



01/09/2017

Guideline ‘to help understand’ the European legislation on the ‘Recognition of professional qualifications’

The mobility of both employers and workers in the Active Leisure sector (Outdoors & Fitness) within the EU is often hampered by all kinds of local, regional or even national protectionism measures. Most known example is the situation of ski instructors in France, but France is certainly not the only EU Member State that causes these difficulties. In the ski sector, Italy (Trento) and Austria (mainly Tyrol) also try to impose all kinds of **‘un-lawful’** protectionism mechanisms.

Nevertheless, though ski is without doubt most notorious, particularly in France the same protectionism mechanisms are also applied for virtually all active leisure activities such as rafting, kayaking, sailing, fitness instructor, ...etc.

Because of the almost endless number of intimidations and even of (unnecessary) court cases – often with bankruptcy as a consequence - reported to EC-OE, the need is felt to inform all parties involved, on the existing European legislation.

By disseminating this **Guideline on the European legislation on the ‘recognition of professional qualifications’**, EC-OE sincerely hopes to contribute to a better understanding of the existing EU legislation and to improve mobility in the active leisure sector within Europe.

For further information and / or legal support please do not hesitate to contact us at info@ec-oe.eu.

EUROPEAN LEGISLATION

Even if not transposed into national legislation (deadline was 18th of January 2016) and regardless of any other local, regional or even national regulation, the only relevant legislation applicable **in all EU Member States** is the EU Directive 2005/36/EC ¹ modified by Directive 2013/55/EU ².

KEY CONCEPTS

Regulated profession

Any Member State (MS) can decide to regulate a profession but if regulated, Art. 1 (Purpose) of the Directive comes into force.

“ This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession. “

Remuneration (specific for France)

If a profession is regulated and if the service provider is not remunerated, no particular qualification is required and no declaration to any competent authority is required.

If a profession is regulated in a certain MS, the service provider must declare in the host MS under the system of either:

- *Free Provision of Services, or*
- *Freedom of Establishment.*

Important for both cases however is that the declarations are done in time (≠ the day before you decide to move).

¹ <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32005L0036>

² <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0055>

Free Provision of Services

Declaration under the system of **FPS** is by far the most useful and easiest to comply with. Moreover, people working in the active leisure sector in most case only move from one MS to another for a limited period of time (1 week, 14 days, holiday period, season...). When the **FPS** declaration is finalized, a simple receipt is given to the service provider.

In active leisure activities, no 'language knowledge' is required.

The FPS declaration must be repeated every time / year.

Freedom of Establishment

Declaration under the system of **FE** in fact is more suitable for those wanting to move more or less permanent to another European Member State. The basic requirements are +/- the same as for the FPS system but some additional information can also be required. In France, once declared under the **FE** system the applicant receives a '**carte professionnelle**'. Proof of language knowledge can be imposed but only after delivery of the 'carte professionnelle'.

This procedure must not be repeated every year.

Declaration procedure for FPS: main guidelines

Art. 7.1 of the Directive, is very explicit on this matter. **Two – and only 2** - documents are compulsory to provide to the host MS.

1. *A written declaration that may be supplied by any means (so called 'formal' documents can not be imposed to use by the host MS)*
2. *Proof of sufficient insurance on professional civil liability*

Additionally for the purpose of the declaration maximum **four – and only 4** – extra documents can be requested by the host MS:

1. *Proof of nationality*
2. *Proof of legal establishment*
3. *Proof of right to exercise the profession*
4. *Proof of professional qualification*

Consequently the host MS is not entitled to require additional documents - such as e.g. Memorandum of Understanding (MoU) stamps, FIS points or an Eurotest certificate as is often the case in the ski sector – and the applicant cannot be forced

to provide any such additional documents.

Evidence of professional qualification

Either the service provider can provide a copy of a relevant qualification acquired - in particular in a European MS - and / or, the service provider can provide any means of proof that he/she has pursued the activity concerned for at **least 1 year** during the previous 10 years (Art. 7 d).

The '1 year proof of experience' however does not apply if the profession or if the training is regulated in the MS of acquisition.

