many of them were evaluated positively by their supervisor at the end of their licence period.

208. The lack of any evidence showing patient safety problems caused by ELTE trained psychologists demonstrates that Norway's former practice was sufficient to guarantee their good performance.

209. Additionally, the Norwegian authorities confirmed that their decision to change their recognition practice was based solely on information on the qualification in Hungary⁸⁵ and thus not any quality or patient safety assessment of the Hungarian trained psychologists' performance.

210. Finally, the fact that it has taken the Norwegian authorities such a long time to decide upon the applications and upon the supplementary educational requirements – which are currently still not created nor organised for the 50 ELTE graduates – merely serves to emphasise that the Norwegian measures have not been justified. If there was a real patient safety risk, it could have been expected that the authorities would have acted immediately.

211. Instead it appears to be the case that the *number* of Norwegian students studying psychology abroad⁸⁶ - and not their *performance* or any changes to the *relevance* or *quality* or their education - has been the reason for Norway to strengthen its recognition policy. To the Authority's knowledge, the Norwegian Directorate of Health was never alarmed by patients and/or employers of Hungarian trained psychologists expressing patient safety concerns. To the Authority, it appears therefore that Norway exclusively

⁸² See e.g. Case E-1/94 *Restamark* [1994-95] *EFTA Ct Rep* 15, para 56.

⁸³ A.o. Case C-260/04 *Commission v. Italy* [2007] ECR I-7083, para 33; Case E-1/94 *Restamark* [1994-95] *EFTA Ct Rep* 15, para 60.

⁸⁴ Case 161/07 *Commission v. Austria* [2008] ECR I-10671, para 37.

⁸⁵ Reply of Norway of 3 March 2017 (Doc No 845211) to the letter of the Authority of 25 January 2017, p. 2-3.

⁸⁶ It was reported by the representatives of the Norwegian authorities that the increasing number of Norwegian students studying in Hungary raised concerns with the four Norwegian universities offering the psychology education. It was acknowledged by the Norwegian authorities that these concerns were the occasion to reconsider their recognition practice, see follow-up letter of the package meeting of 26 October 2017 (Doc No 878916).

based its change of practice on the concerns of the Norwegian universities that offer the psychology education.

212. Norway has proved to be inconsistent in its approach towards the recognition of the ELTE qualifications. According to settled case law of the CJEU and the EFTA Court, inconsistency in applying public health measures cannot properly attain the public health objective⁸⁷.

213. Firstly, Norway has approved seven applications from ELTE graduates after having changed its practice and has decided to uphold these decisions (cf. supra, para 23). Secondly, although Norway claims to be strongly convinced that ELTE graduates constitute a threat to patient safety to such a degree that they should start their education in Norway from scratch, it has decided to offer supplementary educational measures for at least some of them with the objective of granting them an authorisation i.e. for those who were graduated in 2016 and those who had already started their Master's studies at ELTE in 2016.

7.3.2.3 Conclusion

214. For the above reasons, the Authority considers Norway's practice to refuse the recognition of applications from the ELTE graduates and to impose supplementary educational requirements on some of them as not necessary and 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.

215. The Authority considers Norway's practice not only as unnecessary to safeguard patient safety. It is also not proportionate to that goal as less stringent measures in the past have proved to serve the same goal in an effective manner.

216. The Authority concludes that Norway's practice constitutes a breach of Articles 28 and 31 EEA.

8 Conclusion

217. Accordingly, as its information presently stands, the Authority must conclude 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 ("*psykolog*") in Norway and imposing supplementary educational requirements on them, 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 addition and 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 Article 28 and 31 EEA.

⁸⁷ Case C-500/06 *Corporación Dermoestética* [2008] ECR I-5785, paras 39 and 40, Case C-169/07 *Hartlauer* [2009] ECR I-1721, paras 55-63; Case E-3/00 *EFTA Surveillance Authority v. The Kingdom of Norway* [2001-2002] *Rep. EFTA Ct.* 75, paras 26 and 41.

- by 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 addition and in the alternative, the Authority concludes that due to the excessive delays in processing recognition applications, Norway 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 Article 28 and 31 EEA.

- by not having a system in place for appealing against the failure to reach a decision within the timeframe of four months, Norway has failed to fulfil its obligation arising from Article 51(3) 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 addition and in the alternative, the Authority concludes that Norway, by failing to provide effective access to justice in the manner required by 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 Article 28 and 31 EEA, has acted in breach of these provisions.

218. In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Norwegian Government submits its observations on the content of this letter *within three months* of its receipt.

219. After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
Responsible College Member

Högni Kristjánsson
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Carsten Zatschler
Countersigning as Director,
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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.