

## EFTA SURVEILLANCE AUTHORITY DECISION

of 10 June 2020

closing a complaint case arising from an alleged failure by Norway to comply with Directive 2005/36/EC on the recognition of professional qualifications by amending the Norwegian specialist medical training

### THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

On 19 March 2017, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway alleging that amendments to the Norwegian specialist medical training was contrary to Article 25 of Directive 2005/36/EC on the recognition of professional qualifications (“the Directive”).

### 1 Introduction

The complaint concerns Norway’s conversion of the practical 18 months internship (“*turnustjeneste*” or “*turnus*”) in 2014 from the mandatory last part of the *basic* medical training in Norway into the first of three steps of the *specialist* medical training. This first step is known as “*LIS 1*” (abbreviated from the formal name “*Lege-i-spesialisering*”, i.e. “*doctor under specialization*”). Following this change, the *turnus* period is no longer a prerequisite for authorisation to practise as a medical doctor. In order to become a specialist doctor, however, LIS 1 is now the first mandatory step.<sup>1</sup>

The complainant holds that LIS 1 is an internship, which consists of practical aspects of basic medical training, unrelated to specialist medical training, contrary to Article 25 of the Directive. This provision requires that access to specialist training is contingent upon the completion of the basic medical training, as referred to in Article 24 of the Directive.

Additionally, the complainant maintained that his daughter, who had been practising in Norway as an authorised medical doctor after her Dutch diploma was recognised in 2011, was discriminated against under the new system, as she could not have taken the *turnus* at

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<sup>1</sup> A list of all the specialist positions are found in Annex 1 to the Norwegian Specialist Regulation (“*Forskrift 8. Desember 2016 nr. 1428 om spesialistutdanning og spesialistgodkjenning for leger og tannleger.*“)

the time. The complainant claims that his daughter should be exempted from completing LIS 1, as she never had the possibility to complete the *turnus*.

The new structure of the specialist medical training entered into full effect on 1 March 2019, making all medical candidates applying for the Norwegian specialist training subject to completing LIS 1 as a first step of three in the medical specialist training (LIS 1, LIS 2 and LIS 3), as per Section 18 of the Specialist Regulation.<sup>2</sup> This requirement applies to all medical doctors from that date, regardless of whether they have undertaken their basic medical training in Norway or other EEA States. Norway implemented various transitional schemes prior to the cut-off date, allowing doctors with completed basic medical training to skip LIS 1, if they started their specialist training before 1 March 2019.<sup>3</sup>

## 2 Correspondence between the Authority and Norway

On 16 May 2017, the Authority sent a request for information to the Norwegian Government.<sup>4</sup>

On 22 June 2017, Norway replied by referring to its notification of 5 February 2013 of changes to the basic medical training and the Authority's approval of such changes. Norway stated that the new medical specialist training consists of three parts, where LIS 1 takes 18 months and is a mandatory common trunk for all specialities, LIS 2 is a common trunk for the surgical and internal medicine specialties and LIS 3 is specific to each medical specialty. In total, this amounts to a minimum duration of 6.5 years for all trainings.<sup>5</sup>

Norway clarified that even though the earlier *turnus* and LIS 1 were structured in a similar way, both consisting of 12 months of training in a hospital and 6 months in primary health care, there were several differences. The new LIS 1 training was more specific and had more learning outcomes and LIS 2 and 3 would be based on the outcomes of LIS 1. Norway noted that doctors that have undertaken clinical practice in primary health care abroad after completion of their basic medical training could apply to the Directorate of Health for recognition of some or all of the learning outcomes of LIS 1, instead of undertaking it as the first step, and the latter parts of the specialist training could be adjusted correspondingly.<sup>6</sup>

Norway further explained that the new specialist training was implemented in two steps, first by introducing the implementation of LIS 1 as of 1 March 2017. After that date, no new positions for *turnus* were offered. Next, LIS 2 and 3 were implemented as of 1 March 2019, when the first doctors would have finished LIS 1. Up until the implementation of LIS 2 and 3 on 1 March 2019, the old scheme on specialist medical training continued to be in force, as well as the prerequisite of completing *turnus*, as a transitional solution for doctors educated in Norway having finished the *turnus* and/or already started their specialisation. It was not considered necessary or reasonable for those doctors to complete both the *turnus* and the LIS 1, as there are similar key elements in the trainings. Norway

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<sup>2</sup> Forskrift 8. desember 2016 nr. 1428 om spesialistutdanning og spesialistgodkjenning for leger og tannleger.

