



ROYAL NORWEGIAN MINISTRY
OF HEALTH AND CARE SERVICES

EFTA Surveillance Authority
Rue Belliard 35
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BELGIUM

Your ref

Our ref

Date

20/2162-

29 September 2020

Reply to Reasoned Opinion related to case no. 80103, 79661, 81375 and 81656 dated 29th of April 2020 - Directive 2005/36

1 introduction

- (1) Reference is made to the Reasoned Opinion (“RO”) by ESA on 29 April 2020. In that RO, ESA concluded that by
- refusing to recognise the Hungarian qualification of Master’s degree in Clinical and Health Psychology (“okleveles pszichológus”, specialisation “Clinical and Health Psychology”), in order to work as a psychologist (“psykolog”) in Norway, Norway has failed to fulfil its obligations arising from Articles 13 and 14 of the Act referred to at point 1 of Annex VII to the EEA Agreement (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications), as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that Norway has thereby failed to fulfil its obligations arising from the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.
 - exceeding on a regular basis the four-month deadline when processing recognition applications, Norway has failed to fulfil its obligation arising from Article 51(2) of the Act referred to at point 1 of Annex VII to the EEA Agreement (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications),

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as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that, due to the excessive delays in processing recognition applications, Norway has failed to fulfil its obligations arising from Article 13 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.

- (2) The Ministry of Health and Care Services (hereinafter “the Ministry”) disputes the conclusion by ESA and maintains that there has been no violation of either Directive 2005/36/EC, Directive 2006/123/EC or Article 28 and 31 of the EEA Agreement.
- (3) In the view of the Ministry, the RO by ESA is based on several errors, both in law and in fact. The Ministry respectfully argues that many of the factual errors could have been avoided, had ESA only asked for further clarifications or documentation, in particular about the role of the *psykolog* in Norway. The Ministry points out that this case has been subject to lengthy proceedings before Oslo District Court, where both the facts of the case and the relevant EEA law was meticulously dealt with through updated written documentations and oral testimonies, from both the ELTE-university, universities in Norway, the Health Directorate, and an attorney-at-law from Hungary. Both the proceedings and the subsequent judgement of 11. November 2019 from the Oslo District Court confirmed the view of the Ministry about the facts and law of this case. In the opinion of the Ministry, it would have been appropriate for ESA to request updated information after this judgement.
- (4) The Ministry respectfully points out that the errors in the RO particularly relates to the following:
 - ESA describes the role of a *psykolog* in Norway incorrectly. ESA erroneously assumes that a *psykolog* needs assistance from a *psykologspesialist* when carrying out his/her work, and that a *psykolog* is never performing his/her work entirely independently.
 - ESA describes the regulation of an *okleveles pszichológus* and *klinikai szakpszichológus* in Hungary incorrectly. ESA disregards the Hungarian regulation and the Hungarian National Report describing the Hungarian regulation of psychology.
 - ESA puts forward several submissions about the law, which in the opinion of the Ministry is based on a rather weak legal analysis. This is shown in case of E-4/04, where the submissions by ESA are at odds with the submissions by the Commission and other states not involved in the dispute at hand.
- (5) The view of the Ministry will be explained in the following. This letter is structured the following way:
 - Factual background – **Section 2**
 - The regulation of a *psykolog* in Norway – **Section 3**

- The regulation of *okleveles pszichológus* and *klinikai szakpszichológus* in Hungary – **Section 4**
- Other factual errors in the Reasoned Opinion – **Section 5**
- Legal submissions – **Section 6**

2 Factual background

- (6) The Ministry mostly agrees with ESA's account of the factual background of the case in section 4 of the RO. However, some clarifications and corrections are needed:
- The key information in Hungary's reply to Norway on 26 April 2016 was not only that *okleveles pszichológus* was not a regulated profession in Hungary.¹ The key information of that reply was also that a person with the title *okleveles pszichológus* could not work as a clinical psychologist.
 - The incorrect 2014-assessment was not carried out by an expert panel as presumed in the RO.² The 2014-assessment was carried out according to an old assessment scheme where only a single employee from one of the universities on an ad hoc basis was given the assignment to assess the professional qualification in question. There was no quality check of this. The establishments of the expert panels came into use later, to improve the quality of the assessments.
 - ESA's description of the content of the special qualification program offered to the ELTE-graduates is mostly correct.³ It should, however, be emphasised that the supervised practice in this program is not the same as the practise usually assigned as compensatory measures pursuant to Article 14.
 - ESA states that students at ELTE "*relied on the expectation that they would be granted a license to work as a psychologist under supervision on their return to Norway*".⁴ The Ministry finds this language ambiguous. Thus, it should be pointed out, that it has been clearly communicated by the authorities and student organisations, that previous recognitions do not guarantee approval for new applications. In fact, documentation from a meeting between the Norwegian Psychological Association and ELTE-students in February 2016 showed that there was a significant uncertainty among the ELTE-students whether they would be granted license in Norway or not.

¹ RO para 82.

² RO para 70-71. As described in the Ministry's letter 26 September 2018 p. 6, the expert panel was not appointed until 2017.

³ RO 84 til 85.

⁴ RO para 73.

- Annex 1: Printout from the Norwegian Directorate of Health's website, 1 November 2018
- Annex 2: Printout from the websites of Association of Norwegian Students Abroad (ANSA), 3 September 2018.
- Annex 3: Printout from the websites the Norwegian Psychological Association on January 2016, 28 September 2020
- Annex 4: E-mail from the Norwegian Psychological Association to a student representative, 11 March 2016

- (7) The Ministry respectfully points out, that at some points in the RO, ESA's language might leave an impression that ESA doubts the Ministry's descriptions of the facts, without this being stated explicitly by ESA or an alternative explanation being given.⁵ The Ministry therefore kindly ask if ESA could request clarification if some of the information given by the Ministry is unclear.

3 The regulation of a *psykolog* in norway

3.1 Introduction

- (8) The Norwegian legislation uses the term *psykolog* for clinical psychologists.⁶ As the Ministry previously has explained, the core activities for a *psykolog* is examining, diagnosing, and treating patients.⁷ *Psykoletter* have an independent and direct responsibility for patients and may start their own practise. This has been thoroughly explained in the Ministry's letter 26 September 2018 section 4.3.2 and the judgement of the Oslo District Court has concluded similarly. The request for an advisory opinion from the Borgarting Court of Appeal is based on a similar understanding of the autonomy and activities of a *psykolog*, after input from the parties.⁸
- (9) The RO is, in the opinion of the Ministry, based on several incorrect and unsubstantiated claims about the role and autonomy of *psykoletter* in Norway. ESA submits in particular that Norway has overestimated the independence of a *psykolog*.⁹ The Authority assumes that a *psykolog* requires the assistance of a *psykologspesialist* on many occasions, and that a *psykolog* is never performing his/her tasks entirely independently.¹⁰ The Ministry respectfully disputes this. In the following paragraphs, the Ministry will comment on some of ESAs factual misunderstandings:

⁵ RO para 79 and 80.

