

# Aligning the legal frameworks with the ESG

## Preparatory Analysis<sup>1</sup>

Melinda Szabó<sup>2</sup>

European Quality Assurance Register for higher education (EQAR)

**August 2022**

<b>Introduction .....</b>	<b>2</b>
<b>Topic 1: Key issues in internal and external QA.....</b>	<b>3</b>
<b>Topic 2: Barriers to ESG compliance .....</b>	<b>4</b>
<b>Topic 3: The status/role of external QA in different countries .....</b>	<b>5</b>

*The analysis is published under the terms and conditions of the Creative Commons Attribution-Share Alike 2.0 license: you may freely copy, distribute or alter content, provided that you give credit to the original author and publish the (altered) content under the same terms and conditions.*

**Copyright** © August 2022 by EQAR aisbl/ivzw  
<http://www.eqar.eu>

---

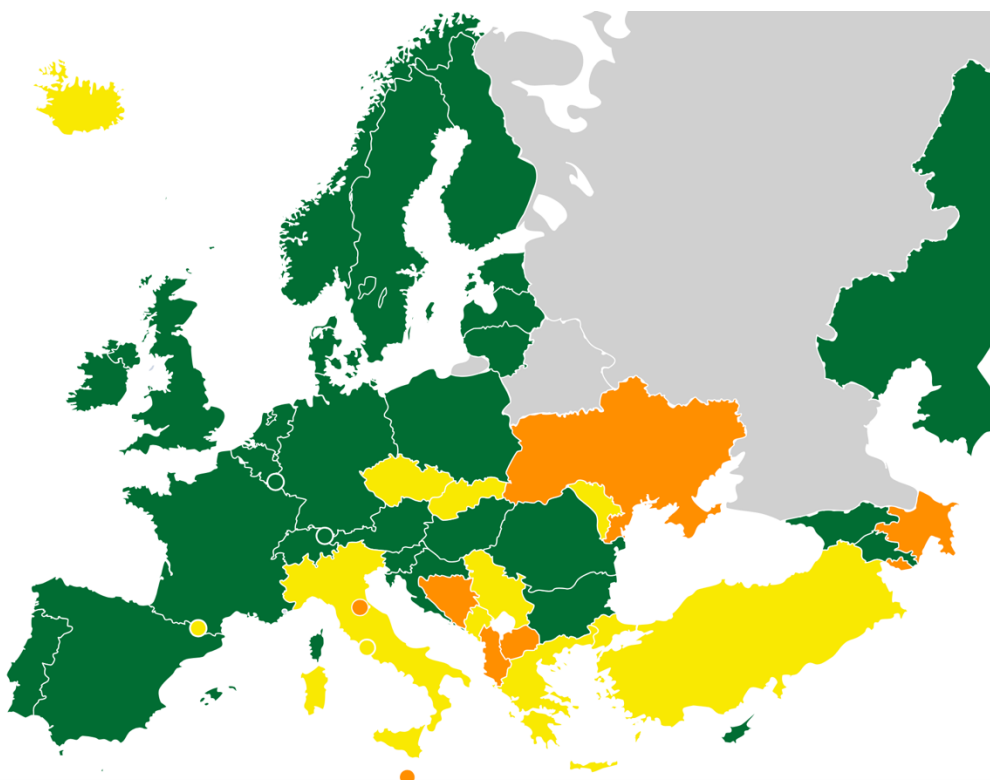
<sup>1</sup> The preparatory analysis is organised in the context of the 'Implementation and Innovation in QA through Peer Learning' (IMINQA) project. This is the first of three such analysis.

<sup>2</sup> Acknowledgments to Maria Kelo (EUA) and Colin Tück (EQAR) for the feedback and contribution offered in the preparation of the paper.

## Introduction

The Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) are the reference point for how QA processes should be carried out. The ESG are not standards for quality, but they provide guidance, covering the areas which are vital for successful quality provision and learning environments in higher education.

