



ECOLE NATIONALE DE SKI ET D'ALPINISME

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HANG AND PARAGLIDING INSTRUCTORS : THE FREE MOVEMENT OF PROFESSIONALS IN EUROPE:

GENERAL INFORMATION ABOUT THE SYSTEMS FOR THE RECOGNITION OF QUALIFICATIONS AND FOR THE EQUIVALENCE OF DIPLOMAS

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 - 3- European professionals: the access to and the pursuit of the profession in France.
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1/ NATIONAL REGULATIONS

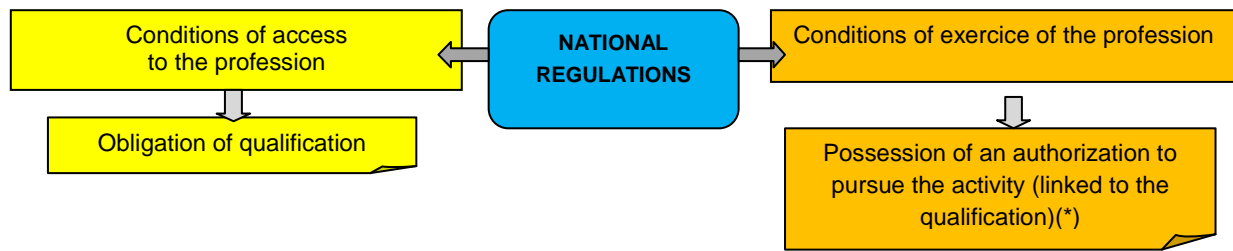
In the European states, the profession of hang and paragliding instructor is rarely regulated within the meaning of the article 3.1 of the directive 2005/36/EC: a regulated profession is « *a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications.* »

The fact that in the great majority of the States the profession is not regulated, does not mean that the hang and paragliding instructors, the hang and paragliding schools may freely carry on their activities. Generally, they must at least respect a body of national laws (aviation law as well as commercial law, the tax law, the labor law....

In a few (rare) States, such as France, the profession of sport instructor is regulated: the professional is subject to an obligation of qualification. This kind of regulation exists in some other States, but only for certain professions such as mountain guides and ski instructors.

In these States, the pursuit of the profession is generally bound by a second obligation, the possession of a specific authorization. It may be an authorization to exercise the profession, the registration with a professional organization or body, a declaration of the professional activity to the administration (It is the case in France). These administrative regimes allow the competent authority to check the qualification of the professional, his physical aptitude, his morality (check of criminal record).

Diagram of the regulated professions within the meaning of the directive 2005/36/EC



(*) This authorization is similar to a “teaching” license.

The goal of this kind of professional regulation is to protect the physical security of the sportsmen, or “sports consumers”. This regulation is justified by an imperative requirement in the general public interest.

In Europe, the national regulations (where they exist) have to comply with the requirements of the European law. One of the objectives of the Community is the abolition between Member States, of obstacles to the free movement of persons and services. For nationals of the Member States, this includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their professional qualifications. The free establishment and the free provision of services are guaranteed by the European law within the Internal Market. The respect of these European freedoms requires, if necessary, the modification of the national regulations.

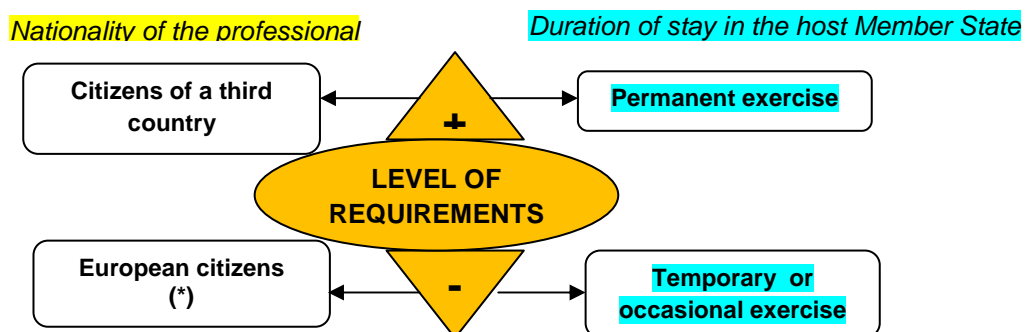
The Member States which regulate the profession must take into account:

- the jurisprudence of the European court,
- the European directives 89/48/EEC and 92/52/EEC on the general systems of recognition of professional qualifications, more recently the directive 2005/36/EC on the recognition of professional qualifications, which has replaced these latter.

