CODE OF CONDUCT APPROVED BY THE GROUP OF COORDINATORS FOR THE DIRECTIVE 2005/36/EC ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS [1]

NATIONAL ADMINISTRATIVE PRACTICES FALLING UNDER DIRECTIVE 2005/36/EC

Disclaimer: this Code is not a legally binding instrument. However it is based on Directive 2005/36/EC and on the EC Treaty as interpreted by the jurisprudence of the Court of Justice of the EC. Complaints on non respect of this Code by competent authorities will therefore be examined in the light of these legal bases

[1] Official Journal of the European Union – L 255, 30.09.2005

I. INFORMATION

	1. Information to be given to the outgoing migrant by the contact point in the Member State origin
A. BEST PRACTICE	The migrant is given the information and/or documents listed in column B, plus: (a) address where the national guide to the directive established by the host Member State as well as by other member States [2]; (e-mail, website, etc.) can be found; upon request a paper copy must be provided; (b) website address of EURES[3] and of EURES Advisers able to supply further information in the host Member State (on job availability or social security, for example); (c) [contact details of the relevant Point of single contact for the completion of procedures when the services Directive is implemented][4]; (d) upon request, the migrant is informed whether the profession he/she wishes to exercise in the host Member State is regulated in this Member State; for professions falling under Title III, Chapter I of the Directive, the migrant is informed of the level under which the host Member State qualification is classified under Article 11 of the Directive; (e) upon request, the migrant who wishes to provide a service in another Member State is informed whether a declaration has to be submitted and receives the list of professions subject to control of qualifications or an indication of the address where this list is available; (f) information on how to obtain a list of certified translators if such a list exists, in the Member State of origin and where appropriate (see point 6).
B. ACCEPTABLE PRACTICE	The migrant is given the following information and/or documents: (a) name, address, telephone number, fax number, e-mail address and website address, if any, of the contact point in the host Member State; (b) the website address of DG Internal market and Services of the European Commission[5] with indication that the following documents can be found on this website: Directive 2005/36/EC; the User's guide; the Code of conduct; the data base on regulated professions[6]; upon request, a paper copy of the Directive, the

2 Guides available for Italy and Sweden

3 http://ec.europa.eu/eures/home.jsp?lang=en

4 To be operational when a single contact point has been set up in a Member State

5 http://ec.europa.eu/internal_market/qualifications/index_en.htm

6 http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?lang=en

	User's guide, and the Code of conduct is made available; upon request, a paper copy of the appropriate extract of the data base on regulated professions is made available; (c) indication to the migrant of the level under which his/her qualification is classified under Article 11 of the Directive; (d) name, address, telephone number, fax number, e-mail address and website of the national competent authorities which issue the certificates provided for in the Directive, and in particular, for qualifications which benefit from automatic recognition under Title III, Chapter III, and which satisfy the minimum training conditions, the so-called "certificate of conformity" (Annex VII.2); the certificate attesting that training is regulated; the attestation of professional experience for professions under Title III, Chapter II; the attestation of professional experience (Article 3.3 and Annex VII.1.c); the documents, if any, attesting good character or repute, absence of bankruptcy, suspension or prohibition of the pursuit of the profession in the event of serious professional misconduct or criminal offence (AnnexVII.1.d) and evidence of no criminal conviction (Article 7.e); if some documents have to be certified (see point 5 of the Code), the migrant must be informed how he/she can have these documents certified (formalities involved and issuing authority); (e) upon request, the home Member State contact point will provide the migrant with additional information and assistance in case of a problem during the recognition procedure (see points 9, 10, 11, 12, 14 of the Code of conduct); it will also indicate to the migrant that he/she can contact the host Member State contact point in case of a problem during the recognition procedure and that, in such a case, additional information and assistance will be provided (see points 9, 10, 11, 12, 14 of the Code of conduct).
C. UNACCEPTABLE PRACTICE	(a) The migrant is given less information than that listed in column B.
	2. Information to be given to the incoming migrant by the contact point in the host Member State
A. BEST PRACTICE	The migrant is given the information and/or documents listed in column B, plus: (a) address where the national guide to the Directive established by the Member State in question can be found (e-mail, website, etc.); upon request a paper copy must be provided; (b) website address of EURES[7] and of EURES Advisers able to supply further information (on job availability or social security, for example).
B. ACCEPTABLE PRACTICE	The migrant is given the following information and/or documents: (a) the contact point in the host Member State will direct the migrant to the competent authority to whom he/she should send his/her application [or to the relevant Point of single contact when the services Directive is implemented][8]; (b) upon request, the migrant is informed whether the profession he/she wishes to exercise in the host Member State is regulated in this Member State; for professions falling under Title III, Chapter I of the Directive, the migrant is informed of the level under which the host Member State qualification is classified under Article 11 of the Directive;

