FREE MOVEMENT, MUTUAL RECOGNITION AND HOMOGENEITY: THE CASE OF HEALTH WORKERS IN THE EU AND EEA

MARÍA CAMILA SALAZAR LARSEN[1*]

The principle of mutual recognition, grounded in mutual trust, anchors the free movement of professionals within the European Union (EU), assuming that qualifications awarded in one Member State (MS) will be accepted across the region. However, despite the EEA agreement and the principle of homogeneity extending these rules to EFTA States, practical challenges, particularly in sectors like healthcare, reveal inconsistencies in how mutual recognition is applied in the labour market. While the EU and EEA frameworks aim to create a barrier-free single labour market, delays in the incorporation of EU legislation, bureaucratic obstacles, national differences in qualification requirements due to education systems being primarily regulated at a national level, and language barriers continue to hinder effective mobility and the proper application of the principle of homogeneity in the framework of the EEA Agreement. This article highlights key EFTA Court rulings that clarify Member States' obligations under Directive 2005/36/EC and the EEA Agreement, especially regarding timely legislative implementation, proportionality of language requirements, and the need for accessible recognition mechanisms. Ultimately, while public health grounds may justify certain limitations, the EFTA Court has reinforced legal principles aimed at safeguarding the freedom of movement for health professionals[2] across the EU and EEA. Strengthening inter-institutional cooperation at the EU level, between employment and education ministries, is essential to align training programs with labour market needs and to harmonize qualification standards in regulated professions, ensuring effective mutual recognition and the free movement of professionals in line with the principle of homogeneity. This discussion is particularly timely due to the recent own initiative cases opened by the EFTA Surveillance Authority against Norway and the enactment of Directive EU 2024/782, which will enter in force in 2026.[3]

1 INTRODUCTION

The European Parliament stated in 2017 that the European Union (EU) single market 'constitutes the largest barrier-free, common economic space in the industrialized world, encompassing over half a billion citizens in an economy with a gross domestic product

[1*] Faculty of Law, University of Bergen, Norway. LL.M. in EU and EEA Law. Scholarship recipient of the EEA Social Security Law Research Project in collaboration with the University of Bergen, University of Oslo, and University of Tromsø.

[2] When referring to Health Workers, this article addresses in general the professions of nurses, midwives, doctors, dentists, and pharmacists. While this article generally considers the aforementioned professions, it should be noted that the selected case law of the EFTA Court refers specifically to the professions of doctors, dentists, and psychologists.

[3] I would like to express my sincere gratitude to Professors Christian Franklin, Ingrid Margrethe Halvorsen Barlund, and Melanie Regine Hack for their invaluable guidance and for imparting their extensive knowledge of institutional and internal market law within the EU/EEA. Their continuous encouragement and support have been instrumental in fostering my intellectual curiosity and creativity.

(GDP) of some €13 trillion'.[4] Furthermore, the creation of the single market has increased employment by 2.8 million and added 2.2% to the GDP of the EU.[5] A single labour market in the EU has given people the chance to work and travel around the EU as freely as within a single country.[6] In fact, 17 million EU citizens live or work in an EU country other than their own.[7] In addition, it is important to highlight that, in 1992, the creation of the European Economic Area (EEA) agreement granted access to the internal market to the EFTA states (Norway, Iceland, and Liechtenstein). However, despite the apparent success of the internal market and the opportunities it offers, not all professionals benefit equally from it, as significant barriers still hinder the full exercise of free movement rights, particularly for health professionals. In fact, the EU is a unique environment for the mobility of health professionals that showcases benefits, but also constraints.[8]

To understand the challenges health professionals face in exercising their free movement rights, it is first necessary to examine the legal architecture underpinning the EU and EEA internal market framework. To begin with, the EU is a sui generis international organization, subject to and of international law. The TEU determines that its aim is to 'promote economic and social progress for their peoples […] within the context of the accomplishment of the internal market'.[9] To be able to accomplish a single market, Member States (MS) have had to transfer part of their regulatory autonomy to the EU.[10] On the other hand, the EEA Agreement allows Norway, Iceland and Liechtenstein to participate in the internal market and enjoy the four freedoms established in the EU. As has been mentioned by Fredriksen and Franklin (2015) 'the EU is by far the most important trading partner of the EFTA States and a significant number of their companies and citizens exercise their rights to free movement to and within the EU'.[11] To be able to join the internal market, the EFTA states must include relevant EU legislation in their legal systems to guarantee homogeneity between the EU and the EEA and an effective participation in the internal market for all actors.[12]

As was mentioned before, the legal framework of the EU's internal market is built on

---

[4] European Parliament, 'EU Single Market: Boosting Growth and Jobs in the EU' (Briefing, European Added Value in Action, 2017) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/611009/EPRS_BRI(2017)611009_EN.pdf> accessed 1 September 2025.

[5] 'EU Single Market: Boosting Growth and Jobs in the EU' (n 2).

[6] European Council, '30th anniversary of the EU single market' (last reviewed 28 July 2025) <https://www.consilium.europa.eu/en/infographics/30-years-of-the-eu-single-market/> accessed 1 September 2025.