At the present time, in the States where profession is regulated, the nature and the importance of the legal requirements vary according to two parameters:

- the nationality of the professional,
- the duration of the professional stay in the host Member State,

as indicated in the diagram below :



(*) citizens of Member States of European Union, and in a wider sense, of the States that are part of the European Economic Area Agreement (Iceland, Norway, Liechtenstein) and Switzerland.

2/ THE GENERAL SYSTEM FOR THE RECOGNITION OF QUALIFICATIONS LAID DOWN BY THE DIRECTIVE 2005/36/CE

The European directive 2005/36/EC admits that the Member States retain the right to lay down the minimum level of qualification required to ensure the quality of the services provided on their territory.

However, the directive lays down that the Member States must take account of the qualifications obtained in another Member State and assess whether they correspond to those which it requires.

The directive defines the mechanism of recognition of professional qualifications. This mechanism has to be implemented in all States where a national regulation imposes a professional qualification for exercising a profession.

As indicated above, in the States where the profession is regulated, the qualification is the first condition of access to the profession, the exercise of the profession being contingent upon the possession of a specific authorization. *De facto* and *de jure*, qualification and authorization are linked one to another because the second implies and includes the first.

The directive 2005/36/EC is incorporated into the internal law of the Member States of the European Union. The beneficiaries of the "European" regime of recognition are the citizens of the above mentioned States. This regime does not apply to citizens of a third country, for instance to the American, Russian, Australian paragliding instructors who hold a « national » diploma, except if the law of the host Member State makes it possible.

The mechanisms of recognition established by the directive are very close to those laid down by the previous directives, whether the professional wishes to become established in the host Member State or intends to exercise the profession on a temporary or occasional basis in this State (provision of services).

This item does not take account of the subtle differences which may arise between the regime of free establishment and the regime of the free provision of services.

The procedure of authorization implies the deposit of a file under the conditions provided by the regulation of the host Member State. By means of this file, the competent authority can check and assess the qualification level of the applicant. The qualification of the applicant comprises the professional training and the professional experience acquired after the completion of this training.

The European procedure of recognition is based on the comparison of the competences (training + professional experience) in the matters strictly defined by the regulation. Regarding the sports instructors occupations, only the security competences are assessed by the competent authority.

The European procedure of recognition is different from the procedure of equivalence of diploma. The procedure of equivalence is based on the comparison of knowledge attested by the completion of a training. This comparison concerns all matters, even those which do not relate to security. The professional experience is not taken into account.

The examination of the file comprises two parts:

The first part concerns the admissibility of the request and the check of the requirements linked to the qualification :

- The knowledge of the language spoken in the host Member State ;
- A professional experience of at least 2 years on a fulltime basis during the previous 10 years when the applicant possesses a diploma delivered in a State where the profession and the training are not regulated. It is the most common situation in Europe and in the third countries.
- If the diploma is issued in a third country, the holder must have three years' professional experience in the profession on the territory of the Member State which recognized that diploma (only in the regime of the free establishment).

The second part of the file concerns the comparison between the training required in the host Member State and the qualification of the applicant.

If the comparison reveals a substantial difference of qualification linked to security, the competent authority of the host Member State may impose a compensation measure to the applicant.

The substantial difference of qualification

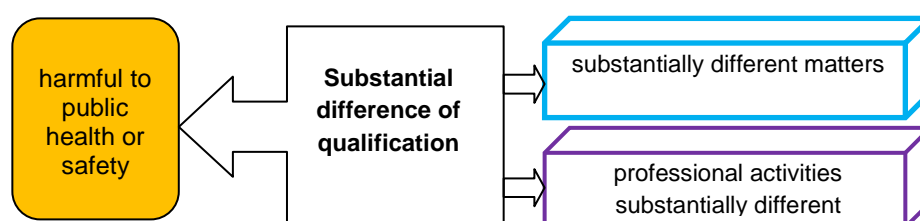
According to the provisions of Titles II (Free provision of services) and III (Free establishment) of the directive 2005/36/EC, there is a substantial difference of qualification where:

- the training received by the applicant covers substantially different matters than those covered by the diploma required in the host Member State.

or

- the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State, and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's qualifications.

and the difference of qualification might be harmful to public health or safety.



Compensation measures

The compensation measure is either an adaptation period or an aptitude test. Under the regime of free establishment, the host Member State must offer the applicant the choice between an adaptation period and an aptitude test.

