



The voice of the European Outdoors

Wolfshagen 180
B-3040 Huldenberg
België

DG Internal Market and Services,
Unit E-4 “Free Movement of Professionals”
European Commission
Rue de Spa 2, Office 06/014
1049 Brussels, Belgium

email: MARKT-PQ-EVALUATION@ec.europa.eu

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GREEN PAPER

Modernising the Professional Qualifications Directive

Question 1 :

The competent authority in charge of delivering the Professional Card should indeed be the representing body of the trade concerned, that is to say the employer ‘s unions acting as social partners for the considered branch of activities.

An employer’s organisation recognized as social Partner seems to be the right organization to accredit the professionals in terms of qualifications, skills and competences required on the work market.

Question 2:

The objective of the Commission and of course, that of the companies is to facilitate mobility across European countries both on short term as well as on long term.

- A) On a temporary base, if the process is too complicated, workers who wish to cross the boarder for a 1 or 2 week contract will either not accept a contract abroad or simply not fill in the declarations; in order to promote mobility in the leisure and tourism industry, any

further declaration on top of the Professional card will certainly discourage the workers; we do therefore strongly support the idea that Professional Card holders would be exempted from any further declaration and simply present their card in case of control by the local authorities of the receiving member State.

B) In case the Cardholder seeks recognition of his/her qualification, the fact that he/she holds a Card should accelerate the process for the receiving State who should have no more than 1 month to recognize the right to work to a Cardholder.

Passed the 1st. month after application for recognition, the incoming citizen should be recognized as any local worker.

Question 3:

Partial access to a profession should indeed be recognised.

This would go in the same direction as the *Morgenbesser Case*¹ confirmed by the more recent *Pesla judgement*²: real mobility of worker should be possible regardless the fact that they have completely finished their training and regardless the fact that their qualification covers the same range of that of the national worker: each individual should be able to work for a salary in accordance with his/her training and his/her existing competences.

If a worker's training and competences from one given country is less than that of a worker of the receiving country, then the incoming worker should only work according to his/her training and competences, but in no case his/her rights to be mobile should be cancelled on the sole base that his/her competences and skills are not "the same" or "as vast" as those of the worker of the receiving country.

Typically, the surfing situation in France is the right example: ski instructors in France have the right to teach "ski" and "snowboard"; incoming instructors who are allowed to teach "snowboard" in another country should of course be allowed to teach "snowboard" in France, even if they cannot "ski"!

Question 4:

Yes, EC-OE is in favour of lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common Platform.

¹ ECJ 13 November 2003, *Morgenbesser*, Case C-313/01, [2003] ECR I-13467

² ECJ 10 December 2009, *Pesla*, Case C-345/08 [2009]

Indeed quite a lot of countries may not feel so involved in the issue, depending on the profession, and 9 out of 27 countries seems enough.

However, we strongly think that common platforms are not the way forward and that the real European way forward is the 28th regime created by 9 or more countries.

Indeed so called “Common Platforms” will always be used as a barrier to mobility.

The example suggested in the document is quite a good one, since French ski instructors have always used the Common Platform as a way to limit the capacity of professionals to come to work in France.

The Commission should very strongly test such “Platforms” since in the case mentioned, they are not only used against non-participating Countries, but they are also used against participating countries !

In fact with strong local lobby, platforms can be imposed by the leading or so-called “leading” countries/professions who have then all the local contacts and lobby capacities to avoid those platforms.

Ski is a very good example since French ski instructors have organized all sorts of ways to turn round nationally, the Common platform they impose to the rest of Europe; the leading countries and/or those who will be the most “receiving” one can always derogate nationally – due to contacts, lobbies, group pressure, language, ... - to the rule (Common Platform) they impose to incomers !