⁶ In the RO para 30, ESA claims that the profession clinical psychologist does not exist in Norway. This in incorrect, cf. the Ministry's letter 26 September 2018 section 2 (i).

⁷ In the RO para 26, ESA equates *psykoletter* clinical and non-clinical work tasks. This does not leave a correct impression. Although *psykoletter* are not required to work clinically, their core tasks are examining, diagnosing, and treating patients. Unfortunately, on this point the description in the EU Database of regulated professions referred to in the RO para 28 is imprecise. The Ministry points out that that database has no legal authority.

⁸ Request for an Advisory Opinion in case E-4/20, 11 May 2020, section 5.2.

⁹ RO para 144-162.

¹⁰ RO para 145 and 155.

- *Psykologers* professional practice varies between the primary and specialist health services – **section 3.2**
- *Psykologer* have an independent and direct responsibility for patients without the involvement of a specialist – **section 3.3**
 - o The ethical guidelines of the Norwegian Psychological Association do not reflect any lack of autonomy for *psykologer* – **section 3.3.2**
 - o It is not the view of the Norwegian Board of Health Supervision that only *psykologspesialister* can diagnose patients. In fact, statements from audits in the primary and private health services confirms that *psykologer* have an independent and direct patient responsibility – **section 3.3.3**
 - o The new national guidelines for the health and social sciences educations do not indicate that *psykologer* previously have not worked independently – **section 3.3.4**
 - o It is not the referring party that receives reimbursements from the state when a patient is referred to the specialist health services. It is the service provider – **section 3.3.5**

3.2 The distinction between primary and specialist health services

- (10) Contrary to what ESA seems to assume in the RO,¹¹ in Norway a distinction is drawn between the primary and specialist health services and this distinction is relevant when assessing the role and autonomy of *psykologer*.
- (11) The municipalities are responsible for providing necessary health- and care services to residents of the municipality. This is often referred to as either the primary health service or the municipal health service (*primærhelsetjenesten* or *kommunehelsetjenesten*) and includes all public health services that are not offered at state level. The primary health service is regulated in the Act on Municipal Health and Care Services. Section 3-2 (2) of this Act imposes on municipalities an obligation to have *psykologer* in their staff.¹²
- (12) Most health issues are dealt with within the primary health service. The primary health service also serves as the link between the public and the specialist health services (*spesialisthelsetjenesten*). The public specialist health services only serve patients with referrals from the primary health service or patients in need of immediate help.
- (13) The specialist health services are responsible for hospitals, institutions, and the ambulance service. It covers resource-intensive services that require specialist

¹¹ RO para 47.

¹² The Act on Municipal Health and Care Services (Lov om kommunale helse- og omsorgstjenester) §§ 3-1 and 3-2. Norwegian version: <https://lovdata.no/dokument/NL/lov/2011-06-24-30>

expertise. It is the state (not the municipalities) who is responsible for providing the public with necessary specialist health services.¹³

- (14) In most municipalities, there is no *psykologspesialist*, nor is there a requirement for the municipalities to have such specialist expertise available. Only 31 per cent of *psykologer* in the municipalities are *psykologspesialister*.¹⁴ This means that it is the *psykolog* in the municipality who is the sole responsible for any diagnostic or interventional assessments the *psykolog* is carrying out. This clearly shows how a *psykolog* within the Norwegian health system is given an independent role.
- (15) In the specialist health services, a specialist co-signs for the assessments that are made by *psykologer* and medical doctors without specialisation. However, that does not mean that the *psykolog* does not perform the diagnostic works independently and carry out the treatment alone. The reason for the co-signing-practice, is the nature of the tasks carried out. Since it is a *specialist* health service which only deals with complex health issues requiring specialist expertise in a specific area, a specialist must co-sign the assessment. Thus, it is incorrect to formulate this involvement of the specialists as a “*requirement of supervision*”.¹⁵
- (16) The above serves to respectfully explain why ESA is mistaken in the RO. ESA claims that Norway has not provided any evidence that a *psykolog* in primary health care is independent, and postulates that “*professional support from a psychologist specialist is a general principle that applies to all settings in which psychologists perform clinical activities*”.¹⁶ That is, quite simply, wrong, and will be dealt with further in Section 3.3.

3.3 *Psykologer* have an independent and direct responsibility for patients without the involvement of a specialist

3.3.1 Introduction

- (17) As explained above, ESA has claimed that there is a requirement for professional support from *psykologspesialister* in all settings where *psykologer* perform clinical activities. In reaching that conclusion, ESA has referred to:
- the ethical guidelines of the Norwegian Psychological Association,
 - statements from the Norwegian Board of Health Supervision,
 - new national regulations for health and social sciences educations, and
 - the reimbursement system.¹⁷

¹³ Specialist Health Services Act (Spesialisthelsetjenesteloven) §§ 3-1 and 3-2. Norwegian version: <https://lovdata.no/dokument/NL/lov/1999-07-02-61>

¹⁴ Of the total 538 employees, 372 were *psykologer* and 166 *psykologspesialister* in 2019, See the SINTEF report «[IS-24/8 - kommunalt psykisk helse-og rusarbeid 2019](#)», table 3.8 on p. 69 (adults) and table 3.10 on p. 72 (children and adolescents).

¹⁵ RO para 147.

¹⁶ RO para. 147

¹⁷ RO para 147-150 and 183.

- (18) In the view of the Ministry, ESA's conclusions are incorrect and based on a misinterpretation of the facts. This will be explained in the following.

3.3.2 The ethical guidelines of the Norwegian Psychological Association

- (19) ESA submits that their views about *psykologers* limited autonomy is “*clearly reflected in the ethical guidelines of the Norwegian Psychological Association*”.¹⁸ In the opinion of the Ministry, ESA has misinterpreted these ethical guidelines.
- (20) The Ministry has contacted the Norwegian Psychological Association about ESA's interpretation of their guidelines. The Association replied that ESA “*has not given a correct understanding of neither the significance nor the scope of the professional principles for Norwegian psychologists*”, and elaborated on its answer as follows:

*“The professional guidelines have no regulation related to the “psykologs” autonomy in his work as a “psykolog”. Nor do they say anything about the requirement for guidance or countersigning. It is not decisive whether a psychologist works in the first or second line [primary or specialist health service] when the Ethical Council is to assess whether the ethical guidelines have been violated. What the professional guidelines actually say is that the individual “psykolog” should seek the guidance of a more experienced “psykolog” if these are tasks for which you have no competence or limited knowledge, regardless of whether you work in the first line, second line or in private practice”.*¹⁹

Annex 5: E-mail from the Norwegian Psychological Association, 4 September 2020

3.3.3 The view of the Norwegian Board of Health Supervision

- (21) ESA has also submitted that their conclusion is supported by statements from the Norwegian Board of Health Supervision (hereinafter “the Board”) in connection with a specific audit of the specialist health service. The Authority claims that view of the Board is that only *psykologspesialister* can diagnose patients. However, that is not the case.
- (22) The Ministry has contacted the Board, with questions about ESA's description of the tasks and autonomy of *psykologer* and interpretation of their statements. The Board gives the following answers:

“ESA's description of the tasks and autonomy of “psykologer” in the Reasoned Opinion (sections 144-155) does not coincide with what the Norwegian Board of Health Supervision bases our supervisory work on the practice of psychologists outside the specialist health service.