[7] http://ec.europa.eu/eures/home.jsp?lang=en

[8] See footnote 4

	(c) if not already communicated by the contact point of the home Member State because the migrant has not contacted this contact point, the website address of DG Internal market and Services of the European Commission with indication that the following documents can be found on this website: Directive 2005/36/EC; the User's guide; the Code of conduct; the data base on regulated professions; upon request, a paper copy of the Directive, the User's guide, and the Code of conduct is made available; upon request, a paper copy of the appropriate extract of the data base on regulated professions is made available; (d) upon request, the name, address, telephone number, fax number, e-mail address and the website address, if any, of the contact point in the home Member State (in order, for instance, to enable migrants to know where they can get attestations from the home Member State (see point 1.B.(d)); (e) if the migrant so requests, an indication of the website address where the appropriate law transposing the Directive in relation to the profession the migrant wishes to exercise can be found, or communication of the law electronically; upon request, a paper copy must be provided; (f) information on the rules governing the exercise of the profession (e.g. registration with a professional body, rights and duties of the profession, continuous professional development, rules governing members, social legislation, rules of ethics etc.) and, where appropriate, on trade union and professional organizations; this information might be provided for instance through indication of website addresses dealing specifically with the issues or electronically; (g) migrants wishing to provide a service must be informed whether a declaration has to be submitted and whether the profession they wish to exercise is subject to control of qualifications; (h) where the applicant's circumstances are not covered by Directive 2005/36/EC (e.g. application for academic recognition), enough information should be provided to enable him/her to redirect his/her application to the department responsible; (i) indication to the migrant that he/she can contact the host Member State contact point in case of problems during the recognition procedure and that in such cases additional information and assistance will be provided.
C. UNACCEPTABLE PRACTICE	(a) The migrant is given less information than that listed in column B.

II. DOCUMENTS

	3. Documents that the migrant may be asked to supply to the competent authority in the host Member State for the purpose of establishment
A. BEST PRACTICE	(a) In case of application of Art. 12 of the Directive, the home Member State competent authority provides the host Member State competent authority with the information which enables them to clarify the status of the relevant equivalent level qualification, preferably in the form of the document in Annex A to this Code. (b) [For professions falling under Title III, Chapter I, in case migrants are unable to provide the necessary information, the host Member State competent authority should find information on the training followed by the migrant using IMI[9] to ask appropriate questions]. (c) [If the host Member State competent authority has any doubt or query concerning the documents listed under Column B provided by the migrant, it raises the issue using IMI.][10].
B. ACCEPTABLE PRACTICE	The migrant may be asked to provide: (a) proof of nationality, for example, a copy of his/her identity card or passport; (b) a copy of the attestation of professional competence or of the evidence of formal qualifications giving access to the profession as defined under Articles 3.1(b), 3.1(c) and 11 of the Directive; (c) information on the nature of the qualification mentioned under Article 12 of the Directive as set out in the standard form (document in Annex A to this Code) if this form has been provided to the migrant by the Member State of origin or through any other means otherwise; (d) the host Member State competent authority may advise migrants to provide information on continuous professional development, seminars, and all forms of training attended in addition to the initial training because additional training may compensate for substantial differences between qualifications and enable migrants to avoid a compensatory measure; (e) proof of the applicant's professional experience: where such professional experience constitutes a prior condition for the application of Directive 2005/36/EC (i.e. when neither the profession nor the training is regulated in the country of origin but the profession is regulated in the host country) and where it is in his/her interest to provide such information since it enables him/her to avoid, in full or in part, the obligation to take an aptitude test or complete an adaptation period; any means of proof should be considered hence, the migrant does not have to submit a certificate delivered by a competent authority; for instance, pay slips or attestations from employers must be accepted by the host Member State; it is however essential that any means of proof clearly identify the professional activity exercised by the migrant;

[9] When IMI is operational for the profession concerned

[10] See footnote 9

	however, in the following cases, a certificate issued by the competent body in the home Member State may be required: - for the automatic recognition of professional qualifications on the basis of professional experience according to Articles 16-19, see Annex VII.1(c) of the Directive; - to justify the three years professional experience of holders of a third country qualification in accordance with Article 3.3 of the Directive ; - for sectoral professions, to benefit from the automatic recognition on the basis of the general or specific acquired rights' provisions of Directive 2005/36/EC, for instance, (see: Article 23 (1) to (5), Article 27.1 for specialized doctors, Articles 33 and 33(a) for nurses, Article 37 for dentists, Article 39 for veterinary surgeons, Articles 43 and 43(a) for midwives, Article 49.2 for architects), and for midwives and pharmacists, to benefit from automatic recognition of the qualification in certain circumstances (see Articles 41 and 45.3); (f) documents attesting that the migrant is of good character or repute, or that he/she has not been declared bankrupt, or suspended or prohibited from the pursuit of the profession in the event of serious professional misconduct or a criminal offence or a declaration on oath or a solemn declaration (if the requirement also applies to nationals) in accordance with Annex VII.1(d) of the Directive; (g) a medical aptitude certificate (if the requirement also applies to nationals) (AnnexVII.1(e) of the Directive) delivered by a competent authority which can be a private medical doctor (general medicine or specialist depending on the certificate required); (h) a proof of the applicant's financial standing and proof of insurance coverage (if the requirement also applies to nationals) (see details in Annex VII.1(f) of the Directive); (i) for qualifications which benefit from automatic recognition under Title III, Chapter III, and which satisfy the minimum training conditions, the so-called certificate of conformity in accordance with Annex VII.2; (j) for qualifications which benefit from automatic recognition under Title III, Chapter III and which satisfy the minimum training conditions, but whose denomination does not correspond to the titles listed in the corresponding annex of the Directive, a certificate "of change of denomination" in accordance with Article 23 (6); (k) for professions falling under Title III, Chapter I, the host Member State competent authority may ask migrants to provide information on the training they followed, if necessary to find out whether there are substantial differences, in accordance with Article 14 of the Directive (see Annex VII.1(b)); as a result, the host Member State competent authority can ask for information, where necessary, on the total duration of the studies, the subjects studied and in which proportion and where appropriate the balance between the theoretical part and the practical part; if the applicant is unable to provide this information, the host Member State competent authorities should address the contact point, the competent authority or any relevant body in the home Member State; in any case, if it is impossible to find out information on training, the decision taken by the competent authority will be based on information available; (l) if the host Member State competent authority has any doubts or questions concerning the documents listed under this Column provided by the migrant, it must raise the issue with its counterpart in the home Member State using administrative cooperation.
C. UNACCEPTABLE PRACTICE	(a) The migrant must not be required to provide more information on training than indicated under point B(k); at issue here is professional recognition, not academic recognition. The recognition cannot be refused on the sole ground that the migrant is unable to provide information on training in the Member State where he/she acquired his/her qualifications and the procedure cannot be unduly delayed for the same reason. In such a case it is the duty of the competent authority to look for this information through administrative cooperation (see (k) under acceptable practice). (b) The migrant must not be required to provide more documents (e.g. a declaration of nationality from his consulate) and/or information than listed under Column B, and/or in a prescriptive form.