To be fully 'aligned with the ESG', all higher education institutions in a system are expected to be subject to a regular review against the ESG carried out by (an) agency/-ies listed in the European Quality Assurance Register for Higher Education (EQAR). Currently 29 of the 47 EHEA higher education systems<sup>3</sup> meet this requirement (see Figure 1 below). Within the remaining 18 countries, external quality assurance may be occasionally carried out by an EQAR-registered agency or only some higher education institutions are subject to regular external QA against the ESG or no external QA is carried out. For these countries action may be needed to remove existing barriers in ESG compliance at system level, to enable the establishment of national QA agencies, or institutionalise the use of a suitable EQAR-registered agency for the regular review of higher education institutions.



*Figure 1. Stage of implementation of the key commitment on external QA across the EHEA*

The preparatory analysis considers three main topics in the design of an external QA framework as follows serving as food for thought for the PLA on “Aligning the legal frameworks with the ESG”:

<sup>3</sup> As of April 2022, Russia and Belarus rights of representation in the EHEA are suspended

- Topic 1: What are the key issues that need to be assured by the legal framework for internal and external QA?
- Topic 2: What are the main barriers in ensuring ESG compliance at national level and what are the effective approaches to address these issues?
- Topic 3: What is the status/role of external QA in different countries, and the balance between institutional and programme-level approaches to external QA and ESG compliance?

## Topic 1: Key issues in internal and external QA

In the past three decades, all EHEA signatory countries have established (to different levels of success) a QA system of their own, designing processes and establishing structures and evaluation criteria. The key methodological features of today's European guidelines for external quality assurance, in particular referring to the introduction of a self-evaluation, peer-review visit, the publication of reports and the independence of quality assurance agencies are present in most EHEA countries (Bologna Process Implementation Report, 2020, p.62-72).

The approaches to quality assurance vary from country to country. National systems have adopted specific approaches reflecting their national strategy for higher education i.e. some countries leaned towards accreditation with varying references to evaluation or improvement aspects (i.e. Poland, Spain) while other countries have instead opted towards improvement-oriented QA without accreditation (Armenia, Finland, Slovenia, United Kingdom). The national approach to QA also reflects the existing diversity and the different missions of their higher education institutions i.e. while some institutions focus on subject specific or institutional performance assessments, others pay attention to improving their academic and management activities. Kohoutek et al. (2018), demonstrated that institutional responses in internal QA reflected not only university organisational characteristics but also political or policy choices at national level. The European standards for quality assurance are designed to be sufficiently generic and adaptable to the various political, national and cultural contexts and respect the system and institutional diversity.

The multi-level, multi-actor governance of the Bologna Process is also reflected in quality assurance, as stakeholders are expected to be part of the consultation and design of the systems. A broad stakeholder buy-in, a shared understanding of the purpose of QA and a clear division of responsibilities ensures that the quality assurance process is successful in its implementation amongst all relevant stakeholders and actors in higher education. Changing or implementing new QA processes can be time-consuming and requires high workload, and it cannot be achieved without institutionalising the dialogue between the operating quality assurance agency(-ies), ministry, higher education institutions and other higher education stakeholders.

Within a higher education system, the responsibility for development of methodologies and review processes is often shared between ministry and QA agency/-ies. In Germany, the Netherlands, Spain, Switzerland and the United Kingdom, for example, different agencies are in charge of different elements in a suite of external QA processes, or even different agencies are responsible for different steps within a QA procedure, either in only carrying out the reviews or in making external QA decisions based on reviews carried out by other bodies.

In introducing internal QA, a key issue is to ensure that institutions take responsibility for assuring and enhancing the quality of their provision, and develop an internal QA system that is fit for its specific internal context (EQUIP report, p. 19). The capacity and ability to design their own quality assurance system depends from one HE institution to another. A limited level of institutional autonomy, lack of financial and human resources, misalignment of goals can hinder the development of an internal QA system. For institutions less accustomed to QA processes, the main challenge is to ensure the introduction of a genuine and useful internal reflection as part of the internal QA and not a mere preparation and data collection exercise for the purpose of an external assessment (Matei, L. Iwinska, J., p. 59).

