

# **The EU DIRECTIVE on the recognition of professional qualifications and national trade law in European Union member states:**

Version: 2019

Impact on the tourist guide profession.

Which professionals from the EU/ EEA are allowed to guide in other member states?

Relationship to third countries

The rights of citizens to practise economic activities in another Member State are laid down in the Treaty. However, within the limits of the Internal Market rules, each Member State is free to make access to a particular profession legally conditional upon the possession of a specific professional qualification which is traditionally the professional qualification issued on its national territory.

Consequently, the European institutions have established rules to facilitate the mutual recognition of professional qualifications between the Member States. This is the aim of Directive 2005/36/EC (updated by 2013/55/EU) on the recognition of professional qualifications. These regulations have been transferred into national Austrian Law (Gewerbeordnung §§ 373a/EEA und b/Switzerland).

The directive is addressed only to professionals who are fully qualified to practise a profession in one Member State and who wish to practise the same profession in another Member State. The existence of a 'cross-border' element is indispensable.

Directive 2005/36/EC applies only to **regulated professions** in the host Member State, that is, professions to which access or practise in the host Member State is, by law or regulation or administrative provision, conditional upon the possession of certain fixed professional qualifications. Directive 2005/36/EC will therefore apply to you if the profession you want to practise in a host Member State is regulated in that Member State.

In the following EU member states the **tourist guide profession is regulated**, and will therefore **require notification** before rendering of services:

Austria	Fremdenführer
Romania	Ghid de turism
Italy	Guida turistica
France	Guide-conférencier
Spain	Guía de turismo
Malta	Gwida tat- Turisti
Slovakia	Sprievodca cestovného ruchu
Croatia	Turistički vodič
Slovenia	Turistični vodnik
Slovenia	Turistični vodnik turističnega območja
Hungary	idegenvezető
Cyprus	Ἔναγός

Link: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm>

Directive 2005/36/EC applies only if the profession you want to practise in a host Member State **is the same as the profession for which you are fully qualified in your Member State of origin.**

The rules that apply are different depending on whether you want to **establish yourself** in another Member State or just **temporarily work** in that Member State.

## Temporary provision of services

If you wish to practise your profession in another Member State on a temporary basis, the rules that apply are more flexible than if you wish to establish yourself on a permanent basis, provided that you meet certain conditions. However, you may be obliged to provide a certain amount of information to the authority of the host Member State.

- If the tourist guide profession is regulated by law in the country of origin, the qualification certificate has to be accepted in the host country, irrespective of its qualitative level.

- If the tourist guide profession is not regulated by law in the country of origin, the applicant must provide a written confirmation proving that he/ she has been authorised to practise the profession concerned for at least one year in the previous ten years in the country of residence.

In both cases, the written declaration, accompanied by supporting documentation, has to be submitted to the **competent authorities** (see list below) before the service on the territory of another member state is first rendered.

Where required, this declaration has to be renewed every year.

This **notification** has to include documents of a general nature, and in particular the following:  
You must provide

- Your **full name, contact information** (address, telephone number, email address, etc.), **nationality**, the **profession for which you are qualified** in the Member State in which you are legally established and the **profession that you wish to practise** in the host Member State.

- Details concerning compulsory professional liability insurance.

- Information whether the specific profession is regulated by law in the member state where the applicant is established.

- Confirmation from a responsible authority in the country of origin that the applicant is not prohibited from providing the specific service in his home country.

**The declaration also has to contain evidence of professional qualification:**

- Proof that the applicant has been authorised to practise the profession in question for at least two years within the last ten years in the member state in which he/ she is legally established.

- Information whether the specific profession is regulated by law in the member state where the applicant is established.

- Confirmation from a responsible authority in the country of origin that the applicant is not prohibited from providing the specific service in his home country.

- Evidence of professional qualification (as far as this is available).

- Proof that the applicant has been authorised to practise the profession in question for at least two years within the last ten years in the member state in which he/ she is legally established.

Any kind of proof is sufficient, for example also that of a private association, provided it is plausible and traceable. However, it is extremely important that **the document clearly states that the profession which the service provider wishes to practise is the same for which he/ she is qualified in the Member State of origin. In cases of doubt, the European Standard EN 13809 (Standardised Dictionary of Tourism)** and the European Standard, EN 15565 (requirements for the provision of professional tourist guide training), can be consulted. In particular, it will be examined in the individual cases if the applicant has been working as a tour manager or as a tourist guide (see Articles 2.3.2. - 2.3.4., 2.3.7. – Tour Manager versus Articles 2.3.5. – Tourist Guide, EN 13809). Applicants will only receive an authorisation if it is clear that the profession they want to practice is the same for which they are qualified in their home country. An important criterion is the European Standard for the provision of professional tourist guide training: if applicants have a qualification compatible with - or perhaps even certified according to - EN 15565, they are without a doubt tourist guides.

The competent notification authority has to publish all relevant data on the internet - full name (or company name), address, or any other contact details in the host country, as well as the profession in question.

Therefore, legally valid authorisations will appear in the **services registers** in every member state.

Link for Austria: <https://dlr.bmdw.gv.at/Search/SearchCompany.aspx>

In order to retrieve data from this database, the full name (or company name) of the service provider must be known. As regards professions that are not regulated in other member states and in Switzerland, service providers are not included in the register because this is not required in the framework of the directive. The same applies to service providers from third countries.