	4. Documents that the migrant may be asked to submit to the competent authority in the host Member State in case of provision of temporary services
A. BEST PRACTICE	(a) [If the host Member State competent authority has any doubts or questions concerning the documents listed under Column B provided by the migrant, it must raise the issue using IMI.][11]
B. ACCEPTABLE PRACTICE	(a) A declaration (Article 7.1 of the Directive) dated and signed, indicating the intention to provide a service in the territory of the host Member State, identifying the migrant (identity, address, profession, Member State of establishment), the profession he/she wants to exercise in the host Member State, as well as the name of the insurance company, if any, and the contract number or other means of collective protection with regard to the professional liability. (b) Proof of nationality (Article 7.2(a) of the Directive), for example, a copy of the identity card or passport. (c) Documents attesting the legal establishment (Article 7.2(b) of the Directive); see list of documents that may be provided by Member States enclosed under Annex B[12] of the Code; in any case it is essential that the document clearly identifies the professional activity exercised by the migrant. (d) If the document provided under B(c) does not attest that the migrant is not prohibited from exercising the profession at the moment of delivering the attestation of legal establishment (Article 7.2(b)), another document to that end can be provided (e.g. extract from penal /criminal register; document from the professional body). (e) A copy of the professional qualifications (Article 7.2.c of the Directive) which are, as defined under Article 3.1(b) of the Directive, qualifications attested by evidence of formal qualifications, an attestation of competence and/or professional experience. (f) Proof of professional experience of at least two years if neither the profession nor the training is regulated (Article 7.2(d) of the Directive). Any means of proof should be accepted, hence, the migrant does not have to submit a certificate issued by a competent authority, for instance, pay slips or attestations from employers must be accepted by the host Member State provided they clearly indicate the professional activity exercised. If the document provided under B(c) also attests that the migrant has professional experience of two years in the Member State of establishment, no other document can be required. (g) Evidence of absence of criminal conviction for professions in the security sector (e.g. an extract of criminal records). (h) For professions which do not benefit from automatic recognition and for which a control of qualifications would be justified under Article 7.4 of the Directive, in order to accelerate the procedure, the host Member State competent authority may, if appropriate, recommend that migrants, immediately following receipt of the declaration (see point 8.B.(b), provide information on training followed. If within one month following receipt of the declaration, the migrant has not provided such information then the host Member State competent authority must address the contact point, the competent authority of the home Member State or any relevant body in the home Member State in order to find out this information. If the host Member State competent authority has not recommended to migrants to provide information on training immediately following receipt of the declaration then, the competent authority must, within the first month following receipt of the declaration, find out, if necessary, information on the training followed by the migrant through the contact point, the competent authority of the home Member State or any relevant body in the home Member State. If,

[11] See footnote 9

[12] Annex B is not yet available

	despite all efforts made, the competent authority has not been able to find out this information within this month, the competent authority, may then ask the migrant to provide this information. The migrant must be contacted as soon as the competent authority is certain that it is not in a position to find out any information on training. If no information is available, the competent authority takes the decision on the basis of documents and other information available. Given that information on training is necessary only in order to identify substantial differences between training courses which are likely to be detrimental to public health or safety, the competent authority can only ask for information relevant to this end among the following information: total duration of the studies, the subjects studied and in which proportion and the balance between the theoretical and the practical part where appropriate. (i) For professions which do not benefit from automatic recognition and for which a control of qualifications would be justified under Article 7.4 of the Directive, the host Member State competent authority may advise migrants immediately following receipt of the declaration (see point 8.B(b)) to provide information on professional experience, continuous professional development, seminar, all forms of training attended in addition to the initial training because in the first place, this may avoid a control of qualifications for them or because, in the second place, professional experience and additional training may compensate for substantial differences between qualifications and enable migrants to avoid a compensatory measure. (j) If the host Member State competent authority has any doubts or questions concerning the documents listed under this Column provided by the migrant, it must raise the issue with its counterpart in the home Member State using administrative cooperation.
C. UNACCEPTABLE PRACTICE	(a) Requiring a deadline for submission of the declaration. (b) Accepting as evidence of legal establishment only a certificate issued by a competent authority in the home Member State. (c) Requiring for the purpose of control of qualifications more information on training than indicated under B (h). (d) Making submission of the documents mentioned under Column B(i) a prerequisite for control of the qualification. (e) Requiring more documents (e.g. a copy of the insurance contract or an attestation from an insurance company with the declaration) and/or information other than listed under column B and /or in a prescriptive form.
	5. Form in which the migrant must supply the documents requested by the competent authorities of the host Member State

