



## **Joint project 'Strengthening Higher Education in BiH III'**

### **Report on a fact finding visit to Sarajevo 19-22 July 2010 regarding Legislation and Quality Assurance and Qualifications Frameworks and an analysis of the laws.**

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#### **1) Introduction**

I was contracted by the Council of Europe to undertake a legislative review supported by a short fact-finding visit to Sarajevo in relation to the Framework Law on Higher Education in Bosnia and Herzegovina (BiH) and within this context the implementation of Bologna Process reforms with particular focus on quality assurance and qualifications frameworks.

This brief was, within the frame of the joint European Commission and Council of Europe project "Strengthening Higher Education in Bosnia and Herzegovina III" (SHE III), but the analysis had by its very nature to stray into and overlap with another legislative review under the parallel EU funded Project "Support to Higher Education Reform in BiH" component 1<sup>2</sup>.

The visit was arranged just a week before the start of the summer vacation season and I thank all who were able to make themselves available to see me, indeed all persons were very welcoming, courteous and helpful. I am particularly grateful to the CoE team who were very helpful and provided me with all the information and support I needed before and during and indeed after the visit. I would also like to thank all those who have translated documents.

My understanding of the legislative context and tiers of law making under the Constitution was informed by, amongst other things, Gerard Madill's Report (July 2010) paragraph 2, the 2010 BiH Stocktaking Report and the BiH Constitution (Article 3 stating that education is a right of the citizens). The Framework Law on Higher Education in Bosnia and Herzegovina 2007, Article 63, requires that "Laws of the Republika Srpska and cantonal laws shall be harmonised with the provisions of this Law no later than 6 (six) months after this Law has come into force". That time has long passed. It does appear that no systematic audit of any subsequent legislative changes has taken place and it is required that the laws be "harmonised" (Article 63). During the visit Republika Srpska did publish a law (see later). Notwithstanding any lower level legislation Article 63 of the State law is pre-eminent and there is an absolute need for any other

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<sup>2</sup> See [http://he-education.ba/projec\\_arh\\_C1.html](http://he-education.ba/projec_arh_C1.html)

laws to be compatible with the State Law in the construction of Article 63 and the requirement for laws to be “harmonised” with the State Law.

The reports on external quality assurance (Curvale and Findlay, February and then March 2010) and on academic titles (Adam, December 2009) also added to the context of the project and the work undertaken to date.

## **2) Methodology**

I adopted the following methodology:

- a) To read and evaluate the Framework Law 2007 prior to the visit in terms of Bologna compatibility, overall clarity of outcomes and in conjunction with the “7 Key Strategies and Guidelines to implement the Bologna Process” (2008) and arrive at some preliminary findings.
- b) Visit and discuss my preliminary findings with interested parties and gather additional relevant information (within the terms of reference)
- c) In the light of discussions and additional materials to draft this report which will contain my analysis, conclusions and recommendations. In this I hope to be able to clearly define those things that are facts and those that are opinions.

### **a) Preliminary Analysis:**

The preliminary analysis is in 2 sections: (i) how compatible the law is with the Bologna action lines and detail and (ii) areas within a broader higher education context.

#### **(i) Bologna:**

- Article 2 clearly states that at State level the Bologna Process (and thus the March 2010 creation of the European Higher Education Area) is “accepted” and thus underpins and is the strategic framework for all future developments of BiH higher education. All action lines of the Bologna Process are therefore a part of this strategic framework.
- Article 1 has already stated that BiH will “establish bodies” and “set methods of quality assurance”.

