JUDGMENT OF THE COURT (Fifth Chamber)
29 April 2004 *

In Case C-102/02,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht Stuttgart (Germany) for a preliminary ruling in the proceedings pending before that court between

Ingeborg Beuttenmüller

and

Land Baden-Württemberg,

on the interpretation of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48 (OJ 1992 L 209, p. 25),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas (Rapporteur), A. La Pergola and S. von Bahr, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Ms Beuttenmüller, by T. Weber, Rechtsanwalt,

— the Land Baden-Württemberg, by J. Daur, acting as Agent,

— the Austrian Government, by M. Fruhmann, acting as Agent,

— the Commission of the European Communities, by M. Patakia and H. Kreppel, acting as Agents,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 September 2003,

gives the following

Judgment

1 By order of 5 March 2002, received at the Court on 20 March 2002, the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) referred to the Court for a preliminary ruling six questions on the interpretation of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48 (OJ 1992 L 209, p. 25).

2 Those questions were raised in proceedings between Ms Beuttenmüller, an Austrian national, and the *Land* Baden-Württemberg concerning the refusal of the Oberschulamt Stuttgart (Stuttgart Secondary Education Office) to recognise her diploma of primary school teacher, obtained in Austria, as equivalent to the qualification required to work as a primary and secondary school teacher in that *Land*.

Law

Community rules

3 Under Article 39(2) EC, freedom of movement for workers is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

Directive 89/48

4 It is apparent from the third recital of the preamble to Directive 89/48 that its purpose is to introduce a method of recognition of diplomas intended to enable European citizens to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State.

5 The fifth recital of the preamble to that directive states as follows:

'Whereas, for those professions for the pursuit of which the Community has not laid down the necessary minimum level of qualification, Member States reserve the option of fixing such a level with a view to guaranteeing the quality of services provided in their territory; whereas, however, they may not, without infringing their obligations laid down in Article 5 of the [EC] Treaty, require a national of a

Member State to obtain those qualifications which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State; whereas, as a result, any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires.'

6 Article 1(a) of that directive provides:

'For the purposes of this directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

— which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

— which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

— which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications [was] received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognised a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognised by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State.'

7 Article 3 of Directive 89/48 provides:

'Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, 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 on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(c) and the first subparagraph of Article 1(d), and possesses evidence of one or more formal qualifications:

— which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of such State,

— which show that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level of a Member State and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

— which have prepared the holder for the pursuit of his profession.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of training received in the Community and is recognised by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.'

8 Article 4 of Directive 89/48 authorises the host Member State, notwithstanding Article 3 thereof, to require the applicant to provide evidence of professional

experience, to complete an adaptation period not exceeding three years or to take an aptitude test. It lays down certain rules and conditions applicable to measures which that State may impose to make up for the shortfalls in education and training of the applicant ('the compensatory measures').

9 Pursuant to Article 8(1) of that directive:

'The host Member State shall accept as proof that the conditions laid down in Articles 3 and 4 are satisfied the certificates and documents issued by the competent authorities in the Member States, which the person concerned shall submit in support of his application to pursue the profession concerned.'

Directive 92/51

10 The complementary system for the recognition of professional education and training introduced by Directive 92/51 covers the levels of education and training which were not covered by the initial general system established by Directive 89/48 the scope of which is limited to higher education.

11 Article 1 of Directive 92/51 provides:

'For the purposes of this Directive, the following definitions shall apply:

(a) diploma: any evidence of education and training or any set of such evidence:

— which has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,

— which shows that the holder has successfully completed:

(i) either a post-secondary course other than that referred to in the second indent of Article 1(a) of Directive 89/48/EEC, of at least one year's duration or of equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education, as well as the professional training which may be required in addition to that post-secondary course;

(ii) or one of the education and training courses in Annex C, and

— which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by this evidence was received mainly in the Community, or outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a Member State, or that the holder thereof has three years' professional experience certified by the Member State which recognised third-country evidence of education and training.

The following shall be treated in the same way as a diploma within the meaning of the first subparagraph: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognised by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

...

(g) regulated education and training: any education and training which:

— is specifically geared to the pursuit of a given profession, and

— comprises a course or courses complemented, where appropriate, by professional training or probationary or professional practice, the structure and level of which are determined by the laws, regulations or

administrative provisions of that Member State or which are monitored or approved by the authority designated for that purpose;

...'

12 Article 3 of that directive provides:

'Without prejudice to Directive 89/48/EEC, where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, as defined in this Directive or in Directive 89/48/EEC, 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 on the same conditions as those which apply to its own nationals:

(a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State;

...

By way of derogation from the first subparagraph of this Article, the host Member State is not required to apply this Article where the taking up or pursuit of a regulated profession is subject in its country to possession of a diploma as defined

in Directive 89/48/EEC, one of the conditions for the issue of which shall be the completion of a post-secondary course of more than four years' duration.'