Question 5:

Indeed, as mentioned above, some ski instructors in France have set up a very demanding system for the whole of Europe, apparently even for themselves, but in fact benefit from a whole French system extremely advantageous for them and perfectly derogatory to the system they have imposed all over Europe:

In France, employees and self-employed instructors are represented by the **Syndicat International des Moniteurs de Ski (SIMS)** and the **Syndicat National des Moniteurs du Ski Français (SNMSF)**.

As for the employers, commercial companies employing ski instructors are represented by the **Syndicat National des Entreprises exploitant les activités physiques récréatives des Loisirs Marchands (SNELM)**, which is the French member of EC-OE.

The **SNMSF** defends the idea that the French ski instructors should be holders of a State diploma giving evidence of their **“technical-sportive” skills of specialist** of Alpine skiing, to work **at the**

same time in the sports world of training and competition AND in the leisure and tourism industry.

As such, he defends the idea that **every European ski instructors should pass a "Eurotest"**, in order to demonstrate their "super-technicality" before obtaining their professional ID card. The SNMSF justifies this requirement in the pretext of the safety of customers and tourists.

As far as SNELM is concerned, ski instructors should effectively have “technical-sportive” skills to work **in the sport sector** but in order to work in the **leisure and tourism activities**, they should benefit from **other skills on top** of the purely technical skills, such as skills in environmental material, safety, human relationship, “savoir-être”, equipment. The position of the SNELM is confirmed by the current works at the European level involving more than 10 countries in the implementation of a 28th regime (European EQFOA, CLO2 and ELESA projects) for outdoor activities.

As such, the SNELM cannot seriously **reduce the skills required** by the ski instructors of the leisure and tourism activities to **purely technical skills**.

The position of the SNMSF consisting in promoting a simple “super-technicality” of the ski instructors is besides **particularly indefensible**, even if the pretext of customers safety, because in fact, **France allows the majority of people who effectively teach alpine skiing, to work without possessing any State Diploma or any “Eurotest”:**

1° French legislation (1):

Article L.212-1 of the Code of sport (**Attachment N°1**) specifies “*Only can be paid to teach, lead or supervise a physical or sportive activity or train people, the holders of a State diploma, a title with professional purpose or a certificate of qualification ”*

Consequently, in France, **all volunteers have the right to teach Alpine skiing without possessing any training, neither any diploma nor any particular skill.**

If the great technical skills defended by the SNMSF were to **guarantee customers safety**, **EVERY French** who teaches Alpine skiing - including thus the volunteers - should possess the diploma of State.

2° French legislation (2) :

Article L.212-3 of the same Code (**Attachment N°1**) specifies that: “*provisions of the articles L. 212-1 (...) **are not applicable** to the servicemen, to the state employees (...) nor to the teachers of the public and (...) private (...) educational establishments in the exercise of their missions.”*

Consequently, soldiers, state employees of City Halls, Departments, ... **teachers** of schools and university **professors**, **do not either need** to hold the State Diploma of ski to teach Alpine skiing, **even when receiving a remuneration!** Naturally none of these employees has ever passed the “Eurotest”!

In France, neither the volunteers - unpaid - nor the state employees of the State - paid - thus need to possess the technical skills demanded by the SNMSF to the European nationals.

3° Training of French ski instructors:

To become a ski instructor in France, it is necessary to follow a training course organized by the Ministry of sports (National School of Ski and Alpinism – ENSA in Chamonix) organized in the following way (**Attachment N°2**):

A technical test + 2 weeks of training + a minimum training course of **20 paid working days** in a ski school + the "Eurotest" + 480 hours (approximately 3 months) of lessons.

Consequently, **ALL young people** who undergo the minimum training course of **20 days in a working situation are paid** while they **do not possess the State Diploma and have not passed the “Eurotest”**.

Paradoxically, they are even **obliged to work against payment before** passing the “Eurotest” which therefore can on no account be considered as the way to verify if an instructor is capable or not of working safely ...