<sup>3</sup> See e.g. Norway's reply of 18 May 2017 (Doc No 862387).

<sup>4</sup> Doc No 854477.

<sup>5</sup> Doc No 862387.

<sup>6</sup> See Section 32 of the Specialist Regulation for this exemption, which was previously set out in Section 27, as Norway's reply reflects.

did not make *turnus* compulsory for doctors educated in other EEA States, if they had completed basic medical training, as Norway considered it contrary to the Directive to implement an intermediate step for doctors with completed basic medical training from other EEA States.

In this regard, Norway explained that medical doctors with basic medical training from other EEA States were able to start their specialist medical training until 1 March 2019 without doing *turnus* or LIS 1 first, as part of the transitional scheme until LIS 2 and 3 were fully implemented. After 1 March 2019, all doctors will be subject the requirement of finishing LIS 1 as a first step in the specialist training, regardless of whether they have undertaken their basic medical training in Norway or other EEA States before starting LIS 2 or 3.

At the package meeting of 26 October 2017,<sup>7</sup> the representatives of the Norwegian Government provided more background on the changes to the specialist medical training. The reason for taking the *turnus* out of the basic medical education was that the basic medical training was considered as being too long (6 years + 18 months *turnus*) and the first 6 years of the training turned out to provide sufficient practical training for students in order to practise as a basic medical doctor. On the other hand, more generalist competence and therefore a solid common trunk for the specialist training seemed necessary in the light of the ageing population and related multi-diagnosis of patients. Therefore, Norway decided to introduce LIS 1 as the first stage of the specialist training, similar to the *turnus* but with more learning outcomes. The representatives of Norway explained that these changes would be fully implemented in 2019.

On 22 November 2018, the Authority sent a further request for information to Norway by e-mail regarding possible exceptions from undertaking LIS 1 as the first step of the specialist training.<sup>8</sup> On 10 December 2018 Norway replied,<sup>9</sup> confirming that the main rule is that LIS 1 must be completed as a first step in the specialist medical training before starting LIS 2 and 3. This applies to both Norwegian and foreign graduates and the only exceptions are the transitional arrangements, applicable until 1 March 2019, listed in the Specialist Regulation.

### 3 EEA law

Article 24(2) of the Directive states:

*“Basic medical training shall comprise a total of at least five years of study, which may in addition be expressed with the equivalent ECTS credits, and shall consist of at least 5 500 hours of theoretical and practical training provided by, or under the supervision of, a university.”*

Article 25(1) of the Directive sets out the following:

*“Admission to specialist medical training shall be contingent upon completion and validation of a basic medical training programme as referred to in Article 24(2) in the course of which the trainee has acquired the relevant knowledge of basic medicine.”*

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<sup>7</sup> See follow up letter after the package meeting in Norway on 26-27 October 2017 (Doc No 878916).

<sup>8</sup> Doc No 1041800.

<sup>9</sup> Doc No 1049928.

## 4 Legal assessment

### 4.1 The Norwegian Medical Training Programme and Transitional Schemes

The Authority has had an extensive dialogue with the Norwegian Government over the years due to these changes to the medical training, both in relation to this complaint and other cases.<sup>10</sup> According to the provided information, the previous system, where the *turnus* period was part of the basic medical training, was changed into a first step in the specialist medical training as LIS 1. However, these changes first entered into full effect on 1 March 2019, with the expiry of certain transitional schemes intended to accommodate various affected students and medical candidates.<sup>11</sup>

Norway had notified the changes to the medical specialist training to the Authority on 5 February 2013 under Article 21(7) of Directive 2005/36. On 8 May 2014, the Authority adopted the decision authorising the changes notified by Norway.<sup>12</sup> This indicated that the Authority had concluded that the changes were in line with the requirements of the Directive. The basic medical training in Norway, without the *turnus* period, still complied with the minimum duration set out in Article 24 of the Directive.