Section 4 of the Health Personnel Act determines a diligence requirement that apply to all health personnel, including psychologists. ... [T]he preparatory work for the law ...

¹⁸ RO para 148.

¹⁹ Office translation.

describes “psykologers” (and physicians’) independent and direct responsibility for patients, and that the professional practice includes assessment, diagnosis, and treatment of mental disorders. It is the opinion of the Norwegian Board of Health Supervision that “psykologer” usually have such an independent responsibility in, for example, municipal health services [primary health services] and in private practice.²⁰

Annex 6: Letter from the Norwegian Board of Health Supervision to the Ministry 27 August 2020

Annex 7: Letter from the Ministry to the Norwegian Board of Health Supervision 20 August 2020

- (23) Regarding the statements about *diagnosis being a task for specialists*,²¹ the Norwegian Board of Health Supervision stated that this should have been formulated differently. However, the Board pointed out that this statement must be understood in light of the fact that it concerned an inspection of a specific part of the specialist health service.²² ESAs assumption about the statement being valid for all health sectors simply because the Board supervises all health sectors, is consequently not valid.²³ The Ministry points out that this shows that one should be careful to draw conclusions from a document which relates to quite other purposes.
- (24) As is apparent from the letter cited above, there is in the opinion of the Ministry, no basis for drawing such a conclusion. This also becomes clear if one looks at statements in connection with audits of *psykologer* in the primary health care service or private practise.
- (25) In an audit of a private practicing *psykolog* from 2018, the Norwegian Board of Health Supervision stated that:
- “Activities as “psykolog” presuppose a significant degree of public trust, especially because the “psykolog” has an independent and direct responsibility for the treatment of the patient.”*²⁴
- (26) An audit from the County Governor²⁵ in Stange municipality can serve as an example of *psykologers* independent responsibility for diagnosing and treating mental disorders in the primary health service:

Annex 8: The County Governor's decision in supervisory case 26 April 2017

²⁰ Office translation. The cited preparatory work is Ot.prp. nr. 13 (1998-1999) Section 15.4.1:

<https://www.regjeringen.no/no/dokumenter/otprp-nr-13-1998-99-/id159428/sec1>

²¹ RO para 149 and Letter of Formal Notice para 146.

²² Cf. p. 3-4 of the Letter from the Norwegian Board of Health Supervision to the Ministry 27 August 2020.

²³ RO para 150, cf. para 149.

²⁴ Office translation of decision in supervision case 17 September 2018. Available here:

<https://www.helsetilsynet.no/tilsyn/tilsynssaker/ville-ikke-overholde-meldeplikten-til-barnevernet--advarsel-til-psykolog/>

²⁵ The County Governor supervises the health service and assesses whether enterprises or health personnel have complied with the requirements of the health legislation, cf. Section 1 of the Letter from the Norwegian Board of Health Supervision to the Ministry 27 August 2020 (Annex 6 above). The County Governor also assesses whether a case should be forwarded to the Norwegian Board of Health Supervision.

- (27) The audit from the County Governor concerned a low-threshold service that provided mental health care without diagnosing patients. However, the County Governor pointed out that this service violated the legal obligation to ensure proper health care.²⁶ The audit emphasized that *psykologer* was obliged to diagnose patients if the criteria for the diagnosis were present:

“Psykologer” are, next to doctors, the occupational group that by virtue of their basic education has diagnostic competence ... “psykologer” with their differential diagnostic competence will be able to guide other professional groups such as GPs in relation to appropriate treatment interventions. The “psykolog” must assess the diagnosis themselves - for example, it is not enough to let the referrer’s diagnosis stand without an assessment.

...

*Part of the purpose of having “psykologer” in the municipality is, among other things, to ensure that the patient receives a correct diagnosis.”*²⁷

- (28) The letter from the Norwegian Board of Health Supervision²⁷ August 2020, as well as the examples from other supervisory cases, clearly shows that *psykologer* have a direct and independent responsibility to examine, diagnose and treat patients, and that ESA’s understanding of Norwegian *psykologers* professional practice and autonomy is incorrect.

3.3.4 The national professional guidelines for health and social sciences educations

- (29) Furthermore, ESA has referred to the new Regulations on national guidelines for psychologist education (hereinafter “the Regulations”). ESA states that the Regulations “*demonstrate clearly that a “psykolog” currently is not performing independently and that this also involves primary care settings (which include work in the municipalities)*”.²⁸ The Ministry respectfully disputes this.
- (30) The Ministry would point out that the Regulation is part of a new, wider national system of regulation of health and social care educations at university and college level, and not only psychologists.²⁹ The new regulations update and coordinate the academic requirements of the various educations at the national level. They contain learning outcome descriptions of the health personnel’s *core competence* – the competence necessary to perform the expected tasks in the health services. It is presupposed that all core competence requirements are included in the national guidelines, even if the requirement is obvious or already established practice.

²⁶ Cf. Section 3-1 and 4-1 of the Health and Care Services Act.

²⁷ Office translation. The County Governor’s decision in supervisory case 26 April 2017 p. 3. Following the audit, the Ministry of Health and Care Services issued circular I -4/2017 clarifying the requirements for documentation and diagnosis when health care is provided by low-threshold services in the municipalities: <https://www.regjeringen.no/no/dokumenter/rundskriv-i-42017-om-helse--og-omsorgstjenestelovgivningens-anvendelse-ved-lavterskeltilbud--sarlig-om-krav-til-dokumentasjon-og-diagnostisering/id2563593/>

²⁸ RO para 154.

²⁹ See information about the national professional guidelines for the health and social sciences educations (RETHOS) here: <https://www.regjeringen.no/no/tema/utdanning/hoyere-utdanning/utvikling-av-nasjonale-retningslinjer-for-helse--og-sosialfagutdanningene/id2569499/> Currently, 20 new regulations have been established by the Ministry of Education and Research, and work is underway to add additional educations to this system of regulation.

- (31) ESA is therefore, in the opinion of the Ministry, mistaken when they conclude that the inclusion of a learning outcome description in the new Regulation somehow imply that this requirement has not previously been set.

3.3.5 The system of referrals and reimbursement

- (32) The Ministry has referred to *psykologers* independent right to refer patients to the specialist health service, when describing their professional practice and autonomy in Norway.³⁰ ESA has rejected this argument. ESA's argument is based on a scrutiny of the Norwegian reimbursement system which, according to ESA, has revealed that "*that the services of a "psykolog" can never be reimbursed by the social security system*".³¹
- (33) The Ministry would point out that ESA has misunderstood both the Ministry's arguments and the Norwegian reimbursement system. The Ministry has not claimed that *psykologer*, who are referring patients to the specialist health service, receive the reimbursement from the State.³² It is not the *referring party* that receive the reimbursement. It is, naturally, the *service provider*. Thus, it is not the reimbursement from the State, but the "gatekeeper function" for public funds and specialist health services, that confirms and underpins the independent responsibilities of *psykologer*.