Although quality assurance implementation has progressed well across the European countries, a number of higher education systems are still struggling in aligning their system to the ESG. A cursory overview of the current challenges described by different countries in their Action's Plan reveal that many higher education systems are still in the process of introducing frameworks and methodologies for quality assurance, in developing standards for accreditation or revising such standards to ensure their fitness for purpose. In other countries the struggle is in removing possible administrative, financial or technical barriers, in ensuring that the agency has its own legal personality and may operate independently.

### Questions for reflections in the PLA:

- ➔ How did your country approach the development of external QA in your higher education system? What is the current division of responsibility between the main stakeholders in the system?
- ➔ What aspects of quality assurance are regulated by laws, what is left to subsidiary legal docs (like ministerial orders) and what is left to QA agencies and higher education institutions to decide themselves?
- ➔ What were the main adaptations made by your country to its legal framework in order to align it to the requirements of the ESG?
- ➔ How were these issues addressed?

### Topic 2: Barriers to ESG compliance

ESG compliance is not assessed at a higher education system level, it is quality assurance agencies that have to demonstrate compliance with the ESG. However existing legal frameworks in some cases make it difficult or impossible for QA agencies to comply with the ESG. As a consequence, they may not seek or they may be unsuccessful in pursuing EQAR registration: between 2005 and 2022, 14% of applications for initial registration on EQAR were unsuccessful mainly due to issues regarding ESG compliance that were beyond their control, linked to the system in which they operated in.

At system level, compliance with the ESG revealed to be challenging for a number of reasons:

- In cases where agencies have a limited involvement in determining the criteria they work with they may have troubles meeting the requirement of ESG 2.2 (Designing methodologies fit for purpose), as this is already defined in detail by the legal framework or by the ministry.
- The engagement of student experts in review teams (ESG 2.4 Peer review experts) and/or the involvement of students in the governance of QA agencies (ESG 3.1 Activities, policy and processes for quality assurance) is sometimes impeded due to

certain requirement of professional experience (which may not be applicable to students), or existing regulations defining the composition of certain governance bodies.

- In some higher education systems, the legal framework implies that reports can only be published with the express permission of the institution in question or only if the regulator deems it fit to publish such reports, therefore making it hard for agencies to comply with the standard, especially in cases with a negative outcome (ESG 2.6 Reporting).
- Complaints and appeals may be also challenging as the appeal of decisions resulting from an external QA activity is often regulated by the ministry and does not fall under the agency's own responsibility (ESG 2.7 Complaints and appeals).
- Sometimes the agency has no separate legal status and cannot have its own employees, determine its own strategy and plan of action, as activities are materially, administratively, and financially secured by the ministry (ESG 3.3 Independence/ESG 3.4 Thematic analysis).

### Questions for reflections in the PLA:

- ➔ What were or continue to be the main legal provisions that hinder or limit your national agency's compliance with the ESG?
- ➔ What has your country done (or plans to do) to address these issues?
- ➔ Are there issues that seem impossible to address for the moment? What are the reasons?

### Topic 3: The status/role of external QA in different countries

Over time, as new QA agencies have been established across the EHEA, the sophistication and variety of instruments used to measure quality has increased. The portfolio of the 50 EQAR-registered agencies includes over 300 types of different procedures – single programme evaluations or certification, clustered evaluations, audits of quality systems, departmental reviews and institutional reviews signalling a diversified picture of external QA activities within the scope of the ESG. The understanding of “ESG-type activities” – predefined processes following an expert or peer review methodology, addressing the quality dimensions described in Part 1 of the ESG, resulting in an official report and frequently also in a formal decision or judgement- is being tested as the work of QA agencies has become increasingly diversified not just in the development of new activities, but also by broadening their scope to cover other education sectors. A number of QA agencies have expanded their scope of activities into continuing education (EKKA, IAAR, FIBAA) or in offering various forms of tailored thematic evaluations covering areas that are important from the perspective of educational policy (UKA, FINEEC, ASHE) but due to their nature, such activities may not always be within the scope of the ESG. Activities such as consultancy or training services are offered by over a third of EQAR-registered agencies, and are expected to be separated from any quality enhancement embedded in agencies' usual external QA processes. This may raise conflict of-interest issues if the two strands of activities are not sufficiently separated.

