E-15/23-15

REPORT FOR THE HEARING

in Case E-15/23

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the National Insurance Court (*Trygderetten*), in the case between

K

and

Nasjonalt klageorgan for helsetjenesten (National Office for Health Service Appeals),

concerning the interpretation of Directive (EU) 2011/24 on the application of patients' rights in cross-border healthcare in relation to an alleged breach of Article 7 thereof and Article 36 of the Agreement on the European Economic Area.

I. Introduction

1. By letter of 1 December 2023, registered at the Court on the same day, the National Insurance Court requested an advisory opinion in the case pending before it between K and *Nasjonalt klageorgan for helsetjenesten* ("National Office for Health Service Appeals"). K has initiated proceedings against the National Office for refusing the reimbursement of costs for dental treatment K received in Poland from a dental practitioner established there.

2. The case raises matters concerning the interpretation of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (the "Patients' Rights Directive" or "Directive 2011/24"), Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (the "Professional Qualifications Directive" or "Directive 2005/36"), and the right to provide and receive services under Article 36 of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA").

II. Legal background

EEA law

3. Article 1 EEA reads, in extract:

> *1. The aim of this Agreement of association is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area, hereinafter referred to as the EEA.*
>
> *2. In order to attain the objectives set out in paragraph 1, the association shall entail, in accordance with the provisions of this Agreement :*
>
> *...*
>
> *(c) the free movement of services;*
>
> *...*

4. Article 36 EEA reads:

> *1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.*
>
> *2. Annexes IX to XI contain specific provisions on the freedom to provide services.*

5. Directive (EU) 2011/24 of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross border healthcare (OJ 2011 L 88, p. 45; and Norwegian EEA Supplement 2018 No 27, p. 1) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 153/2014 of 9 July 2014 (OJ 2015 L 15, p. 78; and Norwegian EEA Supplement 2015 No 5, p. 1) ("JCD 153/2014"). Directive 2011/24 is referred to at point 2 of Annex X (Services in general) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Norway. The requirements were fulfilled by 9 June 2015, and the decision entered into force on 1 August 2015.

6. Article 1 of JCD 153/2014 reads, in extract:

> *The following is added after point 1c (Commission Decision 2011/130/EU) of Annex X to the EEA Agreement:*

*'2. **32011 L 0024**: Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).*

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

Without prejudice to future development by the EEA Joint Committee, it should be noted that the following acts are not incorporated into the EEA Agreement:

(a) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality,

(b) Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

Therefore all references to these acts shall not apply to the EFTA States.

...'

7. Recitals 11, 12, 13, 19, 20, 26, 29, 30, 31, 33, 34, 37 and 42 of the Patients' Rights Directive read as follows:

(11) This Directive should apply to individual patients who decide to seek healthcare in a Member State other than the Member State of affiliation. As confirmed by the Court of Justice, neither its special nature nor the way in which it is organised or financed removes healthcare from the ambit of the fundamental principle of the freedom to provide services. However, the Member State of affiliation may choose to limit the reimbursement of cross-border healthcare for reasons relating to the quality and safety of the healthcare provided, where this can be justified by overriding reasons of general interest relating to public health. The Member State of affiliation may also take further measures on other grounds where this can be justified by such overriding reasons of general interest. Indeed, the Court of Justice has laid down that public health protection is among the overriding reasons of general interest that can justify restrictions to the freedom of movement envisaged in the Treaties.

(12) The concept of 'overriding reasons of general interest' to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case-law in relation to Articles 49 and 56 TFEU

and may continue to evolve. The Court of Justice has held on a number of occasions that overriding reasons of general interest are capable of justifying an obstacle to the freedom to provide services such as planning requirements relating to the aim of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources. The Court of Justice has likewise acknowledged that the objective of maintaining a balanced medical and hospital service open to all may also fall within one of the derogations, on grounds of public health, provided for in Article 52 TFEU, in so far as it contributes to the attainment of a high level of health protection. The Court of Justice has also held that such provision of the TFEU permits Member States to restrict the freedom to provide medical and hospital services in so far as the maintenance of treatment capacity or medical competence on national territory is essential for public health.

(13) It is clear that the obligation to reimburse costs of cross-border healthcare should be limited to healthcare to which the insured person is entitled according to the legislation of the Member State of affiliation.

(19) When a patient receives cross-border healthcare, it is essential for the patient to know in advance which rules will be applicable. The rules applicable to cross-border healthcare should be those set out in the legislation of the Member State of treatment, given that, in accordance with Article 168(7) TFEU, the organisation and delivery of health services and medical care is the responsibility of the Member States. This should help the patient in making an informed choice, and should avoid misapprehension and misunderstanding. It should also establish a high level of trust between the patient and the healthcare provider.

(20) In order to help patients to make an informed choice when they seek to receive healthcare in another Member State, Member States of treatment should ensure that patients from other Member States receive on request the relevant information on safety and quality standards enforced on its territory as well as on which healthcare providers are subject to these standards. Furthermore, healthcare providers should provide patients on request with information on specific aspects of the healthcare services they offer and on the treatment options. To the extent that healthcare providers already provide patients resident in the Member State of treatment with relevant information on those specific aspects, this Directive should not oblige healthcare providers to provide more extensive information to patients from other Member States. Nothing should prevent the Member State of treatment from also obliging other actors than the healthcare providers, such as insurance providers or public authorities, to provide the information on specific aspects of the healthcare services offered, if that would be more appropriate with regard to the organisation of its healthcare system.

