



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/7/2000
MARKT/D4/8339/2000-EN
C(2000) 2274 Final

COMMISSION DECISION

of 25/7/2000

on a request from Austria for a derogation under Article 14 of Council Directive
92/51/EEC for the recognition of certain sports qualifications.

(Only the German text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training, which completes Directive 89/48/EEC¹, as last amended by Commission Directive 97/38/EC² and particularly Articles 7 (a) and 14 thereof,

Having regard to the report of 28 April 2000, received from the Austrian authorities, which evaluates the application of a temporary derogation granted to Austria by way of the Commission Decision of 14 July 1999³ and requests that the derogation be granted on a permanent basis with regard to the professions of ski instructor, trainee ski instructor, ski instructor with a university degree, ski tour guide, cross-country ski instructor, trainee cross-country ski instructor, mountain guide, trainee mountain guide,

Whereas:

I General framework

- (1) Council Directive 92/51/EEC introduced a second general system for the recognition of professional education and training to supplement Council Directive 89/48/EEC⁴ which had introduced a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration. Directive 92/51/EEC deals with diplomas of a different level to those covered by Directive 89/48/EEC.
- (2) Directive 92/51/EEC is based on the principle of mutual trust. This means that where, in a host Member State, taking up or pursuing a profession is subject to the possession of a diploma, certificate or attestation of competence, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession under the same conditions as those which apply to its own nationals, if the applicant has, in another Member State, been awarded the diploma required there in order to take up or pursue the same profession.
- (3) However, this rule does not prevent the host Member State from requiring the applicant to undergo an adaptation period or take an aptitude test when there are substantial differences between the training s/he has received in the host Member State and that required on its territory. The conditions are laid down in Articles 4, 5, 6 and 7 of Directive 92/51/EEC. Should the host Member State make use of this possibility, it must allow the applicant to choose between an adaptation period and an aptitude test. If the host Member State should decide to derogate from the migrant's right to choose, a request to this effect must then be made in accordance with the procedures laid down in Article 14 of the Directive.

II Request by Austria for a derogation and the Evaluation Report

¹ OJ L 209, 24.07.1992, p.25.
² OJ L 184, 12.07.1997, p.31
³ COM (1999) 403 final
⁴ OJ L 19, 24.01.1989, p. 16.

- 4) In a letter dated 28 April 2000, Austria requested a derogation under Article 14 of Council Directive 92/51/EEC with regard to the professions of ski instructor, trainee ski instructor, ski instructor with a university degree, ski tour guide, cross-country ski instructor, trainee cross-country ski instructor, mountain guide, trainee mountain guide and presented the Commission with an evaluation report on the application of the derogation to the above-mentioned professions granted by the Commission in its decision of 14 July, 1999.
- (5) The purpose of the request for a derogation is to enable the Austrian authorities to require migrants who wish to establish themselves in Austria and practise one of these professions to take an aptitude test when there are substantial differences between training in Austria and the training undergone by the migrant in another Member State.
- (6) As for the previous derogation requests introduced, the Austrian Government takes the view that this request is justified by the dangerous nature of the activities concerned, the inherent danger being heightened by factors associated with the naturally unpredictable environment in which these activities take place. According to the Austrian Government, technical ability, whilst exercising the professions of ski instructor, trainee ski instructor, ski instructor with a university degree, ski tour guide, cross-country ski instructor, trainee cross-country ski instructor, mountain guide, trainee mountain guide, amongst the skills required, is very important to guaranteeing human safety in milieus which are by their very nature unsafe, unpredictable and always changing, and this cannot be assessed by way of the adaptation period. The aptitude test is, therefore, the most effective way of ensuring that applicants have the requisite technical skills for the activity in question and are capable of managing and organising assistance.
- (7) The Austrian government indicates that the conditions imposed to Austria by the Commission decision of 14 July 1999 have been respected and incorporated into national regulations.
- (8) For ski instructors, the Austrian government makes reference to the many contacts and flow of dialogue between professionals of the different Member States concerned which have intensified over the last few months. The representatives of several ski instructor associations from the Member States of the European Union arrived at an agreement on several principles which could be examined by the Member States.

III Consultation of the Member States

- (9) Pursuant to Article 14 of Directive 92/51/EEC, the request for a derogation was submitted to the other Member States on 29 May 2000. It was brought to the knowledge of Co-ordinators on 5th May 2000 who put forward their preliminary observations at a meeting held on 12 May 2000 and were asked to provide written comments by 31 May 2000 at the latest. Replies were received from the following Member States : Finland, the United Kingdom, Denmark, Spain, the Netherlands, Sweden and Germany.

IV General considerations

- (10) According to Article 7 of Directive 92/51/EEC, the host Member State may impose an aptitude test on the migrant only in cases where, having taken into account the training and qualifications acquired by the migrant and his/her professional experience, it considers that substantial differences exist between training. Under Article 14, the

Member State must justify the lack of choice granted to the migrant. This can only be justified on the basis of reasons in the general interest, such as considerations of safety and the prevention of accidents. The Member State must show that the lack of choice is necessary and proportionate to the objective pursued to improve safety, that is to say, it must demonstrate that the adaptation period is a less appropriate means of achieving that objective, or, on the other hand, show that the aptitude test is the only appropriate means of so-doing.

