

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance)

TITLE III

FREEDOM OF ESTABLISHMENT

CHAPTER I

General system for the recognition of evidence of training

Article 14

Compensation measures

1 Article 13 does not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if:

- a the duration of the training of which he provides evidence under the terms of Article 13, paragraph 1 or 2, is at least one year shorter than that required by the host Member State;
- b the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;
- c the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State within the meaning of Article 4(2), and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.

2 If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.

Where a Member State considers, with respect to a given profession, that it is necessary to derogate from the requirement, set out in the previous subparagraph, that it give the applicant a choice between an adaptation period and an aptitude test, it shall inform the other Member States and the Commission in advance and provide sufficient justification for the derogation.

If, after receiving all necessary information, the Commission considers that the derogation referred to in the second subparagraph is inappropriate or that it is not in accordance with Community law, it shall, within three months, ask the Member State in question to refrain from taking the envisaged measure. In the absence of a response from the Commission within the abovementioned deadline, the derogation may be applied.

3 By way of derogation from the principle of the right of the applicant to choose, as laid down in paragraph 2, for professions whose pursuit 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, the host Member State may stipulate either an adaptation period or an aptitude test.

This applies also to the cases provided for in Article 10 points (b) and (c), in Article 10 point (d) concerning doctors and dental practitioners, in Article 10 point (f) when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by nurses responsible for general care or specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of the titles listed in Annex V, point 5.2.2 and in Article 10 point (g).

In the cases covered by Article 10 point (a), the host Member State may require an adaptation period or an aptitude test if the migrant envisages pursuing professional activities in a self-employed capacity or as a manager of an undertaking which require the knowledge and the application of the specific national rules in force, provided that knowledge and application of those rules are required by the competent authorities of the host Member State for access to such activities by its own nationals.

4 For the purpose of applying paragraph 1 points (b) and (c), ‘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.

5 Paragraph 1 shall be applied with due regard to the principle of proportionality. In particular, if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first ascertain whether the knowledge acquired by the applicant in the course of his 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 referred to in paragraph 4.