(26) The right to reimbursement of the costs of healthcare provided in another Member State by the statutory social security system of patients as insured persons has been recognised by the Court of Justice in several judgements. The Court of Justice has held that the Treaty provisions on the freedom to provide services include the freedom for the recipients of healthcare, including persons in need of medical treatment, to go to another Member State in order to receive it there. The same should apply to recipients of healthcare seeking to receive healthcare provided in another Member State through other means, for example through eHealth services.

(29) It is appropriate to require that also patients who seek healthcare in another Member State in other circumstances than those provided for in Regulation (EC) No 883/2004 should be able to benefit from the principles of free movement of patients, services and goods in accordance with the TFEU and with this Directive. Patients should enjoy a guarantee of assumption of the costs of that healthcare at least at the level as would be provided for the same healthcare, had it been provided in the Member State of affiliation. This should fully respect the responsibility of the Member States to determine the extent of the sickness cover available to their citizens and prevent any significant effect on the financing of the national healthcare systems.

(30) For patients, therefore, the two systems should be coherent; either this Directive applies or the Union regulations on the coordination of social security systems apply.

(31) Patients should not be deprived of the more beneficial rights guaranteed by the Union Regulations on the coordination of social security systems when the conditions are met. Therefore, any patient who requests an authorisation to receive treatment appropriate to his condition in another Member State should always be granted this authorisation under the conditions provided for in the Unions regulations when the treatment in question is among the benefits provided for by the legislation in the Member State where the patient resides and when the patient cannot be given such treatment within a time limit that is medically justifiable, taking account of his current state of health and the probable course of the condition. However, if a patient instead explicitly requests to seek treatment under the terms of this Directive, the benefits which apply to reimbursement should be limited to those which apply under this Directive. Where the patient is entitled to cross-border healthcare under both this Directive and Regulation (EC) No 883/2004, and the application of that Regulation is more advantageous to the patient, the patient's attention should be drawn to this by the Member State of affiliation.

(33) This Directive does not aim to create an entitlement to reimbursement of the costs of healthcare provided in another Member State, if such healthcare is not among the benefits provided for by the legislation of the Member State of affiliation of the insured person. Equally, this Directive

should not prevent the Member States from extending their benefits-in-kind scheme to healthcare provided in another Member State. This Directive should recognise that Member States are free to organise their healthcare and social security systems in such a way as to determine entitlement for treatment at a regional or local level.

(34) Member States of affiliation should give patients the right to receive at least the same benefits in another Member State as those provided for by the legislation of the Member State of affiliation. If the list of benefits does not specify precisely the treatment method applied but defines types of treatment, the Member State of affiliation should not refuse prior authorisation or reimbursement on the grounds that the treatment method is not available in its territory, but should assess if the cross-border treatment sought or received corresponds to benefits provided for in its legislation. The fact that the obligation to reimburse cross-border healthcare under this Directive is limited to such healthcare that is among the benefits to which the patient is entitled within its Member State of affiliation does not preclude Member States from reimbursing the cost of cross-border healthcare beyond those limits. Member States are free, for example, to reimburse extra costs, such as accommodation and travel costs, or extra costs incurred by persons with disabilities even where those costs are not reimbursed in the case of healthcare provided in their territory.

(37) Member States may maintain general conditions, criteria for eligibility and regulatory and administrative formalities for receipt of healthcare and reimbursement of healthcare costs, such as the requirement to consult a general practitioner before consulting a specialist or before receiving hospital care, also in relation to patients seeking healthcare in another Member State, provided that such conditions are necessary, proportionate to the aim, not discretionary or discriminatory. This may include an assessment by a health professional or healthcare administrator providing services for the statutory social security system or national health system of the Member State of affiliation, such as the general practitioner or primary care practitioner with whom the patient is registered, if this is necessary for determining the individual patient's entitlement to healthcare. It is thus appropriate to require that these general conditions, criteria and formalities should be applied in an objective, transparent and non-discriminatory way and should be known in advance, based primarily on medical considerations, and that they should not impose any additional burden on patients seeking healthcare in another Member State in comparison with patients being treated in their Member State of affiliation, and that decisions should be made as quickly as possible. This should be without prejudice to the rights of the Member States to lay down criteria or conditions for prior authorisation in the case of patients seeking healthcare in their Member State of affiliation.

(42) Given that the Member States are responsible for laying down rules as regards the management, requirements, quality and safety standards and

organisation and delivery of healthcare and that the planning necessities differ from one Member State to another, it should therefore be for the Member States to decide whether there is a need to introduce a system of prior authorisation, and if so, to identify the healthcare requiring prior authorisation in the context of their system in accordance with the criteria defined by this Directive and in the light of the case-law of the Court of Justice. The information concerning this healthcare should be made publicly available in advance.

8. Article 2 of the Patients' Rights Directive, entitled "Relationship with other Union provisions", reads, in extract:

This Directive shall apply without prejudice to:

...

(m) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

(n) Directive 2005/36/EC;

...

9. Article 3 of the Patients' Rights Directive, entitled "Definitions", reads, in extract:

For the purposes of this Directive, the following definitions shall apply:

...

(f) 'health professional' means a doctor of medicine, a nurse responsible for general care, a dental practitioner, a midwife or a pharmacist within the meaning of Directive 2005/36/EC, or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC, or a person considered to be a health professional according to the legislation of the Member State of treatment;

(g) 'healthcare provider' means any natural or legal person or any other entity legally providing healthcare on the territory of a Member State;

...

