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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

TECHNICAL PAPER

ASSESSMENT AND RECOMMENDATIONS CONCERNING DRAFT AMENDMENTS
TO THE LAW ON HIGHER EDUCATION REGULATING INSPECTIONS OF HIGHER
EDUCATION INSTITUTIONS, AND SUB-LEGAL ACTS TO IMPLEMENT THE LAW

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July 2012

ECU-PACA-8/2012

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INTRODUCTION

This Technical Paper is part of on-going work by experts from the General Teaching Council for Scotland for the Council of Europe/EU Project against Corruption in Albania (PACA). Under Activity 4.1 of the PACA Extension Workplan – ‘Policy advice to follow up with actions to implement recommendations of PACA Education System/Human Resources Risk Assessment and Assessment of Regulation of Private Education Institutions’, specific activities planned were to determine (with the Ministry of Education and Science and other relevant bodies) needs for the elaboration of rules and procedures for processes of inspections of private education institutions, and then to provide proposed inspections manuals for inspections of higher education institutions.

The current Technical Paper is the second of three to address this topic between June and September 2012;. It follows a fuller Technical Paper providing an ‘Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future Inspection System’ (PACA June 2012, ECU-PACA-7/2012), which made a broad range of recommendations for a future system of review of Albanian HEIs for quality assurance and enhancement, and will be followed by a final Paper that will provide recommendations for the content of inspections manuals. The first Technical Paper included a section with recommendations for amendments to the Law on Higher Education relating to the inspection of HEIs; the current paper assesses the Law on Higher Education further in the light of draft amendments to the Law proposed by Albanian Ministries to Parliament which the experts have received since submitting the June Technical Paper (see Albanian Government 2012). In particular, the experts were asked to focus on the following issues:

- (a) An assessment of whether draft amendments to the Law on Higher Education relating to inspections and quality assurance of HEIs provide a legal framework for an inspections framework in line with recommendations made in the earlier June Technical Paper ‘Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future Inspection System’
- (b) Recommendations on what sub-legal acts are needed to ensure the establishment of well-functioning inspections, and what should be their main provisions

1 SUMMARY OF FINDINGS AND RECOMMENDATIONS

Detailed Assessment of the Specific Draft Amendments Proposed by Albanian Ministries to the Law on Higher Education relating to Inspection and Quality Assurance of HEIs

- **Draft Amendment proposed for Article 63**

Recommendation 1: The Albanian Government should clarify the relationship between the Article now presented as Article 63 in the draft amendments proposed for the Law on Higher Education and the Article appearing as Article 45 in the 2007 version of the Law previously made available to the experts. Any wording of a new par. 5 in 'Article 63' should not produce an outcome which reduces the operational independence of a new national agency for higher education (HE) quality enhancement and assurance. As previously recommended by the experts, this agency should function with maximum autonomy from central government, consistent with European best practice for such agencies. The MoES may be involved in suspension or removal of private HEI licences, and law enforcement agencies may be involved in issues of illegality by HEIs, but only on recommendation from the new agency after HEI quality review. The Council of Ministers may also be involved in the final suspension and removal of licences, but only after recommendation has come from the MoES and the HE quality agency. The Council of Ministers may also be involved in setting the initial framework for the HE quality system and the work of the agency. However, the Council of Ministers, the MoES, or other law enforcement agencies should not be involved in the on-going operational activities of the HE quality agency, prior to the agency making recommendations which require their involvement. Any new par. 5 in 'Article 63' should be worded to ensure these approaches are not undermined, especially in relation to the Council of Ministers. More widely, the 'Law on Inspections' should also be reviewed to ensure its consistency with the approaches the experts are advocating for the 'inspection' (i.e. review for quality enhancement and assurance) of HEIs. Finally on 'Article 63', the experts would re-emphasise the importance of the amendments implied for par.3 and par.4 of this Article in the relevant parts of Recommendation 6.5 in their June Technical Paper.