13 Article 4 of Directive 92/51 allows the host Member State, notwithstanding Article 3 thereof, to require the applicant to provide evidence of specific professional experience, to complete an adaptation period not exceeding three years or to take an aptitude test. It lays down certain rules and conditions applicable to the compensatory measures which may be required. According to the first indent of Article 4(1)(a), where the duration of the education and training adduced in support of his application pursuant to Article 3(a) of that directive is at least one year less than that required in the host Member State, the period of professional experience required may not exceed 'twice the shortfall in duration of education and training where the shortfall relates to a post-secondary course and/or to a period of probationary practice carried out under the control of a supervising professional person and ending with an examination'.

14 Under Article 12(1) of Directive 92/51:

'The host Member State shall accept as means of proof that the conditions laid down in Articles 3 to 9 are satisfied the documents issued by the competent authorities in the Member States, which the person concerned shall submit in support of his application to pursue the profession concerned.'

National law

15 In Germany, the regulation of the education, training and careers of teachers is essentially the responsibility of the *Länder*. According to the referring court, the following provisions applicable in Baden-Württemberg are relevant to the dispute in the main proceedings.

16 The rules on the recognition of qualifications for the teaching profession are set out in the Verordnung des Kultusministeriums zur Umsetzung der Richtlinie 89/48/EWG ... für Lehrerberufe (Ministry of Education regulation for the teaching profession transposing Directive 89/48/EEC) of 15 August 1996 (GBl., p. 564, 'the EU-EWR-LehrerVO'). That regulation was adopted on the basis of Paragraph 28a(1) of the Landesbeamtengesetz (Law on *Land* officials), in the version published on 19 March 1996 (GBl., p. 286, 'the LBG'). That paragraph states:

'Paragraph 28a — Career qualifications under provisions of European law

(1) The career qualification can also be acquired under

1. Directive 89/48/EEC ... or

2. Directive 92/51/EEC ...

The detailed rules governing this matter shall be enacted, by way of a regulation, by the ministries under the powers vested in them, in agreement with the Ministry of Internal Affairs and the Ministry of Finance.'

17 Paragraph 1 of the EU-EWR-LehrerVO states as follows:

'Paragraph 1 — Recognition

1. A qualification for the teaching profession awarded or recognised in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area after a period of higher education of at least three years' duration, in the form of a diploma within the meaning of Directive 89/48/EEC ... shall, on application, be recognised as a qualification to pursue the profession of teacher in State schools in Baden-Württemberg, where

(1) the applicant is a national of a Member State of the European Union or of another Contracting State to the Agreement on the European Economic Area,

(2) the qualification comprises at least two of the subjects stipulated for the teaching profession in question in Baden-Württemberg,

(3) the applicant's written and spoken knowledge of the German language is of the standard necessary to teach in Baden-Württemberg,

(4) the education and training required for the applicant's diploma within the meaning of Article 3, first paragraph, under (a), of Directive 89/48/EEC does not reveal any substantial deficiencies as regards particular specialisation, teaching methodology, education theory or teaching practice as compared to the education and training in Baden-Württemberg, and

(5) the duration of the education and training necessary for the diploma within the meaning of Article 3, first paragraph, under (a), of Directive 89/48/EEC is not more than one year shorter than the duration of education and training required for the pursuit of the teaching profession in the kind of school in question in Baden-Württemberg.

2. If the content of the education and training does not meet the requirements in subparagraph 1(4), the applicant may be required either to complete an adaptation period or to pass an aptitude test, as the applicant may choose.

3. If the duration of the education and training does not meet the requirements in subparagraph 1(5), the applicant may be required to adduce evidence of professional experience.

4. The applicant may only be required either to comply with a measure under subparagraph 2 or to adduce evidence under subparagraph 3. If there should be a shortfall with regard to both content (subparagraph 1(4)) and duration (subparagraph 1(5)), the applicant may be required to make good only the content shortfall in accordance with subparagraph 2.'

18 Paragraph 5 of the EU-EWR-LehrerVO provides:

'Paragraph 5 — Decisions

1. The applicant shall be informed in writing of the decision on the application within four months of submission of full documentation; that period shall be extended by the amount of time stipulated for the submission of any additional documentation which may be required. The decision must give reasons and contain formal notice of the right of appeal.

2. The notification of the decision shall state the classification given to the applicant's professional activity, education and training to work as a teacher in schools in Baden-Württemberg. It shall also contain:

(1) a determination as to whether there is a shortfall of more than one year compared to the length of education and training required for the pursuit of the profession of teacher in Baden-Württemberg,

(2) a determination with regard to substantial shortfalls in the subjects shown in the evidence of qualifications adduced or of any substantial areas of professional activity not covered, together with a list of missing subject areas,

(3) information on

(a) the length and material content of any adaptation period and

(b) the subject-matter of any aptitude test.'

19 Paragraph 6 of the EU-EWR-LehrerVO provides as follows:

'Paragraph 6 — Recognition

1. If the investigation reveals no shortfall, if the aptitude test or adaptation period has been successfully completed, or if the necessary professional experience has

been proven in the case of a shortfall in duration and if the requisite knowledge of the German language is also proven under Paragraph 2, the teaching qualification shall be recognised. The applicant shall receive a certificate from the Ministry of Education confirming that finding.

