

# Aligning the legal frameworks with the ESG

## Thematic Analysis<sup>1</sup>

Prepared as part of the IMINQA Project

**February 2023**

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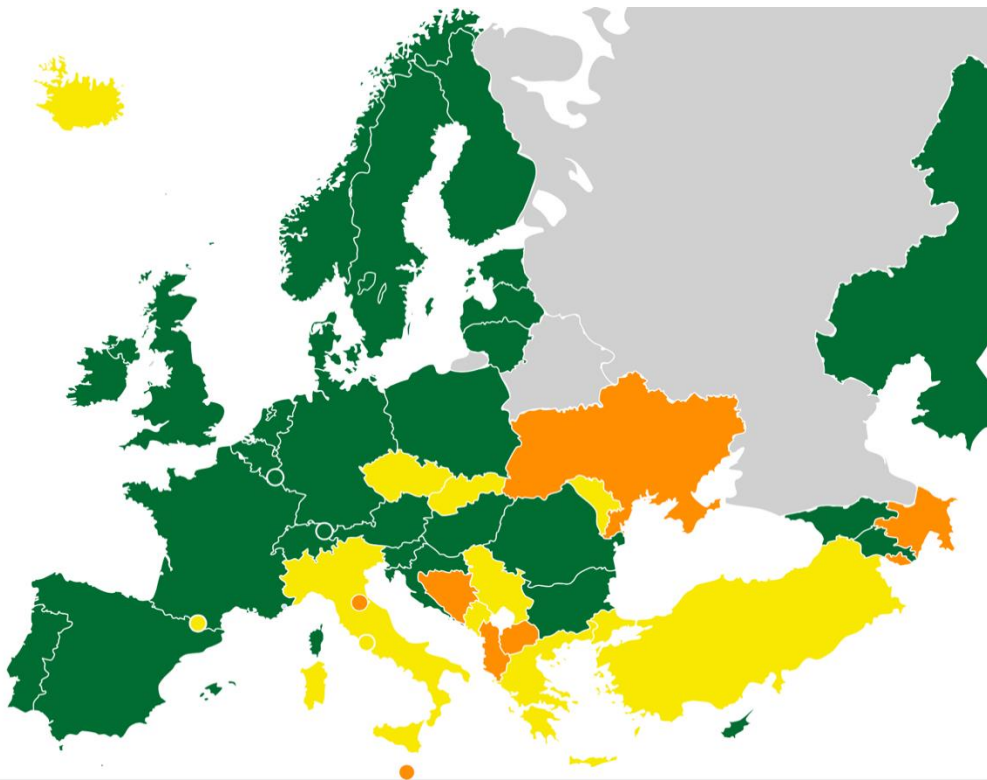
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<sup>1</sup> The thematic analysis is prepared by Melinda Szabó (EQAR) as part of the first Peer Learning Activity on 'Aligning legal frameworks with the ESG', organised in the context of the 'Implementation and Innovation in QA through Peer Learning' (IMINQA) project.

## 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. The standards are designed to be sufficiently generic and adaptable to the various political, national and cultural contexts and respect the system and institutional diversity.

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>2</sup> meet fully this requirement (see Figure 1 below). Within 12 countries, external quality assurance may be occasionally carried out by an EQAR-registered agency, or it may be available only for some higher education institutions as part of the regular external QA against the ESG. In the 7 remaining countries a quality assurance system is in operation nationwide but has not (yet) been fully aligned to the ESG. 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 current thematic analysis has been conceived following a preparatory note and taking in the outcomes of the PLA discussions on “Aligning the legal frameworks with the ESG”. The analysis delves into three main topics related to:

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<sup>2</sup> As of April 2022, Russia and Belarus rights of representation in the EHEA are suspended

- key issues that need to be assured by the legal framework for internal and external QA (topic 1)
- main barriers in ensuring ESG compliance at national level and possible approaches to addressing these issues (topic 2)
- the status/role of external QA in different countries, and the balance between institutional and programme-level approaches (topic 3)

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

In the past three decades, all EHEA signatory countries have established a QA system of their own, consisting of processes, structures and evaluation criteria. Through its ministerial commitments, the Bologna Process pressed towards a European system of quality assurance in higher education and the strengthening of internal QA (through the systematic external QA of higher education institutions against the ESG) and external QA (through the development of a Register of agencies that complied with the ESG).