[7] European Council, 'EU Single Market' (5 February 2025) <https://www.consilium.europa.eu/en/policies/deeper-single-market/> accessed 1 September 2025.

[8] James Buchan et al (eds), 'Health Professional Mobility in a Changing Europe: New Dynamics, Mobile Individuals and Diverse Responses' (European Observatory on Health Systems and Policies, WHO 2014) <https://iris.who.int/handle/10665/326372> accessed 1 September 2025.

[9] Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/195 (TFEU), preamble.

[10] The legal basis for the transfer of sovereignty can be found in Articles 1, 4 and 5 of the TEU and Articles 2 and 3 of the TFEU, as well as in case law such as the Case C-6/64 *Costa v E.N.E.L.* EU:C:1964:66.

[11] HH Fredriksen and CNK Franklin, 'EEA Law and the EU Internal Market: A Growing Tension' (2015) 52 Common Market Law Review 629 https://doi.org/10.54648/cola2015049

[12] As has been mentioned by the EEA authorities 'the number of legal acts incorporated into the EEA Agreement varies from year to year. Typically, the number falls somewhere between 500 and 600 legal acts'. For more information: <https://www.efta.int/about-efta/frequently-asked-questions> accessed 1 September 2025.

four fundamental freedoms: the free movement of goods, capital, persons, and services. Within the freedoms of persons and services, the mutual recognition of professional qualifications plays a central role, as it enables individuals to exercise their acquired skills, which can be done on a permanent basis under the free movement of workers and establishment, or on a temporary basis under the freedom to provide services.[13]

Throughout this article, the analysis will focus on the exercise of the free movement of persons, in particular the free movement of workers and the freedom of establishment for the self-employed. This has been the most common context in which individuals have encountered barriers to exercising their acquired skills across different MS, as reflected in the case law of the EFTA Court, which will be examined below. It should be noted, however, that within the framework of the free movement of services, individuals engaged in liberal professions or undertakings may also face obstacles regarding the recognition and exercise of their professional qualifications across MS. Nevertheless, due to the temporary nature of service provision, this has been a less contested area since to the author's knowledge, no relevant EFTA Court case law exists in this regard. By contrast, the free movement of persons, whether as workers or through self-employment, aims at deeper integration and adaptation to the host Member State. It is therefore in this context that more disputes have arisen, which explains the focus of this article.

The free movement of persons, including the free movement of workers and establishment, is one of the four freedoms recognized in the EU and EEA internal order.[14] This includes the right for workers and the self-employed to move and reside in other MS, rights for family members to join them, equal treatment with nationals and the recognition of their skills to exercise regulated professions.[15] The primary legal basis for the free movement of workers and the self-employed in the EU is directly guaranteed by the Treaty,[16] and can be found in Articles 3(3),[17] 45,[18] 48,[19] 49,[20] 50[21] and 53[22] of the TFEU.

---

[13] The freedom of establishment is analysed under Article 49 TFEU, and not under the scope of Article 56 TFEU, due to the fact that this article focuses on the exercise of professional qualifications on a permanent and not a temporary basis.

[14] The primary legal basis for the free movement of workers can be found on Articles 45-49 of the TFEU. As said by Horspool, Humphreys and Wells-Greco, Article 45 lays down the principles and Article 46 provides detail for implementation – see Margot Horspool, Matthew Humphreys, and Michael Wells-Greco, *European Union Law* (10th edn, Oxford University Press 2018).

[15] Monika Makay and Victor Manuel Martinez Garzon, 'Free Movement of Workers: Fact Sheets on the European Union: European Parliament' (April 2025) <https://www.europarl.europa.eu/factsheets/en/sheet/41/free-movement-of-workers> accessed 1 September 2025.

[16] Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford University Press 2019).

[17] It establishes the creation of an internal market that aims for full employment and combat exclusion and discrimination.

[18] Establishes the freedom of movement of workers and the abolition of discrimination based on nationality.

[19] Establishes the competence of the European Parliament and Council to adopt ordinary legislative measures in the field of social security to guarantee the free movement of workers across Member States.

[20] Establishes the right to establishment which includes the possibility of conducting activities as self-employed or managing an undertaking. In this article the reference to Article 49 TFEU is conducted, and not to Article 56 TFEU, because this article focuses on the exercise of professional qualifications on a permanent and not temporary basis.

[21] Establishes the duties of the Parliament and the Council in regards to regulating the freedom of establishment.

[22] Establishes that the Parliament and the Council must enact directives for the mutual recognition of diplomas and coordination to recognize qualifications between Member States.

The mentioned articles have been interpreted by the CJEU and developed by secondary legislation.[23] In addition, the guarantees granted in these articles have also been included in the EEA Agreement.[24] One of the most relevant secondary legislation instruments is Directive 2005/36/EC, which establishes a system for the recognition of professional qualifications.[25]

Professional qualifications and certificates awarded in one Member State should be accepted in good faith throughout the EU, according to the principle of mutual recognition which is grounded in the concept of mutual trust between MS.[26] This principle is not only central to the functioning of the internal market but also constitutes a key pillar of the free movement of persons including the free movement of workers and establishment, within the EU and the EEA.