2. The recognition decision shall state that recognition does not give rise to any entitlement to employment.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 Ms Beuttenmüller, the claimant in the main proceedings, was born in 1958. After obtaining her school-leaving diploma, she followed a two-year course at the Archdiocese of Vienna College of Education (Austria), specialising in foreign-language and art teaching and on 6 June 1978 she obtained a diploma in primary school teaching.

21 From 1978 to 1988, Ms Beuttenmüller was employed as a primary school teacher in Austria. She went on maternity and unpaid leave from 1 February 1981.

22 Since 1991, Ms Beuttenmüller has been employed as a teacher in *Land* Baden-Württemberg, working first in a church-maintained establishment for young migrants. Since 6 December 1993, she has been employed by *Land* Baden-Württemberg as a teacher in its schools.

23 Until 30 July 1996, Ms Beuttenmüller was on grade Vb of the salary scale fixed by the Bundesangestelltentarifvertrag (federal collective agreement on public sector employees, 'the BAT'), in accordance with the Richtlinie des Finanzministeriums Baden-Württemberg über die Eingruppierung der im Angestelltenverhältnis beschäftigten Lehrkräfte des Landes (Baden-Württemberg Ministry of Finance guidelines on the grading of teaching staff employed by the *Land*). From that date, she was placed on the higher grade IVb of the BAT.

24 In a letter of 16 March 1998, Ms Beuttenmüller applied to the Oberschulamt Stuttgart for the primary school teaching certificate awarded to her in Austria to be treated in the same way as a teaching certificate awarded in Baden-Württemberg and for her promotion to grade III of the BAT.

25 The Oberschulamt Stuttgart rejected that application in a decision notified to Ms Beuttenmüller on 26 August 1999. On 21 November 2000, the Oberschulamt Stuttgart also rejected the complaint brought by Ms Beuttenmüller against that decision.

26 In the proceedings which Ms Beuttenmüller brought before the Verwaltungsgericht Stuttgart, she claimed that the court should:

— primarily, 'annul the decision of the Oberschulamt Stuttgart of 26 August 1999 in the form of the decision of the Oberschulamt Stuttgart of 21 November 2000 in respect of the complaint and to order the defendant to grant the claimant's application that her teaching qualification awarded in Austria after a period of education and training of two years' duration be treated as equivalent to the primary and junior secondary school teaching qualification in Baden-Württemberg';

— in the alternative, 'annul the decision of the Oberschulamt Stuttgart of 26 August 1999 in the form of the decision of the Oberschulamt Stuttgart of 21 November 2000 in respect of the complaint, and to declare that the defendant is required to enable the applicant, by means of the corresponding measures of equivalence (adaptation periods and aptitude tests, amongst others) to satisfy the conditions for the equivalence applied for'.

27 In the order for reference, the Verwaltungsgericht Stuttgart states that the rejection of Ms Beuttenmüller's application is in accordance with the relevant national provisions. The application did not satisfy the condition, which is compulsory under the EU-EWR-LehrerVO, that the applicant must have completed a period of post-secondary education and training of at least three years' duration. There is no need even to decide whether the Archdiocese of Vienna College of Education is to be regarded as an establishment of higher education or at least as another establishment of similar level, within the meaning of the second indent of Article 1(a) of Directive 89/48.

28 However, the Verwaltungsgericht Stuttgart admits that entitlement to recognition or equivalence of Ms Beuttenmüller's qualification awarded in Austria can be based directly on the two directives cited at Paragraph 28a of the LBG, namely Directives 89/48 and 92/51. It considers that, in that case, several difficulties in interpretation arise in relation to the relevant provisions of those two directives.

29 In respect of Directive 89/48, it considers that the equivalence clause contained in the second subparagraph of Article 1(a) thereof could apply to Ms Beuttenmüller's period of education and training of two years' duration only. According to an opinion of the Austrian Federal Ministry of Education and Cultural Affairs of 10 August 1998, which the applicant placed on the file in the administrative proceedings, the education and training of primary school teachers in Austrian colleges of education was extended from two to three years of study with effect from 1 September 1985. Persons who had completed the 'old' two-year education

and training courses are afforded the same rights in respect of the taking up and pursuit of the profession as those who have completed the 'new' three-year course of education and training. According to that opinion, 'the conditions for the applicability of the equal-treatment provision of Directive [89/48] appear to be satisfied in the case of the two-year period of education and training'.

30 In that context, the Verwaltungsgericht Stuttgart also cites the following passage from an opinion of the Commission of the European Communities of 4 November 1998 which Ms Beuttenmüller adduces in evidence:

'If a course of education and training is replaced by a course of study at a higher-education establishment of three years' duration, holders of the "earlier" diploma may, in the Commission's view, benefit from Directive 89/48/EEC if there are provisions of national law in existence which expressly recognise that their education and training is considered to be of a level equivalent to the education and training for which the "new" diploma is awarded and confers the same rights in respect of the pursuit of the profession'.

31 However, the Verwaltungsgericht Stuttgart harbours doubts about the applicability of the equivalence clause in Ms Beuttenmüller's case. It points out, first, that she received her entire education and training in Austria. In its view, the second subparagraph of Article 1(a) of Directive 89/48 seems to refer to education and training received in another Member State and recognised as being of an equivalent level in that Member State, in this case, the Austrian Republic.

