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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

21 September 2017 (*)

(Reference for a preliminary ruling — Directive 2005/36/EC — Recognition of professional qualifications — Dental technologists — Conditions governing the practice of the profession in the host Member State — Requirement for the compulsory intermediation of a dental practitioner — Application of that requirement in the case of clinical dental technologists pursuing their profession in the home Member State — Article 49 TFEU — Freedom of establishment — Restriction — Justification — Public interest objective of ensuring the protection of public health — Proportionality)

In Case C-125/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Prim'Awla tal-Qorti Ċivili (First Hall of the Civil Court, Malta), made by decision of 23 February 2016, received at the Court on 29 February 2016, in the proceedings

Malta Dental Technologists Association,

John Salomone Reynaud

v

Superintendent tas-Sahha Pubblika,

Kunsill tal-Professjonijiet Kumplimentari għall-Medicina,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2017,

after considering the observations submitted on behalf of:

- the Malta Dental Technologists Association and Mr Reynaud, by T. Azzopardi, avukat,
- the Kunsill tal-Professjonijiet Kumplimentari għall-Mediċina, by S. Bailey and V. Cuschieri, avukati,
- the Maltese Government, by A. Buhagiar, acting as Agent,
- the Czech Government, by J. Vláčil and M. Smolek, acting as Agents,
- the Spanish Government, by A. Rubio González and A. Gavela Llopis, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by M. Russo, avvocato dello Stato,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by H. Støvlbæk and J. Aquilina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 June 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49, 52 and 56 TFEU, and 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').

2 The request has been made in proceedings between the Malta Dental Technologists Association ('the MDTA') and Mr John Salomone Reynaud, on the one hand, and the Superintendent tas-Saħħa Pubblika (Superintendent of Public Health, Malta) ('the Superintendent') and the Kunsill tal-Professjonijiet Kumplimentari għall-Mediċina (Council for Complementary Medicine Professions, Malta) ('the CCMP'), on the other, concerning the application for recognition in Malta of the professional qualifications of clinical dental technologists ('the CDTs').

Legal context

EU law

3 Recital 3 of Directive 2005/36 states:

'The guarantee conferred by this Directive on persons having acquired their professional qualifications in a Member State to have access to the same profession and pursue it in another

Member State with the same rights as nationals is without prejudice to compliance by the migrant professional with any non-discriminatory conditions of pursuit which might be laid down by the latter Member State, provided that these are objectively justified and proportionate.’

4 Article 1 of that directive, entitled ‘Purpose’, is worded as follows:

‘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.’

5 Article 3 of that directive, entitled ‘Definitions’, provides in paragraph 1:

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

(a) “regulated profession”: a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; ...

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

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

...

(e) “regulated education and training”: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice.

...’

6 Article 4 of that directive, entitled ‘Effects of recognition’, provides:

‘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.’

7 Under Article 4f of Directive 2005/36, entitled ‘Partial access’:

‘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;

...’

8 Chapter I of Title III of that directive is entitled ‘General system for the recognition of evidence of training’. That chapter comprises Articles 10 to 14 of that directive.

9 Article 10 of that directive, entitled ‘Scope’, provides:

‘This Chapter applies to all professions which are not covered by Chapters II and III of this Title ...’

10 Article 11 of Directive 2005/36, entitled ‘Levels of qualification’, groups the qualifications together for the purposes of Article 13 and Article 14(6) of that directive.

11 Article 13 of Directive 2005/36, entitled ‘Conditions for recognition’, provides in the first subparagraph of paragraph 1:

‘If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit applicants to access and pursue that profession, under the same conditions as apply to its nationals, if they possess an attestation of competence or evidence of formal qualifications referred to in Article 11, required by another Member State in order to gain access to and pursue that profession on its territory.’

12 Chapter III of Title III of Directive 2005/36 is entitled ‘Recognition on the basis of coordination of minimum training conditions’. That chapter comprises Articles 21 to 49 of the directive.

13 Under Article 34 of Directive 2005/36, entitled ‘Basic dental training’:

‘1. Admission to basic dental training presupposes possession of a diploma or certificate giving access, for the studies in question, to universities or higher institutes of a level recognised as equivalent, in a Member State.

...