Notification by the competent authority (of the host MS) for FPS procedure

Art. 7.4 states that:

*“ Within a maximum of **one month** of receipt of the declaration and accompanying documents, the competent authority shall endeavour to inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Where there is a difficulty which would result in delay, the competent authority shall notify the service provider within the first month of the reason for the delay and the timescale for a decision, which must be finalised within the second month of receipt of completed documentation.”*

The same article also specifies that:

*“In the **absence of a reaction** of the competent authority within the deadlines set in the previous subparagraphs, the service may be provided. “*

Substantial difference

The competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services (Art. 7.4). This check must be done within the time limits of the notification (= max. 1+1 month).

Every decision by the competent authority must be motivated. In case the competent authority concludes that there is a substantial difference between the qualification of the home MS and that required in the host MS, the competent authority of the host MS will have to prove – according to a very strict procedure - that substantial difference.

It is important to note that the substantial difference in any case – if only because of previous work experience - by definition is very individual. Therefore, the host MS cannot legally impose every single applicant to perform the same standardised test such as e.g. the (ski) Eurotest.

CONCLUSION

We are well aware of the fact that this brief overview of some of the most important elements of the EU legislation on the mutual recognition of qualifications cannot be exhaustive. There are simply too many issues to deal with in this complex matter.

We hope however to have clarified to a certain extent what is at stake when a service provider in the active leisure sector wants to move from one EU Member State to another.

In the meantime we also want to warn every potential service provider willing to move to another MS, not to be mistaken with the procedures and possible juridical boobytraps. Moreover, it is our experience that many lawyers within the EU are not acquainted with Directive 2005/36/EC & Directive 2013/55/EU.


Please be aware of the fact that some organisations (even competent authorities) in some European MS (basically for protectionist reasons) deliberately misrepresent the scope of Dir. 2005/36/EC and Dir. 2013/55/EU.

Finally, and hopefully also for a better understanding of what goes wrong in some European MS, some examples of frequently used **misleading information** are added as addendum.

Follow us on: www.ec-oe.eu & <http://www.active-leisure-alliance.eu/>

Annex 1

French misleading information leaflet referring to an obsolete French legislative rule instead of referring to Dir. 2005/36/EC and Dir. 2013/55/EU



RÈGLES FRANÇAISES / FRENCH REGULATIONS

En France, l'encadrement de la pratique sportive contre rémunération est réglementé.
Le professionnel doit :

- ✗ Être titulaire d'une qualification française homologuée par le Ministère chargé des sports ou étrangère admise en équivalence ou en reconnaissance.
- ✗ Se déclarer auprès de l'autorité administrative compétente.

In France, if you receive any type of remuneration for Teaching, Coaching or Guiding for any sport related activity you must

- ✗ Hold a French Qualification issued by the appropriate French Governing Body or hold a foreign qualification with full equivalence recognition.
- ✗ You must equally be declared to the correct governing body.

DÉCLARATION / DECLARATION

La déclaration est préalable au démarrage de l'activité.
Elle doit être déposée via l'adresse suivante
<https://www.arquedi.sports.gouv.fr/>
et nécessite un délai d'instruction, une fois le dossier complet déposé.

Your declaration must be made, recognized and accepted for guiding, teaching or coaching before going ahead with your activity.

You must make your declaration on the following website
<https://www.arquedi.sports.gouv.fr/>

Se déclarer ne signifie pas avoir le droit d'exercer ! Le candidat doit obtenir l'autorisation de l'autorité administrative compétente avant de commencer d'exercer.

Just declaring yourself is not enough. You must wait for your declaration to be processed, accepted and authorized.

Any breach in these proceedings can lead to penal prosecutions.

QUALIFICATION ÉTRANGÈRE / FOREIGN QUALIFICATIONS

Selon la nationalité du candidat et les modalités de son exercice professionnel sur le territoire français, sa procédure de déclaration sera traitée différemment :

- ✗ Pour les ressortissants communautaires et conformément à la directive européenne 2005/36/CE relative à la libre circulation des personnes, ce sera une procédure de reconnaissance de qualification :
 - Soit sur le dispositif de « libre établissement » pour une installation permanente ou pour une saison sportive.
 - Soit le dispositif de « libre prestation de service » pour les professionnels établis dans leur pays d'origine et pour un exercice temporaire et occasionnel.
- ✗ Pour les ressortissants extracommunautaires, ce sera une procédure d'équivalence de diplôme.

