



## JUDGMENT OF THE COURT

25 March 2021\*

*(Freedom of movement of persons – Directive 2005/36/EC – Recognition of professional qualifications – Access to profession of dental practitioner – Automatic recognition)*

In Case E-3/20,

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 Supreme Court of Norway (*Norges Høyesterett*), in the case between

**The Norwegian Government, represented by the Ministry of Health and Care Services (*Helse- og omsorgsdepartementet*),**

and

**Anniken Jenny Lindberg,**

concerning the interpretation of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, in particular Article 21, as adapted to the Agreement on the European Economic Area,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur), and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

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\* Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the Norwegian Government, represented by Kaija Bjelland and Torje Sunde, acting as Agents;
- Anniken Jenny Lindberg (“Ms Lindberg”), represented by Tone Christin Galaasen and Per Andreas Bjørgan, Advocates;
- the Austrian Government, represented by Dr. Albert Posch and Julia Schmoll, acting as Agents;
- the Spanish Government, represented by Juan Rodríguez de la Rúa Puig, acting as Agent;
- the EFTA Surveillance Authority (“ESA”), represented by Ingibjörg-Ólöf Vilhjálmisdóttir, Erlend Møinichen Leonhardsen and Carsten Zatschler, acting as Agents; and
- the European Commission (“the Commission”), represented by Lorna Armati and Hans Christian Støvlebak, acting as Agents;

having regard to the Report for the Hearing,

having heard oral argument on behalf of the Norwegian Government, represented by Kaija Bjelland and Torje Sunde; Ms Lindberg, represented by Tone Christin Galaasen and Per Andreas Bjørgan; ESA, represented by Erlend Møinichen Leonhardsen and Carsten Zatschler; and the Commission, represented by Lorna Armati and Hans Christian Støvlebak, at the remote hearing on 11 November 2020,

gives the following

## **Judgment**

### **I Legal background**

*EEA law*

- 1 Article 28(1) and (2) of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

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

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

2 Article 30 EEA reads:

*In order to make it easier for persons to take up and pursue activities as workers and self-employed persons, the Contracting Parties shall take the necessary measures, as contained in Annex VII, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and the coordination of the provisions laid down by law, regulation or administrative action in the Contracting Parties concerning the taking up and pursuit of activities by workers and self-employed persons.*

3 Article 31(1) EEA reads:

*Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.*

*Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.*

4 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) (“the Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 142/2007 (OJ 2008 L 100, p. 70, and EEA Supplement 2008 No 19, p. 70), which amended Annex VII (Recognition of professional qualifications) and inserted the Directive as point 1 of that Annex. Constitutional requirements were indicated by Norway, Iceland and Liechtenstein. The requirements were fulfilled on 14 May 2009 and the decision entered into force on 1 July 2009.

5 The Directive was amended in the European Union 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 2013 L 374, p. 132). The latter directive was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 94/2017 (OJ 2019 L 36 p. 52, and EEA Supplements 2019 No. 11 p. 62). Constitutional requirements were

indicated by Norway, Iceland and Liechtenstein. The requirements were fulfilled on 28 November 2018 and the decision entered into force on 1 January 2019. Accordingly, in the period 1 July 2009 to 1 January 2019 (“the material time”), Directive 2005/36/EC applied in the EEA.

6 Recital 1 of the Directive reads:

*Pursuant to Article 3(1)(c) of the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons and services is one of the objectives of the Community. For nationals of the Member States, this includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their professional qualifications. In addition, Article 47(1) of the Treaty lays down that directives shall be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.*

7 Recital 9 of the Directive reads:

*While maintaining, for the freedom of establishment, the principles and safeguards underlying the different systems for recognition in force, the rules of such systems should be improved in the light of experience. Moreover, the relevant directives have been amended on several occasions, and their provisions should be reorganised and rationalised by standardising the principles applicable. It is therefore necessary to replace Council Directives 89/48/EEC and 92/51/EEC, as well as Directive 1999/42/EC of the European Parliament and of the Council on the general system for the recognition of professional qualifications, and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, by combining them in a single text.*

8 Recital 14 of the Directive reads:

*The mechanism of recognition established by Directives 89/48/EEC and 92/51/EEC remains unchanged. As a consequence, the holder of a diploma certifying successful completion of training at post-secondary level of a duration of at least one year should be permitted access to a regulated profession in a Member State where access is contingent upon possession of a diploma certifying successful completion of higher or university education of four years' duration, regardless of the level to which the diploma required in the host Member State belongs. Conversely, where access to a regulated profession is contingent upon successful completion of higher or university education of more than four years, such access should be permitted*

*only to holders of a diploma certifying successful completion of higher or university education of at least three years' duration.*

9 At the material time, Article 1 of the Directive, entitled “Purpose”, 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.*

10 Article 3(1) of the Directive, entitled “Definitions”, reads, in extract:

*1. For the purposes of this Directive, the following definitions apply:*

...