- (11) The Commission recognises that the eight activities concerned are particularly dangerous and that safety can be invoked here as an imperative requirement in the general interest. It also accepts that, in respect of these eight activities, where a migrant's training has covered matters substantially different from those covered by the diploma required in Austria, imposing an aptitude test might be a measure likely to achieve the objective in view, namely the maintenance of safety. As confirmed during the discussions which the Commission held with the Member States representatives and professional associations over six months, an aptitude test is more reliable and objective than an adaptation period and can provide a better way of ascertaining how the applicant would react in real situations.
- (12) These considerations are equally valid whether migrants wish to establish themselves in Austria or simply to provide a service. Consequently, there is no need to distinguish between these two ways of practising the profession.
- (13) Given the above, the Commission considers that there is sufficient justification for granting Austria a permanent derogation for the professions of ski instructor, trainee ski instructor, ski instructor with a university degree, ski tour guide, cross-country ski instructor, trainee cross-country ski instructor, mountain guide, trainee mountain guide.
- (14) It should be pointed out that:
 - a) the Austrian authorities are entitled to impose an aptitude test only when substantial differences exist between the training required in Austria and that undergone by the migrant;

The Commission recalls that a difference in training cannot be qualified as substantial except when the training comprises one or more subjects, knowledge of which are a prerequisite to exercising the profession;

As far as the profession of ski instructor is concerned, the Commission notes that within the framework of the resolutions adopted by national ski instructor associations, the applicant must have in-depth knowledge of specific subjects before s/he can exercise the profession of ski instructor. As a result of this and in the light of the current situation, the Commission states that each aptitude test which calls for specific knowledge of certain subjects or which requires a higher level will be scrutinised for its compatibility with Community law.

- b) the Austrian authorities are required to take account of the professional experience of the migrant and to examine whether it is such as to compensate for any substantial differences in training;
- c) the Austrian authorities must produce a reasoned decision concerning each migrant, in conformity with Article 12 (2) of Directive 92/51/EEC;

- d) decisions must be made as quickly as possible, and in any case, within a period which takes into account the date on which the migrant wishes to start to work in Austria;
 - e) the decision specifying the nature of the aptitude test and the procedures for applying for it shall be published and made available to all interested associations and persons on request;
 - f) the number of aptitude tests held must be sufficient and migrants must be allowed to take the test more than once; with regard to ski instructors, aptitude tests must be concentrated in the early part of the skiing season.
- b) the Austrian authorities are required to take account of the professional experience of the migrant and to examine whether it is such as to compensate for any substantial differences in training;
 - c) the Austrian authorities must produce a reasoned decision concerning each migrant, in conformity with Article 12 (2) of Directive 92/51/EEC;
 - d) decisions must be made as quickly as possible, and in any case, within a period which takes into account the date on which the migrant wishes to start to work in Austria;
 - e) the decision specifying the nature of the aptitude test and the procedures for applying for it shall be published and made available to all interested associations and persons on request;
 - f) the number of aptitude tests held must be sufficient and migrants must be allowed to take the test more than once; with regard to ski instructors, aptitude tests must be concentrated in the early part of the skiing season.
- (15) The Agreement between professional ski instructor associations⁵ has not yet been notified to the Commission and therefore, has not been examined in the light of the competition rules of the EC Treaty.
- (16) The Commission considers that, in the light of the information made available in the discussions held with Member States and national associations of professional ski instructors, any conditions applied to free movement which are additional to, or stricter than, those contained in the resolutions adopted by the professional associations would have to be examined with particular attention concerning their compatibility with Community law provisions on free movement.
- (17) The Member States and professional associations concerned are asked to provide the Commission by August 2002 at the latest with a report on how ski instructors' diplomas were recognised during the 2000 and 2001 seasons.

⁵ Doc. MARKT/D4/2000/8253-EN

HAS ADOPTED THIS DECISION:

Article 1

Austria is authorised to require applicants who are seeking to have ski instructor's, trainee ski instructor, ski instructor with a university degree, ski tour guide, cross-country ski instructor, trainee cross-country ski instructor, mountain guide or trainee mountain guide qualifications recognised for the purpose of establishing themselves or providing a service in Austria and whose training displays substantial differences from that required in Austria, to undergo an aptitude test.

Article 2

Austria may not consider that there is a substantial difference between the migrant's training and Austrian training without first having verified whether the migrant can lay claim to professional experience, and whether that experience may wholly or partly compensate for this difference.

Article 3

Each request for recognition must be the subject of a reasoned decision specifying in particular the substantial differences existing between the training received by the migrant and the Austrian training.

Each decision must be made as quickly as possible and must take into account the date on which the migrant wishes to start to work in Austria.

Article 4

The decision specifying the nature of the aptitude test and the procedures applicable shall be published and made available to all the interested associations and persons on request.

Article 5

The number of aptitude tests held must be sufficient and the migrant must be given the opportunity to take the aptitude test several times.

With regard to ski instructors, aptitude tests must be concentrated in the early part of the skiing season.

Article 6

This Decision is addressed to the Austrian Republic.

Done at Brussels, 25/7/2000

For the Commission
Frits BOLKESTEIN
Member of the Commission