- Article 4 states that any qualification obtained by a student must be an “internationally recognised higher education degree”, the article then states what higher education shall be based upon including lifelong learning.
- Article 5 defines the cycles in terms of credits with time frames. Two elements here do not accord with the Bologna Process, namely: (a) the apparent requirement to accumulate a total of 300 ECTS to obtain a Masters degree (cycle 1 + cycle 2). This is not in Bologna and also does not accord with Article 4 and lifelong learning (be it “second chance”, “returning learners” or the use of the Accreditation of Prior Experiential Learning (APEL) or indeed the Accreditation of Prior Learning (APL)). And (b) the allocation of 180 ECTS to obtain a doctorate (or equivalent).
- Articles 8 and 9 seem to limit widening access to higher education and thus lifelong learning in accordance with Article 4.
- Articles 38 and 39 (dealing with student complaints) give no guidance on “procedures for appeal” or “dealing fairly” with complaints but 39 does refer to “a court of competent jurisdiction”. Complaints and appeals do link in to quality (the quality of the student experience).

(ii) Broader higher education context:

- a. Article 22 refers to “official language” and defines the scope of choice as to what is the official language. One assumes that this means the administrative language of the university not the medium for learning.
- b. For both universities and other bodies there is a lack of clear lines of authority, decision making and compliance requirements (Articles 15/16/17 and 42 - 48).
- c. Articles 28 – 34 detail the appointment of faculty (academic staff) ending in article 34 with the requirement for “public competition”. Whilst these requirements provide assurance regarding contract terms and transparency they will, one assumes, create a lengthy and [potentially cumbersome appointments process.
- d. There is a tension between autonomy and collective strength and between autonomy and operating within guidelines and in accordance with both the letter and spirit of the law.

- e. Article 48 clearly defines the scope of authority of the Agency for Development of Higher Education and Quality Assurance (the Agency) including some competence to “recommend” (for example on criteria for standards, development policy and also removal of shortcomings in the quality of studies) and some competence to “set” (for example criteria for accreditation, adoption of norms setting minimum standards and quality standards and analyses) and to “propose” (general guidelines and criteria regarding funding allocation to research).
  
- f. Article 49 defines the scope of authority the Agency has in the area of accreditation and again sets a variety of levels of the authority from “publishing” the public competition for experts and “establishing” the committee (which has a defined membership make up) to draw up the list of experts and then “submit” this to “all” the ministries in BiH and the department in the Brcko District. The actual accreditation has to be done, according to article 49 paragraph 7, in accordance with the criteria “set” by the Agency under article 48 paragraph 1 with a stated duty to refer the matter to Governing Board in the event of “lack of harmonisation” to “take further measures” that can include “annulment of an accreditation decision”.

Regarding the points under b and c (*supra*) this is primarily a matter for higher education reform. However, for the sake of a holistic analysis one cannot ignore the effect that these areas of organisation and governance of the universities has upon matters of quality (assurance, enhancement, management and development) and operation of a qualifications framework (within the scope of the European Higher Education Area and the Bologna Process as it continues towards 2020), use of academic titles (new and pre-existing), access to higher education (post secondary, second chance, new directions and continuing professional development) as does the broader governance issues of the State level bodies.

Just as the inextricable link between globalisation and higher education is a fact so also is the need to recognise and facilitate, as stated in Article 5, “internationally recognised degrees”. It is my opinion that to deliver anything to any student that limits in any way their life chances is a disservice to them, to the wider communities in BiH, the region and the EHEA.

**(b) Discussions during the visit:**

The programme had meetings with a variety of stakeholders and interested parties and once again I thank all those who participated and made the time to see me and to the CoE personnel who set up the meetings, provided (much needed by me) language support and transport.

The discussions added to the context and to the detail but also confirmed that the original analysis was accurate. Different nuances of interpretation were of course present but nothing that would, I submit, alter the factual analysis. In terms of opinions there will be a broader cathedral.

Some of the issues that emerged included the feeling by most that the existing law has to be made to work. However, also that there is mistrust regarding possible irregular procedures unless very firm requirements and procedures are laid down in areas such as the recruitment (“election”) of faculty, recognition of prior learning (any use of APEL would be viewed as an area of concern it seems), allocation of resources. The levels of authority across BiH, the entities, the cantons and the District was a recurrent theme, especially with the then imminent (and now accomplished) Republika Srpska higher education law (see later).