Closely linked to mutual recognition is the principle of homogeneity, which ensures that EFTA States (Norway, Iceland, and Liechtenstein) apply internal market rules in a manner consistent with the EU. For that reason, the principle of mutual recognition must be applied under the scope of the principle of homogeneity, understood as one of the building blocks of the EEA Agreement. In theory, this extends the mutual trust underlying mutual recognition to these countries. Nevertheless, even after 30 years of the EEA Agreement, the application of these principles is not always seamless in practice, particularly in regulated sectors such as healthcare, where discrepancies in recognition of professional qualifications have emerged.

While the EU and EEA legal frameworks establish robust principles supporting free movement and mutual recognition, their effectiveness is heavily shaped by national education systems and the qualification standards set therein. It is fundamental to highlight that MS have retained sovereignty over their national training systems. As set out in Article 165 of the TFEU, the EU may support and supplement national actions in the field of education, but it lacks the competence to harmonize educational systems. Consequently, there is considerable diversity in educational traditions across the EU.

It is important to recognize that education is inherently political, deeply intertwined with national identity and cultural values. Nevertheless, the absence of a centralized or harmonized qualifications framework has tangible consequences for employment opportunities and social mobility within the EU and the EEA, given the close interrelation between education and labour market access. While the European Qualifications Framework (EQF) exists to facilitate comparison of qualifications, it functions primarily as a translation tool rather than a mechanism that ensures substantive alignment of professional standards. As such, it provides limited support to individuals seeking to practise regulated professions in another MS.

This article argues that health professionals who seek to exercise their rights of free

---

[23] Horspool, Humphreys, and Wells-Greco (n 11).

[24] The mentioned legal basis can be found in Articles 28, 29, 30 and 32 of the EEA Agreement.

[25] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255/22. Directive 2005/36/EC replaced Directive 92/51 and Directive 1999/42. In addition, Directive 2005/36/EC has been amended by various directives that will be showcased further in this paper.

[26] Horspool, Humphreys, and Wells-Greco (n 11) mention that Directive 2005/36/EC was based on two principles: i) mutual trust between Member States and ii) mutual recognition, understood as 'the assumption that certificates awarded in a member state should be accepted in good faith' across the Union.

movement between the EU and the EEA find a set of barriers to effectively migrate as workers from one country to another in detriment to the principle of homogeneity that binds both pillars. The following sections will showcase how the legislative process of the EEA Agreement, bureaucratic processes, additional requirements based on national standards, and language barriers affect the free movement of health professionals and hinder the effective application of the principle of mutual recognition in the single labour market. It will also highlight how the EFTA Court has analysed these issues to present solutions and guarantee and adequate functioning of the EEA Agreement.

2 BARRIERS

The barriers that health professionals encounter in exercising their rights to free movement arise from various sources: some are legal, while others are social, economic, cultural or related to transparency and access to information.[27] This article examines these barriers primarily from an EEA legal perspective, focusing on how delays in the incorporation of relevant EU legislation, lengthy administrative procedures, language requirements and specific host state conditions can hinder the effective exercise of free movement rights. It is important to emphasise, however, that these legal challenges often intersect with broader issues that extend beyond the legal domain.[28]

To begin with, and as stipulated by the EEA Agreement, for an EU legal act to be applicable in the EFTA States, the EEA Joint Committee (JCD) must adopt a decision to incorporate the act into the EEA Agreement.[29] The EEA authorities have specified that the goal is to incorporate these acts as closely as possible to their EU entry-into-force date, ensuring consistent application of rules across the entire EEA.[30]

In the following table some of the most relevant directives and regulations for the recognition of qualifications of health professionals in the EU (incorporated in the EEA Agreement) are listed.

Directive / Regulation	**Summary**	**Incorporated in EEA Agreement**	**Time for Incorporation in EEA Agreement (years)**
Directive	Established the general system for recognition of qualifications for healthcare and related professions. No longer in force since 2007.	2003	2[32]

[27] Buchan et al (n 6).
[28] ibid.
[29] The legal basis for this statement is found in Part VII Chapter 2 of the EEA Agreement.
[30] EFTA Surveillance Authority, 'How EU law becomes EEA Law' <https://www.efta.int/eealaw> accessed 1 September 2025.
[32] European Free Trade Association (EFTA), 'Factsheet – 32001L0019' < https://www.efta.int/eea-lex/32001l0019> accessed 1 September 2025.

