



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

COMMISSION DECISION

**on a request for a derogation presented by the Czech Republic pursuant to Article 14(2)
of Directive 2005/36/EC of the European Parliament and of the Council in respect of
certain professions in the field of fire prevention**

(Only the Czech 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 Directive 2005/36/EC of 7 September 2005 of the European Parliament and of the Council on the recognition of professional qualifications, and in particular Article 14(1) and (2) thereof,

Having regard to the Czech Government's note of 24 November 2006 seeking a derogation under Article 14(2) of Directive 2005/36/EC of the European Parliament and of the Council in respect of professionals in the field of fire protection and fire prevention,

Whereas:

I Legal framework

- (1) Directive 2005/36/EC consolidates and updates 15 directives on the recognition of professional qualifications. It provides for three separate systems for the recognition of professional qualifications, namely automatic recognition of professional qualifications in the case of doctors, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists and architects (Chapter III), automatic recognition of qualifications based on professional experience in the case of certain industrial, commercial and craft activities (Chapter II) and a general system for the recognition of qualifications applicable to professions not covered by those two chapters, and to professions which are covered by Chapter II, where a professional from another Member State does not have the professional experience required under Chapter II (Chapter I).
- (2) Chapter I of Directive 2005/36/EC is based on the principle of mutual trust. This means in particular that where, in the host Member State, access to a profession, or the right to pursue that profession, requires the possession of professional qualifications, the competent authorities in that Member State may not deny a person who is a national of a Member State, on the ground that that person lacks the necessary qualifications, access to or the right to pursue that profession on the same terms as its own nationals if the applicant possesses the professional qualifications which are required by another Member State for access to or the pursuit of that profession on its own territory and which were obtained in the latter Member State or, where the home Member State does not regulate that profession or the training leading to pursuit of that profession, if the applicant received in the latter Member State the preparatory training for pursuing that profession and has two years' professional experience gained in that profession in a Member State where that profession is not regulated.
- (3) The principle of mutual trust does not, however, preclude the host Member State requiring, pursuant to Article 14(1) of the Directive, that the applicant complete an adaptation period or take an aptitude test where the applicant's training is one year or more shorter than that required in the host Member State or where there are substantial differences between the training received by the applicant in the home Member State and that dispensed on its own territory. Where the host Member State exercises this option it must, by virtue of Article 14(2) of the Directive, allow the applicant to

choose between an adaptation period and an aptitude test. If it is considering not offering such a choice it must apply for a derogation in accordance with Article 14(2) of the Directive. By virtue of Article 14(3) of the Directive, however, such an application is not required in respect of occupations the pursuit of which requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity.

II Application for a derogation submitted by the Czech republic

- (4) By letter of 24 November 2006 the Czech Republic applied for a derogation pursuant to Article 14(2) of Directive 2005/36/EC in respect of competent professionals in the field of fire protection and fire prevention.
- (5) The derogation sought is aimed at enabling the Czech authorities to require that persons who qualified in another Member State and wish to become established in the Czech Republic in order to pursue one of the professions concerned take an aptitude test.
- (6) According to the Czech Government, the application is justified on the grounds of protection of health and safety. Knowledge of the national rules applicable in the field of fire protection is essential to pursuing the professions concerned, especially since this field is only partly regulated at Community level (Directives 67/548/EEC, 1999/45/EC, 76/769/EEC, 87/18/EEC, 88/320/EEC, 96/82/EC, 2003/105/EC and 96/82/EC)¹. Knowledge of those national rules accounts for more than 50% of the knowledge required to gain the professional competence needed to pursue those professions. Those rules relate in particular to technological and product safety, the requirements applicable to flammable and combustion materials, and legislation on buildings, etc. Ignorance of those rules can put human and animal life and safety at risk. Moreover, the operations and measures needed in the event of a fire entail major expenditure for the State. Lastly, the fines imposed for failure to comply with those rules can be as high as CZK 10 million (about EUR 362 670). An aptitude test would appear to constitute the most suitable means of ensuring knowledge of the national rules applicable in the field of fire protection. A comparable result could not be achieved by means of an adaptation period. The Czech Government points out, in connection with this matter, that three applications for recognition of qualifications in the field of fire protection were submitted by persons who qualified in the Slovak Republic. Of those applications, one is under scrutiny, one has been withdrawn and, in the case of the third, a compensation measure has been imposed in respect of the migrant concerned, who has opted for an aptitude test, taking the view that such a measure is more suitable than an adaptation period. No application has thus far been submitted as regards fire prevention technicians.
- (7) The Czech Government points out, as regards both fire protection professionals and fire prevention technicians, that it is possible, in the light of a comparison between the applicants' training and the training applicable in the Czech Republic, to determine the subjects the aptitude test will cover and the content of the written questions. It adds that while the first test in the mandatory aptitude test for Czech nationals deals specifically with knowledge of the rules governing fire protection, the other tests also require knowledge of the national rules. The aptitude test that nationals are required to undergo covers the following: (a) the rules governing fire protection; (b) fire safety relating to buildings and technology (partial knowledge only is required in the case of fire safety technicians); (c) assessing fire risks; (d) basic functions and parameters of fire-fighting techniques, physical means of fire protection and fire safety equipment; and (e) physical and chemical processes involved in combustion and explosion and the

¹ Generally speaking, the Directives concern hazardous substances and preparations and the prevention of serious accidents in those fields.

putting out of fires, and the toxic effects of combustion products. The aptitude test is in two parts: a written test comprising 50 questions and an oral test covering three topics selected from a total of 70.