10. Article 4(1) of the Patients' Rights Directive, entitled "Responsibilities of the Member State of treatment", reads:

1. Taking into account the principles of universality, access to good quality care, equity and solidarity, cross-border healthcare shall be provided in accordance with:

(a) the legislation of the Member State of treatment;

(b) standards and guidelines on quality and safety laid down by the Member State of treatment; and

(c) Union legislation on safety standards.

11. Article 7(1), (3), (4), (7), (9) and (11) of the Patients' Rights Directive, entitled "General principles for reimbursement of costs", reads:

1. Without prejudice to Regulation (EC) No 883/2004 and subject to the provisions of Articles 8 and 9, the Member State of affiliation shall ensure the costs incurred by an insured person who receives cross-border healthcare are reimbursed, if the healthcare in question is among the benefits to which the insured person is entitled in the Member State of affiliation.

3. It is for the Member State of affiliation to determine, whether at a local, regional or national level, the healthcare for which an insured person is entitled to assumption of costs and the level of assumption of those costs, regardless of where the healthcare is provided.

4.The costs of cross-border healthcare shall be reimbursed or paid directly by the Member State of affiliation up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory without exceeding the actual costs of healthcare received.

Where the full cost of cross-border healthcare exceeds the level of costs that would have been assumed had the healthcare been provided in its territory the Member State of affiliation may nevertheless decide to reimburse the full cost.

The Member State of affiliation may decide to reimburse other related costs, such as accommodation and travel costs, or extra costs which persons with disabilities might incur due to one or more disabilities when receiving cross-border healthcare, in accordance with national legislation and on the condition that there be sufficient documentation setting out these costs.

7. The Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare, including healthcare received through means of telemedicine, the same conditions, criteria of eligibility and regulatory and administrative formalities, whether set at a local, regional or national level, as it would impose if this healthcare were

provided in its territory. This may include an assessment by a health professional or healthcare administrator providing services for the statutory social security system or national health system of the Member State of affiliation, such as the general practitioner or primary care practitioner with whom the patient is registered, if this is necessary for determining the individual patient's entitlement to healthcare. However, no conditions, criteria of eligibility and regulatory and administrative formalities imposed according to this paragraph may be discriminatory or constitute an obstacle to the free movement of patients, services or goods, unless it is objectively justified by planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources.

9. The Member State of affiliation may limit the application of the rules on reimbursement for cross-border healthcare based on overriding reasons of general interest, such as planning requirements relating to the aim of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources.

11. The decision to limit the application of this Article pursuant to paragraph 9 shall be restricted to what is necessary and proportionate, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of goods, persons or services. Member States shall notify the Commission of any decisions to limit reimbursement on the grounds stated in paragraph 9.

12. Article 8(1) and (2) of the Patients' Rights Directive, entitled "Healthcare that may be subject to prior authorisation", reads:

1. The Member State of affiliation may provide for a system of prior authorisation for reimbursement of costs of cross-border healthcare, in accordance with this Article and Article 9. The system of prior authorisation, including the criteria and the application of those criteria, and individual decisions of refusal to grant prior authorisation, shall be restricted to what is necessary and proportionate to the objective to be achieved, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of patients.

2. Healthcare that may be subject to prior authorisation shall be limited to healthcare which:

(a) is made subject to planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality

treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources and:

(i) involves overnight hospital accommodation of the patient in question for at least one night; or

(ii) requires use of highly specialised and cost-intensive medical infrastructure or medical equipment;

(b) involves treatments presenting a particular risk for the patient or the population; or

(c) is provided by a healthcare provider that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of healthcare which is subject to Union legislation ensuring a minimum level of safety and quality throughout the Union.

Member States shall notify the categories of healthcare referred to in point (a) to the Commission.

13. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22; and Norwegian EEA Supplement 2011 No 71, p. 1322) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 142/2007 of 26 October 2007 (OJ 2008 L 100, p. 70; and Norwegian EEA Supplement 2008 No 19, p. 70). Directive 2005/36 is referred to at point 1 of Annex VII (Recognition of professional qualifications) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 14 May 2009 and the decision entered into force on 1 July 2009.

14. Recital 3 of the Professional Qualifications Directive reads:

(3) The guarantee conferred by this Directive on persons having acquired their professional qualifications in a Member State to have access to the same profession and pursue it in another Member State with the same rights as nationals is without prejudice to compliance by the migrant professional with any non-discriminatory conditions of pursuit which might be laid down by the latter Member State, provided that these are objectively justified and proportionate.

15. Article 1 of the Professional Qualifications Directive, entitled “Purpose”, at the material time, read:

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.

16. Article 2 of the Professional Qualifications Directive, entitled "Scope", at the material time, read:

1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.

2. Each Member State may permit Member State nationals in possession of evidence of professional qualifications not obtained in a Member State to pursue a regulated profession within the meaning of Article 3(1)(a) on its territory in accordance with its rules. In the case of professions covered by Title III, Chapter III, this initial recognition shall respect the minimum training conditions laid down in that Chapter.

3. Where, for a given regulated profession, other specific arrangements directly related to the recognition of professional qualifications are established in a separate instrument of Community law, the corresponding provisions of this Directive shall not apply.

17. Article 4(1) of the Professional Qualifications Directive, entitled "Effects of recognition", at the material time, read:

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.

18. Article 5 of the Professional Qualifications Directive, entitled "Principle of the free provision of services", at the material time, read:

1. Without prejudice to specific provisions of Community law, as well as to Articles 6 and 7 of this Directive, Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State:

(a) if the service provider is legally established in a Member State for the purpose of pursuing the same profession there (hereinafter referred to as the Member State of establishment), and

(b) where the service provider moves, if he has pursued that profession in the Member State of establishment for at least two years during the 10 years preceding the provision of services when the profession is not regulated in that Member State. The condition requiring two years' pursuit shall not apply when either the profession or the education and training leading to the profession is regulated.

