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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2019

establishing a Common Training Test for ski instructors under Article 49b of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of the professional qualifications

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Pursuant to Article 49b of Directive 2005/36/EC¹ the Commission has been empowered to adopt delegated acts to establish the contents of a common training test as well the conditions required for taking and passing the test.

The common training test will be a standardised aptitude test available across participating Member States and reserved to holders of a particular professional qualification. In accordance with Article 49b(1) of Directive 2005/36/EC passing such a test in a Member State shall entitle the holder of a particular professional qualification to pursue the profession in any host Member State concerned under the same conditions as the holders of a professional qualification acquired in that Member State.

The main objective of the common training test for ski instructors ("CTT") as enshrined in this proposed delegated regulation (the "Regulation") is to facilitate the mobility of professionals across the European Union. By introducing automatic recognition for professionals having passed the CTT existing barriers to the free provision of services and establishment of ski instructors will be significantly reduced. The Regulation will also permit nationals from any Member State to partake in the CTT as well as in the practical organisation of such tests without the obligation of becoming a member of specific professional organisation or to register with such an organisation beforehand.

Furthermore, the Regulation aims at increasing legal clarity, predictability and transparency with respect to the recognition of ski instructor qualifications after the introduction of a Memorandum of Understanding (the "Memorandum") in 2012. The Memorandum was a pilot project for professionals having passed the Eurotest and the Eurosecurity test. Currently, 11 Member States are signatories to the Memorandum. Due to its limited scope and its status as an agreement outside of Union law the Memorandum will not be prolonged further but will instead be effectively replaced by the Regulation once adopted to ensure full compliance with European Union law. The provisions agreed in the Memorandum have been taken into account as basis for this Regulation.

The profession of ski instructor, or the education and training leading to the profession of ski instructor, is regulated in at least 13 Member States: Austria, Belgium, Czech Republic, Croatia, France, Germany, Hungary, Italy, Portugal, Romania, Slovakia, Slovenia and Spain. As outlined in Section 2 below the CTT has been prepared following a transparent due process in close cooperation with national administrations and professional associations.

In light of the above all necessary conditions for the establishment of a common training test as prescribed by Article 49b(2) of Directive 2005/36/EC are fulfilled.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The aspects covered by the Regulation as well as the preparatory works were discussed with experts nominated by the Member States during the period 2015-2018. The documents relevant to the meetings were transmitted simultaneously to the European Parliament and the Council as foreseen in the Common Understanding on Delegated Acts². The observations

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30 September 2005, p. 22.

² Common Understanding between the European Parliament, the Council and the Commission on Delegated Acts, Annex to the Interinstitutional Agreement between the European Parliament, the

raised during these meetings have been duly taken into account when preparing the final draft version of the Regulation.

These expert discussions were preceded by informal contacts with representatives of interested stakeholders, notably Member States and professional organisations, during the period December 2014 to May 2015. Additionally, a meeting with representatives of professional organisations was organised in February 2016. These discussions also included pursuant to Article 49b(2) of Directive 2005/36/EC stakeholders from Member States where the profession is not regulated.

An external consultant contracted by the Commission prepared a comprehensive Study on the profession of ski instructor and the training available in Member States (the "Study").³ Based on additional input received from Member States and professional organisations, the annexes to the Study have been updated by the Commission services.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The main feature of the Regulation once adopted will be the establishment of the CTT. This covers two aspects: a. the organisation and content of the CTT itself and b. the conditions for participating in and the passing of the CTT including its effects.

Regarding its organisation, the CTT would closely follow the technical aspects prescribed by the Memorandum which have been applied since 2012 in the participating Member States. Certain modifications will be introduced to ensure full compliance with European Union law as well as to take the concerns and suggestions expressed by stakeholders into account.

The CTT will in fact consist of two tests, more specifically a test certifying technical ability and a test certifying safety-related competences.

The CTT will be accessible only to ski instructors falling within the scope of this Regulation. For ski instructors not covered by this Regulation the general system of recognition as established by Directive 2005/36/EC continues to apply.

Even though the CTT would be only organized by participating and capable Member States any national of the European Union can participate regardless of whether the Member State of nationality is a participating Member State. Consequently, the Regulation will abolish the nationality-based discrimination that previously existed within the framework of the Memorandum.

By taking into account the results of the Study and in close cooperation with the Member States a screening of existing qualifications has been carried out with the aim of identifying appropriate qualifications conferring the eligibility for participating in the CTT. The outcome of this process is reflected in Annex I of this Regulation. Qualifications not yet included in Annex I of this Regulation need further development to be included in order to grant access to the CTT for their respective holders.

To ensure this high level of quality of the qualifications giving access to a CTT each Member State will be obliged to notify to the Commission and to the other Member States any new or updated qualifications through the Internal Market Information System.

Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12 May 2016, p. 1.