4° The holders of the Animator State Diploma (BAFA - Brevet d’Aptitude aux Fonctions d’Animateur) :

The order of June 20th, 2003 (**Attachment N° 3**) stipulates that “*in occasional case within the framework of the educational activities of the holiday centre or in leisure centres, supervision can be assured by the holders of the certificate of capacity to the functions of animator (BAFA)*”

The training to the BAFA Diploma “Alpine skiing” lasts **6 days**: it is proposed by numerous training centres (**Attachment N° 3a, 3b, 3c**).

Naturally nothing prevents the holders of the BAFA to be paid **while they do not have either the State Diploma nor the “Eurotest”**. How can the French legislator allow this if the ownership of the “Eurotest” should “*guarantee the safety*”? It would obviously consist in endangering other people’s lives ...

5° French Cross-country ski instructors :

Since November 29th, 2010 and according to a circular of the Ministry of Sports (**Attachment N°4**): *“the holders of the first degree State diploma, “Nordic skiing” option, (...) can teach Alpine skiing”*.

However, cross-country ski instructors who are remunerated, as the holders of the BAFA, as the paid soldiers (servicemen) or the volunteers ... **do not possess either the Alpine Skiing State Diploma nor the “Eurotest”!**

Maybe even these cross-country ski instructors **have never skied on ski slopes!** They have nevertheless well and truly the right to teach Alpine skiing against payment.

6° English snowboard instructors :

In March, 2006, the SNMSF and BASI signed in Satolas, an agreement (**Attachment N°5**) by which, more than 30 British snowboard instructors obtained a “ski” equivalence **without passing the “Eurotest” or even know how to ski**, by the attribution of **false alpine ski instructors diplomas** by BASI (**Attachment N°5a**).

Similarly to the French cross-country ski instructors, France also recognized skills in Alpine skiing to **British snowboard instructors** who have doubtlessly never practised alpine skiing, and neither possess the State Diploma nor have passed the “Eurotest”!

7° Safety on ski slopes and outside ski slopes :

Finally, ski instructors have in France **no particular responsibility in safety on or outside ski runs**, except for their own civil liability, linked to the accidents that could arise by their own act, as every French citizen.

On the contrary, the General Code of Local Communities (CGCT) (**Attachment N°6**) which **on the French Republic’s ground establishes the responsibilities in terms of prevention and assistance**, appoints as the only person responsible in safety on and outside marked ski runs, **the Mayor of the concerned Municipality :**

“Article L.2211-1: the mayor contributes by his power of police to the exercise of the missions of public law and order.

Article L2212-1: *the mayor is in charge of, under the administrative control of the representative of the State in the department, the local police, the rural police and the execution of the acts of the State that are relative to it.*

Article L2212-2: *the local police must insure the good order, the safety, the security and public health. It includes in particular: (...) 5 ° The care of preventing, by suitable precautions, and of stopping, by the distribution of the necessary help, the accidents, the disastrous plagues as well as the pollutions of all kinds, such as the fires, the floods, the breaks of dikes, the collapses of earth or rocks, avalanches or the other natural accidents, the epidemic or contagious diseases, epizootic diseases, **to provide immediately all the measures of assistance and help** and, if necessary, to provoke the intervention of the superior administration;*

Article L2212-4: *in case of grave or imminent danger, such as the natural accidents planned in 5 ° of the article L212-2, the mayor prescribes the execution of measures of security demanded by the circumstances. He informs immediately the representative of the State in the Department and informs him about the measures which he prescribed.”*

CONCLUSION

In conclusion, the SNMSF demands **the test of technical capacities of all the Europeans** before delivering them a professional ID card, **because the SNMSF knows that, contrary to the European nationals, its relations with the French Ministry of sports allows him to negotiate for its own account ALL THE POSSIBLE AND CONCEIVABLE DISPENSATIONS to work within the French labour market.**

Consequently, by imposing to the whole of Europe a technical test preliminary to obtaining a professional ID card, the SNMSF creates **a preliminary technical obligation** to the entry of European citizens on the French ground, when the SNMSF is **the only one in a position to break this technical obligation** as he thinks best, which has been the case long-time as it was shown above.