III Notification of the other Member States

- (8) The Czech Government states, pursuant to Article 14(2) of Directive 2005/36/EC, that it has notified the other Member States of the application for a derogation. The coordinators were informed that a derogation had been applied for at a meeting held on 22 January 2007. The application was sent to them by the Czech authorities on 9 February 2007.

IV Request for additional information

- (9) By letter of 21 December 2006, the relevant Commission departments asked the Czech Government to provide further information on the content of the aptitude test they intended to require migrants to undergo. In the application for a derogation, the Czech Government indicated that while the first part of the aptitude test its nationals were required to undergo specifically covers knowledge of the rules governing fire protection, the other parts of the test also required knowledge of national rules.
- (10) The Commission departments concerned accordingly asked the Czech Government whether persons who qualified in another Member State would be required to undergo only part (a) of the test applicable to Czech nationals (knowledge of fire protection rules) or the entire test. The Czech Government replied by electronic mail of 9 February 2007.

V General

- (11) If a Member State is considering not allowing a migrant to choose between an aptitude test and an adaptation period, it must submit an application for a derogation in accordance with Article 14(2) of Directive 2005/36/EC. By virtue of Article 14(3) of the Directive, however, such an application need not be submitted in respect of professions the pursuit of which requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, in which case the host Member State may, on its own initiative, derogate from the principle whereby the migrant is allowed a free choice.
- (12) It emerges from the information the Czech authorities provided as part of the application for a derogation and in the legislation attached thereto, that qualified fire protection professionals and fire prevention technicians must perform the following tasks: provide for a sufficient number of suitable items of fire-protection equipment, the use of fire-fighting techniques, and the installation of fire safety devices and ensure that they all remain operational; introduce the necessary fire-fighting and emergency arrangements (e.g. ensure that access for fire engines and to emergency exits and fire protection equipment, etc. remain free); ensure that the rooms in which fire safety and fire protection equipment is kept are suitably signposted, i.e. that any necessary prohibition or information notices, etc. are displayed; and carry out regular checks to verify whether fire protection rules are being complied with, taking immediate steps to sanction any irregularities that come to light. They must also perform the following tasks in the case of firms which present a greater fire risk: assess the fire risks involved; organise fire protection in the light of the fire risk the activity concerned entails; show that the activity is being conducted under sufficiently safe conditions in terms of the fire risk and that the equipment also provides sufficient safety guarantees

- in respect of that risk; inspect, maintain and repair the technical facilities in accordance with the rules in force or the supplier's instructions, or specify the requirements to be met by the persons who have been assigned those tasks; prepare the documentation showing the fire risk the activity in question involves, how fire protection is effected, the evacuation plan, how the fire alarm is sounded, the fire-fighting plan, the training of the firm's personnel and the watchmen, etc.; and organise the in-house training intended for staff, management and watchmen.
- (13) Lastly, fire protection professionals are also responsible for devising measures to deal with the risk of fire occurring or spreading when firms burn combustible material in open areas, and for notifying in advance the competent regional fire fighting and emergency services.
- (14) In the light of the above, while pursuit of the professions concerned does to some extent require precise knowledge of national legislation, those professions do not have as their object the provision of advice and/or assistance relating to national legislation; at all events it is not an essential and constant aspect of those professional activities. The Czech authorities point out that the professionals concerned provide legal advice. The Commission, however, feels that the fact of explaining the content of a law does not constitute legal advice in the strict sense of the term. The requirements for the application of Article 14(3) are accordingly not satisfied in the case of fire protection professionals and fire prevention technicians. The Czech Republic is therefore right in submitting an application for a derogation on the basis of Article 14(2) of Directive 2005/36/CE.
- (15) By virtue of the third subparagraph of Article 14(2) of Directive 2005/36/EC if, after receiving all necessary information, the Commission considers that the derogation is inappropriate or that it is not in accordance with Community law, it must, within three months, ask the Member State in question to refrain from adopting the measure concerned.
- (16) By virtue of Article 14(1) of Directive 2005/36/EC the host Member State may not subject the migrant to a compensation measure - an aptitude test or an adaptation period, the choice being left to the migrant - unless the duration of the migrant's training is at least one year shorter than that required on its own territory or unless there are substantial differences between the training received by the migrant and that dispensed on its territory. By virtue of Article 14(4) of Directive 2005/36/EC "substantially different matters" means matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the migrant shows important differences in terms of duration or content from the training required by the host Member State. Finally, by virtue of Article 14(5) of Directive 2005/36/EC paragraph 1 must be applied with due regard to the principle of proportionality. In particular, the host Member State must first ascertain whether the knowledge acquired by applicants in the course of their professional experience in a Member State or in a third country is of a nature to cover, in full or in part, the substantial difference noted.
- (17) In its electronic mail of 9 February 2006 the Czech Government gives a description of the aptitude test and argues that, in general, each file will be examined on a case-by-case basis and that the content of the test will cover only areas not harmonised at European level in which migrants have acquired insufficient knowledge during their training in the light of the requirements laid down by Czech law.