32 Second, the referring court considers that the opinion of the Austrian Federal Ministry of Education and Cultural Affairs of 10 August 1998 is not binding. The assertion that persons who have successfully completed the 'old' course are afforded the same rights in respect of the pursuit of the profession of primary school teacher in Austria as persons who have successfully completed the 'new'

course of education and training is undermined by the content of a letter of 8 April 1999 from the Vienna Stadtschulrat (City School Board) to the claimant. According to the referring court, it is apparent from that letter that, whilst both kinds of education and training are recognised to be of an equivalent level for recruitment purposes, only the three-year course of education and training to become a teacher in primary and junior secondary schools in Austria confers entitlement to a grade L2 a2 salary in the relevant pay scale. Teachers who have completed only a two-year course of education and training must successfully complete further training and pass further examinations in certain subjects on the curriculum of education colleges.

33 The Verwaltungsgericht Stuttgart states that, as at the date of the order for reference, Directive 92/51 has not been transposed into national law. It therefore discusses the possibility of directly applying the provisions of that directive. Moreover, it raises the question whether the probationary training period may be taken into account for the purposes of showing that the total period of post-secondary education and training required for access to the teaching profession in Baden-Württemberg exceeds four years. In that case, the final subparagraph of Article 3 of Directive 92/51 would preclude application of the rules laid down in that article.

34 In the light of all the foregoing considerations, the Verwaltungsgericht Stuttgart decided to stay proceedings and refer to the Court for a preliminary ruling the following questions:

'1. Is Article 3, in conjunction with Article 4, of Directive 89/48/EEC ... directly applicable so that a national of a Member State may rely directly on the provisions of the directive where it has not been correctly transposed into national law?

2. Is Article 3, in conjunction with Article 4, of Directive 92/51/EEC ... directly applicable so that, in the absence of implementing measures enacted within

the period prescribed for that purpose, a national of a Member State may rely on those provisions of the directive as against all national provisions that are not in conformity with the directive?

If the answer to question 1 and/or question 2 is in the affirmative:

3. Does Council Directive 89/48/EEC ... or Directive 92/51/EEC ... preclude national legislation (in this instance, the EU-EWR-LehrerVO, transposing Directive 89/48/EEC in respect of the teaching profession, ...) which makes recognition of a professional teaching qualification awarded or recognised in another Member State of the European Union

   (a) conditional, without exception, on completion of higher education and training of at least three years' duration,

   (b) require the qualification to comprise at least two of the subjects stipulated for the teaching profession in question in Baden-Württemberg?

If the answer to question 1 is in the affirmative:

4. Is the second subparagraph of Article 1(a) of Directive 89/48/EEC to be interpreted as meaning that the qualification for the profession of primary school teacher awarded on the basis of the former two-year system of education and training in Austria is to be treated in the same way as a

diploma within the meaning of the first subparagraph of Article 1(a) of Directive 89/48/EEC where the competent authority in Austria confirms that the examination certificate awarded following education and training of two years' duration is recognised, for the purposes of the application of the second subparagraph of Article 1(a) of Directive 89/48/EEC, as being of a level equivalent to the diploma (examination certificate) currently awarded after three years' study and confers the same rights in Austria in respect of the taking up or pursuit of the profession of primary school teacher?

If the answer to question 2 is in the affirmative:

5. Is [the final subparagraph of] Article 3 of Directive 92/51/EEC to be interpreted, with regard to the recognition of professional teaching qualifications, as meaning that the prerequisite of a "post-secondary course of more than four years' duration", specified in that provision, only encompasses the prescribed higher education and training (higher-education studies) or as meaning that the probationary period of teaching practice ("Lehramtsreferendariat") counts towards the "post-secondary course of more than four years' duration"?

6. If Article 3, first subparagraph, of Directive 92/51/EEC applies to professional teaching qualifications awarded after only two years' (higher) education and training in Austria:

In the event of failure to transpose Directive 92/51/EEC within the period prescribed in Article 17 thereof, does Article 3(a) of that directive give rise to an entitlement to have a teaching qualification awarded in a Member State treated in the same way as the corresponding qualification for a teaching career in the host Member State without the host Member State being permitted — where the particular conditions are fulfilled — first of all to require compensatory measures to be applied under Article 4 of the directive?'

The questions referred for a preliminary ruling

35 By its questions, the referring court asks essentially whether a national of a Member State who holds a qualification for entry to the teaching profession, obtained in her Member State of origin following a two-year period of education and training, may rely directly on the provisions of Directive 89/48 or Directive 92/51 in seeking recognition by the competent authority of the host Member State of her entitlement to pursue the profession of teacher in the schools of that State under the same conditions as the nationals of that State.