From 1 March 2017, LIS 1 was for the first time integrated into the specialist training for the medical doctors who had completed their basic training in Norway, as the first step of three in the specialist training. The next steps, LIS 2 and LIS 3, would be implemented as of 1 March 2019, when the first doctors would have finished LIS 1. Until that date, the old scheme on specialist medical training continued for those that had finished *turnus* and/or started their specialist medical training.<sup>13</sup> Students who had finished their basic medical training in Norway with the *turnus* would not need to complete this period again under LIS 1.<sup>14</sup> This was however only a practical transitional solution that would matter for a small number of doctors in a limited period of time.<sup>15</sup>

Until 1 March 2019, medical doctors who had completed their basic medical training in other EEA States could start the medical specialisation at the stage following LIS 1. They were therefore not required to undertake the LIS 1 or *turnus* before 1 March 2019.<sup>16</sup> This is worded in the following way in Section 37, paragraph 4, of the Specialist Regulation:

*“For medical doctors that are under specialisation on 1 March 2019 and hold an authorisation based on completed basic medical training in another EEA State, the requirement of § 29, subparagraph a, on documentation of completed learning objectives of the first part of the specialisation does not apply.”<sup>17</sup>*

From 1 March 2019, is it mandatory for all who go through the specialist medical training in Norway to hold an authorization as a medical doctor and to begin LIS 1. This applies regardless of whether the medical doctor is eligible for that authorization by virtue of basic

<sup>10</sup> See also correspondence in Cases Nos 66932, 73332 and most recently in 81670.

<sup>11</sup> Sections 36-37 of the Specialist Regulation.

<sup>12</sup> See the Authority’s Decision No 191/14/COL of 8 May 2014 (OJ C 187, 19.6.2014, p. 3–3).

<sup>13</sup> Norway’s letter of 18 May 2017 (Doc No 862387).

<sup>14</sup> Sections 36 and 39 of the Specialist Regulation.

<sup>15</sup> Norway’s letter of 18 May 2017 (Doc No 862387).

<sup>16</sup> This was because LIS 1 had not formally entered into force as the first step of the specialist training according to Norwegian regulations. Norway’s letters of 2 October in Case 81670 (Doc No 932460) and of 18 May 2017 in this case (Doc No 862387).

<sup>17</sup> Original wording of Section 37(4): «For leger som per 1. mars 2019 er under spesialisering og har autorisasjon på grunnlag av gjennomført grunnleggende legeutdanning i andre EØS-land, gjelder ikke kravet i § 29 bokstav a om dokumentasjon på oppnådde læringsmål i utdanningens første del.»

medical training in Norway or in another EEA State.<sup>18</sup> This is reflected in Section 18, paragraph 1, of the Specialist Regulation, where it is stated that to be able to enter into LIS 2 and 3, it is required that the medical candidate has achieved all the learning objectives of LIS 1.<sup>19</sup> The daughter of the complainant in this case would fall under this provision, as she had not started the specialist training before 1 March 2019.

However, the Authority notes that under Section 32 of the Specialist Regulations it is still open to doctors who have undertaken parts of their specialist training abroad to apply to the Directorate of Health to recognize that they have already attained some or all learning outcomes of LIS 1.

#### 4.2 Basic and specialist medical training requirements under Directive 2005/36

At the outset, the Authority notes that it had previously opened a case against Norway, as Norway, at the time, required doctors who had already completed basic medical training from other EEA States, as listed in Annex V to Directive 2005/36, to undertake the Norwegian *turnus* period as well. In the Authority's view, Norway's practice requiring doctors with completed basic medical training to undertake additional practical training in Norway, when no additional practical training was foreseen following the *cand. med.* examination in the other EEA State, was in breach of Article 21 of Directive 2005/36 on the principle of automatic recognition. Norway changed its practice following discussions with the Authority and the case was therefore closed in 2011.<sup>20</sup>

Moreover, as stated above, on 8 May 2014 the Authority adopted the decision authorising the changes notified by Norway,<sup>21</sup> indicating that the changes were in line with the requirements of the Directive.