3.4 Conclusions

- (34) To sum up, in the opinion of the Ministry, ESA's description of *psykologers* professional practice and autonomy is based on several errors regarding essential facts. There is a distinction between primary and specialist health services in Norway. *Psykologers* alleged lack of autonomy is not "*clearly reflected in the ethical guidelines of the Norwegian Psychological Association*" nor does the development of new national regulations for the health and social care educations "*demonstrate clearly that a "psykolog" currently is not performing independently*".³³ The Norwegian Board of Health Supervision is not of the opinion that only *psykologspesialister* can diagnose patients, and; finally, it is not the referring party that receives reimbursements from the state.

4 The regulation of *okleveles pszichológus* and *klinikai szakpszichológus* in Hungary

4.1 Introduction

- (35) A person with a MA-degree in psychology has the academic title *okleveles pszichológus*. An *okleveles pszichológus* is entitled to practice different non-clinical professions in the field of psychology, like these examples put forward by the Hungarian authorities:

³⁰ Ministry's letter 26 September 2018 section 4.3.2

³¹ RO para 159.

³² Ministry's letter 21 December 2018 section 4a.

³³ RO para 148 and 154.

«family assistant in child welfare services, psychological advisor, methodological consultant, tutor in children temporary homes».³⁴

- (36) A person with a MA-degree in psychology may undergo training to become *klinikai szakpszichológus*.³⁵ A *klinikai szakpszichológus* may treat patients independently, and *klinikai szakpszichológus* is regarded as an independent profession.³⁶ A person under training to become a *klinikai szakpszichológus* is called *klinikai szakpszichológus jelölt* or simply *jelölt*. *Jelölts* may perform clinical work under supervision as part of their education.³⁷ Reference is made to the description of the Hungarian regulations for providing health care services in the Ministry's letter 26 September 2018 section 5.4.
- (37) In the RO, ESA claims that the activities performed as part of the *klinikai szakpszichológus*-training are relevant when assessing which activities an *okleveles pszichológus* can perform.³⁸ This is, in the opinion of the Ministry, a wrong application of the Directive, since the Directive only covers the professional qualifications of persons that are fully qualified to practice a profession in their home State and have completed all the necessary steps to gain full access to their chosen profession, see section 6.1.
- (38) Furthermore, the Ministry believes that ESA has made incorrect factual submissions about the activities of an *okleveles pszichológus* during *klinikai szakpszichológus*-training. ESA claims that Norway “overestimates the lack of autonomy and therefore the need for supervision on an “*okleveles pszichológus*””.³⁹ ESA further submits that the supervision is only enacted as a part of the working culture, and that it happens “*merely on request of the “okleveles pszichológus*””.⁴⁰ The responsibility for the health care activities is, as ESA sees it, “*shared between them and their supervisors*”.⁴¹ However, those submissions are quite clearly contrary to what the Hungarian law and practice states, and are incorrect. In the following paragraphs, the Ministry will elaborate on this:
- According to Hungarian law, only fully qualified health professionals and persons under training may deliver health care services. Persons under training (as *jelölts*) may only work under supervision and under the instruction and responsibility of their supervisor – **section 4.2.1**

³⁴ Correspondence through IMI 26. April 2016, (Annex 2 to the Ministry's letter 26 September 2018).

³⁵ *Klinikai szakpszichológus* is a common term for all clinical psychologists in Hungary. Both the clinical psychologists (*Alkalmazott egészségpszichológiai szakpszichológia, Felnőtt klinikai és mentálhigiéniai szakpszichológia and Gyermek és ifjúsági klinikai szakpszichológia*), and the clinical psychologist with further specialisations (*Klinikai addiktológiai szakpszichológia, Neuropszichológiai szakpszichológia and Klinikai szakpszichológusi képesítéssel (pszichoterápia)*)

³⁶ Cf. Hungary's National Report (Annex 17 to the Ministry's letter 26 September 2018): “*Clinical psychologist ... can be considered as an independent profession, for which holding a qualification in general psychology (“okleveles pszichológus”) is a prerequisite for entering the training*”.

³⁷ During training, the *jelölt* have an employment contract with a hospital and are, in parallel, enrolled as students at a university. The job description is *klinikai szakpszichológus jelölt*.

³⁸ Cf. Articles 4 and 13 of the Directive.

³⁹ RO para 137.

⁴⁰ RO para 140.

⁴¹ RO para 140.

- Clinical psychology is a reserved activity for *klinikai szakpszichológus* – **section 4.2.2**
- The Hungarian rules on registration of health personnel are directly linked to which activities the different professional groups are entitled to perform. An *okleveles pszichológus* is neither considered to have health care qualifications nor a health care profession – **section 4.2.3**
- The Hungarian Medical Chamber confirms the Ministry’s legal assessments – **section 4.3**

4.2 Legislation in Hungary

4.2.1 The regulation of health care activities

(39) ESA submits that the ELTE-graduates are “*fully qualified to perform healthcare activities*” through their access to the *klinikai szakpszichológus*-training in Hungary.⁴² The Ministry respectfully disputes this. As it will be showed in the following, *okleveles pszichológus* as such cannot provide any form of health care in Hungary.

(40) The Hungarian Act on Health Care was presented in the Ministry`s letter 26 September 2018 section 5.4. Unfortunately, this was an older version of the Hungarian law. The Healthcare Act was amended on significant points in 2009.

Annex 9: The Hungarian Healthcare Act (Act CLIV 1997), per august 2018, selected provisions, English translation.

Annex 10: The Hungarian Healthcare Act (Act CLIV 1997), per august 2018, selected provisions, original version.

(41) Section 110 specifies which professionals can provide health care in Hungary. There is a clear distinction between providing health care independently and under supervision. Health care may only be provided independently by professionals who are given competence to do so in law or regulation, and are listed in the Register of Operations, cf. the second paragraph. The third paragraph regulates who can provide non-independent health care under supervision. Third paragraph letter (a) lists persons under education.

“(1) Healthcare activity, notwithstanding its form and method, shall be conducted individually or under supervision pursuant to this Act and other relevant Acts.

(2) Healthcare activity only shall be conducted individually pursuant to other relevant Acts by a person who attained proper professional qualifications [...], and listed in the operations registry. Healthcare activity conducted individually, [...] shall commence only after registration of the specialised professional qualification for conduct into the operations registry.

⁴² RO para 131-132.

(3) *A person may conduct healthcare activity, who is under the supervision of a person who meets the conditions set forth in subsection (2) [...]*

a) who is participating in training to gain the specialist professional qualifications.”

