



**To: Professionalism Committee**

**From: MRA Task Force**

***Members: Birgit Kaiser (Deutsche Aktuarvereinigung), Yvonne Lynch (Chair) (Society of Actuaries in Ireland) and Suzie Lyons (Institute & Faculty of Actuaries)***

## **Update**

1. To re-cap, the brief that we agreed with the Professionalism Committee (PC) is as follows:
  - a. Consider the changes to the MRA and Heubeck Letter suggested by member associations in their responses to the 2016 “Review of Mutual Recognition Agreement - Questionnaire” (see Appendix) and draft updates to the documents, for consideration by the PC.
  - b. Also consider whether any other changes are needed (e.g. to address ambiguities or implementation issues that have been identified more recently) and if so, draft updates for consideration by the PC. This will not involve a “root and branch” review of the MRA or the Heubeck Letter, as it appears from the responses to the Questionnaire that the MRA is working well. We will focus on issues identified through the Questionnaire, any other issues that may be identified by us during the course of our work and the discussion points recorded in the minutes of the PC (at that time, the Standards, Freedoms and Professionalism Committee) meeting held on 21<sup>st</sup> September 2017.
  - c. Find out what changes to Directive 2005/36/EC, on the recognition of professional qualifications, were introduced by the amending Directive 2013/55/EU.
  - d. Consider whether the MRA and/or Heubeck Letter should be amended to take account of Directive 2013/55/EU. In the preamble to the MRA, the AAE states that “the objectives of the Directives appear to the associations to be desirable” and that associations have entered into the MRA “in order to facilitate the achievement of the objectives of the Directives”. We interpret this as meaning that, although Directive 2005/36/EC applies only in respect of regulated professions (as defined in the Directive<sup>1</sup>), the MRA should reflect the spirit and goals of the Directive. We will be mindful of this when we consider possible changes to the MRA and/or Heubeck letter.

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<sup>1</sup> Article 2 states that the Directive “shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State . . . other than that in which they achieved their professional qualifications” (*Article 1*). Article 3 defines “regulated profession” as “a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit . . .”. In addition, Annex I of the Directive lists associations and organisations, the members of which are (under Article 3(2)) treated as a regulated profession for the purposes of the Directive. The actuarial bodies listed in Annex I are the UK Institute of Actuaries and Faculty of Actuaries. The EU countries in which the actuarial profession is a regulated profession are Denmark, Italy, Poland, Slovakia, Spain and the UK (per the database at <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm>).

2. The Society of Actuaries in Ireland had intended to commission legal advice on interpretation of the Directive, for its own purposes, and was willing to share findings with the working group. However, circumstances changed and the Society no longer needed advice. Therefore, the working group has proceeded by focusing in the first instance on 1.c. above.

### **Key changes to Directive 2005/36/EC<sup>2</sup>**

#### ***other than changes to sections that are specific to other professions***

3. We summarise below key changes to the Directive that might be of relevance or interest to actuaries. Please note that we do **not** necessarily consider that the MRA and/or Heubeck letter should be amended to reflect each item below – at this stage, we have simply identified changes to the Directive, and the next phase of our work will include considering possible implications, if any.

#### ***Title I General Provisions (Articles 1 – 4f)***

4. Rules concerning *partial access to a regulated profession and recognition of professional traineeships<sup>3</sup> pursued outside the home Member State* have been added. (Articles 1, 2(1), 4(3), 4f)
  - a. Partial access may be considered where (among other conditions) the differences between the professional activity in the home and host Member States are so large that, to gain full access in the host Member State, the applicant would have to complete the full programme of education and training required in that State. *(It seems unlikely that this situation will exist in relation to any of the member associations of the AAE and therefore we do not propose to consider partial access in our work on the MRA and Heubeck letter.)*
5. The Directive now explicitly recognises both full-time and equivalent part-time professional experience. (Article 3)
6. The Directive now makes provision for the issuing of electronic European Professional Cards, proving either that the professional has met the conditions necessary to provide services in a host Member State on a temporary and occasional basis or the recognition of professional qualifications for establishment in a host Member State. (Articles 3, 4a, 4b, 4c, 4d, 4e)

#### ***Title II Free provision of services (Articles 5-9)***

7. Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State:
  - a. if the service provider is legally established in a Member State for the purpose of pursuing the same profession, or

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<sup>2</sup> The information set out here does not purport to be a complete list of all changes to the Directive and should not be relied upon for the purposes of decisions relating to compliance with the Directive.

<sup>3</sup> Periods of supervised professional practice that constitute a condition for access to a regulated profession.