Therefore, the situation of the complainant's daughter was that under EEA law, Norway was not allowed to require that she would complete the *turnus*, when she applied, as she had already obtained a qualification in basic medicine, which was sufficient in order to get an authorisation as a medical doctor. The complainant's daughter was granted an authorisation to practise as a medical doctor in Norway on 18 April 2011 and has been practising since.

The rationale of the recognition system for doctors under Directive 2005/36 is based on a minimum harmonisation approach, laying down a mandatory minimum standard of education, which has to be applied by all States and, consequently, mutually recognised by them. For this purpose, the Directive lists in Annex V, under point 5.1.1, the necessary requirements for the accomplishment of basic medical training in the respective EEA States. The respective EEA States have notified these requirements to the European Commission or the EFTA Surveillance Authority respectively, which have granted the

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<sup>18</sup> See Norway's letters of 2 October in Case No 81670 (Doc No 932460) and of 18 May 2017 in this case (Doc No 862387).

<sup>19</sup> Section 18 of the Specialist Regulation. See also Norway's letter of 18 May 2017 (Doc No 862387).

<sup>20</sup> See EFTA Surveillance Authority Decision No 206/11/COL of 14 September 2011 to close an own-initiative case arising from an alleged failure by Norway to fulfil its obligations arising from Articles 14, 21 and 55 of Directive 2005/36 requiring doctors from other EEA States, where there are no requirements for practical training after the termination of the *cand.med.* examination, to nonetheless complete the alternative practical training period set out in the circular letter from the Ministry of Health and Care of 11 January 2008.

<sup>21</sup> See the Authority's Decision No 191/14/COL of 8 May 2014 (OJ C 187, 19.6.2014, p. 3–3).

entry based on an assessment that the education is in line with the minimum requirements of Article 24 of the Directive (see also Article 21a of Directive 2005/36).<sup>22</sup>

Article 24 of Directive 2005/36 establishes the minimum requirements for basic medical training. It must comprise a total of at least five years of study or 5500 hours of theoretical and practical training provided by, or under the supervision of, a university. While some EEA States' education systems include more practical training during the (at least) five-year training period ("*integrated approach*"), other States opted for a more theoretical approach during this period and require, in addition, practical training afterwards. Both approaches are in accordance with the minimum requirements for basic medical training under Article 24 of Directive 2005/36.<sup>23</sup> The Norwegian basic medical training meets the minimum requirements of Article 24(2) of the Directive.

Further, it should be emphasised that Article 25 of Directive 2005/36, on specialist medical training, only provides for generic requirements and a minimum duration of the harmonised trainings under point 5.1.3 of Annex V. Article 25 does not contain any specific requirements on the content or activities of the training (except that it must be comprised of both theoretical and practical training). However, Article 25(1) of the Directive does specify that admission to specialist medical training is contingent upon basic training being completed. Norway cannot therefore accept medical candidates into its speciality training, if the candidates do not possess the certificates of qualifications of basic medical training, as listed in Annex V by the EEA State where the training was undertaken.

In Article 25(2) of the Directive, it is stated that the EEA States shall ensure the minimum duration of specialist training courses as listed in Annex V point 5.1.3. of the Directive. These minimum training periods are between 3 and 5 years.<sup>24</sup> All Norwegian specialist trainings correspond to these minimum periods. This is even so in the case of exemption from LIS 1 (which corresponds to 18 months) as the total duration of the Norwegian specialist training (LIS1-LIS3) is 6.5 years.