3. Basic dental training shall provide an assurance that the person in question has acquired the following knowledge and skills:

- (a) adequate knowledge of the sciences on which dentistry is based and a good understanding of scientific methods, including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;
- (b) adequate knowledge of the constitution, physiology and behaviour of healthy and sick persons as well as the influence of the natural and social environment on the state of health of the human being, in so far as these factors affect dentistry;
- (c) adequate knowledge of the structure and function of the teeth, mouth, jaws and associated tissues, both healthy and diseased, and their relationship to the general state of health and to the physical and social well-being of the patient;
- (d) adequate knowledge of clinical disciplines and methods, providing the dentist with a coherent picture of anomalies, lesions and diseases of the teeth, mouth, jaws and associated tissues and of preventive, diagnostic and therapeutic dentistry;
- (e) suitable clinical experience under appropriate supervision.

This training shall provide him with the skills necessary for carrying out all activities involving the prevention, diagnosis and treatment of anomalies and diseases of the teeth, mouth, jaws and associated tissues.’

14 Article 36 of that directive, entitled ‘Pursuit of the professional activities of dental practitioners’, provides:

‘1. For the purposes of this Directive, the professional activities of dental practitioners are the activities defined in paragraph 3 and pursued under the professional qualifications listed in Annex V, point 5.3.2.

2. The profession of dental practitioner shall be based on dental training referred to in Article 34 and shall constitute a specific profession which is distinct from other general or specialised medical professions. Pursuit of the activities of a dental practitioner requires the possession of evidence of formal qualifications referred to in Annex V, point 5.3.2. ...

3. The Member States shall ensure that dental practitioners are generally able to gain access to and pursue the activities of prevention, diagnosis and treatment of anomalies and diseases affecting the teeth, mouth, jaws and adjoining tissue, having due regard to the regulatory provisions and rules of professional ethics on the reference dates referred to in Annex V, point 5.3.2.’

Maltese law

15 Article 2 of the Att dwar il-Professjonijiet tas-Sahħa (Kapitolu 464 tal-Liġijiet ta’ Malta) (Law on Health Care Professions (Chapter 464 of the Laws of Malta)) defines a ‘professional pursuing a complementary medicine profession’ as ‘a health care professional whose name appears in the register of complementary medicine professions referred to in Article 28’.

16 Under Article 25(1) of that law:

‘No person is authorised to pursue a complementary medicine profession unless his name appears on the relevant register managed by the [CCMP], in accordance with the provisions of this law.’

17 Article 28(1) of that law provides:

‘The [CCMP] keeps separate registers, relating to each of the complementary medicine professions listed in Annex III ... which, at the request of the person concerned, will record the name of every national from Malta or from a Member State holding:

- (a) all qualifications, as outlined, obtained from the University of Malta or from a training establishment, or after completing training organised by the Minister of Health, in the profession for which a separate register is kept, or
- (b) a qualification obtained from a Member State and recognised in accordance with the Law on the mutual recognition of qualifications or any regulation adopted on the basis of that law, or
- (c) a qualification in that profession obtained from another university or from another educational establishment recognised by the [CCMP]

provided that, for the purposes of that qualification, the [CCMP] may require that the person concerned successfully completes a professional and linguistic ability examination.’

18 Annex III to the Law on Health Care Professions (Chapter 464 of the Laws of Malta), which lists complementary medicine professions, refers to the profession of dental technologist, but not the profession of CDT.

The dispute in the main proceedings and the questions referred for a preliminary ruling

19 The MDTA and Mr Reynaud submitted an application to the referring court for recognition in Malta of the professional qualifications of CDTs. By their application, they sought an order requiring the Superintendent and the CCMP to register in Malta CDTs recognised in other Member States and to permit those technologists to pursue their profession in that Member State. In addition, the MDTA and Mr Reynaud sought a declaration that CDTs may pursue their profession without the need for the patient to be referred to them by a dental practitioner.

20 CDTs are specialists in the area of dental appliances, including the crafting of dentures or false teeth, who also carry out repairs and alterations to dentures and to dental prostheses.

21 The MDTA and Mr Reynaud submit that the activity of the CDTs does not pose a risk of irreversible harm to the patients, given that, if the dental appliance is defective, the sole consequence will be that that appliance will have to be adjusted or replaced.

22 It is clear from the order for reference that CDTs are not recognised in Malta and that, therefore, they may not pursue their profession there; only dental technologists are recognised and registered in that Member State.

23 The MDTA and Mr Reynaud do not request that the profession of CDTs be recognised as a health care profession distinct from the profession of dental technologist, but that CDTs be included in the register of dental technologists managed by the CCMP.

24 The referring court states that the application of the MDTA and of Mr Reynaud concerns the cross-border practice of the profession of CDT by persons wishing to establish themselves in Malta. It adds that the Maltese rules, in that respect, do not discriminate in any way between Maltese nationals and nationals from other Member States, in that the profession of CDT is not recognised generally, without any distinction being made on the basis of the nationality of the persons concerned.

