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## Discussion Paper

### Legal and Political Recognition: Fundamentals for the Profession.

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This discussion paper is the result of the presentation of the subject at the Presidents Meeting on 6 June 2019 and at the European Congress of Actuaries on 8 June 2019 and the exchange of ideas at these occasions.

#### *Why discuss legal and political recognition?*

Actuaries are playing a **key role** in the economic, legal and social organization of the society while users of the actuarial expertise expect high quality, respect of ethical values and **accountability**. Actuaries are looking for a professional environment that offers the **appropriate framework** and gives an added value to society.

**European institutions** are recognizing the AAE as a stakeholder, but have difficulties to position the legal status of the actuarial profession and its organizations. **Consumer protection** is a major objective of the EU, actuaries can help to create a sound environment and governance.

There is **not enough mutual understanding** of the legal context in different countries amongst actuaries in Europe.

There has not been a **deep debate** yet on what the strategy in the context of the legal recognition of the profession and its organization should be.

#### *What do we mean by “Recognition”?*

##### **The recognition covers three aspects:**

1°The construction of the **association** of actuaries: actuaries are organized in the format that is most appropriate in their legislation: Association, Professional association, Public Corporation, Institute, Society, ...

2°The recognition of the **profession**: specific roles and tasks that are assigned by law, public regulation and legal framework. The profession is taking part in the debate and the governance of these matters that are part of the expertise field.

3°The recognition of the **title**: the context in which a professional can use the specification of “Actuary” implying the expected quality, ethics and governance.

The external recognition is influenced by on the **internal framework** of the actuarial profession and the number of actuaries

#### *The European context is explicit*

Directive 2005/36/EC of the European Parliament and of the Council, of 7 September 2005, on the recognition of professional qualifications and the Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC, **consolidate a system of mutual recognition** which was initially based on 15 Directives provides for automatic recognition for a number of professions. **Actuary is one of those professions.**

This Directive is conferring a guarantee on persons having acquired their professional qualifications in a Member State to have access to the same profession and pursue it in another Member State with the same rights as nationals.

The European Commission has an official regulated professions database in order to facilitate the free movement of professionals, providing practical information on EU legislation governing the recognition of professional experience in the European Union (EU), the European Economic Area (EEA) and Switzerland [32 countries: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the UK]. This legal regime is recognized by the European Union [see: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm> ]. It's necessary to underline that this Database has to be updated.

A regulated profession is a professional activity to which access is subject-by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications and whose purpose is to grant a reserve of activity.

According to that Database, Actuary is a regulated profession with reserve of activity which represents around 70% of the actuaries in Europe. [See: Goossens, K.; Mendinhos, J.; Sáez de Jáuregui, L.M.(2019): «Legal and Political Recognition: Fundamentals for the Profession» 3th European Congress of Actuaries. Lisbon.]. **As a result, this means that, within the EU framework, the legal status of the Actuary, in itself, necessarily needs to be contemplated as a Regulated Profession and a title with the right to Reserves of Activity.**

Scope: "This Directive shall apply to all nationals of a Member State wishing to pursue a **regulated profession** in any-Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.

There is a link with MRA of AAE: the current Mutual Recognition Agreement (MRA) of the AAE updates the Agreement dated April 1991 and revised in November 1997 and October 2005, and it's in force since January 1st, 2011. **This agreement aims to facilitate the achievement of the objectives of the Directive 2005/36/EC and the Directive 2013/55/EU.**

**The Solvency II Directive** requires actuaries to provide Information for supervisory purposes and to exchange information with other authorities and refers three times to "the actuary". **Therefore, actuaries have an explicit mandate which means a reserve of activity in this Directive.**

***Article 35. Information to be provided for supervisory purposes:***

*(c) to require information from external experts, such as auditors and actuaries.*

***Article 68. Exchange of information with other authorities:***

*(c) independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.*

Due to the development of Solvency II regulation at local level, in the last years, reserve of activity has increased in EU countries with new functions as, for instance, 'the appointed Actuary' or 'the responsible Actuary' in Germany, UK, Ireland, Portugal, Spain, Italy, Sweden, Denmark, Poland and Slovakia.

Actuaries not only perform their functions in Solvency II. Currently, there are three big areas in the scope of the actuaries: (i) Insurance under Solvency II; (ii) Employee Benefits and Pension Schemes; (iii) Actuarial valuation on victims of ~~on~~ traffic accidents.