However, it is clear that the State law makes certain requirements on higher education (*supra*) and the various and varied ministries. One assumes that as the Framework Law is a state law and has been agreed by all, that all will ensure that implementing laws and bodies will comply with the law. Any observer must worry about the diversion of funds into what appear to be replica institutions at different levels, the potential for inconsistency, lack of clear enforcement procedures and how to take higher education forward. This is a politically difficult question.

There appeared to be some uncertainty as to the accumulation nature of ECTS.

The apparent fact of the legislation by the Republika Srpska (RS) was a topic of some discussion. The translation of the Proposal of June 2010 of the RS Law on Higher Education became available at the end of the visit. That being the case some comment does seem to be necessary and appropriate.

**RS Law: comments on compatibility with the Framework Law (BiH) –**

- (i) Article 8 (RS) mirrors Article 5 (BiH) and my comments equally apply.
- (ii) My comments also apply regarding lifelong learning and access issues.
- (iii) Article 14 makes explicit the existence of both public and private institutions.
- (iv) Articles 15, 16 and 17 appear to lay down specific requirements for operations and these will affect quality as do the following articles to 20 (HEIs) and then from 25 – 32 regarding quality of provision. Reference to the Council for Development of Higher Education and Quality Assurance should surely mean the Agency (as determined by the Framework Law Article 48) with the Council (RS) acting in accordance with the Agency’s authority.
- (v) Article 25 is subject to the provisions of articles 48 and 49 (BiH Framework Law) as

confirmed by article 27 assuming that “in co-operation” means taking full cognisance of “set”, “recommend” and “propose” as is the case with article 30(3) as amended (RS).

(vi) Article 37 (RS) specifies the use of ECTS.

(vii) Article 114 (j) and (k) confirm mobility.

(viii) Articles 124 – 128 presumably operate within the framework of the Lisbon recognition Convention given references to the EHEA in, for example, article 114. I am uncertain as to the meaning of article 128(1) as amended.

(ix) One assumes that under article 156 the Rule Books will give due cognisance to the Framework Law.

The explanation section recognises the Framework Law (BiH) but is lengthy and detailed. The RS Law is very comprehensive but, as has been said, Articles 1, 3 and 4 of the Framework Law (BiH) are vital in establishing the context for the future.

### **(c) Recommendations:**

(R1) Ideally article 5 should be amended to give true effect to Bologna and its restatement in the “7 Key Strategies” document (The Framework for Higher Education Qualifications in BiH). However this wish must be tempered by the legislative and political reality (elections forthcoming in October 2010) – the law does not reflect Bologna but it is workable.

(R2) According to article 58 there is a full implementation of ECTS including accumulation and use of learning outcomes and that these be embedded in the curriculum.

(R3) R2 will facilitate the national qualifications framework to operate, comply with the EHEA QF and ensure that the article 4 requirement (“internationally recognised higher education degree”) is met. This needs to be promulgated by the Agency and by an effective team of Bologna Experts and with effective co-ordination<sup>3</sup>.

(R4) The Agency continue to move forward (under articles 48 and 49) at an enhanced pace to give effect to its role and set the framework for implementation of the “7 Key Strategies” (Standards and Guidelines for Quality Assurance) according to the full range of its legislative duties for BiH and thus enable the ministries of education to ensure that their actions do comply with the matters set by the Agency.

(R5) That article 60 of the Framework Law be complied with.

(R6) That article 61 of the Framework Law be complied with.

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<sup>3</sup> See recommendations from Madill’s Report July 2010

(R7) That article 63 of the Framework Law be complied with and that BiH ensures that such laws do actually harmonise with the provisions of the Framework Law and not hinder its effectiveness.

(R8) That all parties continue to do their utmost to ensure that the spirit of the “7 Key Strategies” and the implementation of them under the Framework Law is maintained, especially to ensure the continuing development and improvement of the quality of the educational experience for all students.

(R9) That articles 1 – 4 of the Framework Law (BiH) be fully recognised and enacted by all subsequent article 63 legislation (including the current RS Law).