ESA | EFTA Surveillance Authority

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Ministry of Health and Care Services
Postboks 8011 Dep
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Norway

Dear Sir/Madam,

Subject: Complaint against Norway concerning the recognition of Danish basic medical training

Reference is made to the Authority's Follow-up letter to the package meeting and the subsequent letter of the Norwegian Government of 6 February 2023, in which it requests further explanations to the issues discussed at the package meeting. For that purpose, an informal on-line meeting was held with representatives of the Internal Market Affairs Department of the Authority and the Ministry of Health and Care Services and Education and Research on 30 March 2023, during which the follow-up letter has been discussed. As it was agreed in that meeting, the explanations provided by the representatives of the Authority would be sent in writing to the Norwegian Government as a reply to its letter of 6 February 2023. The present letter has to be read together with the follow-up letter and does neither extend the scope of the follow-up letter nor change the view of the Authority expressed there.

1. *The compliant national system of basic and specialist medical training*

Article 25(1) of Directive 2005/36/EC on the recognition of professional qualifications (PQD) states that 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) PQD in the course of which the trainee has acquired the relevant knowledge of basic medicine. Article 25(4) PQD states that the Member States shall make the issuance of evidence of specialist medical training contingent upon possession of evidence of basic medical training referred to in Annex V, point 5.1.1.

These two paragraphs mean in essence that an EEA State has to foresee in its internal legislative framework that, if one of its nationals intends to become a specialist doctor, they first have to undergo basic medical training in accordance with the requirements set out in Article 24 PQD in order to have access to training for medical specialisations. Furthermore, students can only obtain a specialist medical diploma once the basic medical diploma according to Annex V.5.1.1, as notified by that State, has been issued by that State to the graduate.[1]

After having finalised specialist training, the graduate has thus obtained two separate diplomas, a basic medical diploma as listed in Annex V point 5.1.1 and a specialist medical diploma as listed in Annex V, point 5.1.2 in conjunction with 5.1.3.

[1] The difference in formulation between Article 25(1) and (4) ("finalising a training programme in accordance with Article 24" vs "having obtained the diploma listed in Annex V.5.1.1") is intentional and addresses the delay to issue diplomas by national administrations in the Member States, since this may take several months. Otherwise, a student would not be able to access specialist medical training due purely to administrative reasons. This should be avoided by accepting a confirmation from the training institution that the basic medical training in accordance with Article 24 PQD has been finalised.

2. *The recognition of qualifications of a specialist doctor in possession of diplomas listed in Annex V*

When requesting recognition of qualifications as specialist doctor in another EEA State, the host State recognises both diplomas, the basic and the specialist one, automatically and thus gives access to the requested specialist profession in the host State. It is important to understand that these are legally speaking "two recognitions" within one procedure. In the sense of the Directive, a doctor with basic medical training is a different profession than a doctor with specialist training and recognition has to be sought for both "professions" (see also the regprof database[2], which distinguishes them as separate professions).

In reality, there is quite a number of EEA States that do not check/recognise the basic medical training *stricto sensu*, when a doctor requests recognition as specialist doctor, as it is "assumed" (*principle of trust*) that, if the requirements of basic medical training had not been met, that doctor would not have been issued a specialist medical diploma listed in Annex V, point 5.1.3. Nevertheless, it is a right - but not an obligation - of the host State in the context of the recognition of a specialist medical doctor to formally also recognise the basic medical training.

Consequently, under that two-step procedure the two diplomas are linked in such a way that, on the one hand, the specialist diploma may not be recognised automatically as long as the basic medical diploma has not been fully processed and recognised. On the other hand, an automatic recognition of the specialist medical diploma is not dependent on the fact that the basic diploma has been recognised automatically under the Directive.

The recognition of a specialist medical doctor is thus a two-step procedure to be addressed within one recognition process in accordance with Article 51 PQD.

3. *Diplomas of basic medical training not listed in Annex V*

As set out above, Article 25(4) PQD, which refers to diplomas listed in Annex V, point 5.1.1, as a pre-requirement for issuing a specialist medical diploma, has to be understood in two ways: First, in a current national context, it obliges EEA States to have a compliant basic medical training in place, as set out in Annex V, point 5.1.1, which has to be completed before accessing specialist medical training.

Second, Article 25(4) PQD neither addresses questions of recognition of EEA diplomas in basic medical training nor their integration in the respective national system. In particular, it does not exclude access to training for medical specialisations and the related issuing of corresponding specialist medical diplomas, where the (foreign) diploma of basic medical training is not listed in Annex V, point 5.1.1.[3] It does therefore not stand in the way of EEA States allowing access to the specialist training and the issuing of specialist medical diplomas for basic medical doctors with "equivalent diplomas" to the ones listed in Annex V, such as those covered by the acquired rights regime or third country diplomas, which would never be listed in Annex V *ratione tempore* or *ratione loci*.

