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The Actuarial Association of Europe (AAE)
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Interpretative criteria on the aptitude test and adaptation period concepts contained in the Q&A Document of the Actuarial Association of Europe

1. Overview

- 1.1 Certain Full Member Associations of the Actuarial Association of Europe (the “AAE”) have raised some questions about the interpretation of the Mutual Recognition Agreement (“MRA”) and its compatibility with mandatory local rules, regulations or requirements to be applied for access to certain categories of membership.
- 1.2 At the same time, there is a concern to prevent that members of those Full Member Associations who aspire to be admitted to the highest category of the association on a non-derived basis (and also existing members qualified within such category) may consider that the system of mutual recognition under the MRA means unequal treatment or discrimination in favour of Applicants under the MRA according to local laws and case law.
- 1.3 In view of those concerns, the following should be taken into account:
 - A. Although the MRA is inspired in the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (hereinafter, the “PQD”), it (a) is not intended to transpose the aforementioned EU Directive (the PQD), nor does it (b) override any mandatory rules applicable in any of the states in which Qualifying Associations operate (including, in particular, third countries which are not part of the European Union or the European Economic Area). Those mandatory rules prevail over the provisions of the MRA, as expressly set forth in the MRA and in the existing Q&A Document.

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B. In addition to the above:

- i. it does not seem contrary to the provisions of the PQD (nor to paragraph 3.b. of the MRA, which applies the concept of “aptitude test”) to consider that such an aptitude test could in fact be understood to consist of a sequence of different examinations on different subjects, which could be taken at different times;
 - ii. within the very concept of “adaptation period” used in the PQD (article 3.1.g), on which paragraph 3.b. of the MRA is based, a ‘period of supervised practice’ is included, which may be accompanied by ‘further training’, which is subject to ‘assessment’ (leaving it to the competent authority of the host Member State to specify the conditions of this period and its assessment).
- C. Furthermore, it should be borne in mind that the purpose of the PQD is limited to regulating the recognition of professional qualifications **between EU Member States** (and, by application of the EEA Treaty, EEA Member States), but does not aim to regulate the relationship with third countries. In this respect, the recent Commission Recommendation of 15 November 2023 on the recognition of qualifications of third-country nationals states the following (Whereas 22) includes the same idea, stating the following:

The beneficiaries of Directive 2005/36/EC are nationals of Member States exercising free movement rights under Union law. To complement the Directive, the primary beneficiaries of this Recommendation are third country nationals who are in the process of obtaining a visa or work and residence permit in a Member State or are already legally resident in the Union, irrespective of whether they are holders of qualifications issued in the Union or in third countries

2. **Practical application of the MRA taking into account the criteria set out above**

2.1 In view of all the above, the following criteria and practical considerations in the interpretation of the MRA may be taken into account:

- A. While the provisions of the PQD (including in particular Art. 14 of the PQD on Compensation Measures) inspire the system of the MRA (in particular paragraph 3.b. of the MRA), it should be borne in mind that the PQD is intended to regulate relations between EU or EEA Member States and not between EU or EEA States and third countries. In this regard, it must be noted that some of the Full Member Associations are not from EU or EEA countries.
- B. Therefore, in the case of the home or the host association or both are located in a third country, it is not contrary to the provisions of the MRA, in cases where the education and training and/or practical work experience required for access to the relevant category of the host association differ substantially from those of the home association, that the Applicant must fulfil certain requirements, to qualify for the corresponding Qualifying Actuary category of the host association, to the extent those additional requirements are imposed by mandatory rules, regulations or requirements for access to such category.
- C. Such additional requirements could mean that the Applicant may initially gain access to a certain category of membership of the host association, different from its Qualifying Actuary category (where this exists) without any additional requirements.

The Applicant is entitled to be assessed on a fair basis and may need to take several examinations in certain subjects and at various points in time (in such cases these examinations, taken together, may be deemed to constitute the “Aptitude Test” referred to in paragraph 3.b. of the MRA) and / or gain sufficient actuarial practise (“Adaptation

Period” also referred to in paragraph 3.b. of the MRA) in order to gain access to the category which the host association considers to be Qualifying Actuary.

- D. In any event, for the purposes of assessing whether such requirements imposed on an Applicant are justified and in conformity with the MRA, the following criteria, among others, should be taken into account:
- i. such additional requirements may only be imposed on the Applicant by the host association to the extent that they are required by mandatory rules, regulations or requirements to be applied for access to such category, because there is a substantial difference between the education and training and/or practical work experience required for access to the relevant category of the host association and those of the relevant Applicant;
 - ii. if the Applicant is admitted as a first step to a category different from the one the host association considers as Qualifying Actuary and can only be admitted to this latter category by fulfilling the above mentioned additional requirements, then the members of the lower category of the host association should not automatically be admitted to the Qualifying Actuary category of the other Qualifying Associations without fulfilling conditions materially equivalent to the provisions of paragraph 3.b. of the MRA;
 - iii. The host association shall consider the qualifications, skills and experience of the Applicant, and if, notwithstanding the same, it is necessary for the Applicant to meet additional requirements for access to the relevant category in the host association, such additional requirements shall be limited to supplementing, only to the extent it is strictly necessary, in accordance with the applicable mandatory rules, regulations or requirements, such existing qualifications, skills and experience of the Applicant; and
 - iv. for the purpose of determining whether additional requirements imposed on an Applicant of a Qualifying Association by a host association are indeed justified and imposed by the applicable mandatory local laws, rules, regulations or requirements, other qualification recognition processes and/or mutual recognition agreements with associations that the host association has entered into may be taken into account. Therefore, where the circumstances of qualifications, skills and experience of the members of those third countries associations to which the host association applies mutual recognition do not substantially differ from those of an Applicant who is a Qualifying Actuary for the purpose of the MRA, no more onerous requirements may be imposed on such Applicant than those imposed on members of such third country associations with which the host association has concluded mutual recognition agreements.