- **Attending to the type of business or task:**
  - Insurance Actuary: Life / Non Life Actuary.
  - Employee Benefits Actuary.
  - Actuary for valuation on victims of traffic accidents.
- **Attending to the-line of defense:**
  - **Pricing / Reserving Actuary (1st line of defense).**
  - **Actuarial Function Actuary (2nd line of defense / independent from the operational functions).**
  - **Independent Actuary (SII Review Report / fully Independent reports).**

*Is there a danger that legal recognition should close activities for actuaries ?*

Because of the legal recognition of reserved activities, actuaries should not be restricted from other activities. On the contrary, being recognized by law for so-called reserved activities, should **increase the credibility** of the actuary for other “non reserved” activities.

The legal recognition can be organized in the most efficient way: all members of the actuarial association could be considered for legal recognition if the corresponding requirements are covered by the governance rules of the association, or the actuarial association can install a specific certificate for reserved activities if this would be necessary to prove the fit with what is legally required. Being entitled as a qualified member of the association or for such a certificate should not be constraint to exercise other actuarial or non-actuarial activities.

*Legal recognition will limit competition?*

No. Absolutely not. All fully qualified actuaries will perform their tasks as they are doing now. Some tasks like those that are regulated should be performed only by those who are qualified to perform them and are considered "fit and proper".

*Conditions to be considered "Fit and Proper"*

To be considered Fit and Proper, it is not enough ~~is not enough~~ to have the necessary , it is not enough know-how certified by the association or university exams. It is essential to be limited and comply with a code of conduct and actuarial standards.

*Is there an implied responsibility that actuaries can not accept ?*

Legal recognition does not affect the responsibility of the actuary in whatever capacity, but **responsibility relates to the activity** (reserved and non-reserved) and the corresponding requirements it implies.

The individual actuary cannot be forced to take or to accept a role or activity and the responsibility attached to it. The professional organization , on the other hand, is supposed to create the adapted framework that enables the actuary to accept the responsibility.

The professional liability can be or should be insured and the corresponding cost has to be integrated in the remuneration for such activities.

*Is there a need for a reserved title ?*

Actuarial Associations advocate the fact that their members are “fit & proper” to exercise actuarial activities, implying that other professionals do not reach the same level of appropriateness and ethics for these activities.

The membership of an actuarial association, completed with relevant certificates, can cover the “fit & proper” qualification, but it does not give access to the recognition of qualification as a corresponding professional by the rest of the world. **A legal recognition of the title “actuary” increases the professional status and credibility** and urges the professional organizations to accelerate the evolution to more professionalism.

Moreover, if the title “actuary” is reserved by law to the members, **the association itself also earns a legal recognized status.**

*How does “de facto” recognition increase the profile of the association and the profession ?*

The **survey** on legal and political recognition shows that actuarial associations have created a **high profile in those countries where the development is in a more advanced stage.**

The level of expertise and the professionalization of the organization will give it credibility **as a stakeholder for public authorities and other professions and will raise the profile of its members.**

Political “de facto” recognition is therefore a strategic objective for all actuarial associations. Legal status and political recognition

**Legal status and political recognition will mutually strengthen one another** and this will contribute to the credibility of the profession and the actuaries.

The actuarial profession has a key role in society. It is therefore not appropriate for the profession to claim additional roles; it is preferable to consider ways in which the actuarial profession is **asked to perform additional roles.** The emphasis on political recognition as a fully respected stakeholder will stimulate public authorities and professional organizations to propose explicit activities for actuaries to strengthen operations and governance of the financial institutions.

*What is needed to realize the emerging opportunities for new or extended roles for actuaries ?*

Several opportunities are indeed emerging :

the implementation of the **IFRS17** standard requires a high level of actuarial expertise, including the validation of the technical provisions by a qualified expert. The audit profession is looking at the actuaries to take on this role, but that would require actuaries to be able to take the responsibility and to be legally recognized by the users of the IFRS accounts.

During the review of the **SII regime** it appears that there is a need for an extension of the scope of the actuarial function. As the actuarial profession advocated that the members are “fit & proper” for the AF, it is also ready to promote them for those extended roles.

The intention to extend the scope and observing that nearly 100% of the Actuarial Function Holders are qualified member actuaries, implies that **the political decision makers and the supervisors are accepting** the professional framework of the associations. **A more formal acceptance and recognition** would confirm the status and increase the comfort of insurance companies, pension funds and supervisors.

*What do we recommend ?*

The **European dimension** that introduces an explicit or implicit legal recognition can not be denied and **needs the appropriate follow up** by the profession . We recommend the AAE to formulate an official position.

Local associations are invited to **contact the authorities in charge** of the application of Directives of 2005 and 2013.

Understanding both the European legal background and the local context is essential to tackle these issues; therefore, that **understanding could be strengthened**.

The actuarial profession goes through a constant evolution requiring an **increasing professionalization** : recognition and especially legal recognition can be a catalysator.

The legal recognition can help **all** actuaries : those who take up public roles and those who take up actuarial roles in the context of their employer.