



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/06/2001

**C(2001) 1522 final**

**COMMISSION DECISION**

**Of 01/06/2001**

**on a request from Germany 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/EEC<sup>1</sup>, as last amended by Commission Directive 97/38/EC<sup>2</sup>, and particularly Articles 7 (a) and 14 thereof,

After receiving, by letter of 27 March 2001, a request from Germany for a derogation under Article 14 of Directive 92/51/EEC with regard to the professions of ski instructor, cross-country ski instructor, ski tour guide, and 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/EEC<sup>3</sup>, 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.

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<sup>1</sup> OJ L 209, 24.07.1992, p.25.

<sup>2</sup> OJ L 184, 12.07.1997, p.31.

<sup>3</sup> OJ L 19, 24.01.1989, p. 16.

## **II Request by Germany for a derogation**

- (4) In a letter dated 27 March 2001, Germany requested a derogation under Article 14 of Council Directive 92/51/EEC with regard to the professions of ski instructor cross-country ski instructor, ski tour guide, and mountain guide.
- (5) The purpose of the request for a derogation is, for the above professions, to enable the German authorities to require migrants who wish to establish themselves or provide a service in Germany to take an aptitude test when there are substantial differences between training in Germany and the training undergone by the migrant in another Member State.
- (6) The German 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 German Government, technical ability, whilst exercising the professions of ski instructor or 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.

## **III Consultation of the Member States**

- (7) Pursuant to Article 14 of Directive 92/51/EEC, the request for a derogation was submitted to the other Member States and the Co-ordinators on 18 April 2001. Replies were received from the following Member States: United Kingdom, Netherlands, Austria.

## **IV General considerations**

- (8) 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.
- (9) The Commission recognises that the four 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 four activities, where a migrant's training has covered matters substantially different from those covered by the diploma required in Germany, 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 during the year 2000, 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.

- (10) These considerations are equally valid whether migrants wish to establish themselves in Germany or simply to provide a service. Consequently, there is no need to distinguish between these two ways of practising the profession.
- (11) Given the above, the Commission considers that there is sufficient justification for granting Germany a permanent derogation for the professions of ski instructor cross-country ski instructor, ski tour guide, and mountain guide.
- (12) It should be pointed out that:

- a) the German authorities are entitled to ~~impose an aptitude test only when~~ substantial differences exist between the training required in Germany 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 German 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 German 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 Germany;
- 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.

- (13) 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 during the year 2000, 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.
- (14) 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.

HAS ADOPTED THIS DECISION:

*Article 1*

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

*Article 2*

Germany may not consider that there is a substantial difference between the migrant's training and German 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 German 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 Germany.

*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 Federal Republic of Germany.

Done at Brussels, 01/06/2001

*For the Commission*  
*Frits BOLKESTEIN*  
*Member of the Commission*