Directive / Regulation	Summary	Incorporated in EEA Agreement	Time for Incorporation in EEA Agreement (years)
2001/19/EC[31]			
Directive 2005/36/EC[33]	Created a system for recognition of professional qualifications.	2009	4[34]
Directive 2013/55/EU[35]	Amends Directive 2005/36/EC on recognition of professional qualifications.	2019	6[36]
Directive 2011/24/EU[37]	Established patient rights in cross-border healthcare, with reference to cooperation per Directive 2005/36/EC. Although this Directive does not specifically regulate the recognition of professional qualifications within the region, it remains a relevant instrument as it underscores the importance of cooperation among MS and the need to avoid unnecessary restrictions in the recognition of qualifications, in line with the provisions of Directive 2005/36/EC.[38]	2015	4[39]
Directive	Recognized qualifications of healthcare workers in the context of public	2017	3[41]

[31] Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor [2001] OJ L206/1.
[33] Directive 2005/36/EC (n 22).
[34] European Free Trade Association (EFTA), 'Factsheet – 32005L0036' <https://www.efta.int/eea-lex/32005l0036> accessed 1 September 2025.
[35] Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132.
[36] European Free Trade Association (EFTA), 'Factsheet – 32013L0055' <https://www.efta.int/eea-lex/32013l0055> accessed 1 September 2025.
[37] Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare [2011] OJ L88/45.
[38] The aforementioned can be found in the preamble recital 50, Article 2, Article 3(f), and Article 4(5).
[39] European Free Trade Association (EFTA), 'Factsheet – 32011L0024' <https://www.efta.int/eea-lex/32011L0024> accessed 1 September 2025.
[41] European Free Trade Association (EFTA), 'Factsheet – 32014L0024' <https://www.efta.int/eea-lex/32014l0024> accessed 1 September 2025.

Directive / Regulation	Summary	Incorporated in EEA Agreement	Time for Incorporation in EEA Agreement (years)
2014/24/EU[40]	procurement.		
Regulation (EU) 2016/589[42]	Aimed at labour market integration, promoting EURES network for job vacancy and skill matching.	2021	5[43]

It is important to note that Directive (EU) 2024/782 was recently adopted by a Joint Committee Decision (JCD), which also confirmed its entry into force date for the EEA pillar. This new directive amends Directive 2005/36/EC in regards to the minimum training requirements for the professions of nurse responsible for general care, dental practitioner and pharmacist.[44] The aforementioned directive will enter in force in March, 2026.

In the table presented above, it is possible to observe that legal instruments, which are specifically related to the recognition of qualifications of health workers, and that being EEA relevant should be part of the agreement to guarantee an effective movement of workers, have experienced significant delays in incorporation into the EEA legal framework. One can see that duration oscillates between 2 and 6 years. The delay in incorporation creates an important challenge for the free movement of health workers between the EU and the EFTA states, mostly because individuals in the EEA internal order are not able to access justice and enforcement until the norms have been integrated.

It is fundamental for EU relevant legislation to be incorporated in a timely manner to the EEA agreement for a correct functioning and effective participation of EU and EEA workers in the internal market. As has been mentioned by Fredriksen and Franklin (2015) 'timely and correct implementation of the EEA obligations becomes crucial for the proper functioning of the EEA agreement'.

As a consequence, health professionals who seek to exercise their profession in the EFTA states must not only wait for the incorporation of new EU legislation in the internal legal order, but also need to face long administrative processes. The bureaucratic processes differ from member state to member state[45] and can hinder access to recognition in regard to (i) the timeframe to get authorization[46] and (ii) accessibility to the required

[40] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65.
[42] Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 [2016] OJ L107/1.
[43] European Free Trade Association (EFTA), 'Factsheet – 32016R0589' <https://www.efta.int/eea-lex/32016r0589> accessed 1 September 2025.
[44] European Free Trade Association (EFTA), 'Factsheet – 32024L0782' <https://www.efta.int/eea-lex/32024l0782> accessed 1 September 2025.
[45] Edward C Page, 'The European Union and the Bureaucratic Mode of Production' in Anand Menon and Vincent Wright (eds), *From the Nation State to Europe: Essays in Honour of Jack Hayward* (Oxford University Press 2001).
[46] In the case of Norway, estimated waiting time to get approval is between 6 and 8 months. For more information: <https://hkdir.no/en/foreign-education/education-from-outside-of-norway/recognition-of-

information. For instance, the ESA has previously requested Norway to fully comply with the EEA Agreement by reducing its bureaucracy and inaccessibility to online portals such as PSC which assist the recognition of professional qualifications.[47]

A third barrier that health professionals face towards free movement corresponds to the different requirements that must be fulfilled in each member state for each profession on their qualifications framework and the differences on educational programmes. As has been mentioned by Barnard (2022), 'host state rules on the use of professional titles can prove to be a serious impediment for professionals wishing to work in another MS […] given the major differences between the legal systems of the MS'.[48] Even if qualification frameworks in the EU and the EEA should match the European Qualification Framework, each MS can for example provide or require additional certificates at the end of the education programme.[49] At the same time, differences in education programmes can make it difficult to access the spectrums of each profession.

To conclude, it is relevant to highlight that Art 45(3) TFEU determines that it is possible to limit free movement of workers on the grounds of public health, which is replicated in article 28(3) of the EEA agreement. It should be noted that the CJEU has recognised an additional ground for derogation based on overriding reasons of general interest, as established in Case C-351/90.[50] For that reason, the development of the caselaw of the CJEU should be examined alongside the public health derogation. This prerogative has since been incorporated into Directive 2005/36/EC, as reflected in recital 11 of its preamble. Likewise, Article 53 of the Directive 2005/36/EC determines that 'persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practicing the profession in the host Member State'. As a consequence, there are valid derogations in place that affect the movement of health professionals through different MS with the purpose of protecting public health. Although it is understood as proportional that health professionals should be able to communicate in the local language to guarantee patient safety and a good functioning of the health system in the state of practice, a language requirement creates a practical barrier for those health professionals who want to migrate as workers to a new country. A further discussion of the language requirement will be conducted when presenting the case law of the EFTA Court.

