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Intermediary Report|

Workstream Legal and Political Recognition

1. Introduction

The Task Force 'Roles of the Actuaries" has organized a workstream on Legal and Political Recognition based on a survey aiming to detect the emerging roles for actuaries in 2017.

The workstream members asked the Member Associations in 2018 about the status of the actuary in their jurisdictions. The results together with an analysis of the European legislation in the field was presented to the Professionalism Committee and the Presidents Meeting in 2019. During the annual AAE meeting in October 2019, possible objections have been discussed in a corresponding paper.

The Professionalism Committee concluded that: "Given the challenges for the profession, legal and political recognition is seen as a strategy to strengthen the position. There are different views on the way how legal recognition can be approached. The workstream will be expanded with four members (Romain Durand, Gábor Hanák, Ksenija Sanjkovic, Jan Svab) to be able to formulate clear and balanced recommendations for the next meeting of the Professionalism Committee."

The four new members and the existing members (Luis Saez, José Mendinhos and Karel Goossens) have analyzed the subject in depth and pro's and con's of legal recognition have been considered.

This intermediary report reflects the work of the workstream and is divided into the following five sections:

- Definition of the scope
- Discussion of the arguments - why legal recognition is important
- Discussion of the arguments - why legal recognition should not be considered
- The role of the AAE in this context
- Recommendations and proposed actions

2. Definition of scope

The workstream first acknowledged that at European level, actuaries are playing a key role in society. Users of the actuarial expertise expect accountability and actuaries are looking for a professional environment that offers the appropriate framework.

It also recognized the elements of European context set in appendix 1.

The extended workstream discussed the legal definition of reserved activities and the legal definition of the title of actuary and their connections. It explored the scope of legal recognition which could cover either the recognition of activity (reserved by law to actuaries) or recognition of the title (legal definition of an "actuary"), or the relationship between the two elements (what activities are legally reserved to a legally defined "actuary").

In certain EU countries, there already exists a legal recognition of different titles such as "certified actuary" and "appointed actuary". This could even be recognition of "specific actuaries" as "government actuaries" to be found in some EU countries (UK, Spain).

Sometimes, specific activities are attached to these actuarial titles. Such entitlement to perform specific activities are already defined in different EU countries as well as in European law (authorization to sign in

such activities as work accident compensation, SII, IFRS reserves, expert judgment in court, pricing).

The workstream stresses that speaking of an “actuary” is not accurate enough and requires us to define the “type” of actuary covered by the scope and its relation to associations, such as

- actuary
- certified actuary
- full member of the association
- qualified member of the association.

There is no definition of the term "actuary" in the AAE documents (see appendix for different types of actuaries). Consequently, the workstream thinks that would AAE want to promote the legal recognition of the title, it should define accurately the specific (protected) title and its definition (actuary, certified actuary).

That is why we recommend that AAE explores the relations between legal recognition of title and activities in each country of its member associations, so as to understand clearly the context and position on legal recognition.

3. Discussion of the arguments - why legal recognition is important

a. A legal recognition to guarantee public interest

The participants identify that a legally recognized actuary would be a much stronger defender of the interests of the public good – including the interests of the policyholders, service providers, authorities, observers (such as analysts) and the general public.

The work of actuaries is an invaluable contribution to the proper functioning of public and private institutions. Examples include those providing deferred benefits or assessing the current impact of a future and contingent event (Social Security, Insurance Companies, Pension Funds, etc.) or consumer protection (for example, helping employees or victims of traffic accidents for their compensation).

Actuaries and their knowledge and skills could be essential for institutions in order for them to fulfil their commitments. In a world where these short- and long-term liabilities are an essential part of the activity of governments and a major guarantor of the current and future lifestyle of citizens, their proper monitoring is of public interest, which requires dedicated and recognised professionals.

