

## MoU - the way forward?

Having been copied on Frank Luiten's email regarding the emergency meeting next week Rob and I thought it may help to forward a few thoughts as members of BASI along with some useful precedents which could help move the discussion forwards. Hope they are helpful.

For us, the most important principle is that the MoU is the mechanism for making the relevant EU law work in practice. The key legislation is Directive 2013/55 (which is the amendment to 2005/36). The Directive has two broad aims:

1. To enable mutual recognition of qualifications, supported by a EU Professional Card, of professionals who wish to seek 'Right of Establishment' in other EU countries.
2. To enable partial access to working rights in other EU countries for appropriately qualified professionals who wish to practice on a temporary and occasional basis.

The legislation describes, in general terms, how these two broad aims should operate. Discussions on the MoU should find a way of delivering *both* those aims in the context of snowsports instruction. Unfortunately, in our opinion, the whole focus of the MoU debate so far has been on the first aim, with very little attention given to the second aim. To ensure that the interests of the entire BASI membership are addressed we very much hope a framework can be developed to extend the MoU to encompass both Right of Establishment *and* Temporary Practice aspects of the EU legislation while considering the differences in national training systems and regulation. For reference, we are attaching some notes we prepared on 2005/36 and 2013/55.

### **Aim 1 - Right of Establishment**

For full right of establishment we think the current system is reasonably well understood. BASI's ISTD qualification, including EMS and the Eurotest, is recognised and broadly comparable to the top level qualification of the main Alpine instructor associations. We recognise that there are several EU national associations which would like to make changes (or even remove) the Eurotest from the list of requirements for the MoU. We are sure a case can be made for this, and we would be happy to support such things as:

- increasing the FIS points exceptions (of no real practical help so BASI should not be overly concerned with this)
- introducing an age-handicap alongside the gender-handicap to ensure compliance with anti-discrimination legislation
- ensuring access to the Eurotest is open to all candidates not just those from countries that have signed the MoU
- ensuring every Eurotest is open to candidates from all member nations, not just "home Eurotest events"
- any EU nation to be allowed to participate in opener calibration

We recognise that these points are important to some of the EU national associations, and in terms of reaching agreement on the MoU there might need to be

compromise on some of these points. However, we feel that this is very much tinkering at the edges of a well understood system and agreement on these points by itself is not sufficient to make all of the EU legislation work in practice. For that to happen we also need to see agreement on how best to move forward on the second aim: temporary practice. We think that using the European Qualifications Framework as a means of comparing systems level qualifications across different national systems is probably the best way to determine equivalency. BASI is leading the way in terms of getting its qualifications independently verified (the work being undertaken by Pete Allison at Edinburgh University), so this might be worth emphasising in your discussions next week.

Across the EU nations there is a difference on a country by country basis whether the profession of snowsports instruction is regulated by government or not. Currently a minority of countries regulate snowsports professionals, and this has implications for how EU legislation is applied. We think it would be a major step backwards if the UK and the majority of EU nations were to move towards regulated profession status. For the UK itself, it may well have implications for what level of instructor could work in Scottish resorts and artificial/indoor slopes as well as the employment opportunities in other EU nations (typically regulated professions are based on ISTD equivalent qualifications). From a practical point of view the process of regulation would add a whole level of bureaucracy to snowsports qualifications in the UK and would effectively mean a loss of control by BASI of policies for qualifications as this would become the business of government. As an aside, we doubt very much whether the current Government (which is definitely anti-regulation in business) or any future government would willingly sign up to regulating snowsports professions. For these reasons we hope that you can resist and move towards the majority of countries imposing regulated profession status on snowsports instruction.

## **Aim 2 - Temporary Practice**

Although this aspect has so far not been a major focus of debate within the MoU group, we think there are several currently working examples which can be used as the basis for agreement on this issue.

### *Italy, Trentino region*

Offers online procedure for declaring temporary working. "Temporary" is considered no more than half the winter season, with an assumed season of 100 days, so in principle no more than 50 days can be worked as a temporary instructor. Instructors who do not hold their country's highest level qualification will be considered on a case by case basis. Typically instructors with a level 2 qualification can work for 2 weeks if bringing their own clients, or for 7 weeks if working for a recognised ski school in the region. Level 3 instructors can work for up to 7 weeks if bringing their own clients to the region.

### *Italy, Veneto region*

Similar process to the Trentino region, with temporary working with own clients for no more than 30 days in any one season.

### *Austria, Tirol region*

Welcomes visiting ski schools bringing their own clients. Online application from level

2, level 3 or level 4 instructors. No more than 28 days per calendar year, and no more than 14 days for any one visit.

#### *Switzerland, Valais region*

Declaration of temporary services by instructors from EU nations which are have regulated or unregulated professions is up to 90 days per calendar year. Over 90 days per season is considered established and needs top level qualification equivalent to Swiss Patente. Instructors bringing their own clients (on-piste only) for up to 10 days per season do not require a declaration. For off-piste skiing and for working 10 - 90 days a declaration is required and can be made online.

#### *France*

The DDJS website (Rhone Alpes division) provides an option for online declaration of temporary provision of services by ski instructors established in their home country as a qualified instructor. It is unclear how these declarations are processed.

We can provide further information on these examples if you need to see more detail.

It is interesting to note that in agreement dated March 2000 the national associations from the FEMPS countries agreed to enable temporary practice for visiting ski instructors of up to 4 weeks per season if bringing their own clients (see attached extract from the FEMPS 2000 agreement for details). This seems likely to have been made to accommodate the procurer legislation to 2005/36, but seems to have been largely overlooked until the last few years when some countries/regions began to put in place recognised systems for enabling temporary practice. In each example the relevant authorities require the declaring instructor (or ski school in the case of Austria) provide evidence of nationality, and professional qualifications. In some countries/regions evidence of appropriate liability insurance is required and confirmation that the instructor is not barred from practising as a result of legal conviction (e.g. criminal records check).

#### **Points for agreement?**

While there are some differences between different countries and regions as to how provision is made for temporary practice, we think there is enough commonality to form the basis of agreement on the MoU. Points of agreement we would like to see are:

1. Employment opportunities on a temporary basis is dependent on level of snowsports qualification, with each signatory to the MoU agreeing to 4 weeks per season for qualifications broadly equivalent to BASI Level 2 instructors and 7 weeks per season for qualifications broadly level 3 instructors. This reflects that several countries have a multi-tier qualification system and would be broadly in keeping with the opportunities currently offered in some countries/regions, but it would be helpful to have a Instructors must work either for a recognised snowsports school in the host nation, or bring clients from their home nation and be restricted to working only with those clients.
2. Each instructor association is required to include the names of top level qualified instructors and those lower level qualifications eligible to work in other EU nations on

the IMI Database so there is an easy way of each nation checking that declarations of temporary service from lower level instructors are appropriately qualified, in addition to checking the validity of top level instructors applying for full equivalence/ right of establishment.

3. Continue the requirements for full Right of Establishment, tweaking arrangements as necessary to achieve agreement across the EU nations, including those countries which have not yet signed the MoU.

Hope this all makes sense. We are very happy to provide more detail on our experience of registering for temporary practice if that would be helpful, or to discuss these points more generally. Good luck with your discussions!