

Memo on the status of qualification body

28 February 2020

The law of 5 September 2018 established a definition of qualification bodies for the first time. Article L. 6113-2 states that “the ministries, the national joint employment committees of professional branches, the organisations and the bodies responsible for the registration of one or more professional qualifications registered in the national directory of professional qualifications or of one or more qualifications or authorisations registered in the specific directory mentioned in Article L. 6113-6 are called bodies and ministries issuing qualifications.”

This definition establishes that the status of qualification body is conditional on offering at least one valid qualification registered in one of the two national directories.

The body can offer the relevant qualification alone or jointly with other bodies. In that case, in the event of registration, the bodies are all considered to be qualification bodies and co-providers of the qualification in question. It may also adopt a procedure to delegate assessment of the qualification, while remaining fully responsible for that assessment.

1. OBLIGATIONS OF QUALIFICATION BODIES

1.1 General obligations

The law therefore allows any body in that situation to claim this status and establishes responsibilities associated with it. Qualification bodies therefore:

- “communicate information relating to holders of the qualifications issued to the information system of the personal training account,” an obligation specified by decree no. 2019-1490 of 27 December 2019 relating to transmission to the personal training account's information system of information relating to holders of qualifications registered in national directories;
- must meet the “conditions of professional integrity of qualification bodies” during the period of registration of their qualifications;
- and must not pursue “objectives other than those associated with professional qualification”.

This key point regarding conditions of integrity and the objectives pursued demonstrates:

- the importance given to the qualification body in the skills development system,
- lawmakers' desire¹ to protect candidates during training leading to a qualification from associated risks, particularly deception within the meaning of Article L. 441-1 of the French Consumer Code, as well as the risks of mental manipulation corresponding to the criminal offence of fraudulent abuse of the state of ignorance or weakness;²
- as well as to take into account the harmful consequences of the use of acquired skills that are inappropriate (in terms of their content or their context), both for the qualification holder (e.g. non-compliant safety rules) and for people who could suffer as a result, particularly for activities that could involve illegal practice, e.g. medicine, or lead to mental manipulation.

Its risks are materialised in situations that are rare but the serious consequences of which for those involved imply a particular duty of vigilance from France compétences and its professional qualifications committee.

Finally, France compétences ensures that the access routes declared by the body are lawful and the qualification body must therefore submit:

- in respect of the specific directory, the collective agreement indicating that its qualification may be the subject of a professionalisation contract, along with its classification;
- any type of specific approval from the public authorities allowing completion of training leading to a qualification;
- compliant and relevant implementation of the VAE [Validation of Prior Experience].

The decree of 18 December 2018 specifies several obligations, particularly the condition of integrity³ and supplements them with obligations to provide certain information to France compétences:

- at least every two years, statistical data relating to the professional integration of holders of professional qualifications registered in the RNCP;
- any modification relating to the authorisations they issue to bodies to prepare for the acquisition, assessment or delivery of professional qualifications and other qualifications and authorisations.

Via the issue of this communication obligation, the regulatory authority therefore lays down the principle of the ability for the qualification body to authorise or delegate all or part of provision of the qualification to bodies (called “partners”) which can prepare learners for the qualification and organise assessment sessions, but which are not authorised to issue the qualification on their behalf. (see below).

¹Impact study of the law of 5 September 2018 p. 139: “Strengthening of the regulations on private provision must be supported by legislative and regulatory measures to expand selection criteria, particularly via public policy criteria regarding the preservation of public health, workplace and consumer safety (combating sectarianism, fraud, etc.)”

² Fraudulent abuse of ignorance or of a situation of weakness either of a minor or of a person whose particular vulnerability, due to age, illness, infirmity, a physical or psychological deficiency or pregnancy, is apparent or known to its author, or to a person in a state of psychological or physical subjection resulting from the exercise of serious or repeated pressure or techniques designed to alter their judgment, cause that minor or person to take action or abstain from action which is seriously harmful to them, is punishable by three years’ imprisonment and a fine of €375,000. When the offence is committed by the de facto or de jure director of a group which pursues activities that have the objective or effect of creating, maintaining or exploiting the psychological or physical subjection of the participants in those activities, the penalties are increased to five years’ imprisonment and a fine of €750,000.

³“No one may exercise a de jure or de facto managerial or administrative function in a qualification body within the meaning of Article L. 6113-2, if they have been convicted for a crime or an offence contrary to integrity and moral standards.”

1.2 Obligations relating to the criteria for registration in directories

Finally, the decree sets out the principle of compliance during registration with the criteria mentioned in Articles R. 6113-9 and R. 6113-11, in light of which the professional qualifications and other qualifications or authorisations were registered. The qualification body must therefore ensure that the qualification is implemented in accordance with the processes described in the application documents.