In some countries this role is acknowledged, and actuaries already play a significant public role (see appendix). It is highly probable that the public interest role of the actuary role will become increasingly important, especially in light of political demands for higher levels of consumer protection and the ageing of populations.

b. Legal recognition links title activities and associations

The legal recognition based on public interest should also include the relation to titles and to associations of actuaries. Guaranteeing public interest would require essential technical knowledge, based on common technical standards that are currently promoted by AAE member associations. A legal recognition reserving some activities to actuaries without a clear definition of what an actuary is could prove problematic.

As the public interest is the basis for legal recognition, it requires exploring the relation between the public

interest, the legal recognition and the application of standards promoted by local association of AAE. This inclusion of associations is all the more important given that the technical knowledge of the actuary is only a part of the requirement to safeguard public interest. As important as technical knowledge is, it is not enough as demonstrated by the principles of the code of professional conduct to which members of AAE member associations are subject. For actuarial advice to be effective, it must be completely free of conflicts of interest and, therefore, independent.

This is why legal recognition should include ethical matters as covered by the AAE code of conducts and professionalism recommendations.

c. Legal recognition to enhance the efforts of AAE

The workstream members think that the AAE has done a lot to create standards to ensure high levels of requirements regarding the professionalism of European actuaries:

a) Requirement in accessing qualifications, with the establishment of a minimum syllabus;

b) Requirement to maintain training, with a CPD policy;

c) Requirement to comply with the Code of Professional Conduct, with AAE member associations having a disciplinary procedure instituted in all AAE member associations;

In other words, AAE demands that the actuary is knowledgably, has technical skills and follows ethical principles. For the measures implemented to have the full intended effect - a guarantee of quality in the work that all actuaries carry out - it is necessary that these measures have the support of the law and are legally mandatory, that is, that there is official recognition of the profession.

d. Legal recognition - clarification of the definition of an "actuary"

Legal recognition is also a way to bring clarification of the definition of an "actuary" at the European level.

Although in some translations of European directives the "actuary" term is referred to, the term is not defined in any European legal documents (see appendix 2). Any meaning can be attributed to the term "actuary". For AAE, an actuary is a member of an AAE member association, which means he or she fulfils the minimum technical as well as ethical requirements to be considered a "Fully Qualified Member". But this is a private definition, and absent a legal definition and recognition in some constituencies the term can be freely used. This could be a threat to the profession, as professionals (actuaries and others) not following the technical, ethical standards demanded by the AAE member associations could still use the title. This could create two "actuarial markets" with different levels of standard for actuaries.

In fact, the context in which a professional can use the term "Actuary" specification lacks a legal definition, implying the technical quality, ethics and governance system to which he or she is subject, as it exists for other professions (doctors, lawyers, etc.), all over Europe. We need the recognition of the profession, which covers several aspects, the first of which is the protection of the title.

e. Summary

In sum, the following are the arguments in favour of a legal and political recognition:

- It is a necessary step to "ensure that regulated actuarial work is performed by those properly qualified to undertake it and subject to relevant professional and technical actuarial standards", as it is stated on our SO II and that the profession can operate as a real guarantor of public interest for short and long term liabilities (health, pensions etc)

- Legal and political recognition is an opportunity to clearly confirm the important role of member associations of actuaries for the profession.

- Legal recognition would strengthen and validate the achievements of the actuarial profession in establishing high-level standards through its associations;

- Legal and political recognition would clarify the definition of an "actuary", hence recognising the education, ethical standards and continuous knowledge/CPD requirements. It will help clarify the role of the actuary in EU directives. It would allow an official systematic monitoring of compliance with the required conditions. It would also limit the risk of "non-actuaries" doing actuarial work without applying the quality standards.

4. The discussion of the arguments why legal recognition should not be considered

a. 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.

b. 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".

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

5. The role of the AAE in the context

a. AAE can provide “fit and proper” pillars

AAE can play a major role in the context of a legal definition in that it can provide the three pillars of fit and proper for actuaries through the Syllabus and CPD, the Code of Conduct, and the Standards (ESAPs).