If the applicant does not comply with these measures, or if there are reasons to prohibit the applicant from practising the profession because of national trade law regulations, the competent authority has the right to refuse authorisation on a permanent or temporary basis. It is also possible to impose **finances**.

In addition, without being asked to do so, the applicant is under an obligation to supply the following information to his clients in writing before the conclusion of a contract:

- If the service supplier is listed in an official register: the name of the register (eg., commercial register), including the number of the entry
- If the profession has to be officially registered in the country of origin (business licence or similar): the name of the competent supervisory authority (name, address)
- The name of the professional chamber or other comparable (public law) professional association to which the service supplier belongs (therefore no private associations)
- Occupational title used in the country of origin (see definition of tourist guide according to EN 13809)
- VAT number, if applicable

■ Detail on insurance coverage or any kind of individual or collective cover as regards compulsory professional insurance (please indicate if insurance is not available)

The service supplier has to use the **official professional title** of the country of origin when providing services in the host state. Should there be no such title, the description according to the EN 13809 standard should be used.

These provisions are also valid for Swiss citizens and companies providing services for up to **90 working days per year** in a host country. This limit of days can also be used as a standard for other EU Member States, as the directive does not indicate a limit in this respect.

Activities of a service provider established in another EEA/EC member state or in Switzerland in a host country where the profession in question is regulated always require notification to the competent authorities, as the **unauthorised pursuit of business** is a criminal offence. In this case, the **client or customer** is guilty of aiding and abetting. As the client can be reasonably expected to check the service register, an appeal on grounds of exemption from guilt will not be viable.

## **Establishment**

Regulations regarding establishment differ greatly from what has been outlined above. They can be summed up as follows:

Applicants who wish to establish themselves in a host country (attainment of tourist guide license required!) have to submit an application for the recognition of their foreign qualifications with the competent authorities.

A certain procedure has to be followed:

When you establish yourself in another Member State to practise a regulated profession, your qualifications will be checked. You therefore have a certain number of formalities to complete and a procedure to follow.

The following documents will have to be submitted:

**proof of your nationality,**

**proof of your professional experience**

**proof of your good character, repute, no declaration of bankruptcy**

**a medical certificate of fitness** from a competent authority

**proof of your financial standing and of your insurance cover**

**proof that you have the attestation of professional competence or qualification** that prepares you for or gives access to the profession in question

The directive (Art. 11) divides qualifications into five quality levels a, b, c, d, e (level e is the highest).

If the foreign qualification of the applicant is classified in the same level as the qualification at the national level of the host country, or as the level immediately below, this is sufficient for the purpose of establishment. The evaluation is undertaken by the authorities of the country of origin, not the host country.

If there is no certificate of qualification from the country of origin, or if the qualification is classed more than one level below the standard of the host state, the applicant will be obliged to comply with the standards of the host country, on the condition that he/ she can provide other training certificates and that he/ she has been legally working full time as an authorised tourist guide in the country of origin for at least two years in the previous ten years.

During this procedure, the competent authority will compare the applicant's training with the national training. Only training certificates from authorities will be recognised. In this case, adaptation measures may be prescribed such as an aptitude test or an adaptation course (part/s of the tourist guide examination) but not both.

For certain qualifications, the criterion of two years' practice does not apply. However, the system of the directive is too complicated to explain this in detail here.

The service provider seeking establishment will also need a business licence and thus a residence in the host country.

Important: In some cases the trade laws of the host country require a **tourist guide who is an employee** to acquire the certificate of qualification. Please note that the directive explicitly deals with the professional qualification of persons (see, eg., Recital 3 and Article 2 of the directive). Thus it is clear that the regulations outlined apply not only to self-employed professionals, but also to tourist guides working as employees.

## Tourist guides from regulated countries - outgoing

For tourist guides from regulated countries who want to render their services in EU member states, the regulations outlined above will apply. I.e., in **countries where the profession is not regulated** (eg Germany, Slovakia, etc), **freedom of services** (Services Directive 2006/123/EG) will apply.

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Croatia	Turistički vodič
Slovenia	Turistični vodnik
Slovenia	Turistični vodnik turističnega območja
Hungary	idegenvezető
Cyprus	Ξεναγός

### The competent authorities are:

[https://ec.europa.eu/growth/single-market/services/free-movement-professionals\\_en#contacts](https://ec.europa.eu/growth/single-market/services/free-movement-professionals_en#contacts)

## **Legal situation regarding Third Countries:**

### **Provision of services**

In principle, only pre-booked tours may be provided (regardless of whether the booking was made in the host country or abroad), whereby the same requirements have to be fulfilled that apply to national tourist guides: ie service providers from third countries do not have to possess a trade licence as tourist guides, but - if applicable - they will need a national qualification certificate. If the country of origin is not a member of the WTO or has not subscribed to the GATS treaty, service providers will in addition require a statement of equality issued by the competent authorities of the host country. On the other hand, tourist guides from the EEA who would like to render services in third countries are subject to the national laws and regulations the content of which they have to be informed of.

### **Establishment**

Regulations of the host country will apply.

This information was compiled by the Chamber of Commerce Vienna.

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