Moreover, the revised Directive that entered into force in the EEA EFTA States on 1 January 2019 takes into account possible common trunks between medical specialist trainings.<sup>25</sup> Accordingly, under the new Article 25(3a), EEA States may provide in their national legislation for exemptions from parts of the specialist training listed in point 5.1.3 of Annex V.

Lastly, the fact that EEA States offer medical specialist trainings that are based on a common foundation programme would therefore not automatically result in non-compliance with the requirements of the Directive. The high degree of similarity between the old "*turnustjeneste*" and the new LIS-1 is therefore not relevant.

## 5 Conclusion

As stated above, as of 1 March 2019, receiving authorisation and starting LIS 1 is mandatory for *all* medical doctors going through the specialist medical training in Norway

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<sup>22</sup> See the Authority's letter of formal notice in Case 66932 (Doc No 545676).

<sup>23</sup> Ibid.

<sup>24</sup> See the Authority's pre-closure letter (Doc No 1039255).

<sup>25</sup> As amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ( '*the IMI Regulation*' ) OJ L 354, 28.12.2013, p. 132–170.

– whether or not they have had their basic medical training in Norway or another EEA State.<sup>26</sup>

The complainant holds that his daughter would be discriminated under the new system if she was forced to start the specialist training with LIS 1, as it merely contains elements of basic medical training, which she has already undertaken and which is reflected by her Dutch diploma.<sup>27</sup> The “true” specialist medical training does not commence until at the stage of LIS 2. The complainant holds that she should be exempted from completing LIS 1 due to her experience as a basic medical doctor and due to the fact that she never had the possibility to complete the “*turnustjeneste*”.

The situation of the complainant’s daughter – like all other medical candidates seeking to begin the specialist medical training after the cut-off date of 1 March 2019 – will be subject to the new requirement of LIS 1 as a mandatory first step. The fact that all students will have to start their specialisation training with LIS 1 is the consequence of Norway’s reform of the specialist training, which in itself is not a breach of the Directive, as explained above. Norway’s medical training does still comply with the minimum training requirements of the Directive as set out in Articles 24 and 25.

Furthermore, by implementing transitional measures up until 1 March 2019, Norway allowed doctors who had their training in basic medicine in another EEA State and had not completed the “*turnus*” to skip LIS 1. In addition, it is still open to doctors that have completed parts of the specialist training abroad to apply for recognition of some or all learning outcomes of LIS 1, in order to skip that as a first step.

By letter of 21 February 2019, the Internal Market Affairs Directorate informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit any observations on the Internal Market Affairs Directorate’s assessment of the complaint or present any new information by 21 March 2019.

By letter of 10 March 2019, the complainant replied to this letter.<sup>28</sup> The complainant referred to the fact that hardly any changes had been made to the *LIS 1* from the components of the *turnus* and there are no legal obligations on medical students to commence their specialisation within a certain period after completing their basic training. Norway’s amendments therefore had a detrimental retro-active effect on the candidates who had completed their basic training in other EEA States, but not started their specialisation in Norway before June 2014. Moreover, the complainant stated that the specialist training was in effect shortened by this amendment, leading to a lack in quality of medical specialists trained in Norway.

However, the Authority does not consider that this reply alters the conclusions set out in its letter of 21 February 2019, as explained above, neither the similarities of the *turnus* and LIS 1 amount to a breach of the Directive nor does the fact that Norway changed their speciality training, as both the basic and speciality training comply with the minimum and generic requirements set out in the Directive. Lastly, Norway provided all doctors that had completed their training in basic medicine in another EEA State, like the complainant’s daughter, to skip the LIS 1 as the first step in the speciality training for a certain amount of

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<sup>26</sup> Section 18 of the Specialist Regulation. See also Norway’s letter of 18 May 2017 (Doc No 862387).

<sup>27</sup> Doc No 879125.

<sup>28</sup> Doc No 1058051.

time, up until 1 March 2019. Their situation, affected by Norway's reform was therefore accommodated and addressed.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Article 25 of Directive 2005/36/EC on the recognition of professional qualifications is hereby closed.

For the EFTA Surveillance Authority

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President

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Responsible College Member

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