– Syllabus & CPD (knowledge and relevant experience)

– CoC (commensurate)

– ESAPs (applicable professional standards).

b. AAE is the natural point of contact with European authorities

AAE is the natural point of contact with the European authorities in stressing the role of the “actuary” in diverse legal European texts. The presence of the word “actuary” in two important directives for the actuarial profession [the Solvency II Directive, and the Occupational Pension Schemes Directive IORP II] creates a role for the AAE to determine what this means for the profession (see directives mentioning actuaries in appendix 2).

The AAE should evaluate if it thinks there is currently a proper definition of actuaries in European legislation and develop its own definition accordingly.

c. The necessary update of the EU official regulated professions database:

The European Commission has an official regulated professions database on its website 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]. (the database needs to be updated)

According to the Database, as of today, Actuary is a regulated profession in some countries 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.].

Should the AAE to ask the EU authorities to update this database? Should it be done not only for the actuarial function in Solvency II, but also from the point of view of the appointed actuary and other types of actuaries, such as pension schemes actuaries?

6. Recommendations and proposed actions

The workstream has concentrated on the Legal Recognition in this intermediary report as requested by the Professionalism Committee.

We believe that the legal recognition of the actuary and the actuarial profession and the political recognition of the profession form part of the strategic objectives of the AAE.

Arguments in favor of the European actuarial profession focusing more on legal recognition and arguments against it have been considered in this report.: this illustrates that this subject matter is delicate and the way forward will require care and consensus across the organization.

Based on the in-depth analysis and the extended discussions in the group (of which the main elements have been described and discussed in this intermediary report) the workstream would like to formulate the following recommendations:

a. Legal Recognition has to be on the agenda of the AAE:

- Legal Recognition is a European subject and therefore of importance for the AAE because of the European Directives (recognition of professional qualifications including actuarial activities and the title actuary).
- Legal Recognition is part of the mutual recognition agreement, one of the key documents of the AAE and therefore falls within the scope of the AAE objectives.
- Legal Recognition is a direct consequence of the explicit public interest role of actuaries and the actuarial profession.

b. Legal Recognition is expressed in different ways:

- Legal Recognition of reserved activities and of reserved title requires a different adapted approach.
- Legal Recognition exceeds the prudential framework of insurance companies and pension funds.

c. Legal Recognition falls under the subsidiarity principle as a corner stone of the AAE:

- Legal Recognition is a local matter.
- Legal Recognition has a different context and implementation in different legislations.

d. The AAE has the duty to organize its role in the context of legal recognition:

- Inform the member associations properly on the subject and its impact
- Support the member associations where appropriate with experience, reference and resources
- Represent the profession at the European level on the subject
- Install a systematic monitoring of the subject

- Promote legal recognition of the actuary and the actuarial profession pro-actively

The workstream suggests a number of actions to support the recommendations:

1. Collect and communicate educational information on the implementation of legal recognition in local legislation:
    - Identify the case studies of interest for member associations and organize the exchange of experience
    - Make a check list based on the case studies to collect the information of the member associations
    - Make the inventory of the status in the local countries
    - Identify the actions to follow up
2. Contact and exchange with the European Commission on the implementation of the EU Directives
    - The CE of the AAE to establish the contacts
    - React to possible opportunities
3. Local associations to find out what the procedure is in their legislation for the application of the EU Directives

7. Appendix 1 European context

a. DIRECTIVES

The European Directive 2005/36/EC on the recognition of professional qualifications, and Directive 2013/36/EC amending it, create legal recognition in the European Union.

• Legal recognition requirements according those Directives:

– Common platform at European level

– Respect criteria such as:

- minimum and additional training,
- adapted period under supervised practice,
- aptitude test,
- prescribed minimum level of professional practice
- Legal recognition requirements according to Directive 2009/38/EC (Solvency II) art 48, and Directive 2016/2341(IORP II) for the Actuarial Function are knowledge, relevant experience with applicable professional and other standards

• (i) Directive 2005/36/EC and Directive 2013/55/EU consolidated a system of mutual recognition of professional qualifications which was initially based on 15 Directives.