3. Proposed amendment to the Q&A Document on the MRA

- 3.1 In accordance with the AAE's internal rules and procedures, it is foreseen that the AAE Professionalism Committee will submit a proposal to the Board of the amendments to the Q&A Document. It is also foreseen that the Board's decision on that matter will be taken into consideration by the AAE General Assembly to be held in October 2024.
- 3.2 We have reviewed the proposed amendment to the Q&A Document (a copy of which is attached as an annex hereto) and, in our view, subject to what is set forth in section 2

above, it is in line with the current text of the MRA and does not conflict with the MRA or the PQD.

- 3.3 Notwithstanding the above, it seems advisable that, in the next period foreseen for the evaluation of the implementation of the MRA (which, according to its paragraph 12, starts on 1 January 2027), the different criteria that, in their interpretation, are included in the aforementioned amendments to the Q&A Document should be incorporated into the MRA.

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Annex

Amendments proposed to the Q&A Document

(Proposed amendments are included with tracked changes)

(New question 5 below to be proposed as an amendment to the MRA in next evaluation of the MRA, foreseen to take place in 2027-section 12 MRA-).

1. Proposed amendments in the last paragraph of the preliminary section of the Q&A Document (“Context of the Mutual Recognition Agreement”):

- Qualifying Associations in countries where the actuarial profession is a regulated profession² may be subject to obligations under the PQD that extend beyond their obligations under the Agreement. There may also be Qualifying Associations party to the Agreement which are not subject to the PQD. It is beyond the scope of the following Questions & Answers to provide help in interpreting and complying with legislation that implements the PQD.

2. Proposed amendment in the box on page 3 of the Q&A Document:

IMPORTANT

This Q&A document does not form part of the Mutual Recognition Agreement (“Agreement”).

This document is non-binding and adopting any of the suggestions set out in the “questions and answers” is not mandatory.

In interpreting the Agreement, all Qualifying Associations are reminded to refer not only to this document but also to any relevant law, including but not limited to data privacy law.

In particular, Qualifying Associations that are based in countries where the actuarial profession is a regulated profession (as defined in the PQD) may be subject to obligations under the PQD that extend beyond their obligations under the Agreement, and they are strongly advised not to rely solely on the Agreement and/or this document but to refer also to the PQD itself and, if necessary, seek legal advice. There may also be Qualifying Associations party to the Agreement which are not subject to the PQD.

3. Proposed amendments in the last paragraph of answer to question 4 of the Q&A Document (“When should the host association consider asking for an adaptation period or an aptitude test?”):

We encourage Qualifying Associations, when acting as a host association, to first consider how far differences in knowledge, skills and competences (whether in relation to regulated activities or otherwise), might have been covered through professional experience or through life-long learning, i.e. continuous professional development, and to ensure that their application process includes appropriate consideration of this. If an association wishes to require an Applicant to complete an adaptation period and/or pass an aptitude test, we encourage the association to offer the Applicant the choice between these two options where practicable. Some associations are required to offer this choice by law; other associations may have greater flexibility in how they assess and direct what an Applicant is required to do by way of adaptation period and/or aptitude test.

4. New question 5 in the Q&A Document (The subsequent questions of the Q&A Document, as well as the cross-references to them, should be renumbered sequentially):

5. How could a host association interpret the requirement for an adaptation period and/or an aptitude test?

In determining the scope of any adaptation period and/or aptitude test, a host association could undertake an assessment of the Applicant's qualification and, as a result, may require an Applicant to undertake additional assessment(s) and/or meet experience/training requirements before they are eligible for qualification recognition under the Agreement. This approach is likely to be most relevant to Qualifying Associations which operate two qualification levels and related membership categories or where the single qualification level significantly exceeds AAE core syllabus requirements.

Where, by way of example, a Qualifying Association operates two qualification levels and related membership categories : one which is below the AAE core syllabus requirements and the other which exceeds these requirements (the latter being the "Qualifying Actuary" membership category recognised under the Agreement), that association must, depending on the outcome of the assessment of the Applicant's qualification, admit the Applicant to the membership category which does not meet the AAE core syllabus requirements, until such time as they satisfy all aptitude/experience and/or training requirements of the association's Qualifying Actuary category. Upon satisfaction of all requirements, recognition would be awarded to the Applicant under the Agreement.

In deciding on the scope and nature of any adaptation period and/or aptitude test in individual cases, Qualifying Associations shall impose no more onerous requirements on Applicants than those imposed on individuals pursuing direct qualification with the association. It is recommended for Qualifying Associations to explain, on their own website and/or in communications with prospective Applicants, the approach they will take when considering applications for recognition under the Agreement. This should include the nature and scope of any adaptation period and/or aptitude test and how they will assess what an Applicant requires to do in order to achieve recognition with them under the Agreement.