36 It should be noted as a preliminary point that, as is apparent in particular from the first recital of the preambles to Directives 89/48 and 92/51, the primary objective of those directives is the abolition of obstacles to freedom of movement for persons and services within the Community. Those recitals emphasise that, amongst other things, freedom of movement for persons and services entails, for nationals of the Member States, the possibility of pursuing a profession, whether in a self-employed or employed capacity, in a Member State other than that in which they acquired their professional qualifications. It also follows from the third and fourth recitals of the preamble to Directive 89/48 that the introduction of a general system of recognition of diplomas is intended to facilitate the pursuit by Community citizens of all professional activities which in the host Member State are dependent upon the completion of a particular education and training. Recital 18 of the preamble to Directive 92/51 moreover confirms that the aim of the general system of recognition of diplomas implemented by that directive, like the first general system implemented by Directive 89/48, is to eliminate obstacles to the taking up of regulated professions.

37 Since it is necessary to determine whether, in circumstances such as those in the main proceedings, the conditions for the direct application of the relevant provisions of Directive 89/48 are met, it is first necessary to examine the fourth question referred for a preliminary ruling, concerning the interpretation of the second subparagraph of Article 1(a) of that directive. As is apparent from its title, this lays down a general system for the recognition of higher-education diplomas

awarded on completion of professional education and training of at least three years' duration, whereas, in the present case, the claimant in the main proceedings followed a period of education and training in Austria of just two years. Accordingly, if the reply to the fourth question is in the negative, the applicant cannot rely on the rights conferred by that directive.

The fourth question

38 By this question, the referring court asks whether the second subparagraph of Article 1(a) of Directive 89/48 should be interpreted as meaning that a qualification for the profession of teacher such as that formerly awarded on the basis of a two-year period of education and training in Austria is to be treated in the same way as a diploma within the meaning of the first subparagraph of that provision, where the competent authority of that State certifies that the diploma awarded following education and training of two years' duration is recognised as being of a level equivalent to the diploma currently awarded after three years' study and confers the same rights in that Member State in respect of the taking up or pursuit of the profession of teacher.

39 According to Ms Beuttenmüller, the Austrian Government and the Commission, the reply to that question should be in the affirmative, whilst the *Land* Baden-Württemberg appears to submit that a two-year period of education and training completed in an Austrian college of education cannot fall within the equivalence clause laid down by the second subparagraph of Article 1(a) of Directive 89/48. In any event it considers that that provision does not apply in the dispute in the main proceedings. Ms Beuttenmüller and the Austrian Government are of the opposite view. The Commission, for its part, submits that it is for the national court to determine whether the conditions to which that directive subjects the equivalence of diplomas are satisfied in the dispute in the main proceedings.

40 It should be noted in this connection that the term 'diploma' for the purposes of Directive 89/48 is defined in Article 1(a) thereof, which has two subparagraphs. The first subparagraph sets out the conditions which must be satisfied by diplomas, certificates or other evidence of formal qualifications in order to fall within the definition of 'diploma'. Amongst those conditions should be noted that concerning the minimum period of post-secondary study to which such a diploma attests. Under the second subparagraph of that provision, any diploma, certificate or other evidence of formal qualification which does not satisfy the conditions of the first subparagraph is nevertheless to be treated in the same way as a diploma within the meaning of that subparagraph provided that it satisfies certain conditions. It must have been awarded by a competent authority in a Member State on successful completion of education and training received in the Community. Furthermore, such education and training must have been recognised by that competent authority as being of an equivalent level and the diploma, certificate or other evidence of formal qualifications must confer the same rights in respect of the taking up and pursuit of a regulated profession in that Member State.

41 It must be noted that the conditions referred to in the preceding paragraph are satisfied by a diploma such as that awarded in Austria upon completion of a two-year period of education and training received entirely within that Member State provided that the competent authority certifies that that diploma is regarded as equivalent to the diploma currently granted after three years' study and confers the same rights in respect of the taking up and pursuit of the profession of teacher in that State. The expression 'education and training received in the Community' covers both education and training received entirely in the Member State which awarded the diploma or certificate in question and that received partly or wholly in another Member State.

42 That interpretation of the second subparagraph of Article 1(a) of Directive 89/48, which follows directly from the wording of that provision is, moreover, corroborated by the 'Report to the European Parliament and to the Council on the state of application of the general system for the recognition of higher-education diplomas made in accordance with Article 13 of Directive 89/48/EEC (COM(96) 46 final)', which was presented by the Commission on 15 February 1996. According to point III(v) of that report, the second subparagraph of Article 1(a) of that directive was included to take account of persons who had not undergone three years of higher education and training, but who hold

qualifications giving them the same professional rights as if they had completed such a course. It is apparent from point III(vi) of that report that that situation exists in several Member States. It is moreover apparent from this that that provision also applies where, in a Member State, a course of education and training which does not fall within the first subparagraph of Article 1(a) is replaced by one leading to a diploma within the meaning of that subparagraph, provided that national legislation explicitly recognises that the old education and training was of an equivalent level to that of the new education and training and that it confers on the holders of the 'old' diplomas the same rights to take up and pursue the profession in question as those of the holders of the new diplomas.

43 With regard to the doubts raised by the referring court and the *Land* Baden-Württemberg in the course of the present proceedings concerning the verification of the final condition laid down by the second subparagraph of Article 1(a) of Directive 89/48, it is not for the Court to determine that question by way of a preliminary ruling. It is for the national court to determine in the light of the evidence submitted by the person concerned pursuant to Article 8(1) of that directive, and the relevant national provisions for the assessment of such evidence, whether that condition must be regarded as satisfied in the main proceedings.

44 It should, however, be stated, as the Austrian Government rightly pointed out, that that condition concerns the right to pursue a regulated profession and not the remuneration and other employment conditions applicable in the Member State which recognises the equivalence of the old and new education and training. The reference in the second subparagraph of Article 1(a) of Directive 89/48 to 'the same rights in respect of the ... pursuit of a regulated profession' is intended specifically to take account of the situation of those who retain the right to pursue the profession in question even if the diplomas or certificates which they hold no longer entitle them to take up that profession in the territory of the Member State which awarded or recognised them. That interpretation is in accordance with the objective of the protection of acquired rights which underpins the second subparagraph of Article 1(a) of Directive 89/48. It is also confirmed by the use of the conjunction 'or' in the wording of that provision, which distinguishes between, on the one hand, 'the taking up ... of a regulated profession' and on the other, the 'pursuit' thereof.

45 The reply to the fourth question must therefore be that the second subparagraph of Article 1(a) of Directive 89/48 must be interpreted as meaning that a qualification for the profession of teacher, such as that formerly awarded on the basis of a two-year period of education and training in Austria, is to be treated in the same way as a diploma within the meaning of the first subparagraph of that provision where the competent authority of that Member State certifies that the diploma awarded following education and training of two years' duration is recognised as being of a level equivalent to the diploma currently awarded after three years' study and confers the same rights in that Member State in respect of the taking up or pursuit of the profession of teacher. It is for the national court to determine, in the light of the evidence submitted by the applicant in accordance with Article 8(1) of that directive and the national provisions applicable to the assessment of such evidence, whether the final condition laid down by the second subparagraph of Article 1(a) must be regarded as satisfied in the case in the main proceedings. That condition concerns the right to take up a regulated profession and not the remuneration and other employment conditions applicable in the Member State which recognises the equivalence of the old and new education and training.

The first and third questions

46 By its first and third questions, which should be considered together, the referring court asks essentially whether Article 3 in conjunction with Article 4 of Directive 89/48 may be relied on by a national of a Member State as against national provisions which do not comply with that directive and whether that directive precludes provisions such as those contained in the EU-EWR-LehrerVO, which transpose that directive as regards the teaching profession, in that, in order to recognise a qualification for the teaching profession awarded or recognised in another Member State, those national provisions require without exception the completion of higher education and training of at least three years' duration and comprising at least two of the subjects stipulated for the teaching profession in question in the host Member State.

47 Ms Beuttenmüller, the Austrian Government and the Commission consider that the EU-EWR-LehrerVO incorrectly transposes Directive 89/48 and submit that Article 3(a) thereof may be relied upon by a national of a Member State for the purpose of having national provisions which are incompatible with that directive disapplied. The *Land* Baden-Württemberg for its part submits that the EU-EWR-LehrerVO satisfies the requirements of that directive in all respects and, consequently, the provisions of the directive cannot be applied directly.

48 It should be borne in mind that Article 3(a) of Directive 89/48 provides that the competent authority of the host Member State may not, on grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue a regulated profession on the same conditions as apply to its nationals if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State.

49 As stated in paragraph 40 of the present judgment, the term 'diploma' within the meaning of Directive 89/48, used inter alia in Article 3(a) thereof, covers not only diplomas, certificates or other evidence of formal qualifications which satisfy the conditions laid down by the first subparagraph of Article 1(a) of that directive, but also those which are to be treated in the same way as diplomas, certificates or other evidence of formal qualifications pursuant to the second subparagraph of that provision. Consequently, in accordance with Article 3(a), the competent authority of the host Member State is required to recognise the professional qualifications giving the right to take up a regulated profession where the applicant holds a diploma treated in the same way pursuant to the second subparagraph of Article 1(a) of that directive, even if that diploma is awarded upon successful completion of a period of education and training of less than three years and/or where the corresponding studies were not followed in a higher-education establishment or another establishment of a similar level.

50 It follows that Directive 89/48, in particular Article 3(a) thereof, precludes national provisions such as those set out in the EU-EWR-LehrerVO which require, without exception, for the purposes of the recognition of professional teaching qualifications that a teacher complete higher education and training of at least three years' duration.

51 Directive 89/48 also precludes national provisions which make the recognition of a professional qualification acquired in another Member State dependent upon that education and training having a particular content, such as the provisions laid down by the EU-EWR-LehrerVO which require that the education and training demonstrated by the applicant cover two of the subjects stipulated for the teaching profession in Baden-Württemberg.

52 The Commission rightly pointed out that the system of mutual recognition of diplomas established by Directive 89/48 does not imply that diplomas awarded by the other Member States certify an education and training similar or comparable to that required in the host Member State. According to that system, a diploma is not recognised on the basis of the intrinsic value of the education and training to which it attests, but because it gives the right to take up a regulated profession in the Member State where it was awarded or recognised. Differences in the organisation or content of teacher education and training acquired in another Member State by comparison with that provided in the host Member State are not therefore sufficient to justify a refusal to recognise the professional qualification concerned. At most, where those differences are substantial, they may justify the host Member State requiring that the applicant satisfy one or other of the compensatory measures set out in Article 4 of the directive.

