

Mutual Recognition Agreement – Way Forward

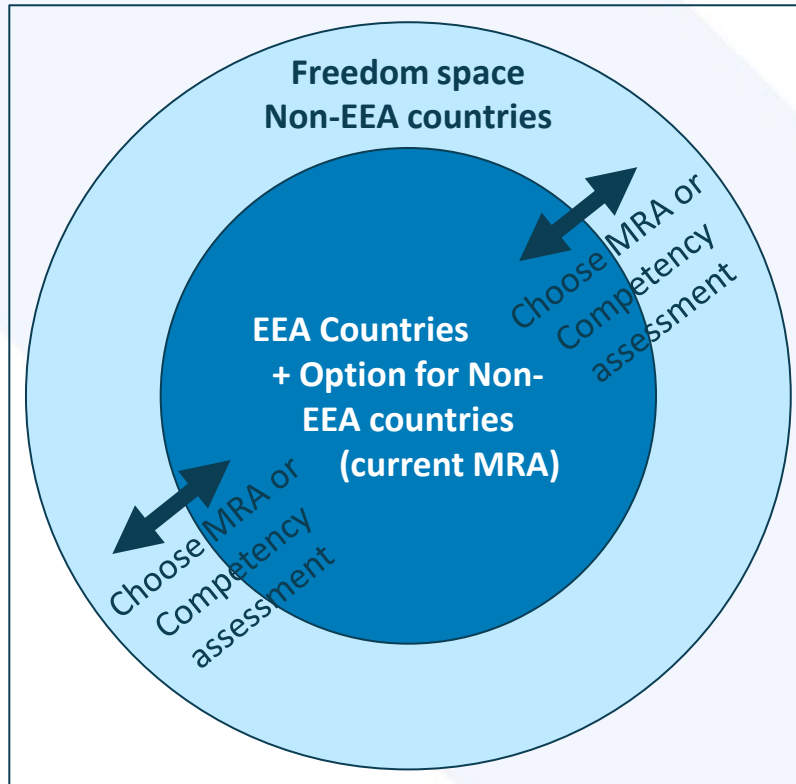
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Executive Summary

Goal: Amending the MRA to get all AAE FMAs back in the MRA

- The IFoA has exited the MRA in 2022 as a right for non-EEA countries after the GA in Sursee. The IFoA must re-enter the MRA by 2026. Otherwise, the IFoA will cease to be a Full Member of the AAE.
- We have considered several options.
- Key decision factors for choosing this current option are:
 - Resolves the current challenges;
 - Ensures a fair treatment of AAE full members' qualified actuaries by ensuring a fair and balanced process;
 - Provides all FMAs with balanced rights; and
 - Keeps amendments to the MRA to a minimum.
- The proposed solution is described in the following slides.

The Solution



- No changes for EEA countries
- Non-EEA countries can choose between the MRA or competency approach
- With competency approach: reciprocal approach between non-EEA and EEA countries

current MRA

The host association may require an Applicant either to complete an adaptation period not exceeding three years or to pass an aptitude test:

1. Where their education and training and/or practical work experience differ substantially from that covered by the evidence of formal qualifications required 3 in the host country; or
2. Where their work will involve reserved activities or other professional activities regulated in the host country which they have not pursued sufficiently, in their home association

Competency

In respect of Applicants to and from non- EEA Qualifying Associations, the host association may assess the Applicant against prescribed competencies in order to determine the class of membership to be awarded by it to the Applicant. If a class of membership is at or below the AAE minimum requirements, the applicant will, at least, automatically receive this class of membership.

Proposal (1/2)

Key points of the proposal

- We distinguish FMAs from EEA (European Economic Area) and non-EEA countries (Channel Islands, Switzerland, Turkey, UK) as this format was used as decision basis for the updated governance documents:
 - MRA doesn't change for relations between EEA FMAs.
 - Proposed amendments only applicable to non-EEA AAE FMAs to resolve the legal challenges dimension.
- The main idea is to build on the “waiting period/additional examination” article in the MRA and allow non-EEA FMAs to *assess and decide on* applying qualifying actuaries based on their competencies which is similar to the current approach.
- Vice-versa, FMAs may *assess and decide on* applying qualifying actuaries from non-EEA FMAs to ensure reciprocity.
- Resolution mechanisms in the MRA, Statutes and Swiss law ensure that qualifying actuaries are treated fairly in the process.

