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ECLI:EU:C:2021:135

Provisional text

JUDGMENT OF THE COURT (First Chamber)

25 February 2021 (\*)

(Reference for a preliminary ruling – Recognition of professional qualifications – Directive 2005/36/EC – Article 4f(6) – National regulation – Allowing for the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications)

In Case C-940/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 19 December 2019, received at the Court on 30 December 2019, in the proceedings

**Les chirurgiens-dentistes de France**, formerly the Confédération nationale des syndicats dentaires,

**Confédération des syndicats médicaux français**,

**Fédération des syndicats pharmaceutiques de France**,

**Syndicat des biologistes**,

**Syndicat des laboratoires de biologie clinique**,

**Syndicat des médecins libéraux**,

**Union dentaire**,

**Conseil national de l'ordre des chirurgiens-dentistes**,

**Conseil national de l'ordre des masseurs-kinésithérapeutes**,

**Conseil national de l'ordre des infirmiers**,

**Ministre des Solidarités et de la Santé,**

**Ministre de l'Enseignement supérieur, de la Recherche et de l'Innovation,**

**Premier ministre,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen (Rapporteur), C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- les chirurgiens-dentistes de France, the confédération des syndicats médicaux français, the fédération des syndicats pharmaceutiques de France, the syndicat des biologistes, the syndicat des laboratoires de biologie clinique, the syndicat des médecins libéraux and the union dentaire, by V. Pellegrain, avocate,
- the conseil national de l'ordre des chirurgiens-dentistes, by F. Thiriez, avocat,
- the conseil national de l'ordre des infirmiers, by O. Smallwood, avocat,
- the French Government, by A.-L. Desjonquères, N. Vincent and A. Daniel, acting as Agents,
- the Czech Government, by M. Smolek, J. Vláčil and I. Gavrilová, acting as Agents,
- the Austrian Government, by A. Posch and J. Schmoll, acting as Agents,
- the European Commission, by L. Armati, H. Støvlbæk and C. Vrignon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 October 2020,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Articles 4f(6) of 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), as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 (OJ 2013 L 354, p. 132) ('Directive 2005/36 as amended').

2 The request has been brought in proceedings between les chirurgiens-dentistes de France, formerly the confédération nationale des syndicats dentaires, the confédération des syndicats médicaux français, the fédération des syndicats pharmaceutiques de France, the syndicat des

biologistes, the syndicat des laboratoires de biologie clinique, the syndicat des médecins libéraux and the union dentaire as well as the conseil national de l'ordre des chirurgiens-dentistes, the conseil national de l'ordre des masseurs-kinésithérapeutes and the conseil national de l'ordre des infirmiers (together, 'les chirurgiens-dentistes de France and Others'), on the one hand, and the Ministre des Solidarités et de la Santé (Minister for Solidarity and Health), the Ministre de l'Enseignement supérieur, de la Recherche et de l'Innovation (Minister for Higher Education, Research and Innovation) and the Premier ministre (Prime Minister), on the other hand, relating to an action seeking annulment of regulatory measures concerning certain aspects of the partial access to healthcare professions.

## **Legal context**

### *EU law*

#### *Directive 2013/55*

3 According to recital 1 of Directive 2013/55, Directive 2005/36, in its original version, provides for automatic recognition for a limited number of professions based on harmonisation of minimum training requirements.

4 Recital 7 of Directive 2013/55 is worded as follows:

'Directive 2005/36/EC applies only to professionals who want to pursue the same profession in another Member State. There are cases where, in the host Member State, the activities concerned are part of a profession with a larger scope of activities than in the home Member State. If the differences between the fields of activity are so large that a full programme of education and training would be required from the professional to compensate for shortcomings, and if the professional so requests, a host Member State should under these particular circumstances grant partial access. However, where there are overriding reasons of general interest, as defined by the Court of Justice of the European Union in its case-law relating to Articles 49 and 56 of the Treaty on the Functioning of the European Union and which may continue to evolve, a Member State should be able to refuse partial access. This may in particular be the case for health professions if they have public health or patient safety implications. Granting partial access should be without prejudice to the right of social partners to organise themselves.'

#### *Directive 2005/36 as amended*

5 Recitals 1 and 19 of Directive 2005/36 as amended state as follows:

'(1) 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.

[...]

(19) Freedom of movement and the mutual recognition of the evidence of formal qualifications of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives,

pharmacists and architects should be based on the fundamental principle of automatic recognition of the evidence of formal qualifications on the basis of coordinated minimum conditions for training. [...]

6 Article 1 of that directive, headed ‘Purpose’, provides:

‘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.

This Directive also establishes rules concerning partial access to a regulated profession and recognition of professional traineeships pursued in another Member State.’

7 Article 4 of the directive, entitled ‘Effects of recognition’, states:

‘1. The recognition of professional qualifications by the host Member State shall allow beneficiaries to gain access in that Member State to the same profession as that for which they are 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.

3. By way of derogation from paragraph 1, partial access to a profession in the host Member State shall be granted under the conditions laid down in Article 4f.’