*(b) ‘professional qualifications’: qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience;*

*(c) ‘evidence of formal qualifications’: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Where the first sentence of this definition does not apply, evidence of formal qualifications referred to in paragraph 3 shall be treated as evidence of formal qualifications;*

...

11 At the material time, Article 4 of the Directive, entitled “Effects of recognition”, 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.*

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

12 Article 10 of the Directive, entitled “Scope”, reads, in extract:

*This Chapter applies to all professions which are not covered by Chapters II and III of this Title and in the following cases in which the applicant, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:*

...

13 At the material time, Article 21 of the Directive, entitled “Principle of automatic recognition”, read, in extract:

*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.*

...

*6. Each Member State shall make access to and pursuit of the professional activities of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives and pharmacists subject to possession of evidence of formal qualifications referred to in Annex V, points 5.1.1, 5.1.2, 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2 and 5.6.2 respectively, attesting that the person concerned has acquired, over the duration of his training, and where appropriate, the knowledge and skills referred to in Articles 24(3), 31(6), 34(3), 38(3), 40(3) and 44(3).*

...

*7. Each Member State shall notify the Commission of the legislative, regulatory and administrative provisions which it adopts with regard to the issuing of evidence of formal qualifications in the area covered by this Chapter. In addition, for evidence*

*of formal qualifications in the area referred to in Section 8, this notification shall be addressed to the other Member States.*

*The Commission shall publish an appropriate communication in the Official Journal of the European Union, indicating the titles adopted by the Member States for evidence of formal qualifications and, where appropriate, the body which issues the evidence of formal qualifications, the certificate which accompanies it and the corresponding professional title referred to in Annex V, points 5.1.1, 5.1.2, 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 respectively.*

- 14 At the material time, Article 34(2) of the Directive, entitled “Basic dental training”, read, in extract:

*Basic dental training shall comprise a total of at least five years of full-time theoretical and practical study, comprising at least the programme described in Annex V, point 5.3.1 and given in a university, in a higher institute providing training recognised as being of an equivalent level or under the supervision of a university.*

...

- 15 At the material time, point 5.3.2 of Annex V to the Directive, entitled “Evidence of basic formal qualifications of dental practitioners”, read, in extract:

<i>Country</i>	<i>Evidence of formal qualifications</i>	<i>Body awarding the evidence of qualifications</i>	<i>Certificate accompanying the evidence of qualifications</i>	<i>Professional title</i>	<i>Reference date</i>
...	...	...	...	...	...
<i>Denmark</i>	<i>Bevis for tandlægeeksamen (odontologisk kandidateksamen)</i>	<i>Tandlægehøjskolerne, Sundhedsvidenskabeligt universitetsfakultet</i>	<i>Autorisation som tandlæge, udstedt af Sundhedsstyrelsen</i>	<i>Tandlæge</i>	<i>28 January 1980</i>
...	...	...	...	...	...

- 16 Commission Communication – Notification of evidence of formal qualifications – Directive 2005/36/EC on the recognition of professional qualifications (Annex V) (OJ 2008 C 322, p. 3) (“Communication 2008/C 322/03”) reads, in extract:

...

## 6. Dental practitioners

...

2. Denmark has notified the following change to the title of dental practitioner already listed (Annex V, point 5.3.2, to Directive 2005/36/EC):

<b>Country</b>	<b>Evidence of formal qualifications</b>	<b>Body awarding the evidence of qualifications</b>	<b>Certificate accompanying the evidence of qualifications</b>	<b>Professional title</b>	<b>Reference date</b>
Denmark	Bevis for tandlægeeksamen (odontologisk kandidateksamen)	Tandlægehøjskolerne, Sundhedsvidenskabeligt universitetsfakultet	1. Autorisation som tandlæge, udstedt af Sundhedsstyrelsen  2. Tilladelse til selvstændig virke som tandlæge	Tandlæge	28 January 1980

17 Pursuant to Article 62 of the Directive, its predecessor directives, including the amendment thereof by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, p. 1) (“Directive 2001/19/EC”), were repealed.

18 Recital 5 of Directive 2001/19/EC read:

*In its Communication to the European Parliament and the Council on the SLIM initiative, the Commission undertook to present proposals aimed at simplifying the updating of the lists of qualifications eligible for automatic recognition. Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications provides for a simple procedure in the case of general practitioners’ qualifications; experience has shown that the procedure affords sufficient legal certainty; it is desirable to extend it to qualifications held by nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and doctors as referred to in Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC,*

*85/432/EEC, 85/433/EEC and 93/16/EEC (hereinafter referred to as the “sectoral Directives”) respectively.*

*National law*

19 The Norwegian Health Care Professionals Act (*Lov 2. juli 1999 nr. 64 om helsepersonell m.v.*) regulates, inter alia, conditions for obtaining authorisations, licences and specialist approvals for health care professionals. Under point (x) of Section 48, first paragraph, the authorisation scheme of the Norwegian Health Care Professionals Act includes authorisation for “dental practitioner” (*tannlege*).