- (42) It follows from Section 110 that a person either must be fully qualified to pursue the relevant activity or do so under supervision as part of their education (non-independent health care). This is also how Hungarian authorities described Section 110 in a 2015-report to the Commission:

“According to Paragraph 110 of the Act CLIV of 1997 on health, any healthcare activity ... can be pursued independently or with the supervision of a person who is entitled to perform the relevant healthcare activity without supervision. Obtaining the necessary qualification or participating in the training to obtain the necessary qualification is a requirement in order to pursue the given healthcare activity (in the latter case, the activity can be pursued only with supervision).” (Our emphasis)

Annex 11: National Action Plan for Hungary, Report to the European Commission, 2015

- (43) Furthermore, Section 110 of the Health Care Act fifth and fifteenth paragraph regulates the framework conditions for providing non-independent health care. This can only be done “... *under the supervision and in keeping with the instructions...*” of the person with right to provide independent health care. The supervisor has full responsibility for this non-independent health care:

“(5) A person described in (3)(a)-(d) may participate in the provision of healthcare activity under the supervision and in keeping with the instructions of a person who meets the conditions set forth in subsection (2).

(15) [...] A supervising healthcare worker who is acting as supervisor shall be fully liable for healthcare activities that must not be performed individually by the person under supervision for the period of supervision. [...]”

- (44) In the area of psychology, Regulation 60/2003 provides detailed rules.⁴³ The regulation states that *okleveles pszichológus* can only work clinically under guidance or close supervision and as part of a commenced or planned *klinikai szakpszichológus*-training. This is in accordance with Section 110 third, fifth and fifteenth paragraphs of the Health Care Act. Regulation 60/2003 also states that there are limits on what clinical tasks may be performed under the training. For instance, an *okleveles pszichológus* is not allowed to diagnose.
- (45) These provisions in the Hungarian Health Care Act and Regulation 60/2003 substantiates Norway’s description of *okleveles pszichológus* professional practice and autonomy. Furthermore, the Ministry argues that it shows that ESAs claims of supervision happening “*merely on request of the “okleveles pszichológus”*”, and that the “*responsibility is shared between them and their*

⁴³ Annex 43 to the Ministry’s letter 26 September 2018.

supervisors” are unfounded and not in accordance with Hungarian law.⁴⁴ The same is true for ESAs submission that the supervision requirement only relates to “*certain healthcare-related activities*”.⁴⁵

4.2.2 Reservation of activities

- (46) Furthermore, ESA claims that Hungary does not reserve clinical psychology for *klinikai szakpszichológus*.⁴⁶ The Ministry respectfully puts forward that ESA has misunderstood the Hungarian rules. Section 103 of the Health Care Act defines clinical psychology and reserves these activities for *klinikai szakpszichológus*:

“(2) *Specialized clinical psychology is an activity conducted by a clinical and mental-hygienic specialized clinical psychologist, which*

- a) retains, improves and restores psychological health,*
- b) diagnoses, examines and discerns the causes of psychological disorders,*
- c) aims to conduct the psycho-diagnostic tests required to diagnose certain disorders, and*
- d) aims to apply psychological methods to correct psychological disorders”*

- (47) Section 103 was amended in 2009. The reason for this was that the earlier version did not explicitly state that these activities were reserved for the *klinikai szakpszichológus*. In the *travaux préparatoires* of the 2009 Amending Act it emerges that the legislature wanted to explicitly clarify that clinical psychology could not be practiced by a person with a MA-degree in psychology:

«*The amendment is essential in order to distinguish between psychologists with a humanities degree in psychology from clinical psychologists with a health-care qualification ...* »

Annex 12: Earlier version of The Health Care Act Section 103

Annex 13: Travaux préparatoires to the Health Care Act Section 103 (2009), English translation and Hungarian original.

4.2.3 The rules on registration and coding of health care workers

- (48) The Ministry notes that ESA no longer claims that an *okleveles pszichológus* can be registered as health care professionals,⁴⁷ but that the Authority instead argues that such registration is irrelevant.⁴⁸ It is, according to ESA, “*only the activities of a profession [that] are relevant*”. Again, the Ministry believes that ESA is wrong. The questions about registration and which activities a professional group can

⁴⁴ RO para 140.

⁴⁵ RO para 166.

⁴⁶ RO para 138, cf. letter of formal notice para 140: “*Hungary could have reserved the healthcare-related activities to the specialised clinical psychologist but has chosen not to*”.

⁴⁷ Letter of Formal Notice para 39.

⁴⁸ RO para 119.

carry out are inextricably linked in Hungary. The registration is a direct consequence of whether an education may provide health care or not.

- (49) The Basic Registry is a register of healthcare qualifications obtained or recognized in Hungary.⁴⁹ Thus, the registration says something about what kind of qualifications the person is deemed to have in Hungary. The register is kept at Emberi Erőforrás Fejlesztési Főigazgatóság (AEEK) and regulated by Regulation 18/2007. Registration is done automatically upon notifications from the medical education institutions to the AEEK, see the registration authorities' website.⁵⁰

Annex 14: Regulation 18/2007, English translation and Hungarian original.

Annex 15: Printout from the home page of Emberi Erőforrás Fejlesztési Főigazgatóság (AEEK), 2 September 2018.

- (50) An MA degree in psychology does not meet the conditions for entry in the basic register. This is because it is a qualification in humanities which does not give health care qualifications. AEEK has informed that a person with an MA degree in psychology cannot be registered in the basic register:

Annex 16: E-mail from the AEEK, 25.9.2018

- (51) To provide independent health care, the health care worker must be registered in the Operational Registry.⁵¹ This presupposes that the health worker is registered in the Basic Registry.⁵² Unlike the Basic Registry, entry into the Operations Registry takes place upon application.

- (52) Furthermore, the various health professions have specific codes in Hungarian legislation. Each health institution must keep a register of its health personnel and code them, see regulation 2/2004. It is only the various *klinikai szakpszichológus* that have such codes. *Okleveles pszichológus* does not have a code, because persons with this academic title are not regarded as health professionals:

Annex 17: Regulation 2/2004, English translation, and Hungarian original.

4.3 The Hungarian Medical Chamber

- (53) The Ministry has contacted the Hungarian Medical Chamber.⁵³ The Medical Chamber confirms the Ministry's interpretation of Hungarian law, including that an *okleveles pszichológus* cannot provide health care and that persons under training (*jelölts*) may only work under supervision:

Annex 18: Letter to the Hungarian Medical Chamber 24 July 2020 (English translation)

⁴⁹ Section 111 (1) of the Health Care Act (Annex 9) and Regulation 18/2007 Section 1A (Annex 14).

⁵⁰ Hungary has also described the registration process in its "National Action Plan" to the European Commission (Annex 11).

⁵¹ Section 110 (1) i.f. of the Health Care Act (Annex 9).

⁵² Section 112 (3) a) of the Health Care Act (Annex 9).

⁵³ *Klinikai szakpszichológus* are obliged to be a members of the Hungarian Medical Chamber, see Hungary's National Report (Annex 17 to the Ministry's letter 26 September 2018) p 5.

4.4 Conclusion

- (54) The Ministry respectfully submits that ESA's description of Hungarian *okleveles pszichológus*, in the same way as ESA's understanding of Norwegian *psykologers* professional practice and autonomy, is based on several factual errors and misunderstandings.
- (55) Contrary to what ESA assumes, an *okleveles pszichológus* cannot provide health care in Hungary. Clinical psychology is a reserved activity for *klinikai szakpszichológus*.⁵⁴ Commencing *klinikai szakpszichológus*-training does not mean that the *okleveles pszichológus* become “fully qualified to perform healthcare activities”.⁵⁵ It means that they can provide some of the reserved health care activities as part of their education, and then only under supervision and keeping within the instructions and responsibility of the supervising *klinikai szakpszichológus*.⁵⁶ Consequently, it is incorrect that the supervision requirement only applies to “certain healthcare-related activities” and happens “merely on request of the “okleveles pszichológus””.⁵⁷ Furthermore, ESAs claim that the “responsibility is shared between them and their supervisors” is also wrong.

5 Other factual errors in the reasoned opinion

5.1 The structures of the educations are not comparable

- (56) ESA claims that the education of an *okleveles pszichológus* and a *psykolog* is structured in the same way, and that this supports their conclusion about the professions being the same.⁵⁸ The Ministry recalls that it is the activities of the profession that is the object of comparison pursuant to Article 4 of the Directive, and not the content of the education. Nevertheless, the Ministry finds it appropriate to comment on some of what it believes to be factual misunderstandings in ESAs letter.
- (57) Reference is made to the Ministry's letter 26 September 2018 section 7.1.3 which expresses the Ministry's view on the comparability of the educations. The Ministry maintains that the complainants' BA+MA-degrees are not comparable to the professional program, due to the lack of central subjects in clinical psychology and practical subjects and skills training. Rather, the complainants' degrees are comparable to the Norwegian BA+MA program.⁵⁹ In fact, most of the complainants have a Norwegian BA-degree.

⁵⁴ Section 103 (2) of the Health Care Act (Annex 9).

⁵⁵ RO para 131-132.

⁵⁶ Section 110 (3) a), (5) and (15) of the Health Care Act (Annex 9) and Regulation 60/2003 b) and c) (Annex 43 to the Ministry's letter 26 September 2018).

⁵⁷ RO para 140 and 166.

⁵⁸ RO section 6.2.4.

⁵⁹ In Norway, some of the MA-specializations are “clinically oriented”, like the MA-program in behavioural psychology and neuroscience (<https://www.uib.no/studier/MAPS-PSYK/PSYKNEVRO>) or the program in cognitive

Annex 20: Overview over the different BA-degrees

- (58) The comparability between the complainants' degrees and the different Norwegian educational programs in psychology, was assessed by the expert panel appointed by the Directorate of Health.⁶⁰ The expert panel found that the Hungarian MA-program was comparable to the Norwegian MA-program:

“The BA-degree may be included as the first cycle of a five-year MA-program in psychology [in Norway]. However, the BA-degree cannot be equivalented to the first three years of the professional program in psychology [...]

Clinical psychology and training in psychological testing, mental health of children, adolescents, and the elderly, as well as clinical neuropsychology, are not found in the course descriptions in the applicant's educational papers. In addition to this, the practical clinical education included in the MA-degree is very limited.

The applicant's BA + MA education is considered to have significant deviations (“vesentlige avvik”) from a Norwegian professional program in psychology [...]. The expert panel has found that the discrepancies in content, progression and practical subjects/skills training are so significant that it is not possible to correct the shortcomings through supplementary education and/or supervised practice.

The assessment panel will point out that the present BA + MA education is a completed education which in scope and content, with certain reservations, can be compared with a Norwegian MA education in psychology.”⁶¹

Annex 21: Expert panel assessment 2 March 2017

- (59) The Ministry also obtained an assessment from the University of Bergen about the comparability between the Hungarian and Norwegian education. The assessment concluded that the Hungarian *klinikai szakpszichológus*-training was comparable to the Norwegian professional program:

*“Overall, we find a significant overlap between the Hungarian licensing education [the *klinikai szakpszichológus*-training] and the Norwegian professional education, both in terms of subjects, level and scope”*

Annex 22: Assessment of comparability 31 August 2018

- (60) ESA “strongly disagrees” with the Ministry’s view on this point and has emphasized that the ELTE-students in this case has chosen a specific MA-specialization at ELTE.⁶² The Ministry would point out that the MA-degree is a degree in “*general psychology*” and the holders of the title *okleveles pszichológus* “*in spite of the numerous specializations ... are trained as generalists*”.⁶³ All MA-

neuroscience (<https://www.uio.no/english/studies/programmes/psychology-master/programme-options/cogneuro/>). This does not mean that they provide competence to work clinically.

⁶⁰ The Expert panel had members both from the professional programs and the BA/MA-program.

⁶¹ Office translation, the Expert panel assessment 2 March 2017 p. 4-7.

⁶² RO para 171.

⁶³ Cf. Hungary’s National Report (Annex 17 to the Ministry’s letter 26 September 2018).

graduates will obtain the title *okleveles pszichológus* and be able to start the training to become *klinikai szakpszichológus*, regardless of which MA-specialization they choose. The consequence of ESAs argument is that an *okleveles pszichológus* with the master specialization “Clinical and Health Psychology” and another with “Work and Organizational Psychology”, either must have different professions or an *okleveles pszichológus* without a single clinical subject must be considered to have the same profession as a *psykolog*.

- (61) ESA has also submitted that “*both educations*” (i.e. the MA-degree from Hungary and the Norwegian professional program) are “*a prerequisite for entering the education for psychology specialists*”.⁶⁴ In the opinion of the Ministry, this statement by ESA shows that ESA had misunderstood essential facts, including the systems and use of titles in both Norway and Hungary for psychologists and clinical psychologists.

5.2 The special qualification programs are not compensation measures

- (62) ESA claims that Norway, through establishing a special qualification program for the ELTE-graduates “*clearly de facto accepted that the professions are “the same” as it has demonstrated that it is possible to overcome the differences in training with compensation measures*”. The Ministry respectfully disputes this.
- (63) At the outset, the Ministry would like to re-emphasise that the special qualification program was “*an extraordinary and costly one-off measure introduced to find a reasonable solution for those affected by the previous wrongful practice to resolve this concrete matter.*”⁶⁵ This has been emphasized, both to ESA and to the ELTE-graduates, as shown in the press release issued when the measure was established. The Minister of Health and Care Services has also underlined this fact.

Annex 23: Press release 15 May 2018

Annex 24: Letter from the Minister of Health and Care Services 5 October 2018

- (64) The special qualification program must be seen in the context of this particular case. While acknowledging that the ELTE-candidates had no legal basis for their claim to be a *psykolog*, their situation nevertheless created a political will to put in place a one-off measure to qualify them to become a *psykolog*. The measure was requested directly from the Education and Research Committee in the Norwegian Parliament (“Stortinget”).⁶⁶
- (65) The Ministry engaged the universities, which recommended a comprehensive course and practical training for the candidates already established in the health care services, and to include the rest in the last half of the professional program

⁶⁴ RO para 171.

⁶⁵ The Ministry’s letter 26 September 2018 section 3.3.