³ Mapping of professional qualifications and relevant training for the profession of ski instructor in the EU-28, EEA and Switzerland, October 2015, available here http://ec.europa.eu/assets/eac/sport/library/documents/ski-instructor-report_en.pdf.

One outcome of the consultation with respect to the technical aspects of the organisation of the CTT was to alleviate the criteria for passing the test certifying the technical ability. By increasing the percentage factored in for a successful performance during a CTT from 18% to 19% for men and from 24% to 25% for women concerns about the degree of difficulty could be addressed.

The Regulation will specify other technical aspects, *inter alia*, the composition of technical commissions for the site approval and the test juries, the choice of forerunners, the determination of the forerunners' coefficient, the review procedure and the proof of successful completion of a CTT.

After a candidate passed the CTT, each Member State should recognise that the successful completion of the CTT effectively gives the said candidate access to the professional activities of ski instructors under the same conditions as the holders of professional qualifications acquired in that Member State.

Taking into account the impact of the existing Memorandum of Understanding and given that its scope of application is limited to 11 Member States it was conceived as necessary to include a possibility to be exempted from participating in and passing the CTT or parts of it to those ski instructors that have obtained their qualification in a Member State other than a signatory of the Memorandum before the entry into force of this Regulation - under the condition of having professional experience as a ski instructor of at least 200 days during five year period preceding the entry into force of this Regulation. Ski instructors having obtained a certain number of FIS (Federation Internationale du Ski) points during a specified period of time will equally benefit from an exemption. In parallel, acquired rights will be recognised for those ski instructors who have passed the Eurotest or Eurosecurity test as well as those having benefitted from grandfathering rights under the Memorandum.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications¹, and in particular Article 49b(4) thereof,

Whereas:

- (1) Currently, ski instructors benefit from the principle of mutual recognition of their qualifications under Directive 2005/36/EC. Establishing a common training test for ski instructors ("CTT") would introduce an automatic recognition for certain ski instructor qualifications to enable holders of those qualifications to move more easily between Member States. The CTT would be one way of facilitating the mobility of ski instructors across the Union. For ski instructors who are not eligible to participate in the CTT or who have not passed the CTT, the general framework for recognition of their qualifications under Directive 2005/36/EC would continue to apply.
- (2) The profession of ski instructor or alternatively the education and training leading to the qualification as a ski instructor is regulated in more than one third of Member States and therefore the requirements under Article 49b(2) of Directive 2005/36/EC are fulfilled.
- (3) In 2012, a Memorandum of Understanding ("Memorandum") establishing a pilot project for a professional card to be issued to ski instructors in the Union was signed by nine Member States, namely Austria, Belgium, Denmark, France, Germany, Italy, Romania, Spain and the United Kingdom. Slovenia and the Czech Republic subsequently signed the Memorandum in 2014. The Memorandum recognised the acquired rights of ski instructors who were nationals of those signatory Member States as of the date of the Memorandum. The Memorandum also stipulated that the successful completion of the Eurotest and Eurosecurity tests were prerequisites for the automatic recognition of the qualification as a ski instructor amongst those Member States as of the date of signing the Memorandum. In order to ensure legal certainty, it is appropriate and reasonable to rely on these two tests as basis for the content of the CTT and to take the provisions agreed in the Memorandum into account as a common basis for this Regulation.
- (4) Any ski instructor covered by this Regulation should be capable of ensuring that ski instruction classes are safely conducted with full autonomy in a snowy mountainous

¹ OJ L 255, 30.9.2005, p.22.

environment, but excluding those areas where mountaineering techniques are required. Therefore, in order to ensure a high quality of ski instruction, it is appropriate that the qualifications which confer the eligibility of candidates to participate in the CTT should also include certain teaching skills.

- (5) Participation in competitions managed by the Fédération Internationale du Ski ("FIS") and any FIS points awarded as part of those competitions should be taken into consideration, where appropriate, when processing a request for an exemption in relation to Part I of the CTT as regards the certification of technical ability.
- (6) In the interests of legal certainty it is necessary to recognise the acquired rights of both ski instructors who hold a professional card issued under the Memorandum as well as those who hold a qualification listed in Annex I in a Member State, which is not a signatory to the Memorandum, where they can demonstrate the required experience as a ski instructor under specific conditions,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to all citizens of the Union who wish to pursue the profession of ski instructor in a Member State other than the one in which they have obtained a qualification listed in Annex I.

Article 2

Subject-matter

1. This Regulation establishes the contents of the Common Training Test ("CTT") and the conditions to be fulfilled for both participating in and passing of the CTT.
2. The CTT shall comprise of a test certifying technical ability of ski instructors and a test certifying safety-related competences of ski instructors in accordance with the rules laid down in Parts I and II respectively of Annex II.

Article 3

Competent entities

For the purpose of this Regulation a "competent entity" means any entity that is listed in Annex I, which awards a qualification conferring the right to participate in the CTT pursuant to Article 5.