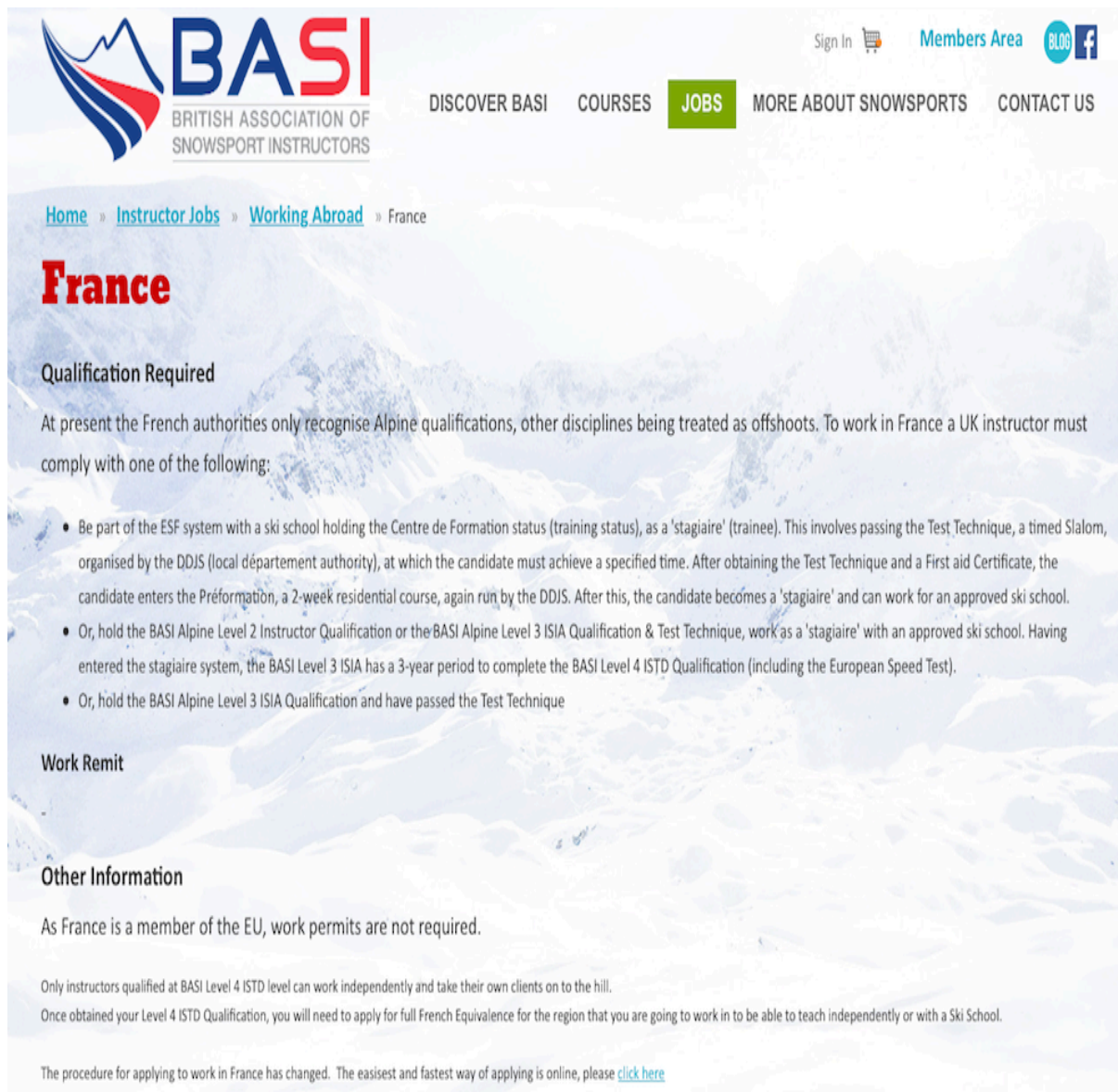
Every country has different qualifications, so therefore the declaration process and equivalent system is different for every country

- ✗ In accordance with the European Directive 2005/36/CE (concerning free movement of people) all European Nationals holding a European qualification (27 countries plus Norway, Iceland, Liechtenstein and Switzerland) must follow a procedure to obtain recognition of their qualifications. This can be either:
 - Under the agreement of "libre établissement" (permanent and seasonal establishment) for permanent installation or for installation on a seasonal basis, such as skiing for the winter season.
 - Or under the agreement of "libre prestation de service" (temporary and occasionnel service) which is for teachers, guides and coaches which are recognized in their own country professionally and who wish to teach, guide or coach on a temporary or occasional basis (i.e. Tour operators).
- ✗ For all other foreign nationals a full equivalence of their teaching, coaching and guiding qualifications will be requested and required.

