



The European Union's IPA Programme for Bosnia and Herzegovina

# Strengthening Institutional Capacity for Quality Assurance

*Activity 1.3: Analysis of legal provisions - Recommendation to relevant stakeholders (Recommendations to the Conference of Ministers of Education in Bosnia and Herzegovina)*



This project is funded by the European Union



A project implemented by the Agency for European Integration and Economic Development (AEI)

## **Twinning Project**

Strengthening Institutional Capacity for Quality Assurance (BA11-IB-OT-02).

The project is a partnership between Bosnia and Herzegovina (BiH) and Austria and funded by the European Union under the Instrument for Pre-Accession Assistance (IPA 2011) with 1 million Euro.

The total duration of the project is 24 months, starting from 13 September 2013 and lasting until 12 September 2015. The objective of the project is to increase mobility and employability of the labour force through improvement of the quality of higher education institutions in line with the Bologna Process. The project purpose is to improve and strengthen human resources and institutional capacities for quality assurance in higher education. The main partner for the project implementation is the Agency for Development of Higher Education and Quality Assurance (HEA), while other partners are the BiH Ministry for Civil Affairs, competent entity and cantonal ministries of education, Education Department in the Government of the Brčko District of Bosnia and Herzegovina, Agency for Accreditation of Higher Education Institutions of the Republika Srpska (HEAARS) and higher education institutions in Bosnia and Herzegovina. On behalf of Austria, the project is implemented by the Agency for European Integration and Economic Development (AEI). The Agency for Quality Assurance and Accreditation of Austria (AQ Austria), in cooperation with relevant experts, provides the appropriate expertise during the project implementation.

### **Project staff**

Alexander Kohler, Twinning Project Leader, Member State Austria

Husein Nanić, Twinning Project Leader, Beneficiary Country Bosnia and Herzegovina

Maria E. Weber, Resident Twinning Advisor (RTA), Member State Austria

Maja Macan, RTA Counterpart, Beneficiary Country Bosnia and Herzegovina

### **Component 1**

Analysis of legal provisions / Activity 1.3: Recommendation to relevant stakeholders

#### **International higher education experts working on the recommendations**

- *Achim Hopbach*, Managing Director of AQ Austria and former president of ENQA
- *Adi Kovačević*, AQ Austria consultant for SEE/WUS Austria
- *Alexander Kohler*, Ministry for Science and Research of Austria/Quality Assurance Council for Teacher Education (Twinning Project Leader, Member State Austria)
- *Bastian Baumann*, Independent Higher Education Consultant and ENQA international reviewer
- *Peter Findlay*, Assistant Director of the Quality Assurance Agency for Higher Education of the United Kingdom (QAA) and ENQA international reviewer

### **Proofreading**

Suzana Trubajić, Language Assistant to RTA

<b>1</b>	<b>Introduction</b> .....	<b>4</b>
<b>2</b>	<b>Analysis</b> .....	<b>4</b>
<b>3</b>	<b>Recommendations by the experts</b> .....	<b>5</b>
3.1	Legal Provisions .....	5
(a)	Framework Law on Higher Education .....	5
(b)	Harmonisation of accreditation processes .....	6
(1)	Independence of accreditation processes and decisions .....	6
(2)	Mandatory nature and periodicity of accreditation .....	7
3.2	Agency for Development of Higher Education and Quality Assurance .....	7
<b>4</b>	<b>Annex 1 – Documents</b> .....	<b>9</b>
<b>5</b>	<b>Annex 2 - Experts involved in Component 1</b> .....	<b>10</b>

## 1 Introduction

The following recommendations are based on the work of international higher education experts within the first component of the Twinning Project *Strengthening Institutional Capacity for Quality Assurance*. This component comprised *an Analysis of the Legal Provisions Relating to Quality Assurance in BiH* in particular with regard to their compliance with the *Standards and Guidelines for Quality Assurance in the European Higher Education Area* (ESG).

