Memorandum

From: José Mendinhos

To: Professionalism Committee

Subject: The discussion of the arguments against legal recognition

This document aims to discuss arguments against legal recognition and is referred to number 4. Of the paper called Legal Recognition – Intermediary report…"

As we will be in an unusual situation and I'm not sure I could explain my arguments with the right clarity, I chose to send you this (very personal) text.

a. Argument: Diversity

The current system, with no legal recognition, based on the continuous recruitment of the new members, and their regular and continuous certification (full membership) is attracting a diverse set of candidates. In this system, actuaries as diverse as the ones looking for private entrepreneurship and its freedom, or traditional salaried employment are co-existing, and these different profiles are attracted to the profession, making it diverse and rich. As the generations are changing, it is possible that a more constrained system (because of legal recognition and its implied requirements) might be less attractive or would even repel some candidates. On the one hand, it can make the profession less diverse; on the other hand, it can limit the entry in the profession that would have a negative impact on especially smaller countries.

Consequently, the attractiveness of the actuarial society or profession should not only be based on the legal recognition of the profession.

Continuous recruitment of new members is not undermined. But only those who really satisfy the necessary conditions, as in the UK or in Spain and other countries; in the limit, actuaries would be treated as doctors, lawyers and other professions all over Europe. There will not be a limitation to enter the profession unless the candidates don't comply with the minimum conditions. Nowadays many associations have multiple categories of members and that situation can be maintained.

b. Argument: Risk of "empty recognition"

As stated previously, the relationship between activities and title recognition is of outmost importance. The worst-case scenario could be the recognition of a title with no attached activities linked to it. This risk creating the "two markets" as mentioned before, with legally recognised

actuaries competing with non-recognised actuaries, facing less constraints. This is why such a scenario should be avoided.

Another option would be a European recognition with no or different local recognition, which could also translate into an "empty title".

Another problem could be that the word "actuary" is not defined correctly. Associations are making a difference between associates, certified and qualified actuaries and this should be included in a legal definition. Moreover, there is also a risk of diverging translation into different European languages during transpositions (or even loss of the term) – arguably, this has already happened.

In any of these scenarios, the legal definition would in practice mean very little and have no other effect than "be proud on being an actuary".

Discussion

"*The worst-case scenario could be the recognition of a title with no attached activities linked to it"*. It's very difficult to imagine such a situation because there are already some tasks implicitly assigned to actuaries: appointed actuary, actuarial function holder.

And, anyway, this possibility already exists and has nothing to do and would not increase with legal recognition.

c. Argument: Risk of "activities recognition"

This already exists with examples as Actuarial Function Holder (AFH), Appointed/Responsible Actuary (AA).

The main risk posed is the dependency on the regulator since the regulator will be in a position to cancel recognition at will. This is already the case with Actuarial function holder under S2. The legal recognition of the activity is transferring the power to define who is a "valid" holder of the activity to the regulator. The regulator can question the efforts of the association by introducing their standards (implicitly or explicitly).

It will also limit the capacity of the association to promote self-discipline and "soft law", important features to ensure development of best practices. There are thus risks of overregulation and a bureaucratic approach to actuarial matters.

Discussion

The power of the regulator already exists and has nothing to do with legal recognition. Depending on the legal system, a recognized association has much more power than a non-recognized association and so, that risk would be reduced.

"The legal recognition of the activity is transferring the power to define who is a "valid" holder of the activity to the regulator". This depends very much on the legal framework. In Latin countries (and probably in others, also) is the legal recognized association that would have that power. Anyway supervisors have already the power (under SII) to accept or reject

actuaries to perform regulated tasks.

"It will also limit the capacity of the association to promote self-discipline…". On the contrary, the "Orders" like in Spain, legally have the disciplinary power and, as to be considered as an actuary one must be a member of the Order, they (those legal recognized associations) have a much powerful way to keep discipline.

d. Argument: Risk and costs due to implementation of self-discipline

Even if the regulator accepts to delegate the disciplinary monitoring of the profession, insuring a proper disciplinary check of the actuaries could be challenging for the associations because it requires skills that are not customary to actuaries, such as legal skills. Legal recognition of the role of actuaries and the delegation of disciplinary procedures partly to an association would require a due process of law within the association. This can be costly.