20 At the material time, the first paragraph of Section 48a of the Norwegian Health Care Professionals Act read, in extract:

*Entitlement to authorisation following application includes those who:*

*...*

*b) have passed an examination abroad which is recognised under an agreement on mutual recognition under section 52,*

*c) have completed training and passed an exam abroad that is recognised as equal to an equivalent Norwegian training and exam, or*

*d) have demonstrated to have the necessary expertise with passed exam in health care professional training, and additional training or professional experience.*

21 Under the first paragraph of Section 52 of the Norwegian Health Care Professionals Act, authorisation, licence, specialist approval and the right to practise professionally as health care personnel in Norway without Norwegian authorisation may be granted based on rules of an international agreement by which Norway is bound. This includes the Directive.

22 For health care professionals, the Directive was implemented in Norway by the regulation of 8 October 2008 on authorisation, licences, and specialist recognition for health care professionals with professional qualifications from other EEA States or from Switzerland (*Forskrift 8. oktober 2008 nr. 1130 om autorisasjon, lisens og spesialistgodkjenning for helsepersonell med yrkeskvalifikasjoner fra andre EØS-land eller fra Sveits*) (“the Norwegian healthcare qualifications regulation”). In accordance with Section 5 of that regulation, an applicant is entitled to authorisation or licence as a dental practitioner if he or she produces evidence of formal qualification as referred to in point 5.3.2 of Annex II to that regulation and attaches, inter alia, any certificate of practical service.

23 At the material time, Annex II to the Norwegian healthcare qualifications regulation was based on the Directive and, inter alia, Communication 2008/C 322/03. For Denmark, point 5.3.2 of that annex read:

<i>Country</i>	<i>Evidence of formal qualifications</i>	<i>Body awarding the evidence of qualifications</i>	<i>Certificate accompanying the evidence of qualifications</i>	<i>Professional title</i>	<i>Reference date</i>
Denmark	<i>Bevis for kandidatuddannelsen i odontologi (cand.odont.)</i>	<i>Tandlægehøjskolerne, Sundhedsvidenskabeligt universitetsfakultet</i>	<i>1. Autorisasjon som tandlæge, udstedt af Sundhedsstyrelsen</i>  <i>2. Tilladelse til selvstændig virke som tandlæge</i>	<i>Tandlæge</i>	<i>28 January 1980</i>

## II Facts and procedure

- 24 Ms Lindberg is a Norwegian national. In the autumn of 2011, she commenced a training programme to become a dental practitioner at Aarhus University in Denmark. Ms Lindberg graduated with the university degree cand. odont. on 27 June 2016 and was granted the Danish authorisation as a dental practitioner on 30 June 2016.
- 25 A Danish authorisation to practise as a dental practitioner is issued following completion of dental training at a university in Denmark. This authorisation gives the holder the right to use the title “dental practitioner” (*tandlæge*) and to pursue the professional activities of a dental practitioner. However, such dental practitioners do not have authorisation to practise independently but may work as a dental practitioner under the supervision of another dental practitioner who has such an authorisation.
- 26 A confirmation from the Danish Patient Safety Authority states that Ms Lindberg’s evidence of formal qualifications meets the standards laid down in Article 34 of the Directive and that she is entitled to work as a dental practitioner under the supervision of a dental practitioner who has a permission to practise independently.
- 27 To practise independently in Denmark, a dental practitioner must obtain a certificate entitled “permit to practise independently as a dental practitioner” (*tilladelse til selvstændig virke som tandlæge*). The certificate is issued following the completion of post-graduate practice consisting of experience working as a dental practitioner for at least 12 months (1 440 hours), either in Denmark or abroad. There is no review or further examination, and no deadline to obtain the certificate.
- 28 Ms Lindberg moved back to Norway and on 10 August 2016 she applied online for authorisation and licence. She provided documentary evidence of her training and the authorisation from Denmark.

- 29 In a decision of 29 September 2016, the Norwegian Directorate of Health (“Directorate of Health”) refused her application on the following grounds:

*Your completed graduate training programme as a dental practitioner largely corresponds to the Norwegian training for dental practitioners. You have been granted an authorisation in Denmark, without entitlement to practise independently. Under the Danish rules, you are required to practise for at least one year following completion of the training programme before you can work as an independent dental practitioner. In Denmark, permission to practise independently is granted after a minimum of one year’s practice. Norway does not have a similar system of practice for dental practitioners like the one in Denmark.*

*Applicants with Danish training as dental practitioners and who have not completed their practice for permission to practice independently in Denmark, have not completed their training programme and are, therefore, not entitled to authorisation in Norway, neither on the basis of the Nordic Agreement, nor on Section 5 of the EEA Regulation (FOR-2008-10-08-1130), with accompanying Annex II, see point (b) of the first paragraph of Section 48a of the Act relating to health care professionals (“the Health Care Professionals Act”).*