- **Draft Amendment proposed for Article 64, par. 1**

Recommendation 2: Any new sentence within par. 1 of Article 64 of an amended Law on Higher Education should emphasise that 'inspection' of HE will take the form of review for quality enhancement and assurance by a new independent national HE quality agency. As already mentioned under Recommendation 1, the 'Law on Inspections' should be reviewed by the Albanian Government to ensure its consistency with the approaches to HE quality review being recommended here by the experts. More widely in relation to par.1 of Article 64, the experts would re-emphasise the importance of their earlier Recommendations 6.6 and 7.3 in the June Technical Paper (June Recommendation 6.6 proposed full quality review of each HEI every four years, covering the wider quality enhancement and assurance agenda, not just 'legality'; June Recommendation 7.3 proposed every HEI would have an 'annual engagement' with the national HE quality agency, covering a range of aspects, not just financial audit).

- **Draft Amendment proposed for Article 64, par. 2**

Recommendation 3: Any new par. 2 within Article 64 of an amended Law on Higher Education should refer to the review of HE for quality enhancement and assurance undertaken by a new independent national HE quality agency. In particular, this paragraph should emphasise that the HE quality agency will be separate from any Inspectorate for pre-university education. Following more general comments in Recommendation 1, par. 2 should clearly indicate that any role being described for the Council of Ministers in relation to the HE quality agency refers to Council of Ministers' decisions about the initial establishment of the agency, not to the Council of Ministers making decisions within the ongoing operational activity of the agency (except for possible Council of Ministers' involvement in final suspension or removal of private HEI licences). As already mentioned in Recommendations 1 and 2, the 'Law on Inspections' should be reviewed by the Albanian government to ensure its consistency with the approaches to HE quality review being recommended here by the experts.

- **Draft Amendment proposed for Article 64, par. 7**

Recommendation 4: As already mentioned in Recommendation 1, clarification should be provided on the relationship between proposed amendments to the Higher Education Law and Article 45 in the 2007 version of the Law as previously made available to the experts. In particular, the Albanian Government should clarify if mention of 'Article 45' in the proposed Article 64, par. 7, of an amended Higher Education Law refers to the 2007 Article 45, which is now appearing as Article 63 elsewhere in the proposed amendments. On the detail of the proposed par.7, this paragraph should refer to the actions of the new HE quality agency (rather than using the individual term 'inspector'). As already described generally in Recommendation 1, par.7 should make clear that the agency will recommend the suspension or removal of licence to MoES, if evidence from review of a private HEI supports this, but will also provide evidence of more specific illegality (such as fraud) directly to the relevant law enforcement agencies which deal with such violations. Linked to these recommendations on the proposed par. 7 of Article 64, the experts would re-emphasise the importance of Recommendation 6.5 in their June Technical Paper. June Recommendation 6.5 similarly proposed amendments to par. 4 of Article 45 in the 2007 Law (possibly now Article 63 in any amended Law), making explicit the role of the new quality agency in recommending the suspension or removal of licence to MoES.

- **Draft Amendment proposed for Article 64, par. 8**

Recommendation 5: As already mentioned in Recommendations 1 and 3, any amended Higher Education Law should make clear that the Council of Ministers will not be involved in the ongoing operational activities of a new national HE quality agency. Any reference to 'Council of Ministers' decision' in the proposed Article 64, par. 8 should only relate to either Council of Ministers' decisions about the initial overall establishment of the national HE quality agency (i.e. identifying its general powers etc.), or to Council of Ministers' involvement in specific final decisions on the suspension or removal of a private HEI's licence, after recommendation for suspension or removal has progressed from the HE quality agency to MoES and then to the

Council of Ministers. Par. 8 should make clear that the Council of Ministers has no role in the HE quality agency's own decision-making on whether to recommend suspension or removal of licences, or indeed on whether to refer illegality to the relevant law enforcement agencies. As already mentioned in Recommendation 4 (for proposed amended Article 64, par. 7), Article 64, par. 8, should also refer to the new national HE quality agency, rather than using the terms 'inspector' and 'Inspectorate'. Additionally, as also already mentioned in Recommendation 4 for Article 64, par 7, there should be clarification if mention of 'Article 45' in Article 64, par. 8, refers to Article 45 of the 2007 Higher Education Law, now appearing as Article 63 elsewhere in the proposed amendments. Finally, as already mentioned in Recommendations 1, 2 and 3, any general Law on Inspections should be reviewed for its consistency with the approaches to HE quality review being recommended here by the experts.