There could also be different fit and proper requirements and/or strength of disciplinary procedures for the different categories of membership (member / full member / full member working in recognized activity) which could be problematic for associations to comply with.

Discussion

Yes, probably costs would raise. But there will be more people joining the association and so more people to spread the costs.

e. Argument: Splitting the actuarial profession

Legal recognition will create a gap to be managed between the "legal recognised" and the "non-recognised" actuaries. How will the associations organise the relations between the two different categories? How will the votes be organised in the association for "legally recognised" matters? Will it create an "aristocracy" of "regulated persons" within the association, with enhanced powers? Will Actuaries in the reserved position (tenure) be motivated to secure their position against other actuaries? These are important questions that needs to be taken into account in the context of legal definition.

Discussion

As it is known, in many associations there are more than one category of members. So, the described situation already exists. But, as an advantage to the new situation, the distinction between those who are recognized and those who are not will be clear, as it is today for those who are doctors and those who are not.

f. Argument: The view of the insurance company

The view of insurance companies on the importance of a legally defined actuary is extremely important. Companies generally do not welcome more regulations, and the legal recognition of the profession could force them into more regulated environment (necessity to hire a

"recognised" person, special protection or reserved duties etc). If they do not recognize the sense of the role, the roles will be seen as a burden, fulfilled formally and a risk that the impact on the profession as whole will be negative.

Discussion

We must fight for what we think is good for the profession and not be influenced by what third parties think or prefer. They will adapt to the new situation as it happened with auditors and as they did in the countries where actuaries are legally recognized (UK, Spain, Denmark, etc.), more than 50% of European actuaries.

g. Argument: The view of the governments

Not all governments in Europe have a view that actuarial activities should be outsourced to non-governmental organisations. For some, the monitoring of companies, reserves, pricing is first and foremost a competency of the public authorities. They want to limit the outsourcing to the bare minimum. Moreover, the free market stance of the Commission is not always favourable to extending the scope of "protected" jobs.

Discussion

It's true: not all governments nor the European Commission share our views, but that's not a reason to give up. On the contrary, it's a reason to discuss the arguments, to fight for what we think it's better, and not to capitulate!

Legal recognition of the profession will change the relation with supervisors in some aspects: it creates new lines of assessment (ethics, CPD) that will probably be assessed by the association; but supervisors will continue to exist and to supervise insurers and pension funds.

h. Argument: Cons and risks in case of recognition limited to the professional body

This would trigger a complete loss of independence for the associations. In such a scenario, the statutes would be given by the law and decided on in parliament. Members of the associations could be strongly against being regulated as a chamber.

Discussion

That is the situation with doctors all over Europe and it doesn't seem they are sad with it.

i. Argument: A legally recognized actuary would constrain competition

Legal recognition will mean that there are going to be more hurdles in order to access the actuarial profession. It could also limit the possibilities to compete and do work on some activities. If we look at the audit profession auditors, the drastic reduction of their number for

"regulated" activities, or the reduction of their "auditing/regulated" part to extend less exposed and more lucrative "consulting" activities is an example of distortion of competition due to regulated activity.

Discussion

That is the European Commission argument against legal recognition. Let's discuss it step by step.

Legal recognition will mean that there are going to be more hurdles in order to access the actuarial profession: No. Barriers can be the same we have established in our associations to define what is an actuary.

It could also limit the possibilities to compete and do work on some activities. This is the main (false) argument used by opponents of legal recognition. Competition would be fairer than it is now because it will be clear who is an actuary and who just claims to be but is not really one. In countries where there is not a legal recognition of the profession, there is an unfair competition between those who are and those who are not fully qualified actuaries subject to a code of conduct and to actuarial standards or to a CPD system.

If we look at the audit profession auditors, the drastic reduction of their number for "regulated" activities, or the reduction of their "auditing/regulated" part to extend less exposed and more lucrative "consulting" activities is an example of distortion of competition due to regulated activity.

I do not think this is the result of regulation. As consultants they earn more!

When we obtain legal recognition, we will take a huge step forward in dignifying our profession and in ensuring the quality of the work produced and its independence. Let's go for it at a European level!