*You do not fulfil the requirement to practice independently and are, therefore, not entitled to authorisation in Norway under point (d) of the first paragraph of Section 48a of the Health Care Professionals Act.*

*Neither does an incomplete training programme give entitlement to authorisation following an individual assessment under points (c) and (d) of the first paragraph of Section 48a of the Health Care Professionals Act.*

#### *Licence*

*A licence may only be granted where there are minor deficiencies. One year’s practice is such a considerable deficiency in terms of training that there neither are grounds to grant a licence under Section 49 of the Health Care Professionals Act.*

#### *Conclusion*

*The Directorate of Health refuses your application, as you do not fulfil the criteria for authorisation under Section 48a of the Health Care Professionals Act. Nor do you fulfil the criteria for a licence under Section 49 of the Health Care Professionals Act.*

*Information*

*In order to obtain authorisation in Norway at a later time, you must demonstrate that you are entitled to practise independently in Denmark by completing practice in Denmark.*

- 30 On 6 October 2016, Ms Lindberg appealed against the decision of the Directorate of Health. She argued that the training programme at Aarhus met European Union standards; that she had availed herself of one of seven admissions for dental training in Denmark reserved for Norwegian nationals; that the Aarhus School of Dentistry is ranked number 17 among the best dental training programmes in the world; that she had received a written reply from the Directorate of Health in February 2016 stating that she would receive a licence in Norway for supervised practice; and that she had now secured employment in Norway subject to her obtaining a licence.
- 31 On 7 March 2017, the Directorate of Health upheld its refusal and forwarded the matter to the National Office for Health Service Appeals for final decision by the Norwegian Appeal Board for Health Personnel, which, by decision of 6 December 2017, upheld the Directorate of Health's decision of 29 September 2016.
- 32 Ms Lindberg brought legal proceedings against the decision before Larvik District Court by writ of 28 February 2018. By judgment of 1 October 2018, Larvik District Court concluded that Ms Lindberg had to submit "evidence of a graduate degree in dentistry", an "authorisation as a dental practitioner" as well as a certificate showing that she had a "permit to practise independently as a dental practitioner", to be entitled to authorisation in Norway. Since Ms Lindberg was not able to produce the last document, Larvik District Court concluded that she was not entitled to an authorisation under the rules of the Norwegian healthcare qualifications regulation or on any other basis.
- 33 Following an appeal by Ms Lindberg, Agder Court of Appeal came to the opposite conclusion in its judgment of 2 July 2019. It held that the criteria for obtaining authorisation under the automatic recognition scheme provided for in Article 21(1) of the Directive were fulfilled. Agder Court of Appeal found that Ms Lindberg's completed university training in Denmark fulfils the minimum requirements laid down in Article 34(2) of the Directive. The submission of "evidence of a graduate degree in dentistry (cand. odont.)" was considered sufficient. It did not matter that Ms Lindberg was not able to produce a certificate concerning a permit to practise independently as a dental practitioner. Agder Court of Appeal pointed out that the principle of automatic recognition in the second subparagraph of Article 21(1) provides for a consideration of appropriateness as to which certificates must be presented. It further held that Ms Lindberg also could have based her entitlement to authorisation on the general recognition scheme provided for in Article 10 of the Directive.

- 34 The Norwegian Government brought an appeal against the judgment of Agder Court of Appeal to the Supreme Court of Norway. By decision of the Appeals Selection Committee of the Supreme Court of 9 December 2019, leave to appeal was granted. The Supreme Court of Norway decided to stay proceedings and make a request to the Court for an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”). The request, dated 27 March 2020, was registered at the Court on 14 April 2020.
- 35 Against this background, the Supreme Court of Norway has referred the following questions to the Court:

*I. Article 21 of the Professional Qualifications Directive*

*1. Is Article 21(1) of the Professional Qualifications Directive to be interpreted as meaning that the host State may, in each case, require the applicant to produce both the relevant “evidence of formal qualifications” referred to in column 2 of point 5.3.2 of Annex V to the Directive and the specified “certificates” the home State may have included in column 4 for the profession in question, or should the term “appropriate” be interpreted as meaning that the host State must determine whether it is appropriate to require the specified certificates in a given case?*

*If the term “appropriate” is to be understood as requiring the host State to determine whether it is appropriate to require the specified certificates in a given case:*

*2. What is the legal assessment and which factors will be legally relevant in the determination of whether it is “appropriate” to require listed certificates?*

*3. Is it of any consequence if the evidence of formal qualifications alone provides documentary evidence of training that is deemed to fulfil the minimum criteria laid down in Article 34(2) of the Directive and if the certificate that cannot be produced relates to post-graduate practice?*

*II. Rights under the Main Part of the EEA Agreement*

*1. Is the host State under an obligation to examine the application for recognition under Articles 28 and 31 of the EEA Agreement if an applicant with training from a member country for a profession with harmonised minimum training requirements does not fulfil the criteria for recognition under Article 21 or Article 10 of the Professional Qualifications Directive?*

*If so:*

*2. What is the legal assessment and what are the legally relevant factors in the determination of whether such an applicant may derive additional rights under Article 28 or Article 31 of the EEA Agreement?*

*3. What importance does it have that an applicant does not have a certificate for post-graduate practice which the home State has listed in column 4 of point 5.3.2 of Annex V to the Professional Qualifications Directive, if the host State does not require post-graduate practice of applicants trained in the host State and the training completed by the applicant is deemed to be equivalent to the training offered in the host State?*

*4. May it be required to give an applicant full rights in the host State if the evidence of formal qualifications the applicant is able to produce does not give the applicant corresponding professional rights in the home State?*

36 On 25 September 2020, the Court prescribed measures of organization of procedure pursuant to Article 49(1) of the Rules of Procedure (“RoP”), in accordance with Article 49(3)(a) RoP. The Court referred those participating in the proceedings before the Court to the certificate “permit to practise independently” at issue in the case and included in Communication 2008/C 322/03. They were invited to answer the following questions in writing by 4 November 2020:

*“1a. Please provide your views on the relevance of the certificate being included in that communication for the assessment of whether Norway could require this certificate for applicants applying for licence/authorisation as a dental practitioner in Norway on the basis of training and authorisation as a dental practitioner in Denmark in 2016; and*

*1b. provide your views on the relevance of the fact that this communication was not published in Norwegian in the EEA Supplement to the Official Journal.*

*2. Please provide your views on whether and if so, how, this affects the assessment set out in your written observations.”*

37 Responses were received from Ms Lindberg, the Norwegian Government, the Spanish Government, ESA and the Commission.

38 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as it is necessary for the reasoning of the Court.

### III Answer of the Court

#### *Question 1*

- 39 By the first part of its first question, the referring court asks, in essence, whether the term “where appropriate” in Article 21(1) of the Directive should be interpreted as referring to situations where the home State has listed a certificate accompanying the evidence of formal qualification in Annex V, or, instead, to situations where the host State finds it appropriate to require the certificate accompanying the evidence of formal qualification.
- 40 Article 21 of the Directive provides for a system of automatic recognition for evidence of professional qualifications for certain professions on the basis of coordinated minimum conditions for training, including those for dental practitioners. It follows from Article 21 that such evidence of formal qualifications covered by that article must be issued by a competent body in an EEA State and accompanied, where appropriate, by the certificates listed in Annex V.
- 41 In accordance with Article 1 of the Directive, the purpose of mutual recognition under the Directive is to guarantee that an EEA State – the host State – which makes access to, or pursuit of, a regulated profession in its territory contingent upon possession of specific professional qualifications, recognises professional qualifications obtained in another EEA State – the home State – which allow the holder of the said qualifications to pursue the same profession in that State, for access to and pursuit of that profession in the host State.
- 42 As stated in Article 4 of the Directive, the effect of the recognition of professional qualifications is that the host State allows the beneficiary to gain access in that State to the same profession as that for which he is qualified in the home State and to pursue it in the host State under the same conditions as its nationals. Under both Articles 1 and 4 of the Directive, the right to access a regulated profession in the host State presupposes that the beneficiary holds “professional qualifications” for that profession in the home State.
- 43 Accordingly, applicants who have completed their training in the home State and are therefore in possession of evidence of formal qualifications, and, where appropriate, certificates accompanying the evidence of formal qualifications, are entitled to automatic recognition of their professional qualifications under Article 21(1) of the Directive.
- 44 The term “where appropriate” in Article 21(1) of the Directive must be interpreted in the context of the system set up by the Directive for automatic recognition of professional qualifications. Under that system, it is for each EEA State to define the evidence that it issues and requires for access to, and pursuit of, the specific professions in its territory. The evidence issued by one EEA State must be recognised and afforded the same effect as the evidence that another EEA State issues and requires for access to and pursuit of that profession in its territory. It is thus for each EEA State to define the evidence of formal

qualification that benefits from automatic recognition in other EEA States under the Directive.