2. The provisions of this title shall only apply where the service provider moves to the territory of the host Member State to pursue, on a temporary and occasional basis, the profession referred to in paragraph 1.

The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.

3. Where a service provider moves, he shall be subject to professional rules of a professional, statutory or administrative nature which are directly linked to professional qualifications, such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host Member State to professionals who pursue the same profession in that Member State.

19. Article 13 of the Professional Qualifications Directive, entitled "Conditions for recognition", at the material time, read:

1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.

Attestations of competence or evidence of formal qualifications shall satisfy the following conditions:

(a) they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;

(b) they shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host Member State, as described in Article 11.

2. Access to and pursuit of the profession, as described in paragraph 1, shall also be granted to applicants who have pursued the profession referred to in

that paragraph on a full-time basis for two years during the previous 10 years in another Member State which does not regulate that profession, providing they possess one or more attestations of competence or documents providing evidence of formal qualifications.

Attestations of competence and evidence of formal qualifications shall satisfy the following conditions:

(a) they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;

(b) they shall attest a level of professional qualification at least equivalent to the level immediately prior to that required in the host Member State, as described in Article 11;

(c) they shall attest that the holder has been prepared for the pursuit of the profession in question.

The two years' professional experience referred to in the first subparagraph may not, however, be required if the evidence of formal qualifications which the applicant possesses 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). The regulated education and training listed in Annex III shall be considered as such regulated education and training at the level described in Article 11, point (c). The list in Annex III may be amended in accordance with the procedure referred to in Article 58(2) in order to take account of regulated education and training which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions.

3. By way of derogation from paragraph 1, point (b) and to paragraph 2, point (b), the host Member State shall permit access and pursuit of a regulated profession where access to this profession is contingent in its territory upon possession of a qualification certifying successful completion of higher or university education of four years' duration, and where the applicant possesses a qualification referred to in Article 11, point (c).

20. Article 21(1) of the Professional Qualifications Directive, entitled "Principle of automatic recognition", reads:

1. Each Member State shall recognise evidence of formal qualifications as doctor giving access to the professional activities of doctor with basic training and specialised doctor, as nurse responsible for general care, as dental practitioner, as specialised dental practitioner, as veterinary surgeon, as pharmacist and as architect, listed in Annex V, points 5.1.1, 5.1.2, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.6.2 and 5.7.1 respectively, which satisfy the minimum

training conditions referred to in Articles 24, 25, 31, 34, 35, 38, 44 and 46 respectively, and shall, for the purposes of access to and pursuit of the professional activities, give such evidence the same effect on its territory as the evidence of formal qualifications which it itself issues.

Such evidence of formal qualifications must be issued by the competent bodies in the Member States and accompanied, where appropriate, by the certificates listed in Annex V, points 5.1.1, 5.1.2, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.6.2 and 5.7.1 respectively.

The provisions of the first and second subparagraphs do not affect the acquired rights referred to in Articles 23, 27, 33, 37, 39 and 49.

21. Annex V to the Professional Qualifications Directive is entitled "Recognition on the basis of coordination of the minimum training conditions". Heading V.3 is entitled "DENTAL PRACTITIONER". At point 5.3.3 of Annex V entitled, "Evidence of formal qualifications of specialised dentists", the following is stated under "Orthodontics" as regards Poland:

Country	**Evidence of formal qualifications**	**Body awarding the evidence of qualifications**	**Reference date**
Polska	Dyplom uzyskania tytułu specjalisty w dziedzinie ortodoncji	Centrum Egzaminów Medycznych	1 May 2004

22. Further at point 5.3.3 of Annex V, the following is stated under "Oral surgery" as regards Poland:

Country	**Evidence of formal qualifications**	**Body awarding the evidence of qualifications**	**Reference date**
Polska	Dyplom uzyskania tytułu specjalisty w dziedzinie chirurgii stomatologicznej	Centrum Egzaminów Medycznych	1 May 2004

23. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 200, p. 1; and Norwegian EEA Supplement 2015 No 76, p. 40) ("Regulation 883/2004") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33; and Norwegian EEA Supplement 2011 No 54, p. 46). Regulation 883/2004 is referred to at point 1 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012.

24. Article 20 of Regulation 883/2004, entitled "Travel with the purpose of receiving benefits in kind – authorisation to receive appropriate treatment outside the Member State of residence", reads, in extract:

> *1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.*
>
> *2. An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his/her condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he/she were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he/she cannot be given such treatment within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness.*
>
> *…*

National law[1]

25. The National Insurance Act No 19 of 28 February 1997 ("*Lov 28 februar 1997 nr. 19 om folketrygd*") ("National Insurance Act") contains rules on reimbursement for treatment abroad.

26. Section 5-1 of the National Insurance Act, entitled "Purpose, etc.", read, at the material time:

> *The purpose of benefits under the present chapter is to provide total or partial compensation for insured persons' necessary expenses for healthcare in the event of sickness, injury, impairment, family planning, pregnancy, birth or termination of pregnancy.*
>
> *No benefits shall be provided for interventions which are essentially carried out on cosmetic grounds, or for treatment of foreseeable consequences of such intervention.*
>
> *In so far as public benefits are provided pursuant to other legislation, no benefits shall be provided under this chapter.*

[1] All translations of national law are unofficial.