• (ii) EU has a database which contains lists of regulated professions in the Member States, EEA countries and Switzerland covered by both Directives.

The European Commission has an official regulated professions database in its website 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 stand out that this Database has to be updated.

• (iii) A regulated profession is a professional activity access to which 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.

• (iv) According to that Database, Actuary is a regulated profession with reserve of activity in at least seven European Countries (Spain, Italy, Sweden, Denmark, UK, Poland and Slovakia). Together with the legal role as Appointed Actuary, this 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.].

• (v) Solvency II Directive requires actuaries to provided Information for supervisory purposes and to

exchange information with other authorities. Therefore, actuaries have an explicit mandate which means a reserve of activity in this Directive.

• (vi) 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 UK, Ireland, Portugal or Spain, or others reserve of activities in Germany

• (vii) Local legislations determine the legal framework

• (viii) As a result, this means that, within the EU framework, the legal status of the Actuary, in itself, necessarily needs to be contemplated (although it's already considered) as a Regulated Profession and a title with the right to Reserves of Activity.

• (ix) Accordingly to the Inforce 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 on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'): (16) In order to promote the free movement of professionals, while ensuring an adequate level of qualification, various professional associations and organizations or Member States should be able to propose common platforms at European level.

• (x) The current Mutual Recognition Agreement (MRA) of the AAE, in force since January 1, 2011, aims to facilitate the achievement of the objectives of the Directive 2005/36/EC, amended by the Directive 2013/55/EU

b. TYPES OF ACTUARIES AT EUROPEAN LEVEL

Actuaries not only perform itheir function in Solvency II. 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 on traffic accidents.

Types of actuaries:

• Attending to the type of business or task, there are 3 types of actuaries:

  – Insurance Actuary: Life / Non Life Actuary.

  – Employee Benefits Actuary.

  – Actuary for valuation on victims on traffic accidents.

• Attending to number of lines of defense, there are 3 types of actuaries:

  – 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).

c. ACTUARIAL INDEPENDENT ADVICE AT EUROPEAN LEVEL

• 1.- "Fully independent".

– An actuary is fully independent when his/her financial resources come from different payers and no one of those payers represents more than a certain amount of money. Their actuarial advice must be considered totally independent from anyone and anywhere.

• 2.- “Independent from”.

– When there is an independent situation from the operational functions. Their actuarial advise must consider only independent from other areas of the company.

8. Appendix 2

The Directive 2009/138/EC of the EUROPEAN PARLIAMENT and of the COUNCIL of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) contains the word actuary:

Article 35. Information to be provided for supervisory purposes:

(c) to require information from external experts, such as audi-tors and actuaries.

Article 68. Exchange of information with other authorities:

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

Solvency II Directive requires actuaries to provided Information for supervisory purposes and to exchange information with other authorities. Therefore, actuaries have an explicit legal mandate done by this Directive.

At European level, please find below the duties of the actuary in the European Legislation of the Occupational Pension Schemes [DIRECTIVE (EU) 2016/2341]:

DIRECTIVE (EU) 2016/2341 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)

Whereas:

(40) A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met both in the short and the long term. Technical provisions should be calculated on the basis of recognized actuarial methods and certified by an actuary ....

Article 13 Technical provisions

4. The calculation of the technical provisions shall be executed and certified by an actuary .... (...)

Article 55. Exchange of information between authorities

3. Articles 52 and 53 shall not preclude Member States from authorizing exchanges of information between the competent authorities and any of the following:

a) the authorities responsible for overseeing the bodies involved in the winding up of pension schemes and other similar procedures.

(b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;

(c) independent actuaries of IORPs carrying out supervision of those IORPs and the bodies responsible for overseeing such actuaries.