3 APPROACH OF THE EFTA COURT

The practical barriers outlined above have given rise to a series of legal disputes, prompting the EFTA Court to clarify the obligations of EFTA States regarding the implementation and application of mutual recognition rules. In Case E-10/10, the EFTA Court evaluated a case brought by the EFTA Surveillance Authority (ESA) on the failure by Norway to fulfil its

foreign-higher-education-bachelor-master-and-phd/after-you-have-applied-higher-education> accessed 1 September 2025.

47 EFTA Surveillance Authority, 'ESA Asks Norway to Reduce Bureaucracy and Provide Clearer Information for Service Providers' (*EFTA Surveillance Authority*, 5 July 2023) <https://www.eftasurv.int/newsroom/updates/esa-asks-norway-reduce-bureaucracy-and-provide-clearer-information-service> accessed 1 September 2025.

48 Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms* (7th edn, Oxford University Press 2022).

49 Europass, 'National Qualifications Frameworks (Nqfs)' <https://europass.europa.eu/en/europass-digital-tools/european-qualifications-framework/national-qualifications-frameworks> accessed 1 September 2025.

50 Case C-351/90 *Commission v Luxembourg* EU:C:1992:266.

obligations for the incorporation and implementation of Directive 2005/36/EC.[51]

In 2007, the EEA Joint Committee added Directive 2005/36/EC on professional qualifications to the EEA Agreement. It required EFTA States to implement it by 1 July 2009. Norway partially implemented the Directive but notified ESA that amendments to several national regulations were still needed. ESA issued formal notices in late 2009 and early 2010 requesting Norway's compliance, and Norway subsequently informed ESA of gradual progress on the required amendments, with the last updates expected by October 2010. By July 2010, Norway confirmed the implementation of related measures but continued to work on final amendments. The chamber found that Norway did not adopt those measures before the expiry of the time-limit given.

In this ruling it was determined that 'Article 3 EEA imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement'. On this particular occasion the Court found that Norway did not fulfil its obligations under Article 63 of Directive 2005/36/EC and Article 7 of the EEA Agreement. This was because it did not enact the required measures within the established time frame to implement the Act listed at point 1 of Annex VII to the EEA Agreement, specifically Directive 2005/36/EC on the recognition of professional qualifications, as amended by Regulation (EC) No 1430/2007.

Afterwards, the Case E-1/11 concerned the interpretation of Directive 2005/36/EC under EEA law. In particular, it analyses the recognition of qualifications under EU law in parallel to EFTA states requirements.[52]

In this case an EU trained medical doctor with a psychiatry specialization, applied for a license to practice her profession in Norway but faced challenges with language skills, theoretical knowledge and assessment during her training. The Norwegian Registration Authority rejected her application for full authorisation in August 2009, citing insufficient aptitude for independent practice, though offering her a one-year subordinate medical doctor license. The decision was appealed, and brought before the Norwegian Appeal Board, which requested an Advisory Opinion from the EFTA Court in January 2011.

When analysing the facts of the case, the EFTA Court referred to the case law of the CJEU. In particular, the EFTA Court mentioned the precedent stated in Case C-110/01 (*Tennah-Durez*) and determined that

> an EEA State is not permitted to make the recognition of professional qualifications of doctors meeting the criteria of the Directive subject to any further conditions. The system of automatic recognition would be jeopardized if it were open to EEA States at their discretion to question the merits of a decision taken by the competent

[51] Case E-10/10 *EFTA Surveillance Authority v The Kingdom of Norway* [2010] EFTA Ct. Rep. 312. The legal questions brought up in this case corresponds to identifying if Norway failed to meet its obligations under the EEA Agreement and Directive 2005/36/EC by not implementing the Directive fully within the set time limit.

[52] Case E-1/11 *Norwegian Appeal Board for Health Personnel – appeal from A* [2011] EFTA Ct. Rep. 484. The legal question that concerns the study in this case corresponds to analysing whether EEA law authorizes an EEA state to deny an authorisation to practice as a medical doctor or to grant limited authorisation to an applicant with insufficient professional qualifications, if that person fulfils the requirements provided for in the directive. Likewise, the Court studies if authorisation to practice a health profession can be made subject to further requirements regarding the pursuit of the profession as a doctor, such as knowledge of language.

authority of another EEA State to award the formal evidence of qualification.[53]

The Court also referred to Article 53 of Directive 2005/36/EC, which states that 'persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for the practice of the profession in the host State'. It determined that a doctor's ability to communicate with patients, administrative authorities, and professional bodies constitutes a general public interest and therefore it is justified to require knowledge of the local language to grant authorization.

The Court specified that the assessment of linguistic knowledge is left to individual interpretation of the EEA states. Nevertheless, language requirements should not go far beyond what is necessary to attain the objective of the profession or posting. If an assessment required linguistic abilities that are not part of a normal doctor's work, it would risk being discriminatory or disproportionate.[54] Furthermore, it mentions that EEA state authorities should give the opportunity to acquire missing language skills.