A. BEST PRACTICE	(a) [Ordinary photocopies: in case of justified doubts, the host Member State competent authority checks with the home Member State competent authority the authenticity of the qualification and/or personal data using IMI][13]. (b) [If a certified copy cannot be provided,[14] the host Member State competent authority may check the authenticity of the qualification, the certificate and/or personal data with the home Member State competent authority using IMI][15]. (c) Accept that all documents are provided in electronic form, including in the case of temporary provision of services (declaration and accompanying documents) [until 28.12.2009 see footnote][16]. (d) Accept the electronic signature.
B. ACCEPTABLE PRACTICE	(a) Ordinary photocopies of the essential documents (professional qualifications, certificate of acquired rights, certificates on professional experience and "personal data"): in case of doubt, the host Member State competent authority may require from the competent authority of the home Member State confirmation of the authenticity of the qualification, the certificate and/or "personal data". (b) Certified photocopies of the essential documents by any authority competent to proceed to certification (professional qualifications, certificate of acquired rights, certificates on professional experience and "personal information"); if a certified copy cannot be provided[17], the host Member State competent authority may check the content and authenticity of the qualification, the certificate and/or "personal data" through administrative cooperation. (c) For establishment, the migrant may be offered the possibility to apply for recognition through an application form (provided by the competent authority) duly completed. (d) The migrant may be offered the possibility to use a standard document to introduce the declaration that may be required under Article 7.1.of the Directive. (e) Accept that migrants send the declaration under Article 7.1 of the Directive using an electronic form. [As from 28.12.2009 – date of implementation of the services Directive 2006/123/EC - (e) is replaced by the following: "accept that all documents are provided in electronic form, including in the case of temporary provision of services (declaration and accompanying documents) for professions covered by the Services Directive"].

[13] See footnote 9

[14] See case law C-298/99 of 21 March 2002 Commission of the European Communities v Italian Republic

[15] See footnote 9

[16] Acceptance of electronic documents will become compulsory as from 28.12.2009, for professions covered by the Services Directive in accordance with Article 8 of the Services Directive (Directive 2006/123/EC).

[17] See footnote 14

C. UNACCEPTABLE PRACTICE	(a) The migrant must not be compelled to provide the originals [18]or documents authenticated by the consular authorities or the national administration (for example, by means of the marginal note provided for in the Hague Convention), or to provide documents on stamp-impressed paper available only in the host Member State. (b) Denying the right of establishment or denying the right to provide services on the sole ground that the migrant has not used the standard document. (c) Refusal to accept the declaration under Article 7.1 of the Directive in electronic format [As from 28.12.2009 – date of implementation of the services Directive 2006/123/EC - (c) is replaced by the following: "refusal to accept that all documents are provided in electronic form for professions covered by the Services Directive"].
	6. Translations required by the competent authority in the host Member State
A. BEST PRACTICE	(a) [No translation should be required, especially for professions falling under Title III, Chapter 3 of the Directive, given that the denomination of the qualification is indicated in the annex to Directive 2005/36/EC; in case of doubt questions are addressed to the competent authority of the home Member State using IMI][19].
B. ACCEPTABLE PRACTICE	(a) Translations may only be asked for if they are genuinely [20] needed for processing the application. (b) Requests for certified or approved translations must be confined to the essential documents (professional qualifications, certificate of acquired rights, "personal information", certificates on professional experience); (bearing in mind that the more certified or approved documents the migrant is required to provide, the greater the costs for him/her)[21]. However, uncertified translations must be accepted for qualifications for professions falling under Title III, Chapter 3 of the Directive; in case of doubt questions are addressed to the home Member State competent authority through administrative cooperation. (c) Certified translations of standard documents such as identity cards, passports, etc., may not be required. (d) Certified or approved translations from the Member State of origin must be accepted by the host Member State; migrants remain free however, to decide in which Member State he/she wishes to get a certified or approved translation.
C. UNACCEPTABLE PRACTICE	(a) Requirements for translations which do not meet the criteria set out in column B.
	7. Assembling documents: time allowed and missing documents for establishment

[18] See footnote 14

[19] See footnote 9

[20] Take the example of Sweden, where documents to certain authorities may be submitted in Swedish, Danish, Norwegian, Finnish, English or French.

[21] See footnote 14

A. BEST PRACTICE	(a) Processing of applications in less than the three or four months allowed by the Directive. (b) Processing of applications through electronic means [until 28.12.2009 see footnote] [22].
B. ACCEPTABLE PRACTICE	(a) Upon request, before an application for recognition is introduced, the competent authorities must provide to the migrant a comprehensive list of the documents he/she might be asked to provide in support of his/her application (on subsequent production of these documents by the candidate, the dossier should be regarded as complete by the competent authority in the host Member State unless it is duly justified to ask for further documents). If certified translations are required for some documents (see point 6 of the Code), he/she must be told where they can be obtained. (b) In accordance with Article 51.1 of the Directive, the competent authority of the host Member State must acknowledge receipt of the application within one month of receipt and inform the applicant of any missing document, indicating specifically what is missing (e.g.: copy of the qualification, information on the total duration of the studies, the subjects studied and in which proportion; where appropriate the balance between the theoretical part and the practical part, etc.); in this acknowledgement of receipt, the applicant must be reminded that the time period will not start to run until the missing documents have been supplied. (c) Where a migrant specifically asks the competent authority in the host Member State whether the documents he/she has submitted are complete, he/she is entitled to be given this information. (d) For professions falling under Chapters I and II of Title III of the Directive, applicants must be informed before the end of the three month period that the deadline will be extended by one month unless the competent authority has clearly stated in the acknowledgement of receipt that the procedure would take 4 months. (e) [As from 28.12.2009 – date of implementation of the services Directive 2006/123/EC -: "processing of applications through electronic means for professions covered by the Services Directive"].
C. UNACCEPTABLE PRACTICE	(a) Demands for further documents not included on the original list notified to the applicant in the acknowledgement of receipt unless duly justified or demands for documents already submitted by the migrant. (b) Failure to meet the deadline fixed under the Directive. (c) Failure to inform or the provision of less information than that listed in column B.
	8. Assembling documents: time allowed and missing documents for check of qualifications in the case of provision of services (Article 7(4) of the Directive)
A. BEST PRACTICE	(a) Processing of cases under Article 7(4) in less than the time allowed by the Directive.