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 EHEA Action's Plan (2022)<sup>3</sup> reveal that many higher education systems are still in the process of defining frameworks and methodologies for quality assurance (e.g., Azerbaijan, Bosnia and Herzegovina, San Marino), in developing and consolidating their standards for accreditation or revising such standards to ensure their fitness for purpose (e.g., Moldova, Czech Republic, Slovak Republic). Some of these countries struggle to remove possible administrative, financial or technical barriers, in ensuring that the agency has its own legal personality and may operate independently.

#### Key issues in internal QA

Quality assurance implementation at institutional level was initially slow to emerge, but became more visible, following in particular the adoption of the ESG (Loukkola, T. and Zhang, T. 2010, p. 23). In introducing internal QA, a key issue was to ensure that institutions take responsibility for assuring and enhancing the quality of their provision, the development of an effective internal QA system that is fit for its specific internal context (EQUIP report, p. 19).

Quite often universities introduced internal QA as a result of the requirement from external quality assurance agencies. The capacity and ability of higher education institutions to design their own quality assurance system depended on the level of institutional autonomy, financial and human resources as well as alignment or misalignment of other national goals (Matei, L. Iwinska, J., p. 59, 2014). 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, which could affect the perception of quality assurance as an activity supporting the university or just as an additional bureaucratic burden.

In approaching internal QA, a distinction can be made between primary, secondary and latent QA processes (Kivistö, J. and Pekkola, E., 2017). The focus of primary QA is on the universities' core missions – teaching and learning, research and third mission activities; the secondary QA is typically confined to the quality of one university activity, while the latent QA processes refer to quality assurance procedures that are not explicitly recognised as quality assurance although they could be relevant to the primary and secondary QA. Examples of latent QA processes may include staff recruitment and promotion policies, internal control of judicial aspects or administrative decisions.

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<sup>3</sup> [http://ehea.info/Upload/Action%20plan%20Peer%20Group%20C%20on%20QA\\_09-08-2022.pdf](http://ehea.info/Upload/Action%20plan%20Peer%20Group%20C%20on%20QA_09-08-2022.pdf)

## Key issues in external QA

National systems have adopted specific approaches on quality assurance 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).

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.

### Reflections on internal and external QA during the PLA discussions:

- ➔ approaching internal QA only as an exercise in data collection can hinder the development of a genuine and meaningful internal QA system.
- ➔ changing or implementing new QA processes can be time-consuming and requires a high workload from all actors involved; an effective (internal and external) QA cannot be achieved without institutionalising the dialogue between the ministry, the operating quality assurance agency/-ies, higher education institutions and other stakeholders.
- ➔ a broad stakeholder buy-in, a shared understanding of the purpose of QA and a clear division of responsibilities ensure that the quality assurance process is successful in its implementation amongst all relevant stakeholders and actors in higher education.
- ➔ in terms of legal and regulatory framework it is better to avoid procedural and methodological details in laws, provisions that make systems too inflexible, in particular introducing provisions that contradict specific ESG standards (see also topic 2);
- ➔ legal frameworks should include essential provisions related to the basic setup of a QA system: types of accreditations, consequences of an external QA, the status of a QA agency, strong safeguards that ensure the QA's agency's independence (nomination of governing bodies, dismissal, ability to self-govern etc.).
- ➔ the type and number of QA procedures should be adapted to the national context, avoiding overburdening the higher education system and considering the added value of each procedure – balancing the efforts invested.

## Topic 2: Barriers to ESG compliance at national level

ESG compliance is not assessed at a higher education system level, it is quality assurance agencies that have to demonstrate that they work in 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 a number of challenges related to specific standards.

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 requirements 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](#)).

Meeting the requirements for having complaints and appeals processes in place may also be challenging, as decisions on appeals are often regulated by the ministry and may only be addressed in a court of law and not with the agency that carried out the review ([ESG 2.7 Complaints and appeals](#)).

Sometimes the agency has no separate legal status and cannot have its own employees, cannot 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](#)).