- **Draft Amendment proposed for Article 64/1 Complaints/Appeal**

Recommendation 6: It is important that any amended Higher Education Law contains a section like Article 64/1, Complaints/Appeal, indicating how the HE quality review system will establish mechanisms for complaint/appeal. However, any such section should add a commitment to minimising the potential for 'vexatious' appeals, which are simply made with the intention of delaying the imposition of sanctions unpalatable to the appellant, and which are not based on well-evidenced grounds. When detailed protocols for appeals are developed, they should make appropriate use of earlier opportunities within quality review processes for HEIs to comment on 'issues of fact' within draft reports (but not simply to 'dispute reviewers' judgements'). The possibility of agreed adjustments for these should reduce the potential for later 'vexatious' appeals. As well as such additions, Article 64/1, Complaints/Appeal should be clarified for the following points:

- (a) whether the mention of 'article 45' refers to Article 45 of the 2007 Higher Education Law, now appearing as Article 63 elsewhere in the proposed amendments (see also comments under Recommendations 4 and 5);
- (b) whether the Law on Inspections is consistent with the approaches to HE quality review being outlined here by the experts (see also comments under Recommendations 1, 2, 3, 5);
- (c) the meaning of the term 'directing/managing authority', and particularly whether this can be interpreted as covering the new HE quality agency, the MoES, and perhaps also other relevant law enforcement agencies (in cases of general dishonesty);
- (d) if 'directing/managing authority' can cover the new HE quality agency, whether this should lead to the removal of separate reference to appeals against an individual 'inspector', as opposed to appeals against the agency;
- (e) whether 'appeal according to existing provisions' means that appeal against decisions to suspend or remove licences by the Council of Ministers (after this has been recommended though the quality agency and the MoES) is to a particular Court;

- (f) whether there will be a precise appeal process under a general Law on Inspection which will provide a mechanism for appealing decisions of the new HE quality agency, or whether some separate new appeal process will have to be established for the agency;
- (g) whether appeals against MoES decisions within the HE quality review process will be made to a Court (e.g. as may be the case with appeals against Council of Ministers' decisions), or will be made in some other way similar to appeals against the new agency (within a new overall approach to HE quality review appeals).

- **Draft Amendment proposed for Article 64/1 Sanctions**

Recommendation 7: It is important that any amended Higher Education Law contains a section like Article 64/1, Sanctions, and that the sanctions available against private HEIs include the suspension and removal of licences, and possible direct referral to law enforcement agencies (as already emphasised in Recommendations 8.2, 8.5 and 4 in the experts' June Technical Paper). However, in discussing 'competent authorities' being notified 'to initiate criminal proceedings' against those in HEIs responsible for fraud etc, Article 64/1, Sanctions, should indicate that this notification will be undertaken directly by the new HE quality agency, rather than by the MoES (this is consistent with the experts' earlier recommendation to this effect in Recommendation 4 in their June Technical Paper). Direct notification by the HE quality agency will emphasise the autonomy of the new agency in assuring HE standards, acting independently from MoES.

Broader Comments on Draft Amendments Proposed to the Law on Higher Education relating to Inspections and Quality Assurance of HEIs

Recommendation 8: In producing an amended Law on Higher Education, the Albanian Government should address all the other amendments to the Law recommended in the experts' earlier June Technical Paper (i.e., June Recommendations 6.1 to 6.4, the earlier parts of 6.5, and 6.7 to 6.11), as well as the amendments which will follow from Recommendations 1 to 7 in the current paper.

Recommendations on Sub-Legal Acts to Ensure the Establishment of Well-Functioning Inspections of HEIs

Recommendation 9: Generally, the Albanian Government should continuously review its use of 'sub-legal acts' in public administration with the aim of reducing any excessive and over-elaborated centralisation with the national government and its departments. Specifically for the proposed new national HE quality review system, the details for the operation of an independent national agency should subsequently be developed as far as possible through the agency's own documentation, based on the amended Higher Education Law itself, rather than through additional 'sub-legal acts'. However, an important role should remain for central government in setting the overall policy framework for HE quality review, and in making final decisions at specific stages within the process, such as initial granting, and final suspension or removal, of private HEI licences.