[22] Acceptance of electronic documents will become compulsory as from 28.12.2009, for professions covered by the Services Directive, in accordance with Article 8 of the Services Directive (Directive 2006/123/EC)

	(b) Documents sent through electronic means [until 28.12.2009 see footnote][23].
B. ACCEPTABLE PRACTICE	(a) A check of qualifications can only be justified in the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition. Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and where this does not go beyond what is necessary for that purpose. (b) Immediately following receipt of the declaration, the competent authority may, for professions which do not benefit from automatic recognition and if appropriate, recommend to migrants to provide information on training, professional experience, continuous professional development, and or additional training/seminars. Concerning training, the competent authority may also decide to address the contact point, the home Member State competent authority or any other body in order to find out this information (see 4B.(h).(i)). (c) A delay in adopting the decision can only be justified if one or several of the following difficulties are encountered: - information listed under Article 7.1 is missing; - one or several documents listed under Article 7.2, where relevant, are missing; - doubt about the authenticity or veracity of one of the documents listed under Article 7.2; - in situations where a check of qualifications is justified for professions which do not benefit from automatic recognition, and the competent authority has not obtained from the migrant or through the contact point or the competent authority of the home Member State or any relevant body in the home Member State any information on training followed by the migrant within the first month following receipt of the declaration, or needs additional information, or had just received this information and had no time to examine it yet (see point 4.B.(h)). The reasons for the delay must be notified in writing to the migrant; in particular, if no information on training was found, the host Member State competent authority must clearly indicate the steps undertaken to obtain it and the reasons for the failure. (d) The period devoted to solve the difficulty must be kept as short as possible and should not exceed one month. (e) The two months deadline within which the competent authority must reach a decision runs as from the moment where the difficulty encountered has been solved (e.g. the home Member State competent authority has confirmed the authenticity of the document, or the migrant has provided information on training or the host Member State competent authority has obtained information on training itself, etc.). If despite all efforts made, it was absolutely impossible for the host Member State competent authority to solve the difficulty within this one-month period, the competent authority must take a decision within two months following the end of this one-month period. (f) If the difficulty cannot be solved speedily, the decision should be taken on the basis of documents and information available. (g) The decision, by which a compensatory measure is imposed on the migrant, must contain information mentioned under point 10.B.(c) and 12.B.(b). (h) [As from 28.12.2009 – date of implementation of the services Directive 2006/123/EC -: "Documents sent through electronic means for professions covered by the services Directive "].
C. UNACCEPTABLE PRACTICE	(a) Demanding documents not listed under 4.B.

[23] Acceptance of electronic documents will become compulsory as from 28.12.2009, for professions covered by the Services Directive, in accordance with Article 8 of the Services Directive (Directive 2006/123/EC)

	(b) Unduly delaying the adoption of the decision. (c) Give less information than indicated under column B(g).

III. COMPENSATION MEASURES

	9. Aptitude test for establishment in the host Member State
A. BEST PRACTICE	(a) Frequency: according to demand, more than 2 sessions a year. (b) Preparation: upon request, provision by the competent authority or the contact point of information on any preparatory courses provided, lists of recommended reading and sample test papers. (c) In case of difficulties in enrolling for the test, the contact point and/or the competent authority assists the migrant.
B. ACCEPTABLE PRACTICE	(a) Frequency: according to demand, at least two sessions a year; for seasonal activities[24] several tests must be organised and these tests must be concentrated in the first part of the season. (b) A list of the national bodies responsible for organising aptitude tests must be made available to the candidate by the competent authority. (c) In order to enable the migrant to make a choice between a test and a training period, he/she must be informed, without delay, by the competent authority, of the essential element concerning the content and organisation of the test (time allowed, written and/or oral tests, options, etc.). (d) Once the migrant has opted for the test, he/she must be notified, without delay, by the competent authority of the administrative formalities to be completed in order to enrol for the aptitude test; it must be possible to provide an enrolment form for the aptitude test. (e) Migrants are allowed to resit the test. The rules governing the number of times candidates may take the test should take account of national practice (with due regard for the principle of non-discrimination).
C. UNACCEPTABLE PRACTICE	(a) Frequency: less than two sessions a year; for seasonal activities, less than indicated under Column B(a). (b) Provision of less information than that listed in column B. (c) To impose a compensation measure without having offered the migrant the possibility to demonstrate that he/she has acquired knowledge or competence lacking through professional experience and/or additional training and/or continuous professional development and/or participation in seminar.
	10. Aptitude test for provision of temporary services in the host Member State
A. BEST PRACTICE	(a) Preparation: upon request, provision by the competent authority or the contact point of information on any preparatory courses provided, lists of recommended reading and sample test papers.