The adaptation period is « *the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training.*

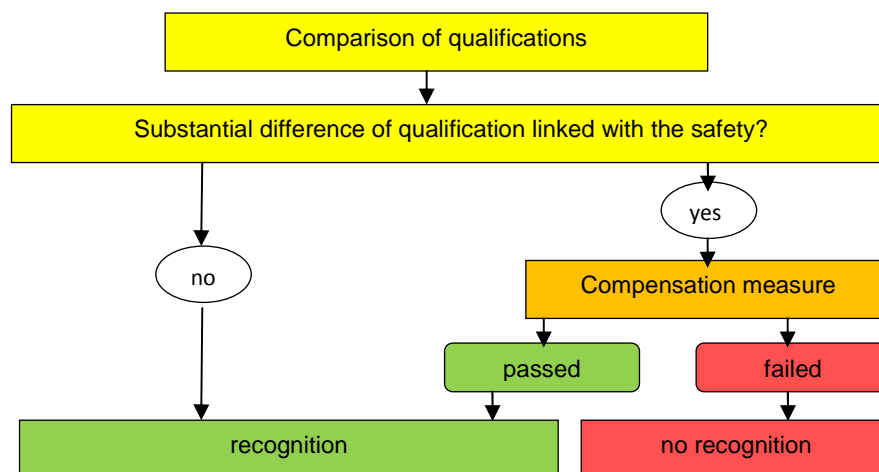
This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State.»¹.

¹ Article 3g of the directive.

The aptitude test is « a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant. »

The aptitude test «shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to pursue the profession in the host Member State »².

Diagram of the procedure of recognition laid down by the directive 2005/36/EC



3/ “EUROPEAN” PROFESSIONALS: THE ACCESS TO AND THE PURSUIT OF THE PROFESSION IN FRANCE

The foreign sport instructor, in the French territory, has to respect the French law (principle of the territoriality of the law). The sport law (code du sport) lays down two requirements:

- Anyone who teaches a sport activity (or leads people in this activity) against remuneration must be qualified (obligation of qualification);
- The sport instructor must also declare his activity to the competent authority prior to exercising his profession (declaration). The procedure of declaration enables the administration to make sure that the sport instructor is qualified.

The qualification has to guarantee the competence of the sport instructor in the field of safety in the sport activity concerned (art.212-1). It involves:

- the capacity to command the technical and teaching knowledge linked to the sport activity and to command the technical skills of this activity in safety;
- the capacity to assess the dangers of the activity and to reach the appropriate decisions in case of accident.

The declaration (art. L212-11) is operated under the conditions laid down by the articles R212-85 to R212-87, and A212-176 to A212-181. The French authorities check by means of the information contained in the file of declaration that the sport instructor is qualified:

² Article 3h of the directive.

- regarding nationals of the Member States³, the assessment of the qualification of the applicant is operated according to the European regime of recognition of qualification;
- regarding nationals of third countries, the assessment of the qualification is operated according to the procedure of equivalence of diplomas.

As regards nationals of the Member States, the pursuit of their professional activity in the French territory is governed by the provisions of the articles:

- L212-7,
- R212-88 to R212-91 and A212-182 to A212-182-1 for the regime of free establishment;
- R212-92, R212-93 and A212-182-2 for the regime of free provision of services.

The main obligations the European” hanging and paragliding instructors have to meet

The hanging and paragliding instructor who intends to work under the regime of the free establishment or the free provision of services has to declare his professional activity to the competent authority.

This authority is the “Prefect” of the department⁴ where he wishes to pursue the major part of his professional activity. The file has to be got from the DDCS⁵ of this department and it is returned to this service.

The address of the relevant service can be found on the web site of the ministry for Health and Sports :

<http://www.sports.gouv.fr/francais/qui-sommes-nous/en-regions/>,

by identifying from a map of France the department where the activity will be pursued.

Concretely, the declaration is operated by means of the application form provided in the articles A212-182 (regime of free establishment) and A212-182-2 (regime of free provision of services). The applicant must enclose various documents, in particular a copy of his professional diplomas or certificates, the content of his training (translated in French by a sworn translator), all documents attesting his professional experience.

Concerning his knowledge of French, the applicant has to produce one of the following documents:

- A copy of an attestation of qualification issued after the completion of a training in French language;
- A copy of a document attesting the level of practice in French, issued by a specialized organization;
- A copy of a document attesting a professional experience acquired in France.