This obligation also encompasses communicating about the registered professional qualification and associated training leading to a qualification. The body must unambiguously identify:

- the main characteristics of the qualification: description, content, access routes and the level of qualification where applicable;
- the training course(s) leading to a professional qualification.

This obligation arises directly from the registration and is separate from the contractual obligations arising from collective use of the mark established by France compétences.

1.3 Effects of non-compliance with obligations

Failure to comply with these obligations, particularly identified by an inspection conducted by France compétences, may, except in cases of proven urgency, be subject to an inter partes procedure followed by formal notice with a view to achieving compliance.

That formal notice may be issued beforehand in the event of non-compliance or a particularly serious breach of a suspension decision or a decision to withdraw the registration.

The application file therefore represents a joint commitment by the qualification body and any joint qualification bodies, a commitment which will also be assessed at the time of renewal requests. Files submitted in respect of the criteria defined in the new standards introduced by the law of 5 September 2018 will be examined at the time of their renewal based on:

- new commitments arising from the request;
- and the procedures for roll-out of the qualification resulting from the previous registration.

2. DEVELOPMENT AND ESTABLISHMENT OF NETWORKS FOR THE ROLL-OUT OF QUALIFICATIONS

Within this framework of responsibility, qualification bodies have fairly significant freedom to organise their networks, in compliance with the principle of freedom of trade and industry, either via the creation of a network of co-qualification bodies, or via the authorisation of partners to prepare learners for assessments and/or to organise those assessment sessions.

2.1 Freedom of organisation between co-qualification bodies

Bodies applying for registration in one of the national directories are free to organise themselves into a network of co-qualification bodies, provided that each member of the network meets the condition of integrity and is not prohibited from making a submission⁴.

As such, it should be noted that the condition of admissibility of files on the RNCP, relating to analysis of the professional prospects of learners who have completed at least two of the annual training courses, is assessed across the entire group. At the time of initial registration or a change in the group's organisation, each co-qualification body is therefore not required to justify this information individually.

During registration, new joint qualification bodies may be identified or replace previously identified joint qualification bodies, provided that they meet the obligations defined, inform France compétences within a reasonable period of time via the dedicated remote procedure⁵, and, in particular, that they provide the partnership agreement concluded between the joint qualification bodies.

2.2 Partner networks

Qualification providers have the option, as indicated above, to draw on a network of authorised partners able to prepare learners for qualification and/or organise assessment on behalf of the qualification body. The examination board responsible for issuing the qualification is under the sole responsibility of the qualification body or the joint qualification bodies.

The partner is required to implement the qualification in accordance with the processes described by the qualification body. In order to ensure consistent implementation of the qualification within its partner network, the qualification body must formalise the requirements and roll out procedures for inspecting the organisation of assessment tests for its partners, an obligation which constitutes a registration criterion.

In this respect, the standard agreements and specifications agreed between the parties are requested when applying for registration to the certification body. These documents must contain the methods for handling anomalies and, where applicable, the procedure for ending the partnership.

Special attention must be paid by qualification bodies to regularly send information to France compétences allowing identification of partners. This requirement ensures that users are fully informed about the bodies actually authorised by the certification body and protects its intellectual property, with France compétences being authorised to inform the various purchasers and financial backers about the bodies effectively authorised to issue qualifications, particularly for application of the personal training account.

4 - penultimate paragraph of article R. 6113-17 of the French Labour Code
- paragraph 2 of article 5 of the decree of 4 January 2019 defining the information allowing the registration of a professional qualification or other qualification or authorisation in the national directories in respect of the procedures provided for in Articles L. 6113- 5 and L. 6113-6 of the French Labour Code
5 <https://www.francecompetences.fr/fiche/organismes-certificateurs-un-nouveau-module-disponible-pour-actualiser-les-fiches-publiees-dans-les-directories-nationaux/>

2.3 Functioning of networks

The qualification body(ies) are responsible for the functioning of their network throughout the registration period and then, if applicable, during the renewal procedure for registration of the qualification. As stated above, they must have a coherent inspection policy, to ensure the functioning of their network and compliance with the commitments underpinning the decision to register their qualification and to the clarity and transparency of communications provided by their partner(s).

If any shortcomings are identified, the qualification bodies must take diligent steps to rectify them. It is useful to attach inspection plans, shortcomings identified and steps taken to rectify them to a qualification renewal application file, in order to inform the committee on the effectiveness of the controls.

Finally, it is recalled that each network of qualification bodies must, in the context of RNCP registration requests and during registration, communicate comprehensive data on the professional prospects of qualification holders based on responses to prospects surveys. Data by partner and by preparation site may be requested, either during consideration of the registration application or as part of an inspection during registration.