In conclusion, the EEA States are allowed to deny a migrant doctor's authorisation to practice based on personal aptitude issues when the requirements are objectively justified, proportionate to protecting public health and would apply equally to a national doctor, allowing for denial of authorisation if such grounds are present at the time of the evaluation.

At this point, it is important to analyse the existence of the requirement of knowledge of the local language. The case law[55] and doctrine[56] have determined that when assessing a measure it is fundamental to analyse suitability, necessity and proportionality sensu stricto to identify if a restriction is justified.[57]

To begin with, to fulfil the suitability requirement, measures should be adequate 'for securing the attainment of the objective which they pursue and they must not go beyond what is necessary in order to attain it'.[58] Therefore, a requirement to be able to communicate in the local language is suitable for the objective of health professionals and patients being able to appropriately communicate and safeguard patients. In regards to necessity, it has been established that the measure can be justified on public health grounds, which seems appropriate in this scenario because health professionals should be able to understand and be understood by their patients to avoid miscommunications on treatments that could hinder patients' well-being.

Additionally, the measure does not appear to be discriminatory on grounds of nationality, because health professionals that migrate to another state to exercise their profession can access employment on the same grounds as long as they learn and can communicate in the local language.

As has been determined by the case law, 'proportionality sensu stricto entails an assessment of the disadvantages caused by a given measure, and of whether those disadvantages are proportionate to the aims pursued'.[59] As a consequence, the requirement

[53]Case E-1/11 *Norwegian Appeal Board for Health Personnel – appeal from A* [2011] EFTA Ct. Rep. 484. point 66.
[54] Opinion of AG Jacobs in Case C-238/98 *Hocsman* EU:C:1999:426 point 57.
[55] CJEU – Case C-128/22 *NORDIC INFO* EU:C:2023:951; EFTA Court – Case E-19/15 *EFTA Surveillance Authority v the Principality of Liechtenstein* [2016] EFTA Ct. Rep. 437.
[56] Barnard (n 45).
[57] Opinion of AG Emiliou in Case C-128/22 *NORDIC INFO* EU:C:2023:645.
[58] Case C-55/94 *Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* EU:C:1995:411.
[59] Opinion of AG Emiliou in *NORDIC INFO* (n 51).

of having sufficient knowledge seems adequate insofar as the objective pursued is that citizens can access a health system that provides them with clear guidelines and seeks to guarantee patient safety. The analysis done by the EFTA Court in Case E-1/11 demonstrates that health professionals are not obliged to have proficiency of the local language for elements that are outside of the normal requirements of the profession, so it is then understood that the requirement is suitable for the objective pursued, and does not exceed what is essential to attain that objective of patient safety.

In Case E-3/20, the EFTA Court studied the case of an EEA national who trained as a dental practitioner in an EU state and who later sought recognition of her qualifications in her EEA home country. In this case, the EEA national received an education as a dental practitioner in Denmark without acquiring a certificate to practice independently in said country.[60]

The EFTA Court concluded that: (i) to benefit from automatic recognition under Article 21(1) of Directive 2005/36/EC, an applicant must hold all certificates required by their home State for the profession listed in Annex V of the Directive; (ii) if an applicant does not meet the automatic recognition criteria, Articles 28 and 31 EEA require the host State to conduct an individual assessment of the applicant's qualifications and training; (iii) this assessment involves comparing the applicant's credentials and experience with the host State's requirements, and if gaps are found, the host State must specify any additional training needed; and (iv) the chamber established that the fact that an applicant does not have full access to the profession in the home State cannot be decisive for the assessment of whether the applicant may be given access to the same profession in the host State.

To end with, Case E-4/20 studied the recognition of professional qualifications of psychologists who had trained in an EU country and subsequently sought to establish themselves in the EEA. In particular, a group of Norwegian citizens obtained a master's degree in psychology from Hungary which did not permit clinical practice. Initially, these individuals were granted licenses. However, the Norwegian authorities changed their policy and revoked them, since the programme did not correspond to the requirements established in Norway. As a consequence, both full and partial authorizations were denied.[61]

The EFTA Court concluded that, to determine if a profession can be considered equivalent in both home and host state, a case-by-case assessment must be completed. The factors that influence if both professions can be deemed the same correspond to aligned core activities, even if there are minor differences.

---

[60] Case E-3/20 *The Norwegian Government v Anniken Jenny Lindberg* [2020] OJ C275/2. The Court formulated three legal questions. In the first place, the Court seeks to analyze the scope of Article 21(1) of Directive 2005/36/EC. In particular to define if evidence of formal qualifications needs to be accompanied by formal certificates. In the second place, the Court seeks to determine whether the host State is under an obligation to examine an application for recognition of qualifications under the scope of the free movement of persons established in the EEA agreement (Articles 28 and 31) when an individual lacks evidence of training according to Article 10 and Article 21 of Directive 2005/36/EC. In the third place, the EFTA Court seeks to provide guidance on the consequences of the applicant not being fully qualified and therefore not having full access to the profession in the home State.