To justify its position, the SNMSF calls upon “*the safety*” when neither the SNMSF nor its members ski instructors have any particular responsibility in safety, in security, in prevention or in help on the ski slopes of the Municipalities on which they work and when no European instructor could substitute himself to the Mayors of mountain Municipalities.

The position of the SNMSF is thus perfectly unbearable and perfectly discriminatory against all other Europeans in particular in consideration of the dispensations the French dispose of, in front of the rules that they try to impose on the Europeans!

The above presentation is actually valid for Alpine skiing as for **all other outdoor activities**.

Question 6:

Yes, each member State should have the obligation to ensure that information on the competent authorities and the required documents for the recognition of Professional qualifications is available through a central on line access point in each Member State.

In the light of the answer to question 2, EC-OE would support on line-completion of long turn declaration and qualification recognition.

Question 7:

As representative of the Leisure and Tourism branch in Outdoor activities, EC-OE is well concerned by this subject: skiing, rafting, canyoning, canoeing, ... are some of the service activities sold by the companies who are members of EC-OE.

Indeed, professionals holding a Professional Card should not have to declare themselves or prove a 2-year experience when they come to a regulated country for either a short period of time, as mentioned above, or when they come with a group of consumers from their own country.

Question 8:

The notion of “regulated education and training” should remain exceptional and explicitly geared towards a specific profession.

The concept of “regulated profession” or “regulated training” should be the exception when funds from third parties are involved (travel agents, estate agents, ...) or when special skills are required to avoid major effects on people (doctors, nurses, ...) or on the environment.

The concept otherwise leads systematically to the abuse of the system and turns into protectionism and corporatism.

A good example is that led by the French ski instructors who in 90% cases work on marked runs where safety is the duty of the local Mayor and the company in charge of rescue and emergencies; in fact, marked runs are possibly more safe than say any road since ski patrollers can intervene in only a few minutes due to the proximity of the ski patrol base and the facilities offered nowadays by mobile phones.

Yet it is the fallacious pretext of safety that is being used by French instructors to maintain their profession as a “regulated one”; the prove that the system is fallacious lies in the numerous “exceptions” that the French have invented to the so called “necessity” to hold a diploma to be a safe instructor: unpaid ski instructors do not require any qualification, servicemen (soldiers) and civil servants do not, by French law require any qualification, cross country ski instructors are

allowed to teach Alpine skiing, holders of BAFA, a 6 day course qualification as an animator are allowed to teach skiing,

This is a typical example of the abuse made in Europe of the concept of “regulated profession”.

Question 9:

The European Qualification Framework (EQF) is a very good tool that members of EC-OE have used on many occasions during discussions and through the running of both the EQFOA and CLO2 projects, funded by the European Commission.

We think that there is no need for any other classification on the matter.

Indeed EC-OE would support the deletion of the classification outlined in Article 11 of the Directive.

Question 10:

Once again and as outlined, the concept of “substantial differences” is well used and abused notably by the French sports authorities.

It would be essential that the Professional Cards delivered to the migrants by the professional non-commercial authority in charge, do mention at which level of the EQF the qualification held is established.

When entering the new country, it should simply down to the local national authority in charge of control, to prove that there is a “substantial difference” between the EQF level of the national required qualification and that of the migrant.

In fact, in order to impose compensation measures to the migrant, the national authority should not only certify the classification of the national required qualification on the EQF grid but also demonstrate that there is more than say 2 levels of difference, in order to be substantial!

If the French impose a qualification at the level 5 EQF to be able to work in an activity, then holders of a Professional Card showing a level 5 or more EQF qualification should be in position to work.

Compensations due to substantial differences should not occur unless the migrant’s card shows a level 3 or less EQF qualification.

At level 4, some compensations could be required to go up to a 5 equivalent but without stopping the migrant to work.