The Twinning Project aims to support progress on that European path. It seeks to reinforce efforts by all concerned to resolve the widely acknowledged existing problems in the full and effective implementation of the external quality assurance system in BiH.

That work has included an in-depth analysis of the legal frameworks and the alignment with the ESG. The external experts recognise the commitment of BiH to implement the Bologna Reforms.

## 2 Analysis

The external experts found that the Framework Law on Higher Education (FLHE) provides a good basis for the development of quality assurance and accreditation in line with the ESG. Articles 48 and 49 are a valuable step in creating a general system of accreditation for the whole country. In particular, good European practice is demonstrated by the two main responsibilities accorded by the FLHE to HEA.<sup>1</sup> They are accreditation and development of higher education.

However, the analyses by the experts identified regulatory gaps in the FLHE relating in particular to the *implementation* of accreditation.<sup>2</sup> This analysis shows that these gaps have been addressed in the higher education laws and accreditation rulebooks of the Republika Srpska, the cantons and the Brčko District. But these additional laws and regulations are in parts inconsistent and incoherent, thus creating substantial problems for all concerned in realising the intentions of the FLHE. Furthermore, the analysis revealed that in many cases these subsidiary regulations are not in line with the ESG.<sup>3</sup>

In their consideration of the current external quality assurance arrangements in BiH, the experts identified the following **deficiencies** as most significant:

<sup>1</sup> The competences of HEA are provided for in Article 48, 49 and 50 in the FLHE.

<sup>2</sup> Kovačević, Adi/Baumann, Bastian/Nitsche, Veronika: Activity 1.1: Analysis of legal provisions – Synthesis of legal provisions and compilation of existing reviews (report).

<sup>3</sup> Kovačević, Adi/Findlay, Peter/Hopbach, Achim/Kastelliz, Dietlinde/Humer, Roland: Activity 1.2: Analysis against the ESG Part II / III and selected legal frameworks for quality assurance (conclusions on the workshops on ESG Part II and Part III).

- There is generally a lack of understanding among stakeholders regarding the purposes of accreditation and the difference between accreditation and licensing.
- Roles and responsibilities within the accreditation system are not sufficiently well defined in Articles 48 and 49 of the FLHE. As a result, there is no common understanding of authority, roles, responsibilities and procedures.
- HEA has only partly fulfilled its responsibilities assigned by the FLHE.
- Very few accreditations of institutions and none of programmes have taken place.

These weaknesses bring serious **consequences** for BiH in both the national and international contexts:

- As the vast majority of higher education institutions have not yet been accredited, they cannot legally award qualifications.
- Qualifications obtained by graduates of non-accredited higher education institutions will not be legally recognized within BiH. As long as none of the higher education institutions had been accredited, this might not have been problematic in practice. However, since the first accreditations have now been completed, serious problems concerning the recognition of graduates of non-accredited higher education institutions are predictable. Firstly, these graduates might not find employment opportunities in the public sector. Secondly, should these graduates gain employment, legal disputes might then arise as graduates from accredited higher education institutions could claim that only they should be eligible.
- There has now been considerable progress in implementing the Bologna Reforms in other countries in the region. The danger here is that BiH will fall further behind.
- This situation will also have a serious impact on the mobility of students, and on the reputation of BiH higher education institutions in Europe and the region.
- HEA is not likely to be recognised as a full member of the European Association for Quality Assurance in Higher Education (ENQA)<sup>4</sup>, and/or to be listed in the European Quality Assurance Register for Higher Education (EQAR)<sup>5</sup>. Besides non-compliance with parts of the ESG, a further reason for this is HEA's lack of experience in carrying out accreditation.

## 3 Recommendations by the experts

### 3.1 Legal Provisions

#### (a) Framework Law on Higher Education

The most suitable and sustainable way to address the deficiencies identified above, and to support a common understanding and consistent practice in accreditation would be to clarify the relevant parts of the FLHE. This would then in turn require some revision of existing subsidiary higher education laws and accreditation rulebooks at the level of the

<sup>4</sup> ENQA: [www.enqa.eu](http://www.enqa.eu). In order to become a full member, agencies have to undergo an external review against the fulfillment of ENQA membership criteria.