8 Article 4f of Directive 2005/36 as amended, entitled ‘Partial access’, is worded as follows:

‘1. The competent authority of the host Member State shall grant partial access, on a case-by-case basis, to a professional activity in its territory only when all the following conditions are fulfilled:

(a) the professional is fully qualified to exercise in the home Member State the professional activity for which partial access is sought in the host Member State;

(b) differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that the application of compensation measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;

(c) the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State.

For the purpose of point (c), the competent authority of the host Member State shall take into account whether the professional activity can be pursued autonomously in the home Member State.

2. Partial access may be rejected if such rejection is justified by overriding reasons of general interest, suitable for securing the attainment of the objective pursued, and does not go beyond what is necessary to attain that objective.
3. Applications for the purpose of establishment in a host Member State shall be examined in accordance with Chapters I and IV of Title III.
4. Applications for the purpose of providing temporary and occasional services in the host Member State concerning professional activities that have public health or safety implications shall be examined in accordance with Title II.
5. By derogation from the sixth subparagraph of Article 7(4) and Article 52(1), the professional activity shall be exercised under the professional title of the home Member State once partial access has been granted. The host Member State may require use of that professional title in the languages of the host Member State. Professionals benefiting from partial access shall clearly indicate to the service recipients the scope of their professional activities.
6. This Article shall not apply to professionals benefiting from automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III.'

9 Included in Chapter III of Title III of Directive 2005/36 as amended, which relates to 'recognition on the basis of coordination of minimum training conditions', the first subparagraph of Article 21(1) of that Directive, entitled 'Principle of automatic recognition', provides that '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'.

### ***French law***

10 Article L. 4002-3 of the Code de la santé publique (Public Health Code) opens up the possibility of partial access to all health professions governed by Part IV of that code, including, consequently, the professions to which the mechanism of automatic recognition of professional qualifications applies.

11 The décret No 2017-1520 du 2 novembre 2017, relatif à la reconnaissance des qualifications professionnelles dans le domaine de la santé (Decree No 2017-1520 of 2 November 2017 on the recognition of professional qualifications in the health sector) was adopted to implement, inter alia, Article L. 4002-3 of the Public Health Code.

12 The arrêtés de la ministre des Solidarités et de la Santé des 4 et 8 décembre 2017 (Orders of the Minister for Solidarity and Health of 4 and 8 December 2017) were adopted to implement Decree No 2017-1520 of 2 November 2017.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

13 Les Chirurgiens-dentistes de France and Others brought several actions before the Conseil d'État (Council of State, France) for misuse of powers, seeking, as appropriate, the annulment, in whole or in part, of Decree No 2017-1520 of 2 November 2017, and/or the annulment of the Orders of the Minister for Solidarity and Health of 4 December 2017 and/or of 8 December 2017.

14 With regard to the said decree, les Chirurgiens-dentistes de France and Others who attacked it argued, inter alia, that Article L. 4002-3 of the Public Health Code, which is the legal basis of that decree, was incompatible, in so far as it applies to the professions of doctor, dental surgeon, midwife and nurse, with Article 4f(6) of Directive 2005/36 as amended, so that that decree therefore unlawfully included the professions covered by Chapter III of Title III of that directive within the scope of partial access.

15 As regards the two orders at issue in the main proceedings, it has been argued, in particular, that they are unlawful in so far as they relate to professions falling within Chapter III of Title III of Directive 2005/36 as amended, those professions being excluded from the partial access mechanism provided for in Article 4f(6) of that directive.

16 According to the referring court, since Decree No 2017-1520 of 2 November 2017 was adopted on the basis of Article L. 4002-3 of the Public Health Code, the question whether Article 4f(6) of Directive 2005/36 as amended must be interpreted as precluding a Member State from introducing the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications laid down by the provisions of Chapter III of Title III of that directive is decisive for the resolution of the dispute and presents a serious difficulty. As regards the legality of the two contested orders, it depends on the legality of that decree, which constitutes their legal basis.

17 In those circumstances, the Conseil d'État (Council of State) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Article 4f(6) of Directive 2005/36 [as amended] preclude a Member State from introducing the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications laid down by the provisions of Chapter III of Title III of that directive?'

### **Consideration of the question referred**

18 By its question, the referring court asks, in essence, whether Article 4f(6) of Directive 2005/36 as amended must be interpreted as precluding legislation which allows for the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications laid down by the provisions of Chapter III of Title III of that directive.

19 In that respect, according to the Court's settled case-law, where provisions of EU law do not refer to the law of the Member States for the purpose of determining their meaning and scope, they must be given an autonomous and uniform interpretation throughout the European Union, which interpretation must take into account not only the wording of those provisions but also their context and the objective pursued by the legislation in question (judgment of 21 October 2020, *Möbel Kraft*, C-529/19, EU:C:2020:846, paragraph 21 and the case-law cited).

20 As is apparent from recital 19 of Directive 2005/36 as amended, that directive provides, with regard to the evidence of formal qualifications of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects, for a system of automatic

recognition of the evidence of formal qualifications based on coordinated minimum training conditions (see, to that effect, judgment of 30 April 2014, *Ordre des architectes*, C-365/13, EU:C:2014:280, paragraph 20).