25 Taking the view that the resolution of the case in the main proceedings depends on the interpretation of Articles 49, 52 and 56 TFEU and of Directive 2005/36, the *Prim'Awla tal-Qorti Ċivili* (First Hall of the Civil Court, Malta) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is the prohibition by the Maltese health authorities, or their refusal to grant recognition to the profession of [CDTs]/denturists, whereby, despite the absence of discrimination in law, individuals from other Member States who have made an application in this respect are in practice precluded from establishing their profession in Malta, incompatible with the principles and the legal provisions regulating the creation of the single market, in particular those resulting from Articles 49, 52 and 56 TFEU, in a situation where there is no risk to public health?

(2) Should Directive 2005/36 ... be applied with respect to [CDTs] in view of the fact that, should a denture prove to be defective, the only consequence would be that the defective dental appliance would have to be modified or replaced, without any risk to the patient?

(3) Can the prohibition by the Maltese health authorities, which is being contested in the present case, serve to ensure the aim of having a high level of public health protection, when any defective denture can be replaced without any risk to the patient?

(4) Does the way in which the Superintendent ... interprets and enforces Directive 2005/36 ... with respect to [CDTs] who have applied for recognition by the same Maltese health authorities constitute an infringement of the principle of proportionality?’

Admissibility of the request for a preliminary ruling

26 The Maltese Government submits, in its written observations, that the questions referred by the national court are inadmissible in that, in the first place, they were formulated too early in the national proceedings and did not give the parties the opportunity to present their evidence; in the second place, they are based on the incorrect assumption that the activities of CDTs do not pose a risk to human health; and in the third place, they are based on the incorrect conclusion that it is impossible for CDTs from other Member States to pursue their professional activities in Malta.

27 In its written observations, the Austrian Government questions whether the Court has jurisdiction to answer the questions referred in that the dispute in the main proceedings does not contain any cross-border element, since the MDTA, which brought the action before the referring court, is a Maltese association.

28 In this respect, it should be noted that, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it

the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 20 and the case-law cited).

29 Furthermore, it is for the national court to decide at what stage in the proceedings it is appropriate for that court to refer a question to the Court of Justice for a preliminary ruling (judgment of 17 April 2007, *AGM-COS.MET*, C-470/03, EU:C:2007:213, paragraph 45 and the case-law cited).

30 As regards the alleged absence, in the eyes of the Austrian Government, of any cross-border element in the dispute in the main proceedings, it should be pointed out that, apart from the fact that the questions concern, not only the provisions of the TFEU, but also Directive 2005/36, the national court referred the matter to the Court of Justice in proceedings, brought by an association of dental technologists, that is to say, the MDTA, concerning the lawfulness of national provisions which apply, not only to Maltese nationals, but also to nationals from other Member States. Accordingly, the decision which that court will adopt following the ruling of the Court of Justice will also have effects on the nationals of other Member States (see, to that effect, judgments of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 35, and of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 51).

31 It follows that the request for a preliminary ruling is admissible.

Substance

32 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the provisions of the TFEU, concerning fundamental freedoms, and of Directive 2005/36 must be interpreted to the effect that they preclude legislation of a Member State, such as that at issue in the main proceedings, which stipulates that the activities of a dental technologist must be pursued in collaboration with a dental practitioner, inasmuch as that requirement is applicable, in accordance with that legislation, to CDTs who obtained their professional qualifications in another Member State and who wish to pursue their profession in the first Member State.

33 As a preliminary point, it should be pointed out that, under Article 1, Directive 2005/36 establishes rules according to which a Member State, that is to say, the host Member State, which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications, must recognise professional qualifications obtained in one or more other Member States, that is to say, the home Member State or States, and which allow the holder of those qualifications to pursue the same profession there, for access to and pursuit of that profession.

34 Under Article 3(1)(a) of Directive 2005/36, ‘regulated profession’ means a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications. Thus, the definition of ‘regulated profession’ within the meaning of that directive is a matter of EU law (judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 36 and the case-law cited).

35 It follows from Article 3(1)(b), (c) and (e) of Directive 2005/36 that the concept of ‘specific professional qualifications’ in Article 3(1)(a) of that directive covers all qualifications relating to

training which is specifically designed to prepare candidates to exercise a given profession (see, to that effect, judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 38).