27. Section 5-1a of the National Insurance Act, entitled "Relationship with provisions on international coordination of national social security", not in force at the time of the claim, was added on 25 November 2022. It reads:

> *Benefits for healthcare are sickness benefits under the social security regulation. The provisions of this chapter shall be waived to the extent necessary to comply with relevant provisions of the Main Part of the EEA Agreement, the social security regulation, the implementation regulation and bilateral and multilateral social security agreements: see sections 1-3 a and 1-3 b.*

28. Section 5-6 of the National Insurance Act, entitled "Dental practitioner care", reads:

> *The social security scheme shall provide benefits for coverage of expenses for sickness-related examination and treatment by a dental practitioner.*
>
> *The benefits shall be provided according to pre-established rates.*
>
> *The Ministry issues regulations on benefits pursuant to the present section, including on grants for common measures for dental practitioners.*

29. Section 5-24a of the National Insurance Act, entitled "Benefits for healthcare in another EEA State", reads:

> *Benefits shall be provided for coverage of expenses for healthcare incurred by the insured person in another EEA country under rules laid down by the Ministry by regulation.*
>
> *The Regulation may contain more detailed provisions on inter alia:*
>
> *a. which healthcare services and goods for which benefits are to be provided;*
>
> *b. who is entitled to benefits;*
>
> *c. conditions for benefits, including prior approval and requirements in respect of the service provider;*
>
> *d. calculation of the benefits;*
>
> *e. coverage of travel and subsistence expenses;*
>
> *f. requirements in respect of documentation and translation of documents;*
>
> *g. relationship to other rules on benefits for healthcare received in other countries.*

30. Regulation No 1702 of 16 December 2014 on benefits to cover expenses for sickness-related examination and treatment by dental practitioners and dental hygienists ("*Forskrift 16 desember 2014 nr. 1702 om stønad til dekning av utgifter til undersøkelse og behandling hos tannlege og tannpleier for sykdom*") (the "Norwegian Dental Regulation").

31. Section 1 of the Norwegian Dental Regulation, entitled "Benefits-eligible examination and treatment", read, at the material time, in extract:

> *Under Section 5-6 of the National Insurance Act, benefits shall be provided for coverage of expenses for examination and treatment performed by a dental practitioner in the event of the following conditions/cases:*
>
> *...*
>
> *6. Periodontitis;*
>
> *...*
>
> *Under Section 5-6a of the National Insurance Act, benefits shall be provided for coverage of expenses for examination and treatment of periodontitis performed by a dental hygienist pursuant to Nos 1, 4, 6 and 14 of the first paragraph.*
>
> *The individual dental practitioner or dental hygienist shall be responsible for determining whether an insured person is entitled to benefits pursuant to section 5-6 or 5-6a of the National Insurance Act. The dental practitioner/dental hygienist shall also determine whether the treatment is within the parameters of necessary and appropriate dental treatment. The dental practitioner/dental hygienist must be able to document their determinations, and the patient log shall contain all relevant and necessary information: see the Healthcare Professionals Act with accompanying regulations.*
>
> *The Directorate of Health (Helsedirektoratet) shall lay down comprehensive provisions and detailed guidelines for which treatments and conditions are covered by the scheme under Section 1.*
>
> *It is a condition for benefits under the present Regulation that the person in question is an insured person under the national insurance scheme: see Section 5-2 of the National Insurance Act.*

32. Section 3 of the Norwegian Dental Regulation, entitled "The dental practitioner's and the dental hygienist's competence", reads:

> *Benefits shall be provided only if the examination or treatment is performed by a dental practitioner or dental hygienist who is permitted to perform*

dental treatment pursuant to Act No 64 of 2 July 1999 on healthcare professionals, etc. (the Healthcare Professionals Act) (Lov 2. juli 1999 nr. 64 om helsepersonell m.v. (helsepersonelloven)), including dental practitioners or dental hygienists from other EEA States providing temporary services in Norway: see Section 16 of Regulation of 8 October 2008 No 1130 on authorisation, licensing and specialist approval for healthcare professionals having professional qualifications from other EEA countries and Switzerland (forskrift 8. oktober 2008 nr. 1130 om autorisasjon, lisens og spesialistgodkjenning for helsepersonell med yrkeskvalifikasjoner fra andre EØS-land og Sveits).

In the event of examination and possible start of orthodontics treatment, a referral is required from another dental practitioner or dental hygienist before treatment with the orthodontist may begin. A referral for insured persons covered by Section 1(8), group (b) or (c) shall be valid for 24 months from the date of the referral. The treatment must be performed by an orthodontist or by a dental practitioner undergoing specialist education in orthodontics. If the treatment is performed by a dental practitioner undergoing specialist education in orthodontics, the treatment must be performed as part of the training. If tasks are delegated to other professionals: see Sections 4 and 5 of the Healthcare Professionals Act (helsepersonelloven), it is assumed that delegated tasks are performed under the responsibility, presence and full attention of the orthodontist.

Expenses for implant-anchored dental prosthetics treatment shall be covered only if the surgical placement of dental implants is performed by a specialist in oral surgery and oral medicine, specialist in maxillofacial surgery or specialist in periodontics. In addition, the prosthetics-related part of the treatment must be performed by a specialist in oral prosthetics or by a dental practitioner having the necessary competence approved by the Directorate of Health. Treatment tasks requiring specialist competence, or particular competence approved by the Directorate of Health, may not be delegated to another healthcare professional where reimbursement for treatment is claimed pursuant to the present provision.

Expenses for maxillofacial radiology examinations done using CT/MR shall be covered only if the examinations are performed by a specialist in maxillofacial radiology.