<sup>5</sup> EQAR: [www.eqar.eu](http://www.eqar.eu). According to the EQAR, quality assurance agencies, whether based in Europe or outside, that have demonstrated their substantial compliance with the ESG through an external review by independent experts can apply for inclusion on the Register.

Republika Srpska, the cantons and the Brčko District. The purpose of such a revision would be to improve the clarity and applicability in line with the ESG and common practice within the European Higher Education Area (EHEA). It should be noted that a transfer of competencies is not necessary to reach this aim.

Such revision should make clear that the ultimate responsibility for the whole accreditation process lies with HEA, in particular defining and carrying out the accreditation process. This would not exclude the possibility for other agencies to carry out accreditation processes under the overall responsibility of HEA. In addition, Article 47 should clarify the distinction between accreditation (evaluation of the quality of an institution or a programme against predefined standards and decision about the compliance) and licensing (permission to operate) by defining these processes. More specifically, the review and revision of Articles 48 and 49 of the FHLHE should seek to clarify the following points:

- Article 48: The list of stated competences of HEA should include "*the carrying out of accreditation processes*" (This is not intended necessarily to be an exclusive responsibility.)
- Article 49, subparagraph 6: An active verb should be included at the beginning of this sentence which makes it clear that in the area of accreditation HEA has the responsibility for overseeing and ensuring the consistency and quality of the processes and decisions whereas the competent education authorities have the sole responsibility for the licensing decision. It could then read e.g.:
  - "(In the area of accreditation, the Agency shall be competent for) developing and conducting accreditation processes and deciding on accreditation,"
- An additional subparagraph should be added after subparagraph 6:
  - "ensuring consistency of accreditation processes carried out in BiH,".

Such amendments would then permit HEA to take responsibility for addressing the other identified areas for clarification.

### **(b) Harmonisation of accreditation processes**

Apart from desirable clarifications in the FLHE, it is highly advisable to immediately review and amend many of the higher education laws and accreditation rulebooks at the level of the Republika Srpska, the cantons and the Brčko District in order to fully realise the intentions and the spirit of the FLHE. The higher education laws and accreditation rulebooks need to be consistent with each other and with the FLHE in order to support a common understanding and a transparent accreditation system. Important areas for attention amongst others are:

#### **(1) Independence of accreditation processes and decisions**

The ESG place a particular emphasis on the independence of the body carrying out quality assurance "*from higher education institutions, ministries and other stakeholders*" (ESG

Standard 3.6).<sup>6</sup> This independence from both institutions and political authorities relates to processes and decision-making. Consequently, HEA has been established with this standard in mind. However, currently competent education authorities play a decisive role in the accreditation processes, which is clearly in contradiction with the ESG. For example, it would be expected that the quality assurance agency autonomously selects the panel of experts.

It follows that, as a priority, it needs to be determined and described that HEA conducts accreditation processes and decides upon accreditation and that the interests and activities of the competent education authorities cannot prejudice the independence of the accreditation processes and judgements. A failure to do this will impede any future European recognition of accreditation in BiH.

## (2) Mandatory nature and periodicity of accreditation

The mandatory nature of accreditation follows the stipulation that only accredited higher education institutions can legally award degrees. This needs to be clearly determined in the higher education laws and accreditation rulebooks at the level of the Republika Srpska, the cantons and the Brčko District. In accordance with the ESG, accreditation of institutions and programmes has to be undertaken on a cyclical basis. The length of the cycle must be clearly defined.

**In order to achieve the above mentioned aim, HEA should make a proposal. Based on this proposal, the Ministry of Civil Affairs should take the lead in ensuring the harmonisation of the higher education laws and accreditation rulebooks at the level of the Republika Srpska, the cantons and the Brčko District.**

## 3.2 Agency for Development of Higher Education and Quality Assurance

HEA must now take a strong lead in all areas that are within its remit in the FLHE. HEA must assume full authority and responsibility for leading on all aspects of accreditation, in a proactive manner, taking the initiative wherever necessary. In accordance with HEA's remit under the FLHE, this responsibility includes ensuring that all accreditation carried out in BiH fulfils the requirements of the ESG.