36 As is clear from the order for reference, the evidence of university training required under Article 28 of the Law on Health Care Professions (Chapter 464 of the Laws of Malta) in order to be able to gain access to complementary medicine professions specifically aims to prepare candidates to exercise such professions. Annex III to that law refers to the profession of dental technologist among the complementary medicine professions.

37 Therefore, subject to the referring court's supervision of compliance with Article 3(1)(b), (c) and (e) of Directive 2005/36 with regard to the professional qualifications requirements for dental technologists, laid down in Maltese law, it must be concluded that the profession of dental technologist constitutes a regulated profession in Malta, within the meaning of Article 3(1)(a) of that directive.

38 Since the profession of dental technologist is not covered by Chapters II and III of Title III of Directive 2005/36, it is therefore subject to the general system for the recognition of evidence of training, laid down in Chapter I of that title, and in particular Articles 10 to 14 of that directive.

39 Under the first subparagraph of Article 13(1) of that directive, if access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State must permit applicants to access and pursue that profession, under the same conditions as apply to its nationals, if they possess an attestation of competence or evidence of formal qualifications referred to in Article 11 of that directive, required by another Member State in order to gain access to and pursue that profession on its territory.

40 The expression 'that profession' in the first subparagraph of Article 13(1) of Directive 2005/36 must be construed as covering professions which, in the home Member State and the host Member State, are identical or analogous or, in some cases, simply equivalent in terms of the activities they cover (see, to that effect, judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03, EU:C:2006:45, paragraph 20).

41 It falls to the referring court to take account of each of the activities covered by the profession in question in both Member States concerned, that is to say the profession of dental technologist in Malta and the profession of CDT in another Member State, in order to determine whether it actually is the same profession for the purposes of the first subparagraph of Article 13(1) of Directive 2005/36 (see, to that effect, judgment of 19 January 2006, *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03, EU:C:2006:45, paragraph 20).

42 In that respect, it must be concluded that it is clear from the documents submitted to the Court that, in the main proceedings, the competent Maltese authorities are not denying CDTs access to the profession of dental technologist, bearing in mind that the activities of CDTs and their professional qualifications correspond to those of dental technologists in Malta.

43 In those circumstances, and subject to the checks which the referring court must carry out in accordance with the criteria set out in paragraph 41 above, it is possible that the profession of dental technologist and that of CDT may be considered to be the same profession, for the purposes of the first subparagraph of Article 13(1) of Directive 2005/36.

44 Furthermore, the fact, referred to in the order for reference, that the qualifications for a CDT required by a home Member State exceed the qualifications required for a dental technologist whose profession is regulated in the host Member State is not relevant in that respect.

45 That being so, it is appropriate to examine the requirement, under Maltese legislation, that the activities of dental technologists in Malta must be pursued in collaboration with a dental practitioner, since those technologists are not authorised to work in direct contact with patients, other than through such a practitioner.

46 In that respect, it must be concluded that the conditions for pursuing the profession of a dental technologist or that of a CDT are not harmonised as such by Directive 2005/36.

47 As the Advocate General observed, in essence, in point 13 of his Opinion, it is apparent from Article 4 of Directive 2005/36, as interpreted in the light of recital 3 of that directive, that it falls to the host Member State to determine the conditions for pursuing a regulated profession, in compliance with EU law.

48 Therefore, a person pursuing the profession of a CDT in his home Member State could not rely on Directive 2005/36 in order to challenge a requirement that the profession of dental technologist must be pursued in collaboration with a dental practitioner, such as the one at issue in the main proceedings.

49 As the Advocate General stated, in essence, in point 13 of his Opinion, to decide otherwise would amount to forcing a Member State to model the conditions for the exercise of a profession on the conditions prevailing in other Member States and would make it possible to use that directive as a means of circumventing the conditions for the exercise of regulated professions which have not yet been harmonised.

50 Although it is true that some activities of CDTs may fall within the activities of the profession of a dental practitioner and that Article 4f of Directive 2005/36, under certain conditions, provides for partial access to a professional activity, it must be recalled, in any event, that the applicants in the main proceedings never sought partial access to the profession of dental practitioner, in accordance with Article 4f(1)(a).

51 Thus, without it even being necessary to rule on the question whether such partial access would, in the present case, be legally possible, it must be concluded that, in the circumstances of the main proceedings, Article 4f of Directive 2005/36 is not applicable.

52 In addition, it is necessary to assess whether, in relation to those aspects of the conditions for the exercise of the profession of dental technologist or that of CDT, which are not harmonised by Directive 2005/36, the requirement for the exercise of the profession of dental technologist in collaboration with a dental practitioner complies with the TFEU.