- b. where the service provider moves and the profession is not a regulated profession in the Member State of establishment: if he has pursued the profession in one or more Member States for at least one year (*previously: if he has pursued the profession in the Member State of establishment for at least two years*). (Article 5(1))

*(Article 5(2) goes on to say that the provisions of Title II shall apply only where the service provider “moves to the territory of the host Member State to pursue, on a temporary and occasional basis, the [relevant] profession”. It is not clear what rights or obligations (if any) apply if a professional wishes to use electronic communications to provide services in a Member State, while being located in a different Member State or in a country that is not a Member State).*

8. There is an unchanged provision that Member States may (but are not obliged to) require that, where a service provider first moves from one Member State to another to provide services, he shall inform the competent authority<sup>4</sup> in the host Member State in advance and shall renew the declaration annually (Article 7(1)). There is a new provision that, where such a declaration is required, the service provider shall be entitled to have access to the service activity or to access the activity in the entire territory of the Member State concerned (Article 7(2a)).
9. A provision that a competent authority of the host Member State may make enquiries of the competent authority of the Member State of establishment regarding the legality of the service provider’s establishment and regarding his good conduct now applies only “in the event of justified doubts”. (Article 8(1))

### **Title III Freedom of establishment (Articles 10-52)**

#### *Chapter 1 General system for the recognition of evidence of training*

10. There are some changes to Articles 12 and 13, which cover recognition of qualifications. For example, Article 12 has been amended to recognise evidence of training completed “on a full or part-time basis, within or outside formal programmes”, subject to certain conditions. *(The AAE MRA is underpinned by the Education Syllabus – what is important is whether the education completed, by whatever means, fulfils the requirements of the Syllabus. Therefore, to a large extent, the changes to these Articles are not important for our purposes. However, the wording of the section of the MRA on adaptation periods and aptitude tests might benefit from fine-tuning, to ensure that it is consistent with the Directive, and it might be useful to include some additional material on this in the Heubeck letter.)*
11. There are also some changes to Article 14, which addresses adaptation periods and aptitude tests. For example, in considering whether the training the applicant has received covers “substantially different matters” than those covered under the host Member State’s qualification requirements, significant differences in terms of the duration of training can no longer be taken into account (Article 14(4)). Also, before requiring an adaptation period or aptitude test, the Member State must consider whether the applicant has addressed differences between the home and host States’ requirements through professional experience (as previously) or (new:) through formally validated lifelong learning (Article 14(5)). There is a

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<sup>4</sup> A “competent authority” is “any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the applications, and take the decisions, referred to in this Directive”.

new provision that “The decision imposing an adaptation period or an aptitude test shall be duly justified” and specific information must be provided to the applicant (*Article 14(6)*). There is also a new provision that, where an aptitude test is required (or offered as an alternative to an adaptation period), the applicant must have the possibility of taking the test within 6 months (*Article 14(7)*).<sup>5</sup>

*Chapter II Recognition of professional experience*

*Chapter III Recognition on the basis of coordination of minimum training conditions*

12. We have not considered changes to these Chapters as they relate to specific activities/industries (e.g. manufacturing of specific goods, chemical industry, petroleum industry, electrical engineering, construction) and professions (e.g. medical professions, veterinary surgeons, architects).

*Chapter IIIA Automatic recognition on the basis of common training principles*

13. Article 49a is new. It describes a “common training framework” as a common set of minimum knowledge, skills and competencies for the pursuit of a specific profession. It provides for recognition of qualifications acquired on the basis of such frameworks, subject to certain conditions. These conditions include that the relevant profession (or the education and training leading to the profession) is regulated in at least one third of the Member States and that the common training framework permits nationals from any Member State to be eligible for acquiring the professional qualification under such framework without first being required to be a member of or registered with any professional organisation.
14. Article 49b is also new and is similar to Article 49a except that it relates to “common training tests”, i.e. standardised aptitude tests available across participating Member States.

*Chapter IV Common provisions on establishment*

15. Article 50 provides that, where the competent authority of a host Member State makes a decision on an application to pursue a regulated profession in that state, the competent authority may demand certain documents and certificates. The list of documents has been extended to include, where the Member State so requires for its own nationals, an attestation confirming the absence of suspensions from practising the profession and criminal convictions (*Annex VII, 1(g)*). In the event of justified doubts, the host Member State may require confirmation of the absence of suspensions/convictions from another Member State (*Article 50(3a)*). Another new part of Article 50 provides that exchange of information between competent authorities of different Member States under the Article shall take place via the Internal Market Information System (*Article 50(3b)*).

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<sup>5</sup> For completeness/future reference: at Article 14(3), the text from “By way of derogation” to the end of the paragraph (“both an adaptation period and an aptitude test”) is new.

16. Article 52 includes a new provision that a Member State may not reserve the use of a professional title to the holders of professional qualifications if it has not notified the association or organisation that issues the title to the Commission and to the other Member States in accordance with Article 3(2)<sup>6</sup> (*Article 52(3)*).

#### ***Title IV Detailed rules for pursuing the profession (Articles 53-55a)***

17. Article 53 provides that professionals benefitting from recognition of qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State. Paragraphs (2) – (4) of the Article are new; they limit the extent to which requirements/constraints may be applied in this regard.
18. Article 55a is new. It provides for recognition of professional traineeships (professional practice carried out under supervision in accordance with a condition for access to a regulated profession), subject to certain conditions and limits.