If he cannot produce one of these documents, an interview enables to check his knowledge of the French language.

Except if the request is not admissible (incomplete file) or except a duly substantiated decision of reject, the procedure of declaration which includes the procedure for examining the qualification, must lead to the delivery:

- of the professional card within 3 months in case of establishment in the French territory;
- of an acknowledgement of receipt of the declaration of provision of services in case of provision of services in the French territory,

within the required time set up by the “code du sport”.

³ Nationals of the Member States of EU, of the States part of the European Economic Area Agreement (Iceland, Norway, Liechtenstein) and of Switzerland.

⁴ Subdivision of France administered by a Prefect.

⁵ Direction départementale de la Cohésion sociale.

It means that the applicant had better to complete the file of declaration in advance; if he starts his job without satisfying the legal conditions, he can be prosecuted pursuant to Article L212-8 of the “Code du sport” (one year imprisonment and a 15 000€ fine).

The comparison of the qualification

The foreign qualification is assessed on the basis of a comparison of the diploma required in France and the qualification acquired by the applicant. The French reference diploma is one of the following diplomas:

- BEES, option « vol libre », spécialité « parapente » or « delta » till January 2011 ;
- BPJEPS, spécialité « vol libre » ;
- DE JEPS, mention « parapente » ;
- DE JEPS, mention « deltaplane ».

The comparison is only based on the knowledge and skills which are essential in order to be able to pursue the profession in France and the lack of which might be harmful to public safety. Are checked:

- the minimal theoretical and practical knowledge related to safety of pupils or clients;
- the safety technical skills.

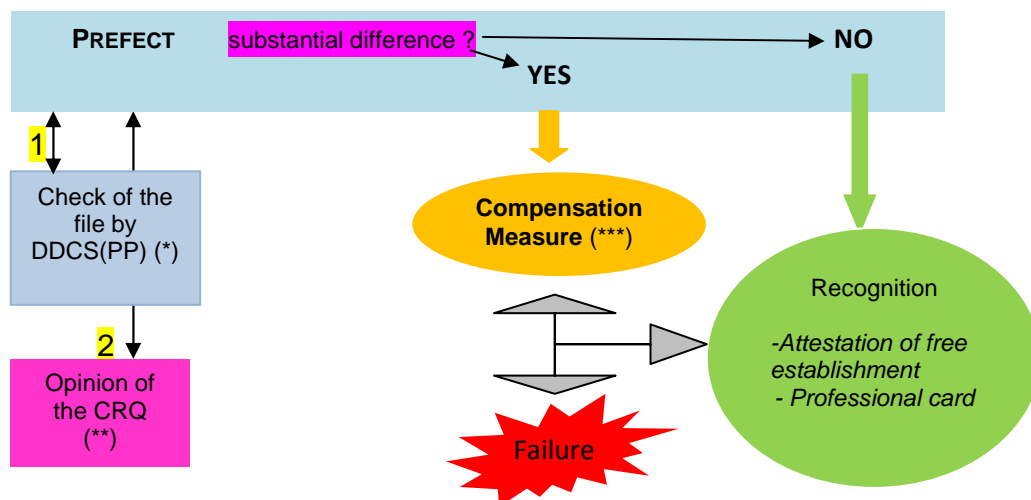
This comparative examination is carried out by the competent authority (DDPC in the department concerned), if necessary with the help of ENSA. The check must enable the assessment of the safety competence of the professional. It might reveal a substantial difference or lack of qualification, harmful to the safety of pupils or clients; in that case, the Prefect may impose a measure of compensation to the applicant:

- an aptitude test or an adaptation period under the regime of free establishment (the applicant chooses);
- an aptitude test under the regime of free provision of services.

Diagrams of the procedure of recognition

IN THE REGIME OF FREE ESTABLISHMENT

Procedure

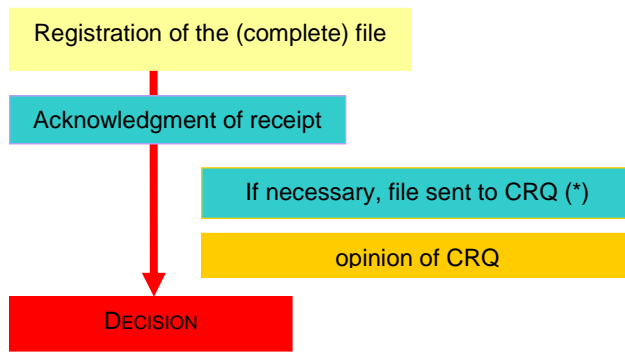


(*) DDCS (direction départementale de la cohésion sociale) /DDCSPP (direction départementale de la cohésion sociale et de la protection des populations).