- (18) It emerges from this argument that the Czech Government will impose an aptitude test where the training undergone by migrants differs from Czech training. However, Article 14(4) refers to substantial differences, i.e. important differences. Furthermore, the Czech Government does not indicate at any point that it will ascertain, in accordance with Article 14(5), whether the professional experience of the migrant can compensate for the substantial differences noted, which would where relevant exempt migrants from taking the aptitude test.
- (19) Consequently, the Czech Government has not given sufficient guarantees that the aptitude test would be imposed and organised in accordance with Articles 14(1), 14(4) and 14(5) of Directive 2005/36/EC.
- (20) The free movement of persons is one of the fundamental freedoms guaranteed by the Treaty. Accordingly, the Court of Justice of the European Communities has consistently held (in particular in its Judgment in Case C-55/94 *Gebhard* [1995] ECR I-4165) that national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty may be authorised provided they are applied in a non-discriminatory manner, are justified by imperative requirements in the general interest, are suitable for securing the attainment of the objective which they pursue and do not go beyond what is necessary in order to attain it. In so far as a derogation from the migrant's right to choose between an aptitude test and an adaptation period makes it more difficult for the professionals concerned to become established in the Czech Republic, the application submitted by the Czech Republic must be scrutinised in the light of those criteria.
- (21) The Commission recognises that the preservation of safety and the safeguarding of health can in this case be invoked as imperative requirements in the general interest. The Commission accepts that lack of knowledge of the national rules in the field of fire protection could well put human and animal health and safety at risk in the event of a fire caused by a mistake resulting from a lack of knowledge of those rules. One must, however, verify whether the fact of not giving the migrant a choice is necessary and proportionate to the objective being pursued, namely preserving safety and safeguarding health. In this context it is advisable to consider whether an aptitude test constitutes the only means of ensuring knowledge of the national rules and whether an adaptation period is a suitable means of attaining that objective.
- (22) The Czech Government states in its application for a derogation that an aptitude test is the most suitable means of ensuring knowledge of the national rules in the field of fire protection. A similar result cannot, it alleges, be achieved by means of an adaptation period. The Czech Government does not, however, state why an aptitude test constitutes the most suitable approach and an adaptation period is unsuitable. The Czech Government refers only to a migrant who allegedly opted for an aptitude test on the grounds that the adaptation period was unsuitable. The position of the Czech Government cannot, however, be justified on the basis of that argument since another migrant could just as well have done the opposite.
- (23) In the light of its scrutiny of the case the Commission, however, feels that knowledge of the national rules in the field of fire protection can just as effectively be gained by means of an adaptation period. Firstly, as provided for in Article 3(1)(g) of Directive 2005/36/EC, the adaptation period may be accompanied by further training. This further training could well cover the national rules - the knowledge of which is

essential to the pursuit of the professions or occupations concerned - since professionals from another Member State would not have gained knowledge of those rules prior to submitting a request for recognition. Moreover the adaptation period can, just as effectively as the aptitude test, be used to verify that the person concerned is sufficiently knowledgeable about the rules in so far as that person is being assessed.

- (24) Consequently the Commission feels that the Czech Republic has failed to demonstrate that it is justifiable to derogate from the migrant's right to choose between an aptitude test and an adaptation period in the case of fire protection professionals and fire prevention technicians. Such a derogation does not appear to be justified in the light of the objectives of maintaining safety and safeguarding health, in so far as those objectives can be achieved in equal measure by an aptitude test and an adaptation period. Such a derogation would thus be contrary to Community law.
- (25) In the light of the above the Commission takes the view that it is not advisable to allow the Czech Republic to derogate from the freedom of choice migrants would otherwise be allowed when seeking access to professions in the field of fire protection and fire prevention.

HAS ADOPTED THIS DECISION:

Article 1

The Czech Republic is not authorised to require that qualified professionals in the field of fire protection and fire prevention trained in other Member States of the European Union take an aptitude test where there are differences between the training received by those professionals and the training dispensed in the Czech Republic, differences which cannot be compensated by their professional experience. The Czech Republic must, where applicable, continue to allow the professionals concerned to choose between an aptitude test and an adaptation period.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission