



Warsaw, 19 February 2024
DPUE.9313.426.2023(3)(JL)

**TO THE PRESIDENT AND MEMBERS
OF THE EFTA COURT**

**WRITTEN OBSERVATIONS
SUBMITTED BY
THE REPUBLIC OF POLAND**

in accordance with Article 20 of the Statute
and Article 90(1) of the Rules of Procedure of the EFTA Court

**in Case No E-15/23
K
(Request from the National Insurance Court – Norway)**

Agent of the Republic of Poland:

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I. FACTS OF THE CASE AND QUESTIONS SUBMITTED BY THE NATIONAL COURT

1. The National Insurance Court made a Request for an Advisory Opinion on 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 healthcare¹, Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications² and Article 36 of the EEA Agreement.
2. As explained in the Request, the case concerns the issue of entitlement to the reimbursement of costs incurred in connection with dental treatment received in Poland. The appellant's application for reimbursement of expenses was refused on the grounds that the treating dental practitioner in Poland did not have the specialisation required to be able to claim reimbursement for equivalent treatment in Norway.
3. The appellant has argued that the requirement of specialisation is contrary to Article 36 of the EEA Agreement and Article 7 of Directive 2011/24/EU. The respondent, on the other hand, has argued that the requirement of specialisation does not place any restrictions on the freedom to provide services, but rather regulates only reimbursement of costs for certain forms of dental treatment. It is submitted that this type of regulation is allowed under Article 7(7) of Directive 2011/24/EU. It is stated that, in the assessment of whether the relevant specialist competence exists in the country in question, regard is had to Directive 2005/36/EC.
4. While analysing the case, the National Insurance Court found that the interpretation of Directive 2011/24/EU, Directive 2005/36/EC and Article 36 of the EEA Agreement is necessary to enable it to deliver a judgement and therefore referred the following questions to the EFTA 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*

¹ OJ L 88 of 4.4.2011, p. 45, with amendments.

² OJ L 255 of 30.9.2005, p. 22, with amendments.

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?*

II. LEGAL ARGUMENTS

5. In its first question, the referring court essentially seeks to determine whether Article 7 of Directive 2011/24/EU must 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 specialisation required to have the equivalent treatment reimbursed in the patient's home state.
6. According to Article 7(1) of Directive 2011/24/EU:
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.
7. The indication of the scope of benefits to which an insured person is entitled, and therefore the catalogue of guaranteed benefits under the national insurance system, is determined by the Member State itself.

8. In Article 7(7), Directive 2011/24/EU introduces an exception to the principle of automatic reimbursement for healthcare falling within the scope of benefits to which the insured person is entitled in the Member State of affiliation. According to this provision:
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. However, the Republic of Poland is of the opinion that the exception, introduced by Article 7(7) of Directive 2011/24/EU, is not applicable in the present case.
10. First, the condition requiring identity of specialisation in both states constitutes an obstacle to the free movement of patients. Thus, the imposition by the state of affiliation, of this condition would not serve the fundamental objective of the Directive, which is to facilitate the use of cross-border healthcare by patients.
11. Moreover, it appears that such a measure could even act as a disincentive to the use of cross-border healthcare, given the uncertainty for the patient as to whether the conditions for reimbursement will be met in a particular case, especially in the view of limited possibility for the patient to verify whether the dentist providing treatment meets the specific qualification requirements of the country of affiliation.
12. Secondly, such a requirement is not objectively justified by the planning requirements to ensure sufficient and permanent access to a balanced range of high-quality treatment in

the country or concerning the will to control costs and avoid, as far as possible, any waste of financial, technical and human resources. Since the doctor is duly authorised, in accordance with the requirements set out in EU law, to practise in the country where the medical service is provided, it must be assumed that the safety and functioning of the healthcare system in the patient's country of residence is not compromised.

13. In parallel, Article 7(1) of Directive 2011/24/EU should be interpreted in conjunction with Article 4(1) of that Directive, which stipulates that:

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.*

14. It therefore follows from Article 7(1) read in conjunction with Article 4(1) of Directive 2011/24/EU that, on the one hand, it is the Member State of insurance that determines the scope of benefits to which the insured is entitled. On the other hand, however, it should respect the quality and safety standards for these health services as set forth in the regulations of the country of treatment where they are provided as part of cross-border health care.

15. Furthermore, the state of insurance is not entitled, as it were, to supplement these norms with more restrictive requirements established by its own regulations whenever the issue concerns reimbursement for cross-border healthcare received in another Member State.

16. It should be concluded, therefore, that the provision of Article 7(1) read in conjunction with Article 4(1) of Directive 2011/24/EU, should be interpreted to mean that the term "benefits to which the insured person is entitled" contained therein denotes a catalogue of medical procedures financed by the health insurance system in question, without additional requirements for the organisation of the provision of benefits, such as the specific qualifications of the persons performing the benefits in question, attached.

17. The above interpretation is in line with recital 19 of Directive 2011/24/EU, which stipulates that the rules of the legislation of the Member State of treatment should apply

to cross-border healthcare, since, according to Article 168(7) TFEU, Member States are responsible for the organisation and provision of health services and medical care.

18. In view of the proposed answer to the first question, the second and the third questions are irrelevant.

III. PROPOSAL FOR AN ANSWER TO BE GIVEN BY THE EFTA COURT

19. The Republic of Poland suggests that the EFTA Court gives the following answer to the first question referred by the National Insurance Court:

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.

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