33. Section 1 of Regulation No 1466 of 22 November 2010 on benefits for healthcare received in another EEA State ("*Forskrift 22 november 2010 nr. 1466 om stønad til helsetjenester mottatt i et annet EØS-land*") (the "Norwegian Reimbursement Regulation"), entitled "General scope", read, at the material time:

The Regulation shall apply to benefits for coverage of expenses for healthcare received in another country in the European Economic Area (EEA), hereinafter called EEA countries.

Where telemedicine is used, the healthcare shall be deemed to be received in the country where the service provider is established.

34. Section 2 of the Norwegian Reimbursement Regulation, entitled "Main conditions", reads:

Benefits shall be provided only for healthcare for which the insured person would have received benefits or a contribution under the National Insurance Act or had covered by the public health and care service had the healthcare in question been received in Norway.

Unless exceptions or adaptations are provided for in the present Regulation, the same conditions shall apply as for equivalent healthcare at public expense in Norway.

35. Section 3 of the Norwegian Reimbursement Regulation, entitled "Which types of healthcare for which benefits are provided", reads:

Benefits shall be paid to cover expenses for healthcare equivalent to healthcare:

a. for which benefits are provided under Sections 5-4 to 5-12, 5-14 and 5-25 of the National Insurance Act;

b. for which contributions are made under Section 5-22 of the National Insurance Act, limited to the contribution-related purposes hormonal contraceptives and medicinal products in connection with fertility treatment;

c. is given totally or partially free of charge under the first paragraph of Section 1-3 of the Dental Health Services Act (tannhelsetjenesteloven), read in conjunction with Section 2-2 thereof;

d. is provided totally or partially free of charge under the Specialist Healthcare Act (spesialisthelsetjenesteloven).

Benefits shall not be provided for substitution treatment for opioid dependency. This applies even if the insured person is undergoing medicinal product-assisted rehabilitation in Norway.

36. Section 6 of the Norwegian Reimbursement Regulation, entitled "Authorisation and other requirements for the service provider", read, at the material time:

The healthcare must be performed by a healthcare professional having official authorisation in the profession in question which is valid in the country where the healthcare is received.

When specialist approval is a condition for entitlement to benefits or healthcare at public expense in Norway, the healthcare must be performed by a healthcare professional having equivalent specialist approval that is valid in the country where the healthcare is received. The same applies to other particular competence requirements. Exceptions may be made to this condition if the speciality in question or equivalent formal competence does not exist in the country where the healthcare is received. It is a condition that, instead, it must be documented that the service provider actually has equivalent substantive competence or other doctor specialisation in medicine which is it is natural to compare with the speciality required in Norway.

The healthcare professional must have permission to practise lawfully in the country where the healthcare is received.

It is not a condition that the healthcare must be performed by a healthcare professional who is part of the public health service, although this is a condition for equivalent healthcare at public expense in Norway.

37. There is an administrative circular which accompanies Section 5-24a of the National Insurance Act ("*Rundskriv til folketrygdloven § 5-24 a – Stønad til helsetjenester mottatt i et annet EØS-land*") (the "Administrative Circular"). The following paragraphs reproduce the Administrative Circular as it read at the time of the claim.

38. In the part entitled "Introduction" of the Administrative Circular, the following is stated:

Section 5-24a confers entitlement to benefits for healthcare received in another EEA country. Detailed provisions are laid down by regulation.

The reimbursement scheme provides an option to choose to receive treatment to which a person is entitled in Norway also in other EEA countries. Thus, Section 5-24a does not broaden which types of healthcare services a person is entitled to receive but does entail greater freedom of choice in terms of place of treatment.

In order to assess a claim for reimbursement under Section 5-24a, regard is had to the national conditions applicable to the healthcare in question (medicinal products, dental health, doctor care, etc.). The general rule is that treatment should take place as if the healthcare was received in Norway. The patient may, however, make use of private healthcare providers. Which conditions apply in respect of the healthcare in question will not be discussed in the administrative circular, unless there are particular matters which should be commented on.

39. In the part "Background to the scheme", the following is stated:

The ECJ has held that the EU Treaty's principle of freedom to provide services encompasses healthcare services. Thus, the principle of freedom to provide services entails that patients have rights as recipients of services.

The Patients' Rights Directive was implemented in the EU in October 2013, and is a codification of the ECJ's case-law. Section 5-24a implements the Patients' Rights Directive in Norwegian law.

40. Part 6 of the Administrative Circular, entitled "Authorisation and other requirements for the service provider", reads:

In order for the healthcare to be eligible for reimbursement, the service provider must, as a main rule, have authorisation and, as the case may be, specialist approval, etc., in an equivalent manner as if the treatment had been performed in Norway.

41. Part 6.1 of the Administrative Circular, entitled "Requirement of official authorisation", reads:

An authorisation is a confirmation that a person fulfils the formal and professional requirements for the applicable professional title in question.

It follows from the first paragraph of Section 6 that the healthcare must be provided by a healthcare professional having official authorisation. The authorisation must be valid in the country where the healthcare is received. Norwegian authorisation is not required.

42. Part 6.2 of the Administrative Circular, entitled "Specialist approval and other particular competence requirements", reads:

Where specialist approval is a requirement for receiving benefits for healthcare in Norway, the treatment abroad must be performed by a healthcare professional having equivalent specialist approval. The specialist approval must be valid in the country where the healthcare is received. Norwegian specialist approval is not required.

For specialist doctors in medicine, approved specialities are largely harmonised through the Professional Qualifications Directive, 2005/36/EC. Thus, the requirement of doctor speciality in medicine will generally be satisfied in most cases. For a more detailed description of qualification requirements, see Annex V – approval of harmonised courses of education.