21 By virtue of Article 4f(6) of Directive 2005/36 as amended, that article does not apply to professionals benefiting from automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III of that directive.

22 Thus, it follows from the wording of that provision that it is the professionals benefiting from the automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III of that directive, and not the professions which are concerned by such an automatic recognition, which are excluded from the partial access provided for in Article 4f(1) to (5) of Directive 2005/36 as amended.

23 The wording of Article 4f(6) of Directive 2005/36 as amended makes it thus clear that it refers to individuals.

24 Such a literal interpretation of that provision is consistent with the context and purpose of that directive.

25 In that regard, it must be stated that both the origins of Directive 2005/36 and the scheme thereof confirm that the EU legislature intended to distinguish between the use of the term ‘professions’ and that of ‘professionals’.

26 First, it is apparent from the examination of the file submitted to the Court that, although the Proposal for a Directive of the European Parliament and of the Council amending Commission Directive 2005/36 (COM(2011) 883 final) did not contain any provision such as that in the current Article 4f(6) of Directive 2005/36, the European Parliament proposed an amendment designed to exclude from partial access professions benefiting from automatic recognition.

27 However, the term ‘professionals’ was preferred after agreement between the institutions involved in the legislative process.

28 Second, as regards the scheme of automatic recognition, although Article 4f(6) of Directive 2005/36 as amended refers to ‘professionals’ benefiting from it, other provisions of that directive, such as those mentioned by the Advocate General in point 23 and footnote 4 of his Opinion, refer, on the contrary, to the ‘professions’ which benefit or not from that scheme.

29 Furthermore, it must be borne in mind that, according to recital 7 of Directive 2013/55, where there are overriding reasons of general interest, a Member State should be able to refuse partial access, in particular for health professions if they have public health or patient safety implications. Health professions include, inter alia, professions concerned by the automatic recognition of professional qualifications, such as those of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives and pharmacists, which are referred to in Article 21 of Directive 2005/36 as amended and benefit from automatic recognition. Therefore, the fact that partial access to those professions may be refused presupposes that, as a rule, partial access to those professions is not excluded.

30 Such partial access satisfies, first, the general objective of the abolition, as between Member States, of obstacles to the free movement of persons and services, as set out in recital 1 of Directive 2005/36 as amended. Second, it also meets the more specific objective set out in recital 7 of

Directive 2013/55, namely to go beyond Directive 2005/36, which applied only to professionals wishing to pursue the same profession in another Member State, and to grant partial access to professionals requesting that access where, in the host Member State, the activities concerned are part of a profession with a larger scope of activities than in the home Member State and the differences between the fields of activity are so large that a full programme of education and training would be required from the professionals to compensate for shortcomings.

31 In the absence of the possibility of partial access to the health professions listed in paragraph 28 above, namely the professions listed in Chapter III of Title III of Directive 2005/36 as amended, many health professionals qualified in a Member State in order to pursue certain activities that are covered by one of those professions but do not correspond, in the host Member State, to an existing profession, would continue to face obstacles to mobility.

32 Furthermore, as observed by the Advocate General, in essence, in point 33 of his Opinion, authorising partial access for activities included in the professions concerned by automatic recognition under, *inter alia*, Chapter III of Title III of Directive 2005/36 as amended, is not such as to undermine the harmonisation of the minimum training requirements for those professions, as set out in recital 1 of Directive 2013/55.

33 It is apparent from Article 4f(5) of Directive 2005/36 as amended that the activities allowed in the context of partial access to a regulated profession are to be exercised under the professional title of the home Member State, if necessary translated into the languages of the host Member State, and under the condition that the professionals concerned must clearly indicate to the service recipients the scope of their professional activities. Thus, the fact of being entitled to pursue only part of the activities included in a profession concerned by automatic recognition does not call into question the system established by that directive, under which only persons meeting the minimum training requirements laid down by the directive for a profession concerned by automatic recognition may actually benefit from such recognition and pursue all the activities which such a profession includes.

34 Consequently, Article 4f(6) of Directive 2005/36 as amended therefore implies, as the Commission in essence submitted in its written observations, that the professionals benefiting from the automatic recognition of their professional qualifications under, *inter alia*, Chapter III of Title III of that directive are to have access to all of the activities covered by the corresponding profession in the host Member State and that they are therefore not concerned by partial access. By contrast, that provision does not imply that the professions referred to in Chapter III of Title III are not concerned by partial access.

35 In the light of the foregoing considerations, the answer to the question referred is that Article 4f(6) of Directive 2005/36 as amended must be interpreted as not precluding legislation which allows for the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications laid down by the provisions of Chapter III of Title III of that directive.

### **Costs**

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:



**Article 4f(6) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, must be interpreted as not precluding legislation allowing for the possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualifications laid down by the provisions of Chapter III of Title III of that directive, as amended.**

[Signatures]

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\* Language of the case: French.

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