Annex 2

Misleading information by the British Association of Snowsport instructors:

not 1 single sentence of this 'information' (website) is correct



The screenshot shows the BASI (British Association of Snowsport Instructors) website. The header includes the BASI logo, navigation links (DISCOVER BASI, COURSES, JOBS, MORE ABOUT SNOWSPORTS, CONTACT US), and user links (Sign In, Members Area, BLOG, Facebook). The breadcrumb trail reads: Home » Instructor Jobs » Working Abroad » France. The main heading is "France".

Qualification Required

At present the French authorities only recognise Alpine qualifications, other disciplines being treated as offshoots. To work in France a UK instructor must comply with one of the following:

- Be part of the ESF system with a ski school holding the Centre de Formation status (training status), as a 'stagiaire' (trainee). This involves passing the Test Technique, a timed Slalom, organised by the DDJS (local département authority), at which the candidate must achieve a specified time. After obtaining the Test Technique and a First aid Certificate, the candidate enters the Préformation, a 2-week residential course, again run by the DDJS. After this, the candidate becomes a 'stagiaire' and can work for an approved ski school.
- Or, hold the BASI Alpine Level 2 Instructor Qualification or the BASI Alpine Level 3 ISIA Qualification & Test Technique, work as a 'stagiaire' with an approved ski school. Having entered the stagiaire system, the BASI Level 3 ISIA has a 3-year period to complete the BASI Level 4 ISTD Qualification (including the European Speed Test).
- Or, hold the BASI Alpine Level 3 ISIA Qualification and have passed the Test Technique

Work Remit

Other Information

As France is a member of the EU, work permits are not required.

Only instructors qualified at BASI Level 4 ISTD level can work independently and take their own clients on to the hill.

Once obtained your Level 4 ISTD Qualification, you will need to apply for full French Equivalence for the region that you are going to work in to be able to teach independently or with a Ski School.

The procedure for applying to work in France has changed. The easiest and fastest way of applying is online, please [click here](#)

Annex 3

Racketeering by the 'Tourism Department of the Autonomous Province of Trento': the price to bribe is between € 36 and € 44 / hour per instructor



Mail

To whom it may concern

Trento, - 8 NOV. 2016

Prot. n. 893 MIN/kv

Dear Partner,

with reference to the temporary exercise of the ski instructor profession by foreign nationals, we notify below the decisions reached by the Tourism Department of the Autonomous Province of Trento after the necessary investigations into the relevant regulations.

As regards the qualification of **Initiator/Aspirant or Level I Moniteur Sportif Initiateur (Bioso, Adeps, BVSI/ABIS)**, as such a person is **not entitled** to exercise the profession independently, we inform you that, in order to ensure public safety, the temporary exercise of the profession by Belgian nationals who hold this qualification can be envisaged **only with the coordination of Italian ski schools operating in the province of Trento** and the consequent supervision of their activity by the technical directors **according to the following proportions** applied to the number of foreign operators and the number of Italian registered ski instructors adequate for such supervision.