53 It is not in dispute in the main proceedings that Paragraph 1(1)(2) of the EU-EWR-LehrerVO makes recognition of a teaching qualification dependent upon the education and training acquired in another Member State covering at least two of the subjects stipulated in the host Member State, even if the applicant wishes to teach only one subject covered by her education and training. That requirement is likely to prevent a great number of Community nationals from entering the teaching profession in the host Member State in question, even though they have the qualifications necessary to pursue that profession in their Member State of origin. Furthermore, it amounts to requiring that the education and training acquired in a Member State other than the host Member State be similar or comparable to that provided in the latter State, which is clearly contrary to the system of recognition of diplomas established by Directive 89/48 and the express wording of Article 3(a) thereof.

54 According to the Court's case-law, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against the State where that State has failed to implement the directive in national law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, Case 103/88 *Fratelli Costanzo* [1989] ECR 1839, paragraph 29; Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 51; and Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Others* [2003] ECR I-4989, paragraph 98).

55 In that regard, Article 3(a) of Directive 89/48 is a provision the subject-matter of which is unconditional and sufficiently precise. Individuals are therefore entitled to rely upon that provision before a national court in order to have national provisions inconsistent with the directive disapplied.

56 With regard to Article 4 of Directive 89/48, it should be noted that in the case in the main proceedings, no compensatory measure under that article was imposed on Ms Beuttenmüller by the competent authority of the host Member State. In those circumstances, it is not appropriate for the Court to rule on the interpretation of that provision.

57 In the light of the foregoing considerations, the answer to the first and third questions must be that Article 3(a) of Directive 89/48 may be relied upon by a national of a Member State as against national provisions inconsistent with that directive. That directive precludes such provisions where, for the purpose of recognising a professional teaching qualification awarded or recognised in a Member State other than the host Member State, they require, without exception, completion of a period of higher education and training of at least three years' duration and covering at least two of the subjects stipulated for the teaching profession in the host Member State.

The second, fifth and sixth questions

58 By its second, fifth and sixth questions, which should be examined together and which concern the interpretation of Articles 3 and 4 of Directive 92/51, the referring court asks essentially whether, in the absence of implementing measures enacted within the period prescribed in the first subparagraph of Article 17(1) of that directive, a national of a Member State may rely on Article 3(a) of that directive in order to obtain in the host Member State recognition of a professional teaching qualification such as that awarded in Austria following education and training of two-years' duration or whether, on the contrary, that possibility is excluded by reason of the application in the case in the main proceedings of the derogation laid down by the final subparagraph of Article 3 or is conditional upon the applicant first complying with any compensatory measures that may be required pursuant to Article 4 of that directive.

59 It should be borne in mind that, according to the information contained in the order for reference, the *Land* Baden-Württemberg failed to transpose Directive 92/51, which, according to the first subparagraph of Article 17(1), the Member States should have been transposed before 18 June 1994. Furthermore, it follows from Article 3(a) of that directive, the purpose and subject-matter of which are similar to those of Article 3(a) of Directive 89/48, that the competent authority of the host Member State must recognise the equivalence of a professional teaching qualification held by a national of a Member State if the applicant holds a diploma, as defined by Directive 92/51 or 89/48, which is required by a Member State for the taking up or pursuit of that profession in its territory. As is apparent from Article 1(a) of Directive 92/51, for the purposes of that directive, a diploma is any evidence of education and training which shows that the holder has successfully completed inter alia a post-secondary course other than that referred to in the second indent of Article 1(a) of Directive 89/48, of at least one year's duration.

60 In those circumstances, a national of a Member State can rely on Article 3(a) of Directive 92/51 to obtain recognition in the host Member State of a professional

teaching qualification such as that awarded in Austria upon completion of a two-year period of education and training. It should however be pointed out that, where such a professional qualification also meets all the requirements laid down by the second subparagraph of Article 1(a) of Directive 89/48 in order to be treated in the same way as a diploma under the first subparagraph of that provision, the competent authority of the Member State must grant recognition under Article 3(a) of Directive 89/48 and not under Article 3(a) of Directive 92/51.

61 The *Land* Baden-Württemberg submits, however, that Article 3 of Directive 92/51 does not apply in the case in the main proceedings because of the derogation laid down by the final subparagraph of that article. According to that provision, the host Member State is not required to apply that article where the taking up or pursuit of a regulated profession is subject in its country to possession of a diploma as defined in Directive 89/48, one of the conditions for the issue of which is the completion of a post-secondary course of more than four years' duration. The *Land* Baden-Württemberg submits in that context that the pursuit of the profession of teacher in its primary or junior secondary schools necessitates a three-year period of study in a higher college of education and a preparatory probationary period of at least 18 months following those studies. Therefore, it does involve a post-secondary course of more than four years' duration within the meaning of the last subparagraph of Article 3 of Directive 92/51.