- 45 The system of automatic recognition is based on automatic and unconditional recognition which does not involve any substantive examination by the host State of the evidence of formal qualifications being recognised. As submitted by the Norwegian Government, the Austrian Government, the Spanish Government, ESA, and the Commission, the host State has no discretion as to whether it recognises the qualifications in question, and it is not for the host State to review whether additional requirements by the home State are appropriate. The host State is obliged automatically to recognise the evidence of formal qualifications issued by the home State for that profession.
- 46 The term “where appropriate” in Article 21(1) of the Directive must therefore be understood as referring to any additional certificate where the home State has listed such certificates for the access to a profession on its territory in the context of Annex V. Those certificates are required to accompany evidence of formal qualification for an applicant to benefit from the right to automatic recognition conferred by the Directive. In this respect, it does not matter whether the qualification already obtained in the home State by the applicant corresponds to the host State’s requirements for access to that profession. If the applicant cannot provide the documents listed in Annex V, the applicant is not entitled to automatic recognition of professional qualifications under the Directive.
- 47 For the purposes of the Directive, Denmark, which issued the evidence of formal qualifications at issue in the main proceedings, is Ms Lindberg’s home State. The requirements relating to the evidence of formal qualifications of dental practitioners issued by Denmark and accompanying certificates have been in force since 2008. These requirements were notified by Denmark to the Commission and subsequently published in Communication 2008/C 322/03 in accordance with Article 21(7) of the Directive. It follows from the request that Ms Lindberg is not in possession of the “permit to practise independently as a dental practitioner” (“*tilladelse til selvstændig virke som tandlæge*”) which is included in that communication.
- 48 Both ESA and Ms Lindberg have argued that Communication 2008/C 322/03 was not binding in the EEA, with the effect that Norway, as the host State for the purposes of the Directive, could not require the “permit to practise independently as a dental practitioner”, because that communication was not specifically incorporated into the EEA Agreement by the EEA Joint Committee or published in Norwegian in the EEA Supplement to the Official Journal.
- 49 Article 21(7) of the Directive provides that EEA States shall notify to the Commission or ESA the legislative, regulatory and administrative provisions which they adopt with regard to the issuing of evidence of formal qualifications in the area covered by Chapter III of Title III of the Directive. The Commission or ESA shall then publish an appropriate

communication in the Official Journal of the European Union or the EEA Section of and the EEA Supplement to the Official Journal of the European Union indicating the titles adopted by EEA States for evidence of formal qualifications and, where appropriate, the body which issues the evidence of formal qualifications, the certificate which accompanies it and the corresponding professional title referred to in Annex V.

- 50 Communication 2008/C 322/03 included the updated requirements by Denmark for certificates accompanying evidence of formal qualifications in accordance with the procedure provided for in Article 21(7) of the Directive. It was published in the Official Journal under the procedure set out in the Directive as incorporated into the EEA Agreement. The relevant requirements in Denmark for a dental practitioner were thus in place in accordance with the Directive at the material time. Accordingly, Communication 2008/C 322/03 was neither required to be incorporated into the EEA Agreement by the EEA Joint Committee nor required to be published in Norwegian in the EEA Supplement to the Official Journal.
- 51 This interpretation is confirmed both by the wording of Article 21(7) of the Directive and, as pointed out by the Commission and the Norwegian Government at the oral hearing, by the preparatory works to Directive 2001/19/EC, which introduced provisions equivalent to Article 21(7) of the Directive to the predecessor directives on recognition of professional qualifications. This is also evident from recital 5 of Directive 2001/19/EC which refers to the Commission's undertaking to present proposals aimed at simplifying the updating of the lists of qualifications eligible for automatic recognition.
- 52 Accordingly, the answer to the first question must be that, in order to benefit from the automatic recognition provided for in Article 21(1) of the Directive, an applicant must be in possession of all certificates accompanying the evidence of formal qualifications listed in Annex V to the Directive in line with the requirements of the home State for the relevant profession.
- 53 In light of this answer, it is not necessary to answer the second and third parts of the first question.

#### *Question 2.1*

- 54 By the first part of its second question, the referring court asks, in essence, whether the host State is under an obligation to examine an application for recognition under Article 28 and Article 31 EEA if an applicant does not fulfil the criteria for recognition under Article 10 and Article 21 of the Directive.
- 55 The right to recognition of diplomas is an expression of the fundamental right to freedom of establishment (compare the judgment in *Commission v Spain*, C-39/07, EU:C:2008:265, paragraph 37). Failure to recognise learning, skills and qualifications acquired by the person concerned in another EEA State can serve as a barrier to the free movement and

establishment of EEA professionals, even when national rules are applied in an indiscriminate manner in relation to nationality. Therefore, the host State cannot disregard knowledge and qualifications obtained in other EEA States. In particular, the provisions of national law adopted in that connection must not constitute an unjustified obstacle to the effective exercise of the fundamental freedoms guaranteed by the EEA Agreement (compare the judgment in *Brouillard*, C-298/14, EU:C:2015:652, paragraphs 52 and 53 and case law cited).