[61] Case E-4/20 Tor-Arne Martinez Haugland and others v The Norwegian Government [2020] OJ C308/21. For our case of study, the relevant legal question in this case corresponds to determining the rules for assessing the equivalence of professions across states for the purposes of Directive 2005/36/EC. As well as if applicants who do not fulfil the requirements of the Directives, can rely on Articles 28 and 31 of the EEA Agreement to pursue a regulated profession in the host state.

On this occasion the court reiterated the rule determined in Case E-3/20 and established that applicants who do not meet recognition requirements under Directive 2005/36/EC can still pursue a regulated profession in the host State by drawing upon Articles 28 and 31 EEA. In these cases, the host State must review all relevant qualifications and professional experience against its own standards and, if there are gaps, specify the additional training needed to meet local requirements.

Building on the legal standards articulated by the EFTA Court, recent enforcement actions by ESA further illustrate the continued gaps in implementation, particularly in the recognition of specific health professions. In particular, ESA has opened an own initiative case (91996) due to the non-availability of aptitude tests as a compensation measure for the profession of nutritionist in Norway.[62] The problem in this case arises from the fact that Norway does not offer a possibility to choose from an aptitude test or an adaptation period, as granted in EEA law.[63] On the contrary, it only offers an adaptation period within limited institutions. Specifically, the ESA states that Norway has failed to fulfil its obligation arising from Directive 2005/36/EC (adapted to the EEA Agreement by Protocol 1) because of the administrative practice of not providing aptitude tests as a compensation measure for health professionals and not providing effective possibilities to access the adaptation period. In September 2024, the Norwegian government was given a period of 2 months to submit its observations.[64]

As a consequence, it is possible to observe that the EFTA Court has had to evaluate the application of the principle of mutual recognition in various occasions and has determined important rules of precedential value:

1) Under Article 7 of the EEA Agreement, EEA states have the obligation to adopt relevant EU legislation into the internal legal order within the timeframe established to avoid a failure to fulfil their obligations and a breach of the agreement. This point is fundamental because the legislative process should not be a reason to hinder full enforcement of the EEA agreement;
2) For the recognition of qualifications of health professionals, as a general rule, States should not ask for further requirements than those established in Directive 2005/36/EC. However, the EFTA Court determined that authorisation to practice a health profession can be made subject to further requirements such as knowledge of the national language. It clarifies that the requirements must be objectively justified, proportionate to protecting public health and would apply equally to a national doctor;
3) In accordance with Article 53 of Directive 2005/36/EC, for recognition of

[62] EFTA Surveillance Authority, 'Letter of formal notice to Norway concerning the lack of compensation measures for the recognition of health professionals, in particular nutritionists, in Norway' (September 2024) <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Case%2091996%20College%20Decision%20152%2024%20COL%20-%20Letter%20of%20formal%20notice%20-%20Norway%20-%20Lack%20of%20compensation%20measures%20for%20the%20r.pdf> accessed 1 September 2025.

[63] Directive 2005/36/EC (n 22) Articles 13 and 14.

[64] EFTA Surveillance Authority, 'Letter of formal notice to Norway concerning the lack of compensation measures for the recognition of health professionals, in particular nutritionists, in Norway' (September 2024) <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Case%2091996%20College%20Decision%20152%2024%20COL%20-%20Letter%20of%20formal%20notice%20-%20Norway%20-%20Lack%20of%20compensation%20measures%20for%20the%20r.pdf> accessed 1 September 2025.

qualifications of health professionals, it is allowed to require knowledge of the local language. Nevertheless, language requirements should not go far beyond what is necessary to attain the objective of the profession or posting;

4) Applicants who do not meet recognition requirements under Directive 2005/36/EC can still pursue a regulated profession in the host State by relying on Articles 28 and 31 EEA.[65]

The legislative framework, judicial interpretation and enforcement measures reveal a complex but incomplete realization of mutual recognition and homogeneity. This calls for closer coordination and reform, as will be outlined in the closing section.

4 FINAL REMARKS

In conclusion, health professionals in the EU and EEA who seek to exercise their freedom of movement have to overcome various barriers in order to access labour markets. These barriers hinder an effective application of the principle of mutual recognition, but in some cases, they can be justified on grounds of patient safety. Nevertheless, the EFTA Court has set a series of rules that seek to protect free movement of health professionals in the EEA and EU internal order.

A key reason why barriers persist within the internal market lies in the different perspectives underpinning EU and EEA law in relation to national law. From the EU's perspective, and consequently the EEA's perspective, health professionals are economic actors exercising their rights to free movement.[66] On the other hand, national regulations are often based on social considerations such as patient safety, public interest and ensuring the sustainability of national health systems.[67] As the legal literature has noted, this duality highlights the complexity of integrating health services within the internal market.[68] For example, this problem between economic integration and public health protection is not unique to professional mobility and the recognition of professional qualifications. Similar issues have risen in the CJEU's case law on cross-border healthcare, when balancing patients' free movement rights against Member States' responsibilities to organise effective health

[65] As has been mentioned in Case E-3/20 of the EFTA Court (n 56), 'an assessment under Articles 28 and 31 EEA is not the same as the assessment for recognition of professional qualifications under the Directive. Therefore, it is neither necessary nor sufficient to demonstrate that the completed training in the home State fulfills the minimum training conditions laid down in the relevant provisions of the Directive. However, the Court considers that if an applicant has received training that satisfies the minimum training conditions specified in the Directive, that should simplify and facilitate the comparison of the qualifications obtained by the applicant with the requirements in the host State'.