Question 11:

In effect, as soon as a country allows its trainees to work for remuneration without holding the qualification that they prepare (!) the students for other countries, preparing a qualification of a similar EQF level should be able to work abroad and the country of origin should be obliged to recognize the job done abroad.

This way the Morgenbesser/Pesla Cases would be respected.

Also, this would correspond to the ECTS/ECVET policy of making modular training systems highly comparable.

Indeed this would be a very good way to check the reality of the motivations behind the classification as “regulated profession”.

Take the French ski instructors example again: how can they impose “tests” and highly technical training under the pretext of “safety” to the whole of Europe when a French trainee instructor is **obliged** to follow a minimum 20 days work course **prior** to pass his/her Eurotest and after only **2 weeks of training**, if holding both the Eurotest and the State Diploma the minimum required to be able to work “safely” ?

There is something seriously wrong – and obviously dangerous - in the French system and something seriously weird about the standards imposed by the French on their fellow Europeans !

Surely if the safety of the clients was in question, the trainees should pass their Eurotest **prior** to start working in a Ski School !

And so, such a profession should indeed be **declassified** as a “regulated profession”, because there is in fact no serious safety issue.

Can a trainee surgeon operate as a trainee prior to hold his/her diploma ?

Certainly no: this should then effectively be a regulated profession ...

Question 12:

Not applicable to the EC-OE’s sector of activities.

Question 13:

The option 1 seems the best one; however, EC-OE is fully in favour to consider that is down to the employers to evaluate the competences required by their employees, especially in the Leisure/Tourism sector.

There are indeed many cases when the ability to speak the language of the hosting country is not even necessary: taking again the ski instructors example, some French businesses are exclusively dealing with British customers and/or German, Danish, Spanish clients, ... and hence seek to employ ski instructors from the corresponding countries with no particular competences in other languages than their original one.

Imposing any linguistic standard can therefore rapidly lead to protectionism again and prevent the professionals to move from one country to the other.

Question 14:

EC-OE is absolutely in favour of such an evolution.

Question 15:

Indeed the principle of demonstrating to the host country that the professional has got the right to work in his/her country should be general and hence extended to cases where the professional wishes to establish himself.

As mentioned above, the professional card should be used to legitimate the right to work in the original country.

As well, the recognition of common training programs established by at least 9 countries should be generalized in other professions than just the “health” ones in order to create common European references.

EC_OE is well advanced on this issue through the management/participation to different Leonardo programs that lead to strong consensuses amongst the participants as to what the training of professionals should be.

This is viewed by EC-OE as a very serious way forward in mobility and professionalization of the trade.

Question 16:

Not applicable.

Question 17:

The organizations in charge of delivering the certification such as the universities and other training providers should indeed be obliged to transmit to a central office in Brussels the modification and/or innovations they bring to existing or new certifications.

Thus should be created a central European Register for Certifications that the countries would have the responsibility to update for the benefit of their own nationals.

Question 18:

The rule of one third of the member states should be used for every sector in order to promote work at the supra- national level, including for doctors and other health professions.

Question 19:

Not Applicable.

Question 20:

Not applicable.

Question 21:

Not applicable

Question 22:

Not applicable

Question 23:

EC_OE is in favour of an immediate modernisation through replacing the ISIC classification of 1958 by the ISIC classification of 2008.

However, a clear consultation of the professional European organisations should be organized in order to validate the classification of the professionals and their employing businesses in the right nomenclature.

Indeed, certain countries wishing to boost certain economic activities, or on the contrary wishing to minimize the economic reality of economical sectors, in order to respond to such or such pressure from groups of lobbyists tend to “interpret” the European classification in various ways.

Consequently, certain professionals are included in various nomenclatures, depending on the country.

Question 24:

It is indeed necessary to make adjustments to the treatment of EU citizens holding third country qualifications.

Reducing the 3 year rule in Article 3 could be one way, as well as facilitating the national recognition of the competences held by the national citizen coming back to his/her home country with a third country qualification.