To address the above priorities, HEA will need to:

<sup>6</sup> ESG 3.6: **Standard:** Agencies should be independent to the extent both that they have autonomous responsibility for their operations and that the conclusions and recommendations made in their reports cannot be influenced by third parties such as higher education institutions, ministries or other stakeholders. **Guidelines:** An agency will need to demonstrate its independence through measures, such as: its operational independence from higher education institutions and governments is guaranteed in official documentation (e.g. instruments of governance or legislative acts); the definition and operation of its procedures and methods; the nomination and appointment of external experts and the determination of the outcomes of its quality assurance processes are undertaken autonomously and independently from governments, higher education institutions, and organs of political influence while relevant stakeholders in higher education, particularly students/learners, are consulted in the course of quality assurance processes, the final outcomes of the quality assurance processes remain the responsibility of the agency. (See: [www.enqa.eu/wp-content/.../ESG\\_3edition-2.pdf](http://www.enqa.eu/wp-content/.../ESG_3edition-2.pdf)).

- work on its internal structures, clarifying the relationships for governance, management and strategic planning, and in particular determine a clear role for the Steering Board,<sup>7</sup>
- develop a procedure for ensuring that accreditation decisions are taken in an independent and coherent manner,
- produce more user-friendly guidelines to support the accreditation processes,
- ensure good communication and co-operation with all stakeholders, namely higher education institutions, competent education authorities, HEAARS and other interested stakeholders, in particular students.

Taken together, these measures will support the wider recognition of HEA, and consequently of the national quality assurance system, at the European level.

**It is important for action to be taken without delay on the most important points in these recommendations. Therefore, HEA should propose the necessary steps to ensure the introduction of accreditation processes in line with the above principles. This can be done on an ad hoc basis in order to remedy the most severe shortcomings, whilst not delaying any further the implementation of accreditation in BiH.**

<sup>7</sup> Article 51 of the FLHE refers to the notion "Governing Board". Since HEA always uses the notion "Steering Board", the experts will be using this term whenever the governing body of HEA is referred to.



## 4 Annex 1 – Documents

Relevant legal provisions concerning quality assurance – referring to the FLHE in BiH:

- Framework Law on Higher Education in Bosnia and Herzegovina, BiH OG Nos. 59/07 and 59/09
  - Republika Srpska Law on Higher Education, RS OG Nos. 73/10, 104/11 and 84/12
  - Brčko District Law on Higher Education, BDBiH OG, No. 30/09
  - Bosnia-Podrinje Canton Law on Higher Education, BPC OG No. 2/10
  - Herzegovina-Neretva Canton Law on Higher Education, HNC OG No. 4/12
  - Central Bosnia Canton Law on Higher Education, CBC OG No. 4/13
  - Posavina Canton Law on Higher Education, PC OG No. 1/10
  - Sarajevo Canton Law on Higher Education – Consolidated Text, SC OG No. 22/10
  - Tuzla Canton Law on Higher Education, TC OG Nos. 8/08, 12/09 and 13/12
  - Una-Sana Canton Law on Higher Education, USC OG No. 8/09
  - West Herzegovina Canton Law on Higher Education, WHC OG No. 10/09
  - Zenica-Doboj Canton Law on Higher Education, ZDC OG No. 6/09
  - Herzeg-Bosnia Canton Law on Higher Education, HBC OG 9/09

Report and conclusion from Activity 1.1 and Activity 1.3:

- Kovačević, Adi/Baumann, Bastian/Nitsche, Veronika: Activity 1.1: Analysis of legal provisions – Synthesis of legal provisions and compilation of existing reviews (report)
- Kovačević, Adi/Findlay, Peter/Hopbach, Achim/Kastelliz, Dietlinde/Humer, Roland: Activity 1.2: Analysis against the ESG Part II / III and selected legal frameworks for quality assurance (conclusions on the workshops on ESG Part II and Part III)