[24] In particular for ski instructors, as requested in the decisions granting derogations (http://ec.europa.eu/internal_market/qualifications/general-system_otherprof_ski_instructors_en.htm)

	(b) In case of difficulties in enrolling for the test, the contact point and/or the competent authority assists the migrant. (c) The migrant should have the possibility to resit the test within a month following failure.
B. ACCEPTABLE PRACTICE	(a) If the migrant has not provided with the declaration any information about professional experience, additional training and/or continuous professional development and/or participation in seminars, he/she must be offered in the first place the possibility to demonstrate that he/she has acquired the knowledge or competence lacking through this professional experience, and/or continuous professional development and/or additional training and/or seminars. (b) Frequency of the test: depending on needs given that the test must take place within one month following adoption of the decision to impose it. (c) In the decision requiring the migrant to prove that he/she has acquired the lacking knowledge through a test, candidates must be informed of the date, the place of the test, the content and organisation of the test (time allowed, written and/or oral tests, options, etc.).The decision must also indicate that if all the arrangements for the test have not been concluded, including the results of the test, within one month the migrant can provide the service. (d) Migrants are allowed to resit the test. In such cases, migrants do not have to restart the whole process; a new test should be organised as soon as possible. The rules governing the number of times candidates may take the test should take account of national practice (with due regard for the principle of non-discrimination).
C. UNACCEPTABLE PRACTICE	(a) To impose a compensation measure without having offered the migrant the possibility to demonstrate that he/she has acquired knowledge or competence lacking through professional experience and/or additional training and/or continuous professional development and/or participation in seminars. (b) Giving less information, or less right than mentioned under Column B.
	11. Adaptation period for establishment in the host Member State
A. BEST PRACTICE	(a) Upon request, lessons drawn from successful adaptation periods are passed on to the migrant for information (lists of recommended books, for example) by the competent authority or the contact point. (b) As far as possible, the migrant should be free to choose a training supervisor and the place where the adaptation period will be spent. (c) In case of difficulties in finding a place for the adaptation period, the contact point and/or the competent authority assists the migrant.
B. ACCEPTABLE PRACTICE	(a) In order to enable the migrant to make a choice between a test and a training period, he/she must be notified, without delay, by the competent authority of the essential elements concerning the content and organisation of the adaptation period. (b) Once the migrant has opted for the adaptation period, he/she must be notified, without delay, by the competent authority of the administrative formalities to be completed for enrolment for the adaptation period. (c) Where this is possible within the host country's national structures, the migrant may receive payment during the adaptation period; however, this does not constitute a right; in any case he/she must receive information on this issue. (d) If a statute for a trainee has been defined at national level, it must also be applicable to migrants on the grounds of the principle of equal treatment.

	(e) The host Member State may confer responsibility for organising adaptation periods on authorised establishments and/or training supervisors. However, the arrangements for the adaptation period should not be so daunting that they constitute an indirect and disproportionate obstacle for the migrant (e.g.: too far to travel to the place of the training period, over-restrictive conditions, etc.). A list of establishments/people responsible for adaptation periods for the profession that the migrant wishes to exercise should be made available to him.
C. UNACCEPTABLE PRACTICE	(a) To impose a compensation measure without having offered the migrant the possibility to demonstrate that he/she has acquired knowledge or competence lacking through professional experience and/or additional training and/or continuous professional development and/or participation in seminars. (b) Provision of less information than that listed in column B.
	12. Adaptation period for provision of temporary services in the host Member State
A. BEST PRACTICE	(a) Upon request, lessons drawn from successful adaptation periods are passed on to the migrant for information (lists of recommended books, for example) by the competent authority or the contact point.
B. ACCEPTABLE PRACTICE	(a) If the migrant has not provided with the declaration any information about professional experience and/or additional training and/or continuous professional development and/or participation in seminars, he/she must be offered in the first place the possibility to demonstrate that he/she has acquired the knowledge or competence lacking through professional experience, continuous professional development and/or additional training and/or seminars. (b) In the decision requiring the migrant to prove that he/she has acquired the missing knowledge through an adaptation period, candidates must be informed of the starting date, the place, the duration, the content of the training period; he/she must also receive information on payment and on the statute. The adaptation period must be completed and the results communicated within one month of that decision ; as a result, an adaptation period can only be proposed if its duration does not exceed the one month deadline; the decision must also indicate that if the adaptation period has not been organised within one month the migrant can provide the service. (c) The arrangements for the adaptation period should not be so daunting that they constitute an indirect and disproportionate obstacle for the migrant. (d) Where this is possible within the host country's national structures, the migrant may receive payment during the adaptation period; however, this does not constitute a right; in any case he/she must receive information on this issue. (e) If a statute for a trainee has been defined at national level, it must also be applicable to migrants on the grounds of the principle of equal treatment.
C. UNACCEPTABLE PRACTICE	(a) To impose a compensation measure without having offered the migrant the possibility to demonstrate that he/she has acquired knowledge or competence lacking through professional experience and/or additional training and/or continuous professional development and/or participation in seminars. (b) Provision of less information than that listed in column B.

IV. CHARGES

	13. Charges to be paid by the migrant in the host Member State in case of establishment and in case of control of qualifications under Article 7.4 (provision of services)
A. BEST PRACTICE	(a) No charges.
B. ACCEPTABLE PRACTICE	The migrant may be required to pay charges for the processing of his/her application, aptitude test or adaptation period, provided that the following conditions are met: (a) the charges should not exceed the real cost of the service provided; (b) the charges should be comparable to those paid by nationals of the host Member State in similar circumstances; (c) the charges must not be set at a level which would make it impossible in practice to exercise the rights provided for in the Directive; (d) flat-rate charges may be imposed provided that they can be justified by reference to the average cost of processing an application.
C. UNACCEPTABLE PRACTICE	(a) Levying charges which do not meet the criteria listed in column B. (b) Levying charges in relation to the declaration under Article 7 (free provision of services); this does not apply to cases falling under Article 7.4.