Recommendation 10: It is essential that the proposed new national HE quality review system is based on sufficiently clear and full details on:

- (a) The nature of the new HE quality agency itself, and in particular details which confirm that the composition and system of governance of the new agency ensure that the agency functions as genuinely independent of the central Government. The agency should be governed by an independent board whose membership and method of appointment reflect European best practice for corporate governance of such independent agencies, and which do not involve the direct and extensive role of central government that is found with current Albanian bodies such as the HE Accreditation Council and the Council of Higher Education and Science.
- (b) The protocols and procedures on the relationship between the new HE quality agency and the MoES and the Council of Ministers over the suspension and removal of private HEI licences.
- (c) The protocols and procedures on the relationship between the new HE quality agency and other law enforcement agencies on issues of illegality by HEIs relating to general dishonesty.
- (d) The protocols and procedures on appeals/complaints against decisions taken within the HE quality review system by the new HE quality agency, the MoES and the Council of Ministers respectively.

However, as far as possible, core details within these areas should be established in the amended Higher Education Law itself, and additional details developed in subsequent documentation of the new HE quality agency. Therefore, there should be minimal use of additional 'sub-legal acts', if these are required at all.

2 DRAFT AMENDMENTS TO THE LAW ON HIGHER EDUCATION RELATING TO INSPECTIONS AND QUALITY ASSURANCE OF HEIs

The experts have been provided with a document indicating the relevant draft amendments to the Higher Education Law submitted by the Albanian Government Ministries to Parliament (Albanian Government, July 2012). These amendments appear only to relate to Article 63 and Article 64 'Control of legality' (including Article 64/1 'Complaints/Appeal', and Article 64/1 'Sanctions'). In comparing these draft amendments with the version of the Higher Education Law which they had previously been provided with (Albanian Parliament 2007), the experts note that the Article numbered as Article 63 in the draft amendments document seems to correspond to Article 45 in the 2007 version of the Law, not to what appears as Article 63 in the 2007 document. In linking any comments here to comments in the earlier June Technical Paper, the experts are assuming that it is appropriate to regard the Article now numbered 63 as corresponding to the Article previously discussed as Article 45. There is no equivalent complication with Article 64,

where the core Article (i.e. before proposed amendments) seems similar in both the 2007 and 2012 documents.

In summary, the relevant draft amendments to the Higher Education Law proposed by the Albanian Government Ministries involve the following:

For Article 63

Article 63 generally relates to the requirements on private HEIs, and the sanctions to be imposed on institutions which do not meet these requirements. The draft amendment proposed is the addition of a par. 5 which emphasises the relevant role of the Council of Ministers, especially in relation to 'the Law on Inspections' specifically.

For Article 64

Article 64 generally relates to 'Control of legality' for public and private HEIs. Six draft amendments are proposed:

- (a) In par. 1, the addition of a sentence to emphasise that 'control of legality' of HEIs will be conducted by the national Inspectorate covering HE.
- (b) The addition of a par. 2 to emphasise that the organisation and functioning of this Inspectorate will be decided by the Council of Ministers in compliance with 'the law on inspection'.
- (c) The addition of a par. 7 to emphasise that any measures/sanctions proposed by an 'inspector' on finding violations of legal requirements by an HEI should be determined by Council of Ministers' decisions, and submitted to the Council of Ministers by the Ministry of Education and Science (MoES).
- (d) The addition of a par. 8 to emphasise once again the role of the Council of Ministers in determining the measures which can be taken by the HE Inspectorate in implementing the Law on Higher Education and the 'Law on Inspections'.
- (e) The addition of an Article 64/1 on 'Complaints/Appeal', stating that Council of Ministers' decisions under the Higher Education Law can be appealed 'according to the existing provisions', and Inspectors' decisions can be appealed according to the 'Law on Inspections'.
- (f) The addition of an Article 64/1 on 'Sanctions', detailing the circumstances under which various sanctions will be imposed on private HEIs, including the initiating of criminal proceedings.