⁶⁶ Decision 770 from the Parliaments Education and Research Committee (Utdannings- og forskningskomiteen på Stortinget) <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=67754>

in Norway. It was underlined that these programs would “*not be as good as the six-year educational course with integrated theory, skills training and practice*”.⁶⁷

Annex 25: Letter from the Universities 13 October 2017

- (66) The Ministry found that the proposals from the universities were too comprehensive, out of consideration for the state's resources and the candidates. The universities were asked to find a more “*compressed*” and “*limited*” proposal.⁶⁸

Annex 26: Letter from the Ministry 15 February 2018

- (67) The program was reduced in line with the Ministry's request, and was later criticized from a professional point of view because the compressed program was not in line with the advices of the universities nor the expert panels⁶⁹ and did not take sufficient account of patient safety. Questions were also raised to the Minister of Health and Care Services:

Annex 27: Excerpt from Aftenposten 14 March 2018

Annex 28: Letter from the Minister of Health and Care Services 22 March 2018

- (68) The experiences from the qualification program showed that there was great variation in the competence of the candidates, and that they lacked basic knowledge in key subjects:

"We have the impression that there is variation in the level of competence [in clinical child and adolescent psychology] among the students, especially in practical and clinical exercises ... This applies in particular to practical skills such as clinical interviews, diagnostics, case formulation and treatment plans. Based on these experiences, we want the next batch to have more practical tasks and exercises and increase the number of tutors present in the classroom ...

There is a great variation in the competence of the participants [in clinical adult psychology] ... many had a very great need for this teaching since there som participants have large knowledge gaps ... It seems that the candidates have had some theoretical teaching in the subjects taught in the course but lack some competence in the clinical application of various psychotherapeutic approaches in the treatment of mental disorders in adults ...

There seemed to be great variation in the prior knowledge [in clinical neuropsychology] among the participants, some had never used assessment tools such as ability tests or specialized neuropsychological tests before, while others had some, albeit limited, experience. The most central thing in this teaching, however, is the interpretation and understanding of results from cognitive/neuropsychological examinations against various

⁶⁷ Office translation, Letter from the Universities 13 October 2017 p. 2.

⁶⁸ Office translation, Letter from the Ministry 15 February 2018 p1.

⁶⁹ See the expert panel assessment 2 March 2017 (Annex 21), where the expert panel found that “*the discrepancies in content, progression and practical topics/skills training are so significant that it is not possible to correct the shortcomings through supplementary education and/or supervised practice*”.

*pathological conditions related to diseases and/or injuries in the central nervous system. Here, our impression was that the candidates had very little prior knowledge, at least based on the holistic impression of the participants in the teaching situation. The same was the case regarding the level of basic knowledge about the central nervous system and cerebral anatomy ...*⁷⁰

Annex 29: Summary note 11 September 2019

- (69) The statistics from this autumn's qualification program confirm that the ELTE-graduates has major knowledge gaps in clinical subjects. 36% of those who completed the program did not pass the theoretical exam:

Annex 30: Distribution of results, theoretical test qualification program, 11. September 2020

- (70) This clearly shows that the qualification program was not a measure to *compensate* for shortcomings in the education of a profession.⁷¹ It was an extraordinary measure put in place to *qualify* the candidates for the profession of *pszikolog*.
- (71) Finally, the Ministry would like to note that the supervised practice in the qualification program differs in several respects from the practice typically imposed as compensatory measures in various cases under the Directive. Special learning objectives, that reflect the candidates' lack of theoretical and practical clinical competence, have been developed especially for the qualification program. There is a special framework for follow-up and supervision and the scope of the guidance is more comprehensive.
- (72) Consequently, the establishment of the special qualification programmes for the ELTE-graduates affected by the change of practise did not entailed an acknowledgment that *okleveles pszichológus* and a *pszikolog* are the same profession.

5.3 The previous practice does not support ESAs views

- (73) ESA also draws conclusions based on Norway's earlier practice, where 19 persons where given licenses and later authorisations as *pszikolog* based on an incorrect assumption that the professions where the same.⁷² The Authority claims that this practice "*has proven to be effective in covering what Norway considered to be a lack of independent practice in the Hungarian education. As far as the Authority is aware, no incidents or other patient safety problems have been notified following such supervised practice*".⁷³
- (74) The Ministry cannot see why this is legally relevant, when it is clear that an *okleveles pszichológus* is not the same profession as a *pszikolog*. Furthermore,

⁷⁰ Office translation.

⁷¹ Cf. article 14 of the Directive.

⁷² The Ministry's letter 26 September 2018 section 3.1.

⁷³ RO para 111.

reference is made to The Ministry's letter 26 September 2018 section 7.1.5, where the argument by ESA was rejected.

- (75) Moreover, the Ministry would emphasise that one cannot draw any conclusions about patient safety from the non-existence of supervisory cases. This was addressed by the Norwegian Board of Health Supervision in their letter 27 August 2020:

*"The Norwegian Board of Health Supervision does not register the place of education for health personnel in supervisory cases ... In our opinion, more extensive investigations of the individual cases will also not be appropriate. As of today, it is approximately 8,500 - 9,000 licensed psychologists in Norway. In the ten-year period 2009 - 2018, the Norwegian Board of Health Supervision dealt with 101 supervisory cases against psychologists. With this in mind, a possible occurrence of individual cases from a small subgroup, such as ELTE graduates, will not provide any statistical basis for drawing valid conclusions in one direction or another."*⁷⁴

6 As to the law

6.1 Directive 2005/36 and primary law

- (76) Reference is made to Norway's Written Observation in case E-4/20, where the Norwegian Government's view of the legal issues that arise in connection with Directive 2005/36 are explained in detail. The Ministry put forward the same pleas in law and facts in this case:

Annex 31: Written Observations from Norway, case E-4/20

- (77) The Ministry's legal and factual submissions can be summarized as follows:

An *okleveles pszichológus* does not have a "regulated training", cf. Article 13 (2) and 3 (1) a of the Directive.

- "[R]egulated education and training" must be "specifically geared to the pursuit of a given profession", cf. Article 3 of the Directive. This means that the training must prepare the candidate for the immediate pursuit of a specific profession.
- The academic title of *okleveles pszichológus* is achieved after a general MA-degree in humanities, qualifying for a wide range of professions "such as family assistant in child welfare services, psychological advisor, methodological consultant, tutor in children temporary homes".⁷⁵ It is therefore not a "regulated education and training".

⁷⁴ Office translation, p.2 of the letter from the Norwegian Board of Health Supervision to the Ministry 27 August 2020 (Annex 6).

⁷⁵ Correspondence through IMI 26 April 2016. Annex 2 to the Ministry's letter 26 September 2018.

Okleveles pszichológus and *psykolog* are not the same profession, cf. Article 4 of the Directive.