It was agreed with the provincial College of Ski Instructors that public safety be pursued at least according to these proportions:

Trentino Instructors	Initiator/ Aspirant	Trentino Instructors	Initiator/ Aspirant	Trentino Instructors	Initiator/ Aspirant	Trentino Instructors	Initiator/ Aspirant	Trentino Instructors	Initiator/ Aspirant
1	1	2	5	3	9	4	13	5	15
1	2	2	6	3	10	4	14		
1	3	2	7	3	11				
1	4	2	8	3	12				

In summary, the conditions applying to Belgian ski instructors in Trentino are as follows:

Initiator/Aspirant or Moniteur Sportif Initiateur (BLOSO, ADEPS, BVSI/ABIS)

Max 7 weeks, under the coordination of a Ski School and the supervision of a technical director

Intermediate qualifications (Aide Moniteur, niveau II, éducateur ADEPS – instructeur, skileraar, trainer BVSI/ABIS – instructeur B, trainer A BLOSO)

Max 2 weeks working independently

Moniteur de ski professionnel

Max 7 weeks working independently

Trentino Marketing s.r.l.
I - 38122 Trento, via Romagnosi 11
T + 39.0461.219300
www.trentinomarketing.org

C.F. P.IVA, Reg. Impr. Trento 02341860225
Capitale Sociale 20.000,00 € i.v.
Società unipersonale
Direzione e coordinamento di Trentino Sviluppo s.p.a.

TRENTINO
visittrentino.it

On p.2 the Tourism Department of the Autonomous Province of Trento even proclaims itself as “ **identified by the European Directive as the relevant competent authority** “



The agreement with the provincial College of Ski Instructors envisages that the Trentino instructor's fee shall correspond to the **school's list price for a 1-hour individual lesson** (usually from a minimum of 36.00€ to a maximum of 44.00€ / hour per instructor), a rate which is however lower than the list price for groups and must be paid by the tour operator/agency to the Trentino ski school in line with Italian tax regulations.

The ski school is responsible for the Trentino instructor, while the tour operator/agency is responsible for the Belgian worker.

Finally, as regards **volunteers**, i.e. Belgian citizens who declare to be so, we point out that the Tourism Department of the Province of Trento is not competent on the matter, since the Autonomous Province of Trento has been identified by the European directive as the relevant competent authority only for those who operate professionally.

We confide in your collaboration with the local ski schools, of which we attach a list including details and contacts.

For further information on the declaration of temporary exercise of the ski instructor profession please contact the "Ufficio ricettività e professioni turistiche" (Accommodation and Tourism Professions Office) of the Autonomous Province of Trento at the e-mail address: esercizio.temporaneo@provincia.tn.it

Kind regards.

Maurizio Rossini
CEO

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Annex 4

Blackmail letter by an Austrian legal firm: pay € 952,68 and we leave you in peace.

Sehr geehrter Herr,

Wir sind mit der rechtsfreundlichen Vertretung des Tiroler Skilehrerverbands beauftragt.

Auf Ihrer Website bieten Sie erwerbsmäßig Schiunter-richt in Tirol an.

Insbesondere bieten Sie Ihren potenziellen Kunden an, sie durch Technik- und Pistentraining am Stubai Gletscher oder im Kühtai auf deren spätere Schilehrerausbildung vorzubereiten.

Gemäß § 3 des Tiroler Schischulgesetzes 1995 ist das erwerbsmäßige Anbieten und Erteilen von Skiunterricht in Tirol grundsätzlich nur im Rahmen bewilligter Schischulen zulässig (Schischulvorbehalt).

Nach den uns vorliegenden Informationen betreiben Sie keine bewilligte Schischule und dürfen daher keinen Skiunterricht anbieten oder durchführen.

Durch die Nichtbeachtung des Schischulvorbehalts begehen Sie sowohl einen Wettbewerbsverstoß als auch eine Verwaltungsübertretung, die mit Geldstrafe bis zu € 3.000.- bedroht ist.

Wir fordern Sie daher auf, bis längstens 01 April 2017

1. es zukünftig zu unterlassen, erwerbsmäßig Skiunterricht in Tirol ohne entsprechende Bewilligung anzubieten und/oder durchzuführen,
2. das Angebot des Erteilens von Skiunterricht in Tirol von Ihrer Website www.developyourskiing.com zu entfernen,
3. die beiliegende Unterlassungserklärung unterzeichnet im Original per Post an uns zu retournieren und
4. die Kosten für unser Einschreiten in Höhe von € 952,68 (inkl. € 158,78 an USt.) auf eines unserer Kanzleikonten zu überweisen.

Sollten Sie diese Forderungen nicht binnen oben genannter Frist erfüllen, werden wir unserem Mandanten empfehlen, gerichtliche Schritte gegen Sie einzuleiten.

Mit freundlichen Grüßen