- 56 The Norwegian Government, supported by the Spanish Government, submits that where an applicant seeks access to a regulated profession covered by the Directive, the host State is not required to assess applications for recognition of professional qualifications under the main part of the EEA Agreement when the applicant does not satisfy the conditions for recognition under the system of automatic recognition or the general system of recognition under the Directive.
- 57 As noted by ESA, the Court of Justice of the European Union (“ECJ”) has held in relation to the predecessor directives on recognition of professional qualifications that the obligation for an EEA State to consider an applicant’s relevant experience does not cease to exist as a result of the adoption of directives on mutual recognition of diplomas (compare the judgment in *Vandorou*, Joined Cases C-422/09, C-425/09 and C-426/09, EU:C:2010:732, paragraph 71 and case law cited).
- 58 There is no indication in the Directive itself that it was intended to limit the exercise of fundamental freedoms, as they had been interpreted in the context of the predecessor directives on the recognition of professional qualifications. On the contrary, as expressed in recitals 9 and 14, the Directive’s aim is to reorganise and rationalise the application of the predecessor directives on the recognition of professional qualifications and thus support the free movement and establishment for professionals.
- 59 The objective of the Directive is, as is apparent from Article 1 of the Directive and Article 30 EEA, to facilitate the mutual recognition of diplomas, certificates, and other evidence of formal qualifications by laying down rules and common criteria which result, as far as possible, in automatic recognition of those professional qualifications and, thus, make the process of recognition more predictable and efficient for the applicant. It is not the purpose of the Directive to make recognition of professional qualifications more difficult in situations falling outside its scope, nor may it have such an effect (compare the judgment in *Dreessen*, C-31/00, EU:C:2002:35, paragraph 26). The system of automatic recognition under the Directive thus complements the rights guaranteed under the main part of the EEA Agreement, but does not displace an assessment under those provisions.
- 60 These considerations are equally applicable to the system set out in Article 10 of the Directive, which must be understood in the same manner. Applicants who cannot avail themselves of the system of automatic recognition, under the specific conditions of Article

10, must be assessed under the general system of recognition. This provision is meant to facilitate and simplify the recognition of professional qualifications in the specific cases listed therein. This does not entail that every other situation where an applicant does not satisfy the conditions set out in Article 10 is left without the protection of the fundamental freedoms.

61 Therefore, in circumstances where the conditions for the recognition of professional qualifications under the Directive are not met, the right to recognition of professional qualifications may be derived from Articles 28 and 31 EEA. This applies to cases where a person applies for authorisation in the host State to pursue a profession in a case not covered by the Directive (compare the judgment in *Brouillard*, cited above, paragraph 46). This also applies where a directive for the mutual recognition of diplomas has been adopted for the profession in question, but the applicant does not satisfy the conditions for recognition of qualifications (compare the judgment in *Dreessen*, cited above, paragraph 31).

62 In the light of the foregoing, the answer to the first part of the second question must therefore be that Articles 28 and 31 EEA must be interpreted as requiring a host State to carry out an individual assessment of the knowledge and training attested by the professional qualifications of an applicant also where the applicant seeks access to a profession which falls within the category of professions with coordinated minimum training conditions but does not satisfy the conditions set out in Article 10 or Article 21 of the Directive.

#### *Question 2.2*

63 By the second part of its second question, the referring court asks, in essence, which factors are relevant in determining whether an applicant can rely on Articles 28 and 31 EEA.

64 It follows from the case law of the ECJ that the authorities of the host State must take into account all the applicant's diplomas, certificates, other evidence of qualifications, and relevant experience, when they compare the qualifications and experience held by the applicant with the knowledge and qualifications required by the national legislation for access to the relevant profession (compare the judgment in *Brouillard*, cited above, paragraph 54 and case law cited). This exercise is not intended to result in recognising any particular diploma or certificate as equal to a corresponding national qualification, but to assess whether the applicant's qualifications correspond to the qualifications required by the host State. The host State must therefore examine the qualification and the specific content of the training.

65 The assessment must enable the authorities of the host State to assure themselves on an objective basis that a foreign diploma certifies that the knowledge and qualifications are, if not identical, at least equivalent to those attested by the national diploma. That assessment must be based exclusively on the level of knowledge and qualifications which its holder can be assumed to possess, having regard to the nature and duration of the

studies and practical training to which the diploma relates (compare the judgment in *Brouillard*, cited above, paragraph 55 and case law cited). In the course of the comparative examination, an EEA State may take into consideration objective differences relating to both the legal framework of the profession in question in the home State and to its field of activity (compare the judgment in *Brouillard*, cited above, paragraph 56 and case law cited).