- Directive 2005/36/EC applies to persons qualified to pursue a profession in one EEA State and seeking to exercise *the same* profession in another EEA State. Two professions are the “*same*” if the activities they are fully qualified to perform are “*are identical or analogous or, in some cases, simply equivalent.*”⁷⁶ The host state may take into consideration objective differences relating to the legal framework of the profession in question. The Directive covers only the professional qualifications of persons that are *fully qualified professionals in their home State and have completed all the necessary steps in order to gain full access to their chosen profession.*
- The possibility of requiring compensation measures after Article 14 does not have any bearing on this assessment. This is a *right* of which the host state may avail itself once the conclusion has been reached that it is the “*same profession*”. It is not an *obligation* for the host state to ensure that an applicant will be allowed to study and train for a profession other than the one for which he/she is qualified for in their home State.
- In the Ministry’s view it is clear that *okleveles pszichológus* is not the same profession as *psykolog*. A *psykolog* can provide health care on an independent basis, and this constitutes the central activity for the profession. An *okleveles pszichológus* cannot provide health care in Hungary at all but is instead qualified for several non-clinical positions where psychological expertise is required.

Article 28 and 31 of the Agreement cannot serve as a basis for recognition for the complainants.

- The Ministry holds that recourse to the main part of the Agreement is not possible, due to the detailed recognition procedure, in the Directive Chapter I Title III, and which has harmonised the recognitions procedure. In the alternative, if an assessment according to the main part of the Agreement is to be carried out, the Ministry disputes that this gives the plaintiffs in this case any right to access a profession which is not the same as they are qualified for in their home state.
- Even if the Agreement were applicable and could be used to access another profession that the one you are qualified for in your home state, the complainants could still not access the profession of *psykolog*. The Norwegian authorities have, pursuant to national law, made a concrete comparison of the competence possessed by the complainants and the competence required to practice as a *psykolog* in Norway. The conclusion was that the complainants had such major deficiencies in their competence that it was not possible to repair it through either supervised practice or additional training.⁷⁷

⁷⁶ C-330/03 Colegio, para. 20. See also C-125/16 Malta Dental, para. 40.

⁷⁷ Expert panel assessment 2 March 2017 (Annex 21).

- (78) Finally, the Ministry notes that the Commission has concluded that the Directive does not apply in this case. The reasoning is, in essence, the same as the Norwegian Government has put forward – namely that the complainants are not *klinikai szakpszichológus*, which would have been the same profession as a *psykolog*. Thus, the complainants cannot rely on the Directive for recognition, since their case is a case of academic recognition.

Annex 32: Written Observations from the Commission, case E-4/20

6.2 Directive 2006/123

- (79) Reference is made to the Ministry's letter 26 September 2018 section 8.1, where the Ministry described its view on the applicability of Directive 2006/123. The Ministry maintains these arguments, which can be summarized as follows:
- Directive 2006/123 Article 2(2) f clearly stipulate that the Directive “*shall not apply*” to “*healthcare services ...*”. Healthcare services covers any activity intended to assess, maintain or restore the state of health of patients, where that activity is carried out by healthcare professionals.
 - A *psykolog* performs “*healthcare services*” in Norway, even though there are no explicitly reserved activities in the law. Norway reserves activities only implicitly, by regulating title protection and setting a due diligence requirement.⁷⁸

6.3 Case processing times

- (80) ESA has submitted that Norway's “administrative practice” does not comply with Article 51 (2) of the Directive.⁷⁹
- (81) At the outset, the Ministry would like to point out that this part of the complaint by ESA is both unclear and unprecise. The complaint by ESA seems to relate to some older cases, seemingly from 2016 and 2017. However, ESA has not demonstrated that there is a current ongoing administrative practice, which contravenes Article 51 (2) of the Directive. This raises a question of the competence of ESA to bring this plea forward, which must be addressed by ESA in any potential application before the EFTA Court on this matter. For the sake of completion, the Ministry would point out, that there has not been identified any current ongoing administrative practice which contravenes Article 51 (2) of the Directive.
- (82) That notwithstanding, the Ministry also disputes that back in 2016-2017, there was an “administrative practice” that contravened Article 51 (2). There are several reasons for this.
- (83) First of all, the Ministry submits that Article 51 (2) does not apply in the cases where an applicant holding a MA-degree in psychology from Hungary seeks access to the profession of *psykolog* in Norway. The Directive only applies to

⁷⁸ Health personell Act §§ 74 and 4. 5 Lov om helsepersonell m.v. (helsepersonelloven), LOV-1999-07-02-64.

⁷⁹ RO Section 7.

cases where an applicant seeks access to the “same profession”. Since this is not the case here, Article 51 (2) does not apply. If an *okleveles pszichológus* seeks access to the profession of *psykolog* (which is not the same profession) that is rather a question of academic recognition and is neither covered by the Directive nor Article 51.

- (84) Second, the case processing time in Article 51 (2) only starts when “the applicant’s complete file” has been submitted. This means that, if there is an objective need for the host state to gather further information in a case, the case handling time will not start until that information has been gathered. In several cases the complete file was not submitted in the application.⁸⁰ This means, that in most of the cases here, the case handling time has been in accordance with Article 51 (2). In particular, ESA has not demonstrated that back in 2016-2017 there was an “administrative practice” of contravening Article 51 (2).
- (85) Third, Article 51 (2) does not harmonize case handling times to such a degree that the normal justifications grounds are precluded. Against this background, any long processing time would in this case be justified due to public health, in particular the need to ensure that persons allowed into the Norwegian health care system to practice clinical psychology are in fact qualified to do so.
- (86) With regard to ESA's questions about the 2017-applications,⁸¹ the case processing time was dependent on several factors. The appellate body signaled in November 2017 that decisions for the first ELTE-cases would come soon. The Norwegian Directorate of Health awaited these decisions because they could have an impact on their assessment. The first appeal decisions were made ultimo December 2017. When the Norwegian Directorate of Health received these, it was decided that it was necessary to obtain new professional assessments, because ELTE University had made changes in the education due to the Norwegian practice changes. The new professional assessments were received in the beginning of June 2018. Decisions in these cases were made at the end of the same month.
- (87) Finally, the Ministry maintains that Article 51 (2) does not impose a deadline for the processing of appeals. Reference is made to Section 9.2 of the Ministry’s letter 26 September.
- (88) Against this background, the Ministry disputes the conclusion by ESA that Norway has an “administrative practice” which contravenes Article 51 (2) of the Directive. ESA has, in the alternative, submitted that the administrative practice constitutes a breach of Article 13 of Directive 2006/123/EC and/or Article 28/31 EEA. This has not been substantiated by ESA, and the Ministry disputes this.

6.4 Conclusion

- (89) The Ministry respectfully disputes the conclusion by ESA and maintains that there has been no violation of either Directive 2005/36/EC, Directive 2006/123/EC or Article 28 or 31 EEA.

⁸⁰ Cf. Section 9.1 of the Ministry’s letter 26 September 2018.

⁸¹ RO para 198-199.

(90) In the view of the Ministry, the RO by ESA is based on several errors, both in law and in fact. ESA has misunderstood the professional practise and autonomy of both a Norwegian psykolog and a Hungarian *okleveles pszichológus*. This, together with ESA's incorrect legal assessments, has led the Authority to conclude incorrectly.

Yours sincerely

Maiken Engelstad
Deputy Director General

Jon Espelid
Senior Adviser

This document is signed electronically and has therefore no handwritten signature

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