Where particular competence requirements are imposed with respect to the service provider for entitlement to benefits under Norwegian rules, they shall apply accordingly. Examples include additional courses/education for certain rates for care by a doctor in medicine, manual therapy and psychomotor physiotherapy, and psychological care.

The Regulation allows for exceptions to be made from the condition on equivalent specialist approval or particular competence. Two conditions must be satisfied in order for an exception to be made. First, the speciality in question or equivalent formal competence must not exist in the country where the healthcare is received. Second, it must be documented that the service provider instead actually has equivalent substantive competence or other doctor specialisation in medicine which is clearly comparable to the speciality required in Norway.

Exceptions may not be made if the specialisation in question exists in the country where the healthcare is received.

Specific remarks on specialist approval for implant-based prosthetics

In the regulation for benefits for dental treatment under Section 5-6 of the National Insurance Act, for reimbursement for implant-based prosthetics and implant surgery, particular competence requirements are set out for the dental practitioner who performs the treatment. In order to receive benefits for implant-based prosthetics in Norway, both the dental practitioner who places the implants (the surgeon) and the dental practitioner who performs the prosthetics-related work must have a specified specialist approval.

Dental/oral surgery is referred to in Annex V to the Professional Qualifications Directive. Hence documentation may be required showing that the dental practitioner who performed the surgical placement of implants in another EEA country is in possession of the relevant specialities.

The speciality in oral prosthetics is not, however, referred to in the Professional Qualifications Directive, and not all EEA countries have such specialist approval. Nevertheless, allowance is made for reimbursement for the prosthetics-related part of the treatment in countries where an oral prosthetics speciality does not exist. In such cases, a specific assessment must be made of whether the service provider's competence can be deemed to be almost the same as the specialist competence required in Norway.

Annex 2 accompanying the Regulation on authorisation, licensing and specialist approval for healthcare professionals having professional qualifications from other EEA countries can offer some guidance for the assessment of confirmation of authorisation and the like from other EEA countries. The Annex contains a list of names of diplomas, levels of education, etc., for different groups of healthcare professionals.

43. Part 6.4 of the Administrative Circular, entitled "No requirement that treatment provider must be part of the public health service", reads:

> *It is not a requirement for benefits under this reimbursement scheme that the treatment received is performed by a healthcare professional who is part of the public health service.*

III. Facts and procedure

44. On 30 November 2017, K applied for benefits to cover dental treatment in Poland in the period 16 August to 24 October 2017. The application related to stage two of treatment for severe marginal periodontitis that had been commenced in 2016. K has previously applied for, and been refused, reimbursement for the first stage of the treatment, also on the ground that the treating dental practitioner lacked the necessary specialisation. The refusal of reimbursement for the first stage of the treatment was upheld by the National Insurance Court's ruling in Appeal Case No 20/00406 delivered on 9 April 2021.

45. By decision of 1 February 2018, the Norwegian Health Economics Administration (*Helseøkonomiforvaltningen* ("NHEA") rejected K's application for reimbursement for that portion of the treatment at issue in the present case. The grounds given for the rejection were the treating dental practitioner's lack of specialisation.

46. Following a complaint by K, NHEA's decision was upheld by decision of 25 February 2021 of the National Office for Health Service Appeals ("NOHSA").

47. On 7 April 2021, K appealed against the decision of NOHSA to the National Insurance Court. As part of the preparation of the appeals case, NOHSA re-examined the decision under appeal in accordance with Section 13(1) of the National Insurance Court Act. Following the re-examination, NOHSA arrived at the same conclusion as in the decision appealed. In the cover letter dated 10 September 2021, the following was stated with regard to the requirement of specialisation:

> As mentioned, it follows from the third paragraph of Section 3 of the Dental Regulation that expenses for implant-anchored dental prosthetics treatment are covered only if the surgical placement of dental implants is performed by a specialist in oral surgery and oral medicine, specialist in maxillofacial surgery or a specialist in periodontics. In the present case, the surgical part of the treatment was not performed by a specialist in oral surgery and oral medicine, a specialist in maxillofacial surgery or a specialist in periodontics (see ruling 20/00406 of the National Insurance Court). Nor, accordingly, can the prosthetics part of the treatment be covered.
>
> The appellant submits that the requirement of specialisation in order to be able to claim reimbursement is contrary to the EU rules on non-discrimination. In that respect, reference is made, *inter alia* to Case 205/84 *Commission v Germany* and Case C-398/95 *Symvoulio Epikrateias - Greece*.

The National Office for Health Service Appeals wishes to point out that it is not the right to place implants that is restricted under section 3 of the Regulation, but rather the right to claim reimbursement for the placed implants. There is nothing preventing a person from receiving treatment from a dental practitioner not in possession of the necessary specialisation. The regulations concern only the right to claim reimbursement for the treatment in question, and in no way regulate who has a right to perform dental treatment. Since the judgments referred to concern the requirements for providing services in another EEA country, and not which national requirements that may be imposed for awarding reimbursement, those judgments are not relevant in the present case.

In its ruling 20/00406, the National Insurance Court held that the regulation on the requirement of specialisation in order to claim reimbursement was not contrary to EEA law. The National Office for Health Service Appeals also refers to Article 7 of the Patients' Rights Directive, which regulates the right to receive reimbursement for healthcare received in another EEA/EU country than the state of affiliation.