The content of these amendments will be covered in more detail in the fuller assessment of the amendments which follows in Section 4.

3 GENERAL APPROACH TO ASSESSMENT OF DRAFT AMENDMENTS TO THE LAW RELATING TO INSPECTIONS AND QUALITY ASSURANCE OF HEIs

In the earlier Technical Paper 'Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future Inspection System' (PACA June 2012), the experts have already provided a full range of recommendations for amendments to the Law on Higher Education relating to HE quality enhancement and assurance (the current paper continues with the experts' preference for language based on the term 'HE review for quality enhancement and assurance', rather than the term 'HE inspection'). These recommendations initially focused on the sections of the Law relating most directly to review for quality enhancement and assurance (Chapter IX), but then considered other sections of the Law which should also be specifically linked to quality review. The recommendations appeared in the June Technical Paper as Recommendations 6.1 to 6.11, and are reprinted in Appendix 1 of the current paper.

As already discussed, the current paper is assessing draft amendments proposed for Article 63 of the Higher Education Law (which appears to correspond to Article 45 of the 2007 Law made available to the experts), and for Article 64. Therefore, from the June Recommendations, aspects of June Recommendation 6.5, and June Recommendation 6.6 relate directly to the draft amendments currently being assessed. In the reprint of these June Recommendations in Appendix 1, the relevant parts of June Recommendations 6.5 and 6.6 are highlighted in bold. The relevant aspects of the June Recommendation 6.5 relate to the amendments proposed for Article 63 of the Law (i.e., Article 45 in the version previously made available to the experts). June Recommendation 6.6 relates to the amendments proposed for Article 64 of the Law.

In assessing the draft amendments proposed, this paper will make use of the Recommendations from the June Technical Paper initially by referring to the highlighted sections of June Recommendations 6.5 and 6.6 in the detailed assessment of the specific proposed amendments which follows in Section 4 below. The June amendments are also referred to in Section 5 below in broader comments on the proposed amendments.

4 DETAILED ASSESSMENT OF THE SPECIFIC DRAFT AMENDMENTS PROPOSED TO THE LAW ON HIGHER EDUCATION RELATING TO INSPECTIONS AND QUALITY ASSURANCE OF HEIs

Draft Amendments proposed for Article 63

Article 63 generally relates to the requirements on private HEIs and the sanctions to be imposed on institutions which do not met these requirements. The draft amendment proposed is the addition of the following par. 5:

'The determination of the measures taken on implementation of this article and their categorisation in main administrative sanctions or complementary sanctions are made by Council of Ministers' decision, in compliance with the Law on Inspections.'

The general approach taken by the experts in their June Technical Paper was to argue for a strong, independent national agency to be responsible separately for HE quality enhancement and assurance, including reviews. The experts stressed that this agency should function with the independence from central government which European best practice expects of such national agencies. (See PACA, June 2012, Recommendations 1 and 5, also pp.14 and 21.) The experts recognised that any such agency would have to liaise with the MoES (on behalf of the Albanian Government) on the actual suspension or withdrawal of licences of private HEIs failing to meet appropriate standards, or with the appropriate branches of law enforcement agencies on actual illegality by HEIs. (See PACA, June 2012, Recommendation 4, also pp.19-20.) However, the experts would re-emphasise their underlying point about the importance of maximum autonomy for any national HE quality agency within such processes.

In the draft par. 5 proposed for Article 63, the experts are not completely clear on the meaning of 'categorisation in main administrative sanctions or complementary sanctions'. However, if this proposed paragraph implies any increase in the on-going role of the Council of Ministers during HE quality review, the experts would not support this. The experts recommend a role for the Council of Ministers in setting the initial framework for the HE quality review system, or in making decisions at the final stages on suspension or withdrawal of licence if such decisions are made only after recommendation from the national HE quality agency and MoES.

The experts also note that the draft par. 5 refers to 'compliance with the Law on Inspections'. The experts have been asked to comment (in both the current paper and the earlier June Technical Paper) on 'inspection' of HEIs (i.e. review for quality enhancement and assurance) only in relation to the Law on Higher Education. The experts therefore recommend that this separate law is reviewed for its consistency with the approaches the experts are advocating for the 'inspection' of HEIs.