[66] The understanding of workers or the self-employed as economic operators within the EU stems from the interpretation of the CJEU, when the aforementioned individuals are engaged in an economic activity to exercise their free movement rights. See for example Case C-55/94 Gebhard (n 54); Case 139/85 *R H Kempf v Staatssecretaris van Justitie* EU:C:1986:223; Case 66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* EU:C:1986:284.

[67] Mike Saks, 'The Regulation of Healthcare Professions and Support Workers in an International Context' (2021) 19 Human Resources for Health 74.

[68] For more information the following readings are recommended: Tamara K Hervey, 'The European Union's Governance of Health Care and the Welfare Modernization Agenda' (2008) 2(1) Regulation & Governance 103; Tamara K Hervey and Jean V McHale, 'Law, Health and the European Union' (2005) 25(2) Legal Studies 228; Tamara K Hervey and Bart Vanhercke, 'Health Care and the EU: The Law and Policy Patchwork' in Elias Mossialos et al (eds), *Health Systems Governance in Europe: The Role of EU Law and Policy* (Cambridge University Press 2010).

systems.[69]

However, health professionals who have obtained their qualifications within the EU or EEA should not be forced to rely on judicial intervention to exercise their profession in another MS. Addressing this issue requires more effective inter-institutional cooperation, especially between national ministries of employment and education at the Union level. Such cooperation is essential not only to ensure that educational programs across MS align with the demands of the evolving labour market, but also to harmonize qualification standards for regulated professions. This would facilitate the free movement of persons and uphold the principle of mutual recognition in line with the principle of homogeneity. Attention should be drawn to the barriers faced by undertakings and individuals in liberal professions when exercising the freedom to provide services, particularly in securing recognition of their professional qualifications on a temporary basis. This is an area in which further research is required.

To end with, health personal mobility should be analysed within the broad strategies directed to the workforce in Europe.[70] The labour market must be understood as intrinsically linked to the education system, especially in the context of rapid digital transformation, which constantly generates demand for new skills and professional profiles. In the absence of coordinated efforts to align educational curriculums with labour market needs, there is a growing risk of producing outdated qualifications and exacerbating the widening gap between the EU and EEA systems, undermining the success of the internal market.

[69] For example in Case C-158/96 *Kohll v Union des caisses de maladie* EU:C:1998:171, the CJEU stated that 'Community law does not detract from the powers of the Member States to organise their social security systems, they must nevertheless comply with Community law when exercising those powers'.
[70] Buchan et al (n 6).

LIST OF REFERENCES

Barnard C, *The Substantive Law of the EU: The Four Freedoms* (7th edn, Oxford University Press 2022)
DOI: https://doi.org/10.1093/he/9780192857880.001.0001

Buchan J et al (eds), 'Health Professional Mobility in a Changing Europe: New Dynamics, Mobile Individuals and Diverse Responses' (European Observatory on Health Systems and Policies, WHO 2014) <https://iris.who.int/handle/10665/326372> accessed 1 September 2025

Fredriksen HH and Franklin CNK, 'EEA Law and the EU Internal Market: A Growing Tension' (2015) 52 *Common Market Law Review* 629
DOI: https://doi.org/10.54648/cola2015049

Hervey TK and McHale JV, 'Law, Health and the European Union' (2005) 25(2) Legal Studies 228
DOI: https://doi.org/10.1111/j.1748-121X.2005.tb00614.x

Hervey TK and Vanhercke B, 'Health Care and the EU: The Law and Policy Patchwork' in Elias Mossialos et al (eds), Health Systems Governance in Europe: The Role of EU Law and Policy (Cambridge University Press 2010)
DOI: https://doi.org/10.1017/CBO9780511750496.003

Hervey TK, 'The European Union's Governance of Health Care and the Welfare Modernization Agenda' (2008) 2(1) Regulation & Governance 103
DOI: https://doi.org/10.1111/j.1748-5991.2007.00028.x

Horspool M, Humphreys M, and Wells-Greco M, *European Union Law* (10th edn, Oxford University Press 2018)
DOI: https://doi.org/10.1093/he/9780198818854.001.0001

Kellerbauer M, Klamert M, and Tomkin J (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford University Press 2019)
DOI: https://doi.org/10.1093/oso/9780198794561.001.0001

Page EC, 'The European Union and the Bureaucratic Mode of Production' in Menon A and Wright V (eds), *From the Nation State to Europe: Essays in Honour of Jack Hayward* (Oxford University Press 2001)
DOI: https://doi.org/10.1093/0199244030.003.0009

Saks M, 'The Regulation of Healthcare Professions and Support Workers in an International Context' (2021) 19 Human Resources for Health 74
DOI: https://doi.org/10.1186/s12960-021-00618-8