#### Reflections from the PLA discussions on barriers to ESG compliance:

- ➔ some adaptations are still expected to be made to the legal framework of many countries in order to align it to the requirements of the ESG, but such changes are often difficult to introduce as it requires time and political support to change fundamental laws;
- ➔ in developing a legal framework for QA, it is important to allow for the possibility of changes and adaptation to a QA approach without requiring fundamental changes to a law;
- ➔ ESG are reference points, they should not be translated into law, but provide a generic guidance;
- ➔ the legal framework could also consider key issues such as publication of reports, the full transparency of processes and results, possibility for cross-border recognition, the use of the European Approach for QA of Joint Programmes without being too prescriptive;
- ➔ it is important to define the aspects that would be covered by QA agency methodologies and the aspects that would remain within the remit of the ministry.

#### 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.

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 (Germany and Netherlands), 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 (reduced to fewer standards) for the accreditation of their study programmes (Netherlands) or discontinue programme evaluation for a period of six years (Belgium – French Community). Similarly, for higher education systems like Finland, Iceland and 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.

“ESG-type activities” are understood as 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. Such activities are 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 educational sectors. A number of QA agencies have expanded their scope of activities into continuing education (EKKA, IAAR, FIBAA); other agencies are offering various forms of tailored thematic evaluations covering areas that are important from the perspective of educational policy (UKÄ, FINEEC, ASHE, QAA) 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 QA agencies’ usual external QA processes. This distinction is not always self-evident and may raise conflict of interest issues if the two strands of activities are not sufficiently separated thus possibly misleading the public about the status of the activity.

The design of external QA is intrinsically linked to the design of internal QA and is subject to constant change, generally following a national consultation led by a national authority (i.e. the ministry in charge of HE) or a quality assurance agency. 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 generally illustrate developments in quality assurance within the higher education system where agencies operate. In some situations, new QA approaches are intended to reduce the repetitiveness of the same external QA processes by opting for a move from an individual programme focused review to a clustered or field specific review of a group of study programmes. Croatia introduced cluster evaluation of the 3rd cycle; Latvia, Lithuania and Romania initiated cluster evaluation of the 2nd cycle and France, Estonia and Hungary have developed a cluster approach for both 1st and 2nd cycle<sup>4</sup>.

#### **Reflections from the PLA discussion on the (changing) status and role of external QA:**

- ➔ There is a shift in the discussion on how to keep HEI on their toes with new external QA procedures with more innovative solutions and approaches in order to maintain the relevance and impact of external QA process after several cycles;
- ➔ To address the “evaluation fatigue” it is important to recognise when existing methodologies are no longer fit for purpose; QA agencies may reduce the length and the scope of the evaluations, in particular in more ‘mature QA higher education systems’;
- ➔ QA agencies have broadened their activities and assumed various new roles in QA such as: legal supervision of the HEIs, producing statistics of HEIs, etc.;
- ➔ The question on how to address the “fitness for purpose” of QA and identifying the features of effective quality assurance systems remains difficult due to a lack of clarity about the essential purpose of quality assurance. Is the QA fit for purpose for the higher education institution, the students or the general public? The adequacy of diverse methods and instruments depends on how QA is defined;
- ➔ Transition to online environments caused by the pandemic was found to be the most common factor that influenced recent developments in external QA. QA methodologies have been altered to permit (or facilitate) online site visits, expert trainings and panel meetings. Many elements of the online approaches to QA have been kept in place with various hybrid

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<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

(online and on site) approaches being used for evaluations of higher education institutions and their programmes;

- ➔ In moving away from a control focused QA to a more enhancement-led approach, a cultural shift is needed, allowing for an adaptation in the responsibilities on quality assurance. If an internal QA system is set in place, the role of the QA agencies is to evaluate whether such a system is effective or not; the focus will no longer be on a strict institutional evaluation and individual study programmes, as the institution is expected to be able to ensure its own quality assurance;
- ➔ The involvement of foreign experts in review panels, introducing new criteria for measuring the international impacts of higher education institutions has led to an internationalisation of QA processes, allowing for translations and availability of the evaluation documents and results in English.

#### Resources:

- Database of External Quality Assurance Results: <https://www.eqar.eu/qa-results/search/>
- 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
- **Kivistö, J., & Pekkola, E. (2017). Quality of Administration in Higher Education.** [https://suhf.se/app/uploads/2019/03/Quality-in-admin\\_SUHF\\_170824.pdf](https://suhf.se/app/uploads/2019/03/Quality-in-admin_SUHF_170824.pdf)
- 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/>
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