- 66 If the knowledge and qualifications attested by the foreign diploma correspond to those required by the national provisions, the host State must recognise that diploma as fulfilling the requirements laid down by its national provisions. On the other hand, if the knowledge and qualifications attested by the foreign diploma only partially correspond to the requirements under the national provisions, the host State may require the applicant to show that he or she has acquired the knowledge and qualifications which are lacking (compare the judgment in *Brouillard*, cited above, paragraph 57 and case law cited).
- 67 In that regard, it is for the competent national authorities to assess whether the knowledge acquired during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking (compare the judgment in *Brouillard*, cited above, paragraph 58 and case law cited).
- 68 In so far as practical experience in the pursuit of related activities can increase an applicant's knowledge, it is incumbent on the competent national authorities to take practical experience relevant for the profession that the applicant seeks access to into consideration. It is for the competent national authority to determine the value of such experience based on the specific functions, knowledge acquired and applied in pursuit of those functions, responsibilities assumed and the level of independence accorded to the applicant (compare the judgment in *Brouillard*, cited above, paragraph 59 and case law cited).
- 69 If the host State's competent authorities find that an applicant's knowledge and qualifications attested by the diploma and relevant working experience are not equivalent, or only partially correspond to those required by the host State, the host State must specify what training the applicant lacks in order for the applicant to complete or supplement the training. A different interpretation would not be capable of facilitating the effective exercise of the fundamental freedoms guaranteed by the EEA Agreement. In this regard, it must also be recalled that EEA law imposes an obligation to state the reasons for national decisions affecting the exercise of a fundamental freedom (compare the judgments in *Heylens*, 222/86, EU:C:1987:442, paragraph 15; *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 22; and *Norbrook Laboratories Ltd*, C-127/95, EU:C:1998:151, paragraph 103). Accordingly, an applicant, such as Ms Lindberg in the present case, must be able to ascertain the reasons on which refusal is based, such as which training he or she lacks.

70 Accordingly, a host State must compare all diplomas, certificates and other evidence of formal qualifications and experience of the applicant with its own requirements to pursue the profession in question. If the applicant's knowledge and qualifications attested by the diploma and relevant working experience are not equivalent, or only partially correspond to those required by the host State, that State must specify which training is lacking in order for the applicant to complete or supplement the training.

*Questions 2.3 and 2.4*

71 By the third and fourth parts of its second question, the referring court, in essence, seeks guidance on the consequences of the applicant not being fully qualified and therefore not having full access to the profession in the home State.

72 Articles 28 and 31 EEA do not establish any rights to recognition of training in itself, but rather a right to have such training recognised in order to facilitate the exercise of the rights guaranteed under the EEA Agreement, such as the rights of taking up work and establishment in another EEA State. Therefore, these provisions do not grant any rights to recognition of professional qualifications independent of the exercise of the rights of free movement.

73 However, in the case at hand, the applicant has completed university training, which is attested by a diploma. It is therefore not a question of assessing incomplete training, but the training attested by that diploma.

74 The assessment to be made under the main part of the EEA Agreement must compare the applicant's knowledge and skills, attested by the applicant's certificates and practical experience, with the knowledge and skills required for access to the profession in the host State. In this assessment, the applicant's qualifications must be compared to the requirements for access to the profession in the host State. The fact that the applicant does not have full access to the profession in the home State cannot be decisive for this assessment.

75 An assessment under Articles 28 and 31 EEA is not the same as the assessment for recognition of professional qualifications under the Directive. Therefore, as pointed out by the Commission, it is neither necessary nor sufficient to demonstrate that the completed training in the home State fulfils the minimum training conditions laid down in the relevant provisions of the Directive. However, the Court considers, as observed by the Commission at the oral hearing, that if an applicant has received training that satisfies the minimum training conditions specified in the Directive, that should simplify and facilitate the comparison of the qualifications obtained by the applicant with the requirements in the host State.

76 In light of these considerations, the Court finds that the answer to the third and fourth parts of the second question must be that the fact that an applicant does not have full access to

the profession in the home State cannot be decisive for the assessment of whether the applicant may be given access to the same profession in the host State.

#### **IV Costs**

77 The costs incurred by the Austrian Government, Spanish Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

#### **THE COURT**

in answer to the questions referred to it by the Supreme Court of Norway gives the following Advisory Opinion:

- 1. In order to benefit from the automatic recognition provided for in Article 21(1) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, an applicant must be in possession of all certificates accompanying the evidence of formal qualifications listed in Annex V to the Directive in line with the requirements of the home State for the relevant profession.**
- 2. Articles 28 and 31 EEA must be interpreted as requiring a host State to carry out an individual assessment of the knowledge and training attested by the professional qualifications of an applicant also where the applicant seeks access to a profession which falls within the category of professions with coordinated minimum training conditions but does not satisfy the conditions set out in Articles 10 or 21 of Directive 2005/36/EC.**
- 3. An individual assessment of the knowledge and skills of an applicant by the host State must entail a comparison of all diplomas, certificates and other evidence of formal qualifications and experience of the applicant with its own requirements to pursue the profession in question. If the applicant's knowledge and qualifications attested by the diploma and relevant working experience are not equivalent, or only partially correspond to those required by the host State, that State must specify which training is lacking in order for the applicant to complete or supplement the training.**

- 4. The fact that an applicant does not have full access to the profession in the home State cannot be decisive for the assessment of whether the applicant may be given access to the same profession in the host State.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 25 March 2021.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President