Main amendments to the MRA

- **Competency assessment en lieu of waiting period/test:** “... in respect of Applicants to or from non-EEA Qualifying Associations, the host association may assess the Applicant against prescribed competencies in order to determine the class of membership to be awarded by it to the Applicant.”
- “[If] the Applicant is seeking membership of the host association at a level of qualification which exceeds the Core Syllabus for Actuarial Training in Europe of the AAE and does not meet all of the prescribed competencies required for that membership level, [the host association may] require the Applicant to undertake such further examinations, periods of experience or training with it, as it considers necessary. With this exception, their rights, duties, obligations and subscriptions shall be the same as those of other members within the class of members to which they are admitted, and in particular they shall be subject to the same code of conduct as those other members.”
- **Appeal process of the applying qualifying actuary:** “Any appeal against the outcome confirmed by the Host association shall be made to the Host Association [explaining the grounds of appeal and including any supporting material from the Applicant’s Home Association/ in accordance with the Appeal Policy]. The decision of the Host Association on appeal shall be final.”

Proposal (2/2)

Escalation procedure

- **In case of an FMA considering the action of another FMA under the MRA as unfair**, the AAE assesses the situation as an arbiter. It tries to resolve the situation and potentially determines non-compliance with or non-participation in the MRA.
- In case of failure to fix non-compliance within 6 months, the AAE general assembly may end the participation in the MRA potentially leading an FMA to becoming an Observer Member.
- In case of non-participation in the MRA, the AAE general assembly may also end the membership in the AAE, as AAE considers non-participation of its Full Member Associations in this Agreement as cause in the context of Art 72 Par 3 of the Swiss Civil Code.

Raised challenges so far

Raised challenges

- **Confidentiality** of the process in case of an appeal. Mitigant: case handled by selected group at AAE (i.e. appointed Board Members and Committee Chairs based on expertise and no conflict of interest).
- Seek **legal advise** on the finally proposed text. Ensure that FMAs and AAE have liability covers in place to the extent needed.
- **No side-letters** to avoid disintegration.
- **Additional competencies to be tested** can be chosen from a large variety of options. Specificity in the required competencies must not be used to block the MRA process.
- Use the **MRA notion** only when automatic recognition.
- **Willing non-EEA countries** should be able to stay within automatic recognition.

MRA – Art 3: amendment proposal

Article 3:

Each Qualifying Association shall make provision to admit to membership any Qualifying Actuary who intends to pursue actively the profession of actuary in a qualifying country other than that of their home association and who applies for membership (“Applicant”) of the first association (the “host association”), consistent with the purpose of this Agreement, with the following conditions:

a. Membership of a Qualifying Association shall be open to any Qualifying Actuary of another Qualifying Association on application, without further requirements as to training, passing examinations or periods of experience, except as specified in Article 3.b. of this Agreement.

b. Notwithstanding Article 3.a. of this Agreement:-

(i) the host association may require an Applicant either to complete an adaptation period not exceeding three years or to pass an aptitude test:

1. where their education and training and/or practical work experience differ substantially from that covered by the evidence of formal qualifications required 3 in the host country; or
2. where their work will involve reserved activities or other professional activities regulated in the host country which they have not pursued sufficiently, in their home association; OR

(ii) in respect of Applicants to and from non- EEA Qualifying Associations, the host association may assess the Applicant against prescribed competencies in order to determine the class of membership to be awarded by it to the Applicant.

The host association shall in no case impose stronger conditions or require more of an Applicant than is permitted by the law applicable to the host association.

c. (i) In respect of the application and operation of Article 3(b)(i), an Applicant whose application is accepted shall be admitted to a class of members that includes the host association’s Qualifying Actuaries. The Qualifying Association shall not deem Applicants to be Qualifying Actuaries for the purposes of this Agreement unless they complete the host association’s education/qualification/experience requirements in accordance with Article 3(b)(i).