In terms of the approach to external QA, almost all countries in the EHEA have evolved into a combined form of institutional and programme-level external QA. Even in countries like Germany, Netherlands and Belgium – French Community, where regular external quality assurance is in principle required at programme level only, in practice almost all higher

education institutions undergo an institutional audit or accreditation, as this would allow them (following a positive decision) to accredit their own programmes (Germany), use a limited framework for the accreditation of their study programmes (Netherlands) or discontinue programmatic evaluation for a period of six years (Belgium – French Community). Similarly, for higher education systems like Finland, Iceland, Turkey that only require institutional external QA, programme level external QA might still be taken up by institutions voluntarily, as a way to increase recognition within a specific field of study and to improve their reputation internationally.

The design of external QA is intrinsically linked to the design of internal QA and it is subject to constant change, generally following a national consultation led by the national quality assurance agency or the government. Between 2015 and 2022, 3 in 4 EQAR-registered agencies have reported at least one change in their external QA activities, by either changing existing evaluations, accreditations, audits, certifications or introducing a new approach. Such changes often showed the development of new QA approaches within the higher education system where agencies operate. In some situations, a new QA approach was introduced in order to reduce the repetitiveness of the same external QA processes. This meant a change from an institutional or programme focused review to a clustered or field specific review of study programmes, e.g. Croatia introduced cluster evaluation of the 3rd cycle; Latvia, Lithuania and Romania initiated cluster evaluation of the 2nd cycle; France, Estonia and Hungary have developed cluster approach for both 1st and 2nd cycle<sup>4</sup>.

### Questions for reflections in the PLA:

- ➔ How do we recognise when the existing methodology of QA is no longer fit for purpose? How to maintain the relevance and impact of external QA process after several cycles?
- ➔ How is external QA expected to support the different purposes of higher education?
- ➔ In what ways has the external QA broadened its scope within your higher education system?

---

<sup>4</sup> The clustered form of reviews is usually done by selecting specific disciplines at higher education level, which allow for a system level approach into specific study fields

## Resources:

- European Education and Culture Executive Agency, Eurydice, The European higher education area in 2020 : Bologna process implementation report, Publications Office, 2020, <https://data.europa.eu/doi/10.2797/756192>
- Gover, A., EQUIP: Enhancing quality: from policy to practice, 2018  
<https://eua.eu/downloads/publications/enhancing%20quality%20from%20policy%20to%20practice%20equip%20publication%20final.pdf>
- Kohoutek, J., Veiga, A., Rosa, M.J. & Sarrico, C.S., 2017, 'The European standards and guidelines for quality assurance in the European higher education area in Portugal and the Czech Republic: between the worlds of neglect and dead letters?', Higher Education Policy, 31(2), pp. 201–24
- Matei, L., & Iwinska, J. (2015). National strategies and practices in internationalisation of higher education: Lessons from a cross-country comparison. In A. Curaj, L. Deca, E. Egron-Polak & J. Salmi (Eds.), Higher education reforms in Romania between the Bologna process and national challenges. Berlin: Springer.
- Analysis of Register Committee Decisions and Quality Assurance Agencies' Compliance with the ESG (2021) <https://www.eqar.eu/register/analysis-of-register-committee-decisions/>
- Szabó, M., (2021). Policy Brief. ESG Coverage of Higher Education Systems in Europe. <https://www.eqar.eu/about/projects/deqar-connect/policy-briefs/>
- Szabó, M., (2020). Policy Brief: External Quality Assurance Activities within and beyond the EHEA. [https://www.eqar.eu/assets/uploads/2020/07/PolicyBrief\\_EQA\\_WithinandBeyondEHEA.pdf](https://www.eqar.eu/assets/uploads/2020/07/PolicyBrief_EQA_WithinandBeyondEHEA.pdf)
- Database of External Quality Assurance Results: <https://www.eqar.eu/qa-results/search/>