Relevant other documents used by the international higher education experts:

- Self-evaluation report of HEA produced for the Tempus Project CUBRIK<sup>8</sup> and the final report of the experts delivered for the mock-site visit within the Tempus Project CUBRIK
- HEA Documents<sup>9</sup>
- Rulebook on the internal organisation of HEA<sup>10</sup> and Statute of HEA
- Document on the organizational structure of HEA<sup>11</sup>
- Program of work of HEA 2013<sup>12</sup>

<sup>8</sup> Basic Project information: [www.hea.gov.ba/projekti/pro\\_tempus/cubrik/?id=3735](http://www.hea.gov.ba/projekti/pro_tempus/cubrik/?id=3735) or [www.cubrik.eu/content/background](http://www.cubrik.eu/content/background). HEA SER: [www.cubrik.eu/sites/cubrik.eu/.../SER%20HEA.pdf](http://www.cubrik.eu/sites/cubrik.eu/.../SER%20HEA.pdf)

<sup>9</sup> Agency for Development of Higher Education and Quality Assurance: HEA Documents (2012), [www.hea.gov.ba/Dokumenti/dokumenti\\_agencije/Archive.aspx?template\\_id=52&pageIndex=1](http://www.hea.gov.ba/Dokumenti/dokumenti_agencije/Archive.aspx?template_id=52&pageIndex=1) (as of 20 December 2013).

<sup>10</sup> Agency for Development of Higher Education and Quality Assurance: Internal legal documents, [www.hea.gov.ba/Dokumenti/interni\\_akti/Archive.aspx?template\\_id=52&pageIndex=1](http://www.hea.gov.ba/Dokumenti/interni_akti/Archive.aspx?template_id=52&pageIndex=1) (as of 20 December 2013).

<sup>11</sup> Agency for Development of Higher Education and Quality Assurance: Organizational Structure, [www.hea.gov.ba/o-nama/OrganizacijskaStruktura.aspx](http://www.hea.gov.ba/o-nama/OrganizacijskaStruktura.aspx) (as of 20 December 2013).

<sup>12</sup> Agency for Development of Higher Education and Quality Assurance: Program of work, [www.hea.gov.ba/Aktivnosti/progr/Archive.aspx?template\\_id=52&pageIndex=1](http://www.hea.gov.ba/Aktivnosti/progr/Archive.aspx?template_id=52&pageIndex=1) (as of 20 December 2013).

- Documents produced by the Council of Europe within the joint project 'Strengthening Higher Education in BiH III' (2010)<sup>13</sup>

## 5 Annex 2 - Experts involved in Component 1

### Short Term Experts involved in Component 1

- *Achim Hopbach*, Managing Director of AQ Austria and former president of ENQA
- *Adi Kovačević*, AQ Austria consultant for SEE/WUS Austria
- *Alexander Kohler*, Ministry for Science and Research of Austria/ Quality Assurance Council for Teacher Education (Twinning Project Leader, Member State Austria)
- *Bastian Baumann*, Independent Higher Education Consultant and ENQA international reviewer
- *Dietlinde Kastelliz*, Head of Department Audit & Consulting, AQ Austria
- *Peter Findlay*, Assistant Director of QAA and ENQA international reviewer
- *Roland Humer*, Consultant for Higher Education Management
- *Veronika Nitsche*, Deputy Director/WUS Austria

### Short Term Experts Support

- *Maria E. Weber*, AQ Austria / RTA MS
- *Maja Macan*, HEA / RTA Counterpart BC
- *Sanda Topić*, Assistant to RTA
- *Suzana Trubajić*, Language Assistant to RTA

<sup>13</sup> Office of the Council of Europe in Bosnia and Herzegovina:  
[www.coe.ba/web/index.php?option=com\\_content&task=view&id=412&Itemid=68&lang=en](http://www.coe.ba/web/index.php?option=com_content&task=view&id=412&Itemid=68&lang=en)