(ii) In respect of the application and operation of Article 3(b)(ii), the host association may, insofar as (i) it operates more than one class of membership, (ii) the Applicant is seeking membership of the host association at a level of qualification which exceeds the Core Syllabus for Actuarial Training in Europe of the AAE and (iii) does not meet all of the prescribed competencies required for that membership level, require the Applicant to undertake such further examinations, periods of experience or training with it, as it considers necessary. With this exception, their rights, duties, obligations and subscriptions shall be the same as those of other members within the class of members to which they are admitted, and in particular they shall be subject to the same code of conduct as those other members.

d. Any appeal against the outcome confirmed by the Qualifying Association shall be made to the Qualifying Association [explaining the grounds of appeal and including any supporting material from the Applicant’s home association/in accordance with the Appeal Policy]. The decision of the Qualifying Association on appeal shall be final.

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Appendix

Resolution process

If an EEA-FMA does not collaborate on the MRA and in particular on accepting qualifying actuaries, the following resolution process can be executed:

1. The qualifying actuary can appeal to the host association. If the qualifying actuary deems not being treated fairly, she can take it up with his home association who can raise the issue at the AAE and trigger the following mechanism:
 1. Article 7 of the MRA: if an EEA FMA is showing a lack of compliance, then the AAE General Assembly may terminate the FMAs participation in the Agreement.
 2. Article 6 of the Statutes: an FMA will become an Observer Member if not participating in the MRA.
 3. Article 72 of the Swiss law: members may be excluded without reasons being given with a resolution by the members and a good cause. Furthermore, the reasons may not be challenged.

MRA – Article 7

7. In the event that a Qualifying Association fails to comply with this Agreement, the AAE may send written notice to the Qualifying Association of said lack of compliance. If the Qualifying Association fails to correct said lack of compliance within 6 months of receipt of written notice, then the AAE General Assembly may terminate this association's participation in the Agreement.

Statutes – Article 6

Article 6 Mutual Recognition

1. Except for a valid reason (which may include but is not necessarily limited to (a) a force majeure event, (b) legal requirement, (c) prohibition, or (d) according to transitional arrangements agreed by the General Assembly at the time of approving this October 2021 version of these Statutes), Full Member Associations shall enter into the AAE Agreement of April 1991 (as amended from time to time) concerning the recognition by each Full Member Association of members of the other Full Member Associations (the Mutual Recognition Agreement or MRA).

If a Full Member Association acting in good faith, cannot be (or continue to be) a party to the MRA and has a valid reason, the Full Member Association shall be entitled not to conclude the MRA or to cease to be a party to it by submitting written notice to the AAE and, in respect of (a) to (c) above, after validation by the AAE General Assembly. In this situation, the Full Member Association shall have 5 years ("resolution period") to attempt, in collaboration with the AAE, to enter into (or re-enter into, as the case may be) the MRA. In the event that, after the expiry of the resolution period, the Full Member Association has not entered into (or re-entered into) the MRA and no agreement to the contrary has been reached between the AAE and the Full Member Association concerned, the Full Member Association shall become an Observer Member unless the General Assembly agrees that the resolution period shall be extended.

For the purposes of this Article:

- Force majeure event shall mean (i) any unforeseeable situation or circumstance or (ii) any foreseeable situation or circumstance which was unavoidable, provided that any such situation or circumstance set out in (i) or (ii) would seriously impede or prevent a Full Member Association from entering into or remaining a party to the MRA on the terms provided for in the MRA from time to time.
- Legal requirement or prohibition shall mean any mandatory rule, applicable to a Full Member Association, or order, decision or requirement of any judicial, legislative or administrative body or authority having jurisdiction over the Full Member Association which prevents the Full Member Association from entering into or remaining a party to the MRA on the terms provided for in the MRA from time to time.

The Full Member Association shall justify to the AAE the reasons for the incompatibility between the MRA and the force majeure event, the legal requirement or the prohibition.

Swiss Law

Art. 72

III. Exclusion

¹ The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given.

² In such cases, the exclusion may not be challenged based on the reasons.

³ Unless the articles of association provide otherwise, exclusion requires a resolution by the members and good cause.