While the draft amendment proposed for Article 63 only involves a new par.5, the experts would also re-emphasise the amendments they have already proposed in their June Technical Paper to par.3 and par. 4 of this Article, although, as explained earlier, the Article is numbered 45 in that earlier paper (see highlighted parts of the June Recommendation 6.5, as reprinted in Appendix 1).

Recommendation 1: The Albanian Government should clarify the relationship between the Article now presented as Article 63 in the draft amendments proposed for the Law on Higher Education and the Article appearing as Article 45 in the 2007 version of the Law previously made available to the experts. Any wording of a new par. 5 in 'Article 63' should not produce an outcome which reduces the operational independence of a new national agency for higher education (HE) quality enhancement and assurance. As previously recommended by the experts, this agency should function with maximum autonomy from central government, consistent with European best practice for such agencies. The MoES may be involved in

suspension or removal of private HEI licences, and law enforcement agencies may be involved in issues of illegality by HEIs, but only on recommendation from the new agency after HEI quality review. The Council of Ministers may also be involved in the final suspension and removal of licences, but only after recommendation has come from the MoES and the HE quality agency. The Council of Ministers may also be involved in setting the initial framework for the HE quality system and the work of the agency. However, the Council of Ministers, the MoES, or other law enforcement agencies should not be involved in the ongoing operational activities of the HE quality agency, prior to the agency making recommendations which require their involvement. Any new par. 5 in 'Article 63' should be worded to ensure these approaches are not undermined, especially in relation to the Council of Ministers. More widely, the 'Law on Inspections' should also be reviewed to ensure its consistency with the approaches the experts are advocating for the 'inspection' (i.e. review for quality enhancement and assurance) of HEIs. Finally on 'Article 63', the experts would re-emphasise the importance of the amendments implied for par.3 and par.4 of this Article in the relevant parts of Recommendation 6.5 in their June Technical Paper.

Draft Amendments proposed for Article 64

Article 64 generally relates to 'Control of legality' for public and private HEIs.

Article 64, par. 1

The draft amendment proposes the following additional sentence:

'The control is conducted by the Inspectorate that covers the area of the Higher Education in accordance with this law and the Law on Inspections.'

The experts agree with the addition of a sentence like this because it specifically emphasises the role of a national 'Inspectorate that covers the area of the Higher Education' in ensuring the maintenance of appropriate standards in HE. However, the experts would also re-emphasise that they have argued for this role being taken forward by a truly independent national agency for HE quality enhancement and assurance specifically, and they would prefer the language of the Law to describe the agency in this way, including in Article 64, par. 1.

The experts would also repeat their recommendation that the 'Law on Inspections' is reviewed to ensure its consistency with the approaches being advocated by the experts for HE quality review.

Apart from commenting on the additional sentence being proposed for par. 1, the experts would also refer back to the earlier recommendations in their June Technical Paper that Article 64, par. 1, should be amended to provide that the new national HE quality agency will undertake a full review of each HEI every 4 years, and have an 'annual engagement' with each HEI (see June Recommendation 6.6, and also Recommendation 7.3 from the June Paper). The experts would observe that these earlier Recommendations envisaged that: the four-yearly quality review should not only assess 'legality' but also embrace a wider quality enhancement and assurance agenda; the 'annual engagement' should cover both private and public HEIs; and this

engagement should include discussion of a range of data and activities of HEIs, not just financial audit issues.

Recommendation 2: Any new sentence within par. 1 of Article 64 of an amended Law on Higher Education should emphasise that ‘inspection’ of HE will take the form of review for quality enhancement and assurance by a new independent national HE quality agency. As already mentioned under Recommendation 1, the ‘Law on Inspections’ should be reviewed by the Albanian Government to ensure its consistency with the approaches to HE quality review being recommended here by the experts. More widely in relation to par.1 of Article 64, the experts would re-emphasise the importance of their earlier Recommendations 6.6 and 7.3 in the June Technical Paper (June Recommendation 6.6 proposed full quality review of each HEI every four years, covering the wider quality enhancement and assurance agenda, not just ‘legality’; June Recommendation 7.3 proposed every HEI would have an ‘annual engagement’ with the national HE quality agency, covering a range of aspects, not just financial audit).