Article 7(3) of the Directive provides that it is the Member State of affiliation itself that to determine, whether at a local, regional or national level, the healthcare for which an insured person is entitled to assumption of costs and the level of assumption of those costs. […]

This means that it is the State itself that determines which healthcare services can be covered and how much is to be covered. It further follows from Article 7(7) that the Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare the same conditions, criteria of eligibility and regulatory and administrative formalities, whether set at a local, regional or national level, as it would impose if that healthcare were provided in its territory.

This means that it is possible to impose the same conditions for reimbursement in Norway as for treatment abroad. This is also in keeping with the EU principle of non-discrimination, because if less stringent requirements were to be imposed for reimbursement for dental treatment received in another EEA country, that would amount to a discriminatory scheme towards those who receive dental treatment in Norway.

The requirement that implant-anchored dental prosthetics treatment must be performed by a dental practitioner with a given specialisation in order for reimbursement to be granted applies irrespective of where you receive the treatment. Accordingly, it makes no difference if you visit your dental practitioner in Norway or if you travel to Poland. The requirement imposed for reimbursement is the same.

> In the light of the foregoing, the National Office for Health Service Appeals finds that the conditions for benefits under Section 5-24a of the National Insurance Act (*folketrygdloven*), read in conjunction with Section 5-6, are not fulfilled, both because the time of and background to the loss of teeth is not sufficiently documented and the requirement of specialisation is not satisfied.

48. According to the request, the parties disagree as to whether a requirement may be imposed to the effect that the treating dental practitioner must have the same specialisation as what is required for reimbursement under the third paragraph of Section 3 of the Norwegian Dental Regulation.

49. Against this background, on 1 December 2023, the National Insurance Court decided to request an advisory opinion, registered at the Court on the same day, referring the following questions to the Court:

> **1. Is it compatible with Article 36 of the EEA Agreement and Article 7 of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare to refuse reimbursement of costs for dental treatment in another EEA State on the ground that the treating dental practitioner does not possess the required specialisation in order to have equivalent treatment reimbursed in the service recipient's home State?**
>
> **2. Does it affect the answer to Question 1 if the specialisation required in the service recipient's home State is included in Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications?**
>
> **3. If the specialisation is not included in Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, must the competent authorities in the service recipient's home State also conduct an assessment under Article 36 of the EEA Agreement in order to determine whether the treating dental practitioner has equivalent competence to that required under national law?**

IV. Written observations

50. Pursuant to Article 20 of the Statute of the Court and Article 90(1) of the Rules of Procedure, written observations have been received from:

> the Norwegian Government, represented by the National Office for Health Service Appeals, represented by Andreas Runde, acting as Agent;
>
> the Estonian Government, represented by Merili Kriisa, acting as Agent;
>
> the Polish Government, represented by Bogusław Majczyna, acting as Agent;

the EFTA Surveillance Authority ("ESA"), represented by Marte Brathovde, Ewa Gromnicka, and Melpo-Menie Joséphidès, acting as Agents; and

the European Commission ("the Commission"), represented by Lorna Armati, Sandrine Delaude and Esther Eva Schmidt, acting as Agents.

V. Proposed answers submitted

The Norwegian Government represented by the National Office for Health Service Appeals

51. The Norwegian Government represented by the National Office for Health Service Appeals proposes that the questions referred should be answered as follows:

> *1. It is compatible with both Article 36 EEA and Article 7 of Directive 2011/24/EU to deny reimbursement of costs for dental treatment in another EEA State where the treating dental practitioner neither has the required specialisation from the service recipient's home State nor any other equivalent specialisation from another EEA State.*
>
> *2. It does not affect the answer to the first question if the specialisation required in the service recipient's home State is included in Annex V to Directive 2005/36/EC.*

The Estonian Government

52. The Estonian Government proposes that the first and second questions referred be answered as follows:

> *1. It is compatible with Article 36 of the EEA Agreement and Article 7 of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare to refuse reimbursement of costs for dental treatment in another EEA State on the ground that the treating dental practitioner does not possess the required specialisation in order to have equivalent treatment reimbursed in the service recipient's home State.*
>
> *2. It does not affect the answer to the first question if the specialisation required in the service recipient's home State is included in Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.*

53. The Estonian Government considers that there is no need to examine the third question.

The Polish Government

54. The Polish Government proposes that the first question referred be answered as follows:

> *Article 7(1) read in conjunction with Article 4(1) of Directive 2011/24/EU should be interpreted as precluding national legislation which prohibits reimbursement of costs for dental treatment in another EEA State on the grounds that the treating dental practitioner does not possess the required specialisation in order to have equivalent treatment reimbursed in the service recipient's home State.*

55. The Polish Government considers that there is no need to answer the second and third questions.

ESA

56. ESA proposes that the first question referred be answered as follows:

> *Article 36 EEA and Articles 4 and 7(1) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare must be interpreted as precluding a national provision which excludes reimbursement of costs for dental treatment in another EEA State on the ground that the treating dental practitioner does not possess the required specialisation in order to have equivalent treatment reimbursed in the EEA State of affiliation.*

57. ESA considers that there is no need to answer to the second and the third questions.

The Commission

58. The Commission proposes that the questions referred be answered together as follows:

> *Article 36 of the EEA Agreement and Article 7 of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare must be interpreted as not precluding, as a matter of principle, national rules, which impose, as a precondition for reimbursement of medical costs incurred in another EEA State, the possession by the dental practitioner providing certain types of treatment of a specialist qualification equivalent to that required for reimbursement of medical costs incurred in the EEA State of affiliation, provided that the rules guarantee an assessment of equivalence in each individual case and in line with the principle of freedom to provide services enshrined in Article 36 EEA.*

Bernd Hammermann

Judge-Rapporteur