V. RULES ON REASONED DECISIONS AND APPEALS

	14. Rules on reasoned decisions and appeals
A. BEST PRACTICE	(a) The decision adopted by the competent authority mentions the migrant's right of appeal, specifying the procedure to be followed and especially the time limit for lodging an appeal in the Member State concerned. (b) The migrant is informed of non judicial procedures and especially is given the website address of SOLVIT.
B. ACCEPTABLE PRACTICE	(a) Reasons must be given for all decisions taken. (b) The migrant must be informed by the competent authority of the legal (or administrative) right of appeal open to him, setting out the procedure to be followed and the time limit for appeals in the Member State concerned; he/she should also be informed of the consequences of failure on the part of the authority responsible for processing the application to reply within the time allowed. (c) Upon request of the migrant, the contact point gives further information on SOLVIT[25] and, if requested, provides assistance.
C. UNACCEPTABLE PRACTICE	(a) Failure to provide reasons or satisfactory reasons. Arguments based on "academic recognition" are not acceptable. (b) No information on the migrant's right of appeal.

[25] http://ec.europa.eu/solvit/index.htm

VI. COORDINATION

	15. Coordination
A. BEST PRACTICE	(a) Regular meetings between competent authorities dealing with different professions within a Member State with a view to exchanging experiences. (b) Network of contact points at EU level.
B. ACCEPTABLE PRACTICE	(a) Regular contact at national level between national coordinators and the competent authorities directly or indirectly through intermediaries. (b) Contact between coordinators of different Member States at EU level. (c) Regular contact between contact points.
C. UNACCEPTABLE PRACTICE	(a) Less contact or coordination than mentioned under Column B.

VII. LINGUISTICS KNOWLEDGE

	16. Linguistics knowledge
A. **BEST PRACTICE**	(a) In case of doubt, about the accuracy of the qualification or of the document supporting linguistics knowledge, the host Member State competent authority may require from the competent authority of the home Member State confirmation of the accuracy of the qualification or of the document supporting linguistics knowledge using administrative cooperation [and IMI][26].
B. **ACCEPTABLE PRACTICE**	The recognition of professional qualifications cannot be subject to linguistics knowledge unless it belongs to the qualifications (e.g; speech therapists). Language requirements must not exceed what is necessary and proportionate for practising the profession in the host Member State. It can only be considered on an individual case by case basis ; one of the following documents should be considered as sufficient to attest the linguistics knowledge: (a) a copy of a qualification acquired in the language of the host Member State; (b) a copy of a qualification attesting knowledge in the language(s) of the host Member State (e.g. university degree, chamber of commerce qualification, qualifications delivered by recognised language institutions like the Goethe Institute, etc.); (c) evidence of previous professional experience in the host Member State territory; (d) if the migrant does not provide evidence under (a) to (c), an appropriate interview or a test (oral and/or written) may be imposed.
C. **UNACCEPTABLE PRACTICE**	(a) Making recognition of the qualification subject to linguistics knowledge unless it belongs to the qualification (e.g. speech therapists). (b) Acceptance only of qualifications issued by certain types of institutions and requiring that the migrant provides the originals or documents authenticated by the consular authorities or the national administration (for example, by means of the marginal note provided for in the Hague Convention), or to provide documents on stamp-impressed paper available only in the host Member State. (c) Imposing a test systematically.

[26] See footnote 9

Annex A

Information to be provided by the home Member State on an "equal treatment of qualifications" under Article 12 of Directive 2005/36/EC

1 Description of the profession and the range of activities to which both qualifications give access.

2 Confirmation that the qualification mentioned in point 4 confers the same rights in respect of the taking up and pursuit of a regulated profession in the home Member State as the qualification mentioned in point 5 and a brief description of those rights

3. Indication whether the qualification mentioned in point 4 was granted equal rights or covers another situation

4. Description of the level, the duration of training and any other relevant characteristics of the qualification which is considered equivalent

5. Description of the qualification to which the other qualification is considered equivalent

6. Indication of the competent authorities which issue the qualifications.

ANNEX B
CATEGORIES OF DOCUMENTS ATTESTING LEGAL ESTABLISHMENT UNDER ARTICLE 7.2 (b) of DIRECTIVE 2005/36/EC

I. The documents mentioned below are documents which are deemed to provide evidence of legal establishment of qualified professionals in their home Member State for the purpose of providing services in the host Member State, provided that they meet the following conditions:

- **attest that the person is legally established[1] when he/she introduces the declaration for the first time and,**
- **indicate the profession concerned .**

No other document can be required if the document also attests that the migrant is not prohibited from exercising the profession at the moment of delivering the attestation of legal establishment.

A) THE PROFESSION IS REGULATED IN THE MEMBER STATE OF ESTABLISHMENT

Only one of the documents listed below can be required to attest legal establishment and it is up to the migrant to choose which one is the most appropriate.