(**) National committee of recognition of qualification (ministry of sports), if the Prefect of department considers that it might exist a substantial difference.

(***) Either the aptitude test or the adaptation period.

Delays

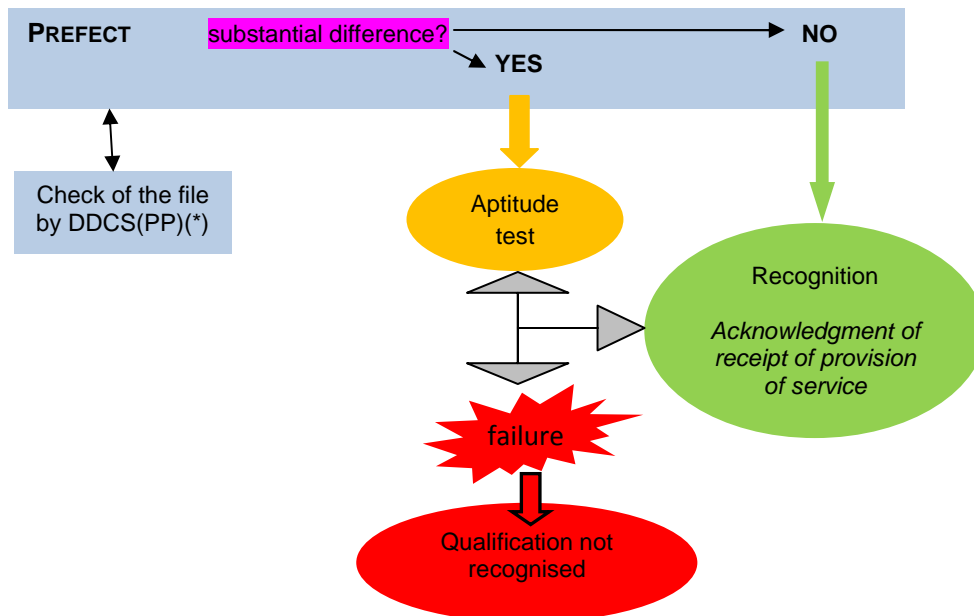


- Within 1 month* of receipt of the declaration and accompanying documents
- Within 1 month* after the date on which the CRQ has received the file
- Within 3 + 1 months* of receipt of the declaration and accompanying documents

(*) if the Prefect of department considers that it might exist a substantial difference.

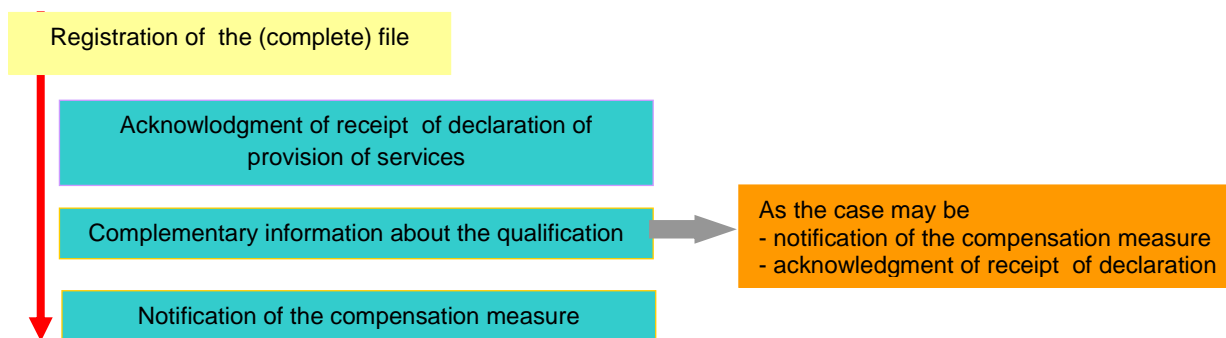
IN THE REGIME OF FREE PROVISION OF SERVICES


Procedure





(*) DDCS (direction départementale de la cohésion sociale) /DDCSPP (direction départementale de la cohésion sociale et de la protection des populations).

Delays



 *Within 1 month* of receipt of the declaration and accompanying documents

 *Within 2 months* of receipt of the declaration and accompanying documents

 *Within 3 months* of receipt of the declaration and accompanying documents