Article 4

Principle of automatic recognition

1. Member States shall recognise certificates issued in accordance with Article 8 attesting the successful completion of the CTT. Any citizen of the Union who holds such a certificate issued in a Member State shall be entitled to gain access to the professional activities of ski instructors in other Member States subject to the same conditions as ski instructors who have acquired their qualification in those Member States.
2. Member States shall recognise certificates issued in accordance with Article 8 to ski instructors who benefit from acquired rights as set out in Article 7. Any citizen of the Union who holds such a certificate issued in a Member State shall be entitled to gain access to the

professional activities of ski instructors in other Member States subject to the same conditions as ski instructors who have acquired their qualification in those Member States.

Article 5
Participation in the CTT

All citizens of the Union who hold or who are in training to obtain a qualification listed in Annex I² shall be entitled to participate in the CTT.

Article 6
Exemptions

1. Without prejudice to Article 5, ski instructors shall be exempted from the requirement to pass the test certifying technical ability as referred to in Part I of Annex II, where they hold or where they are in training to obtain a qualification listed in Annex I and either:

(a) can provide evidence of having been awarded at least 100 Fédération Internationale du Ski alpine skiing points for men and at least 85 Fédération Internationale du Ski alpine skiing points for women in one of the technical disciplines of slalom or giant slalom over any period of five years; or

(b) have passed the Eurotest.

2. Without prejudice to Article 5, ski instructors who have passed the Eurosecurity test shall be exempted from the requirement to pass the test certifying safety-related competences as referred to in Part II of Annex II, where they hold or where they are in training to obtain a qualification listed in Annex I.

3. Those ski instructors who have passed, as part of the CTT, either the test certifying technical ability as referred to in Part I of Annex II or the test certifying safety-related competences as referred to in Part II of Annex II shall not be required to repeat that part of the CTT that they have successfully completed.

Article 7
Acquired rights

1. Ski instructors who, before the date of entry into force of this Regulation, hold a professional card issued under the Memorandum shall benefit from the principle of automatic recognition as set out in Article 4(2).

2. Ski instructors who fall within the scope of this Regulation and who have passed both the Eurotest and the Eurosecurity test shall benefit from the principle of automatic recognition as set out in Article 4(2), where they also hold a qualification listed in Annex I.

3. Ski instructors who have obtained a qualification listed in Annex I in a Member State other than a signatory of the Memorandum at the moment of entry into force of this Regulation and are able to demonstrate professional experience of at least 200 days during the five years immediately preceding the entry into force of this Regulation shall benefit from the principle of automatic recognition as set out in Article 4(2).

4. Those ski instructors who enjoy the benefit of acquired rights as set out in paragraphs 1, 2 and 3 shall be entitled to apply for a certificate of competency pursuant to Article 8.

² For Austria, this is understood to be the qualification as *Diplomschilehrer* - formerly titled as *staatlich geprüfter Schilehrer*.

Article 8
Certificate of competency

1. Ski instructors who fall within the scope of this Regulation and have either successfully passed the CTT or who enjoy acquired rights pursuant to Article 7 shall be issued a certificate of competency. The certificate shall be issued by the Member State or by the competent entity in a Member State, which have awarded the professional qualification conferring the right to participate in the CTT pursuant to Article 5 to the professional.

2. The certificate of competency shall indicate at least the following:

- (a) the name of the ski instructor;
- (b) the results obtained in the CTT and the date of passing the CTT, if applicable;
- (c) the specific acquired right the ski instructor enjoys pursuant to Article 7, if applicable;
- (d) the issuing Member State or competent entity;
- (e) the qualification listed in Annex I held by the ski instructor.

3. The certificate of competency shall be accompanied by a sticker to be affixed to the national card of the ski instructor. The sticker shall attest that a certificate of competency has been issued to the ski instructor and shall indicate at least:

- (a) the name of the ski instructor;
- (b) the year of issue of the certificate of competency;
- (c) the issuing Member State or competent entity.

4. A duplicate of the certificate of competency shall be issued at any time upon request from the ski instructor.

Article 9
Notification procedure

Member States shall notify the Commission and the other Member States of any changes to the qualifications listed in Annex I as well as the existence of any new qualifications that are comparable, in terms of the skills and knowledge, with those listed in Annex I. Such notifications shall be transmitted via the Internal Market Information System established by Regulation (EU) 1024/2012 of the European Parliament and of the Council³.

Article 10
Training and experience of long duration

Ski instructors holding a qualification listed in Annex I and being able to demonstrate at least 95 days of theoretical and practical ski instructor training and 95 days of work experience as a ski instructor will be recognized in Austria on the level of "Diplomschilehrer".

Article 11
Final provisions

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

³ Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14.3.2019

For the Commission
The President
Jean-Claude JUNCKER