53 In that respect, it must be recalled that the Member States must, when exercising their powers to determine the conditions referred to in the preceding paragraph, respect the basic freedoms guaranteed by the TFEU (see, by analogy, judgment of 27 June 2013, *Nasiopoulos*, C-575/11, EU:C:2013:430, paragraph 20 and the case-law cited).

54 It is true that, in accordance with Article 168(7) TFEU, as interpreted in the case-law of the Court, EU law does not detract from the power of the Member States to adopt provisions aimed at organising their health services. In exercising that power, however, the Member States must comply

with EU law, in particular the provisions of the TFEU on the freedom of establishment, which prohibit the Member States from introducing or maintaining unjustified restrictions on the exercise of that freedom in the health care sector (judgment of 26 September 2013, *Ottica New Line*, C-539/11, EU:C:2013:591, paragraph 24 and the case-law cited).

55 In that respect, it must be concluded that, in so far as CDTs are authorised, in the home Member State, to work in direct contact with patients without the compulsory intermediation of a dental practitioner, the requirement for such an intermediation, under the legislation of the host Member State in relation to dental technologists, may make the exercise of their freedom of establishment, guaranteed under Article 49 TFEU, less attractive.

56 It is settled case-law that restrictions on freedom of establishment which are applicable without discrimination on grounds of nationality may be justified by overriding reasons relating to the general interest, provided that the restrictions are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for attaining that objective (judgment of 26 September 2013, *Ottica New Line*, C-539/11, EU:C:2013:591, paragraph 33 and the case-law cited).

57 In the main proceedings, the requirement for that compulsory intermediation is based on the premiss that only persons who pursued the dental training referred to in Article 34 of Directive 2005/36 and who have evidence of basic dental training are sufficiently qualified to pursue the activities, listed in Article 36(3) of that directive, of prevention, diagnosis and treatment of anomalies and diseases affecting the teeth, mouth, jaws and adjoining tissue.

58 In those circumstances, the compulsory involvement of a dental practitioner in the treatment of a patient to whom a dental technologist dispenses his services is aimed at ensuring the protection of public health, which constitutes an overriding reason in the general interest capable of justifying a restriction of the freedom of establishment.

59 Therefore, it is necessary to ascertain whether the prohibition at issue in the main proceedings is appropriate in order to attain the objective pursued and whether it does not go beyond what is necessary for that purpose.

60 The Court has consistently held that, in order to assess whether a Member State has observed the principle of proportionality in the area of public health, account must be taken of the fact that the health and life of humans rank foremost among the assets and interests protected by the TFEU and that it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved. Since that level may vary from one Member State to another, Member States must be allowed a measure of discretion in that area (see, to that effect, judgment of 19 October 2016, *Deutsche Parkinson Vereinigung*, C-148/15, EU:C:2016:776, paragraph 30 and the case-law cited).

61 At the same time, a particular vigilance is required when examining national measures for the protection of public health (see, to that effect, judgment of 27 June 2013, *Nasiopoulos*, C-575/11, EU:C:2013:430, paragraph 27).

62 Bearing in mind the risk to the patient's health inherent in all the activities referred to in paragraph 57 above, the importance of the objective of protecting public health and the discretion, recalled in paragraph 60 above, enjoyed by the Member States in implementing that objective, it must be concluded that, as the Advocate General observed in points 26 to 30 of his Opinion, the

requirement for the compulsory intermediation of a dental practitioner is appropriate in order to attain that objective and does not go beyond what is necessary for that purpose.

63 Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 49 TFEU, and Article 4(1) and the first subparagraph of Article 13(1) of Directive 2005/36 must be interpreted to the effect that they do not preclude legislation of a Member State, such as that at issue in the main proceedings, which stipulates that the activities of a dental technologist must be pursued in collaboration with a dental practitioner, inasmuch as that requirement is applicable, in accordance with that legislation, to CDTs who obtained their professional qualifications in another Member State and who wish to pursue their profession in the first Member State.

Costs

64 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 (Third Chamber) hereby rules:

Article 49 TFEU, and Article 4(1) and the first subparagraph of Article 13(1) 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 to the effect that they do not preclude legislation of a Member State, such as that at issue in the main proceedings, which stipulates that the activities of a dental technologist must be pursued in collaboration with a dental practitioner, inasmuch as that requirement is applicable, in accordance with that legislation, to clinical dental technologists who obtained their professional qualifications in another Member State and who wish to pursue their profession in the first Member State.

[Signatures]

* Language of the case: Maltese.