#### ***Title V Administrative cooperation and responsibility towards citizens for implementation (Articles 56-59)***

19. Article 56, on cooperation and information-sharing among competent authorities, includes some new provisions, including that the competent authorities shall use the Internal Market Information System to exchange information on relevant disciplinary actions or criminal sanctions (*Article 56(2)*). The Article also includes some new provisions on cooperation, e.g. it requires Member States to share information and best practice for the purposes of optimising continuous professional development (*Article 56(4); bullets (c) – (e) are new*).
20. Article 57, on central access to information, includes a new provision that Member States shall ensure that a list of all regulated professions and associated competent authorities in the Member State is available online. (*Article 57(1)(a)*)
21. Article 57a is new. Member States must ensure that, subject to some exceptions (e.g. the carrying out of an adaptation period or aptitude test, or the provision of certified copies of documents), all requirements, procedures and formalities relating to matters covered by the Directive may be easily completed, remotely and by electronic means, through a specified point of single contact or the relevant competent authorities. The Article also addresses the use of advanced electronic signatures.
22. Article 57b is new and requires Member States to designate assistance centres. Competent authorities must cooperate with assistance centres.
23. Much of Article 59, on transparency, is new.
  - a. It now includes a clause that the Commission shall set up and maintain a publicly available database of regulated professions (*Article 59(1)*). *The database is at <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm>. According to the database, the actuarial profession is a regulated profession in Denmark, Italy, Poland, Slovakia, Spain and the United Kingdom*.

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<sup>6</sup> Following such notification, Annex I may be updated. Annex I lists associations and organisations, the members of which are treated as a regulated profession for the purposes of the Directive.

- b. It now also requires Member States to examine whether legal requirements restricting access to or pursuit of a profession to holders of a specific professional qualification, or restrictions on use of a professional title, or requirements for membership of an association or organisation listed in Annex I, are compatible with certain principles - the restrictions must not be discriminatory on the basis of nationality or residence, they must be justified by overriding reasons of public interest, and they must not go beyond what is necessary to attain a particular objective (*Article 59(3) – (5)*).

#### ***Title VI Other provisions (Articles 60–65)***

- 24. Article 60 covers reports to be prepared by Member States (every 2 years) and the Commission (every 5 years). It has been amended to require more detailed statistical information from Member States (*Article 60(1), second paragraph*) and to specify information to be included in the Commission's reports (*Article 60(2)*).

#### **Next steps**

- 25. The Task Force will now consider whether it might be appropriate to amend the MRA and/or the Heubeck to reflect changes to the Directive. We will revert to the Professionalism Committee on this and on the other aspects of the brief outlined above. We have set up a series of conference calls over the period to end January 2019 and we hope to complete the work within this timeline.

## **Appendix**

### **Suggested changes to the MRA and/or Heubeck Letter**

#### *Society of Actuaries in Ireland:*

Some points that could be considered in relation to the Heubeck Letter:

(i) Section 2, recommendation that “a migrant actuary be asked to report annually to his or her home Association” – it is not clear what the purpose of this is, i.e. what is the migrant actuary expected to report.

(ii) Section 5, last sentence – the purpose of this recommendation is not clear, as it seems to us that the home association is not in a position to do anything with or in relation to the information mentioned.

(iii) Section 14, “If the actuary has not joined the host Association, the question of discipline should be referred to the home Association” – if the actuary has not joined the host association, he or she is not subject to that association’s codes and standards, and the host association has no obligation (or, perhaps, authority) to take any action relating to the actuary, including referring conduct to the home association.

(iv) Section 14, “it should not be a defence against invoking the disciplinary procedures to argue that the misconduct in the host country would not have been misconduct according to the rules of the home Association if the offence had been committed in the home country” – this is perhaps arguable. For example, suppose an actuary is censured by a host association for not completing CPD requirements, and the home association does not have CPD requirements or has much lighter CPD requirements. Would it really be fair and proportionate for the home association to censure him or her too, when other members of the home association would not be so censured?

(v) The last paragraph says that home Associations “should be under an obligation” to make certain notifications to other associations. This wording is odd and could be improved. If the obligation set out did apply, it could be onerous in terms of record-keeping and processes.

#### *Institute & Faculty of Actuaries:*

We suggest that it would be prudent to review the MRA to ensure compliance with Directive 2013/55/EC, which has amended Directive 2005/36/EC on the Mutual Recognition of Professional Qualifications. We have already carried out some preliminary work in considering the implications of these changes, which we would be happy to share.

Separately, in light of these changes and of the current core syllabus reviews by both the AAE and IAA, it may be necessary for member associations to reconsider the appropriate qualification level(s) to which mutual recognition should appropriately apply. The IFoA, for example, recognises both Associateship and Fellowship as providing 'qualified actuary' status, both of which are referred to in the UK legislation (the European Union (Recognition of Professional Qualifications) Regulations 2015) implementing in the UK the changes introduced by the 2013 Directive.

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