62 That interpretation cannot be upheld.

63 First, as the Advocate General pointed out in point 87 of his Opinion, a Member State which has failed to fulfil its obligation to transpose the provisions of a directive into national law can no more rely, as against Community citizens, upon the limitations laid down by those provisions than it can require that they perform

the obligations laid down by that directive. The *Land* Baden-Württemberg cannot therefore rely upon the derogation laid down by the final subparagraph of Article 3 of Directive 92/51 as against an individual since it has failed to transpose that directive.

64 Second, the interpretation of the final subparagraph of Article 3 of Directive 92/51 put forward by the *Land* Baden-Württemberg is, in any event, incorrect. It is apparent from several provisions of that directive, in particular Article 1(g) and the first indent of Article 4(1)(a) thereof, that the term 'post-secondary course' is distinct from that of 'probationary practice', even though professional training may consist of a post-secondary course plus a period of probationary practice. There is no evidence to suggest that the final subparagraph of Article 3 of that directive does not take account of that distinction. Furthermore, a provision which derogates from the general principle established by that directive, that the host Member State may not refuse the right to take up a regulated profession to a national of a Member State who possesses the qualification required by a Member State other than the host Member State in order to take up that profession, must be interpreted strictly (see, by analogy, *Kügler*, paragraph 28). Consequently, the final subparagraph of Article 3 of Directive 92/51 must be regarded as referring only to the duration of the post-secondary course and the period of probationary practice may not be included in the calculation of the minimum period of four years, which is one of the conditions for the application of that derogation.

65 As for making the recognition of a professional qualification conditional upon the applicant first complying with the compensatory measures that may be required pursuant to Article 4 of Directive 92/51, it follows from paragraph 63 of the present judgment that, where a Member State has failed to fulfil its obligation to transpose the provisions of a directive into national law, it cannot require individuals to perform the obligations laid down by those provisions. The *Land* Baden-Württemberg cannot therefore refuse to recognise the equivalence of the diploma held by the claimant in the main proceedings by relying on any obligation on the part of that applicant first to submit to compensatory measures.

66 Furthermore, it should be emphasised that the competent authority of the host Member State did not impose any of the compensatory measures referred to in Article 4 of Directive 92/51 on Ms Beuttenmüller. In those circumstances, as has already been stated at paragraph 56 of the present judgment in respect of Article 4 of Directive 89/48, it is not appropriate for the Court to rule on the interpretation of the equivalent provision of Directive 92/51.

67 In the light of all of the foregoing, the reply to the second, fifth and sixth questions must be that in the absence of implementing measures enacted within the period prescribed in the first subparagraph of Article 17(1) of Directive 92/51, a national of a Member State may rely on Article 3(a) of that directive in order to obtain in the host Member State recognition of a professional teaching qualification such as that awarded in Austria following education and training of two years' duration. In circumstances such as those in the case in the main proceedings, that possibility is neither excluded by reason of the application of the derogation laid down by the final subparagraph of Article 3 of that directive nor is it conditional upon the applicant first complying with any compensatory measures that may be required pursuant to Article 4 of that directive.

Costs

68 The costs incurred by the Austrian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Stuttgart by order of 5 March 2002, hereby rules:

1. The second subparagraph of Article 1(a) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration must be interpreted as meaning that a qualification for the profession of teacher, such as that formerly awarded on the basis of a two-year period of education and training in Austria, is to be treated in the same way as a diploma within the meaning of the first subparagraph of that provision where the competent authority of that Member State certifies that the diploma awarded following education and training of two years' duration is recognised as being of a level equivalent to the diploma currently awarded after three years' study and confers the same rights in that Member State in respect of the taking up or pursuit of the profession of teacher. It is for the national court to determine, in the light of the evidence submitted by the applicant in accordance with Article 8(1) of that directive and the national provisions applicable to the assessment of such evidence, whether the final condition laid down by the second subparagraph of Article 1(a) must be regarded as satisfied in the case in the main proceedings. That condition concerns the right to take up a regulated profession and not the remuneration and other employment conditions applicable in the Member State which recognises the equivalence of the old and new education and training.

2. Article 3(a) of Directive 89/48 may be relied upon by a national of a Member State as against national provisions inconsistent with that directive. That directive precludes such provisions where, for the purpose of recognising a professional teaching qualification awarded or recognised in a Member State other than the host Member State, they require, without exception, completion of a period of higher education and training of at least three years' duration and covering at least two of the subjects stipulated for the teaching profession in the host Member State.

3. In the absence of implementing measures enacted within the period prescribed in the first subparagraph of Article 17(1) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48, a national of a Member State may rely on Article 3(a) of that directive in order to obtain in the host Member State recognition of a professional teaching qualification such as that awarded in Austria following education and training of two years' duration. In circumstances such as those in the case in the main proceedings, that possibility is neither excluded by reason of the application of the derogation laid down by the final subparagraph of Article 3 of that directive nor is it conditional upon the applicant first complying with any compensatory measures that may be required pursuant to Article 4 of that directive.

Jann Timmermans Rosas

La Pergola von Bahr

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President