SELF-EMPLOYED PERSONS

(The following documents are, in principle, available in most or all Member States)

- Certificate from the competent authority **or**,

- Certificate from professional bodies which are entrusted by Member States with the regulation of the conditions of access and of exercise of the profession **or**,

- Copy of the professional licence **or**,

- Copy of the trade/economic register **or,**

(The following additional documents are available in the Member States mentioned)

- Excerpt from the register of the professionals hold by the competent authority:
CY /AT (for Psychotherapists, Health psychologists, Clinical psychologists, Music therapists and accountancy professions: the excerpt from the list must be printed through Internet) **/LU**

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[1]Under Article 7.2 (b) of Directive 2005/36/EC, a professional is legally established in a Member State when he has the right to exercise, in this Member State, the profession for which he is qualified. This means that at the time this professional intends to provide a service in another Member State he is not prohibited from exercising his profession in the Member State of establishment. It does not mean, however, that this professional must effectively exercise this profession in the Member State of establishment at the moment he intends to provide a service in another Member State. However, if the profession for which this professional is qualified in the Member State of establishment is not regulated in this Member State, he must have exercised the profession for at least two years during the last ten years.

or,

- Social security slip:
BG – copy of the Social Security Book or a document issued by the National Social Security Institute/ **LU**

or,

- Proof of tax payments:
BG /EL /ES /LU

or,

- **C**ertificate of good standing
BG (issued by the respective Regional Court or by the Registry agency)

or,

- Professional liability insurance policy / certificate:
BG/ PL (valuers, property managers, real estate agents - in addition to professional licence)

or,

- Contracting entities' declaration:
BG (for self employed persons who are not members of a chamber or professional organization);

EMPLOYEES

(The following documents are, in principle, available in most or all Member States)

- Certificate from the competent authority **or,**

- Certificate from professional bodies which are entrusted by Member States with the regulation of the conditions of access and of exercise of the profession **or,**

- Copy of the professional licence **or,**

(The following additional documents are available in the Member States mentioned)

- Excerpt from the register of the professionals hold by the competent authority:
CY/ AT (for Psychotherapists, Health psychologists, Clinical psychologists, Music therapists and accountancy professions: the excerpt of the list must be printed from Internet) **/LU**

or,

Excerpt from the personnel register of the company:
FR (for the funeral area)

or,

- Social security slip:
BG (Copy of the Social Security Book/ a document issued by the National Social Security Institute/ copy of the Employment Record Book)/ **LU**

or,

- Proof of tax payment,
BG / ES/ LU

or,

-Certificate of good standing:
BG (issued by the respective Regional Court or by the Registry agency)

or,

- Pay slips
FR;

or,

- Professional liability insurance policy / certificate:
PL (valuers, property managers, real estate agents – in addition to professional licence);

B) THE PROFESSION IS NOT REGULATED IN THE MEMBER STATE OF ESTABLISHMENT

Only one of the documents listed below can be required to attest legal establishment and it is up to the migrant to choose which one is the most appropriate.

1) <u>SELF-EMPLOYED PERSONS</u>

(The following documents are, in principle, available in most or all Member States)

- Professional licence **or,**

- Copy of the trade/economic /companies/ register **or,**

- Certificate from professional bodies **or,**

(The following additional documents are available in the Member States mentioned)

- Social security slip:
BG (copy of the Social Security Book or a document issued by the National Social Security Institute) /**CY** /**LU** /**PT**

or,

- Proof of tax payment:
BG /DE / /EL /ES /LU /UK (Taxation information from HM Revenue and Customs, or last statement of accounts /**PT**

or,

Business tax reference number
UK

or,

- VAT registration details
UK

or,

- Certificate of good standing:
BG (issued by the respective Regional Court or by the Registry agency)

or,

- Contracting entities declaration:
BG /DE (members of the liberal professions who are self-employed and are not members of a chamber (e.g. tour guide) can only submit certificates issued by contracting entities together with document issued by the local tax authority)/ **UK**

or,

- Copies of contracts
UK

or,

- Documentation from accountant
UK

or,

- Certificate of legal establishment from the competent authority:
DK (document attesting absence of sanctions) /**LT** (certificate of self-employment) /**PL** (for professions under Annex IV, certificate issued by Marshals of Voivodeships or Voivodeship (Provincial) Labour Offices);

or,

- Certificate of registration from a competent authority:
CZ (for self-employed sole trader: confirmation of registration from the professional organisation or the competent authority) /**DK**.

2) EMPLOYEES

(The following documents are, in principle, available in most or all Member States)

- Certificate from professional bodies **or**,

- Professional licence **or**,

- Certificate of employer attesting professional experience of at least two years in the last ten years together with a social security slip or a proof of tax payment **or,**

(The following additional documents are available in the Member States mentioned)

- Social security slip:
BG (Copy of the Social Security Book/ a document issued by the National Social Security Institute/ copy of the Employment Record Book)/**LU /PT**

or,

- Proof of tax payment:
BG /ES /LU /UK (Taxation information from HM Revenue and customs, or copy of P60 (an annual statement of income for the previous tax year) **/PT**

or,

- Pay slips:
BG /FR

or,

- Certificate attesting legal establishment from the competent authority:
DK (document attesting absence of disciplinary sanctions) **/PL** (for professions under Annex IV certificate issued by Marshals of Voivodeships or Voivodeship (Provincial) Labour Offices);

or,

- Registration certificate from competent authority:
ES (for employees in public sector and for health professions

II. One of the following documents may be required if the documents mentioned under point 1) do not attest that the migrant is not prohibited from exercising the profession at the moment of delivering the attestation of legal establishment. It must result clearly from this document that the person is not prohibited from exercising the profession. When the profession is regulated in the home Member State, request of one of these documents must be exceptional as in principle it should always be possible through

official documents mentioned under point I.A to attest that a person is not prohibited from exercising the profession.

- Extract from penal/criminal register **or**,

- Certificate for clean criminal record, issued by the competent authority (i.e. Court or police) **or**,

- Certificate from the professional bodies.