"Equivalent" would mean in this context that the doctors with basic medical training have the same rights in the national health care system as the ones with compliant diplomas listed in Annex V, point 5.1.1. It can be held that when a State recognises a diploma not listed in Annex V, point 5.1.1, from another EAA State or even a third country, it is considered equivalent to the diplomas from Annex V. Otherwise, the effect of access to the profession under equal conditions as set out in Art 1 and 4 PQD and the Case law

[2] Regulated Profession database (REGPROF) of the European Commission: https://ec.europa.eu/growth/tools-databases/regprof/home.

[3] See case law in relation to the interpretation of provisions of EEA law referred to at page 2 of the follow-up letter, paragraph 3.

based on the fundamental freedoms (i.e. *Vlassopoulou* and *Hocsman*) would not be met. Accordingly, these qualifications should also have the same effect under Article 25(4) PQD as diplomas listed in Annex V, point 5.1.1.

The same applies to the doctors, who have not finalised their (current) professional / practical training of basic medicine as set out in Annex V, point 5.1.1 and are recognised in another EEA State on the basis of the recognition principles established by the EFTA Court in its judgment in Case E-3/20 *Lindberg*.[4] Since these Danish doctors get recognised in Norway and obtain a license to practice, they are considered to be equivalent in rights to doctors with a Norwegian diploma, as listed in Annex V, point 5.1.1 to the Directive for Norway. This holds also for the purpose of Article 25(4) PQD. Thus, Norway would not need to require from such Danish doctors to obtain first a Danish diploma before issuing a Norwegian specialist diploma to be compliant with Article 25(4) PQD. It has to be also said that these doctors will never be able to make use of automatic recognition of their basic medical diploma, since their recognition will always be based on the *Lindberg* principles of comparative assessment under the fundamental freedoms of the Internal Market, and never on the basis of Directive 2005/36/EC, which provides higher procedural guarantees.[5]

Since the question was raised explicitly, it should be stated that students, who have not yet obtained an academic diploma of studies of medicine, would at current status of the case law of the EFTA Court or the CJEU not be subject to a recognition of professional qualifications under the *Lindberg* principles. Since their recognition would have as objective to be integrated into academic training, their recognition would be subject to the ENIC/NARIC system and not be covered by the fundamental freedoms encompassing economic activity.[6]

4. Access to LIS 1 and LIS 2

Accessing LIS 1 and LIS 2 can be compared to accessing a specific position in a public institution, in this case a university hospital. Although it concerns a training institution, doctors in specialist training could be considered as economically active persons, since their activity is remunerated.[7] Such instances would be covered by a different group of case law than *Lindberg*.[8]

In any event, Directive 2005/36/EC allows exemptions from specialist medical training only in specific cases and foresees in its Article 25(3a) PQD that "*EEA States may provide, […] for partial exemptions from parts of the specialist medical training courses listed in point 5.1.3 of Annex V, to be applied on a case-by-case basis provided that that part of the training has been followed already during another specialist training course listed in point 5.1.3 of Annex V* (underline added)*, for which the professional has already obtained the professional qualification in an EEA State. EEA States shall ensure that the granted exemption equates to not more than half of the minimum duration of the specialist medical training course in question. Each Member State shall notify the Commission and the other Member States of the national legislation concerned for any such partial exemptions".*

[4] Same principles also applied in Case E-4/20 *Haugland* (psychologists) and CJEU cases C-166/20 *Lietuvos Respublikos sveikatos apsaugos ministerija* (pharmacists) and C-634/20 *Sosiaali- ja terveysalan lupa- ja valvontavirasto* (basic medical training).

[5] See same conclusion in follow-up letter referred to at page 2, last paragraph.

[6] See same conclusion in follow-up letter referred to at page 3, last paragraph, and case-law cited there.

[7] See Article 25(3) PQD and related CJEU Case C-419/16 *Federspiel;* and Case C-313/01 *Morgenbesser* in relation trainee lawyers working in a law firm.

[8] See i.e. CJEU Case C-703/17 *Krah* and case law referred to there.

First, this provision is a harmonised provision of EEA law and thus excludes the subsidiary application of the fundamental freedoms of the EEA Agreement. Second, it is a "may" provision, thus an EEA State is not obliged to shorten its specialist medical training, even if parts of that training have already been done by a student in the context of another specialist training. Thus, the training that may be taken into account to exempt a student from LIS 1 programme has to have come from other specialist medical training and not a basic medical training cycle. Third, the exemption shall not be more than half of the minimum duration of the training of the concerned medical specialisation as set out in Annex V, point 5.1.3, to PQD. Last, the EEA States that apply such exemptions have to notify this to the European Commission or the EFTA Surveillance Authority respectively. As the information presently stands, Norway has not notified to the Authority that it would allow for such exemptions under Article 25(3a) PQD.

We hope that the above explanations help the Norwegian Government with the implementation of the judgment in EFTA Court case C-3/20 *Lindberg*.

The Norwegian Government is invited to inform he Authority about which steps it has taken by **30 August 2023 at the latest**.

Yours faithfully,

Maria Moustakali
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Maria Moustakali.