Article 64, par. 2

The draft amendment proposes the following additional sentence:

‘The organisation and functioning of the Inspectorate covering the area of Higher Education, is determined by a Council of Ministers’ decision in compliance with the law on inspection’. (In the version received by the experts, there is also a relevant embedded comment, presumably from a Ministry official, that ‘In addition, since the inspectorate will also cover the pre/university education, we suggest to remove the qualifying word “Higher”’.)

As already emphasised, one of the experts’ central arguments is that a new national agency for HE quality enhancement and assurance should function with the independence from central government which is a feature of European best practice for such agencies. In relation to the proposed Article 64, par. 2, the experts again would prefer the language of the paragraph to refer explicitly to such a new agency, rather than use the term ‘Inspectorate’. In particular, the experts do not favour the suggestion in the embedded Ministry comment that there should be a single Inspectorate for pre/university education and HE, as the June paper underlined. From a meeting held with MoES staff and a representative of the Central Inspectorate (the body responsible for oversight of all inspectorates within ministries and public institutions) on 25 June 2012, the understanding of the experts is that the Law on Inspections in general requires a single inspectorate to be established within each institution, but that there may be exceptions to this. If this is the case, the experts recommend that such an exception be applied in the case of inspections of education institutions – i.e. separating the agency for higher education inspections from inspections of pre-university education.

More widely, the experts would emphasise that any reference to the Council of Ministers in this paragraph should only imply a role for the Council of Ministers in the initial establishment of the new HE quality agency, and not in its ongoing operational activity.

Finally, the point already made about any general Law on Inspection also applies to this proposed par. 2.

Recommendation 3: Any new par. 2 within Article 64 of an amended Law on Higher Education should refer to the review of HE for quality enhancement and assurance undertaken by a new independent national HE quality agency. In particular, this paragraph should emphasise that the HE quality agency will be separate from any Inspectorate for pre-university education. Following more general comments in Recommendation 1, par. 2 should clearly indicate that any role being described for the Council of Ministers in relation to the HE quality agency refers to Council of Ministers' decisions about the initial establishment of the agency, not to the Council of Ministers making decisions within the ongoing operational activity of the agency (except for possible Council of Ministers' involvement in final suspension or removal of private HEI licences). As already mentioned in Recommendations 1 and 2, the 'Law on Inspections' should be reviewed by the Albanian government to ensure its consistency with the approaches to HE quality review being recommended here by the experts.

Article 64, par. 7

The draft amendment proposes the following new par. 7:

'When the inspector finds a violation of legal requirements during a control of the legality, he proposes the measures/sanctions to take according to the Article 45 of this law, and his proposal is submitted to the Council of Ministers by the Minister of Education and Science.' (In the version received by the experts, there is also a relevant embedded comment, presumably from a Ministry official, on the reference to Article 45, stating that 'The measures and their categorisation will be decided by a Council of Ministers decision. Wrong reference.')

As the embedded comment from the Ministry itself implies, there is some lack of clarity about the internal cross-referencing in this proposed amendment. The experts would ask if this relates to the point they have raised earlier in the current paper about Article 63 in the proposed amendments actually corresponding to Article 45 in the 2007 version of the Law which they received earlier. This may suggest that the reference to Article 45 in the proposed Article 64, par. 7 actually refers to what has now been presented to the experts as Article 63 (see above).

Moving beyond this issue of cross-referencing, the experts would prefer this proposed paragraph to be worded in terms of the actions of the new HE quality agency, rather than worded around the individual 'inspector', and to reflect what they have already said in their June Technical Paper on the relationship between the new agency, the MoES and other law enforcement agencies.

On this latter point, the experts have proposed that the new agency would recommend the suspension or removal of licence to MoES, if evidence from review of a private HEI supported this, and that the agency would provide evidence of more specific illegality (such as fraud) directly to the law enforcement agencies which deal with such violations (see Recommendation 6.5 and Recommendation 4 in the June paper).

For example, in Recommendation 6.5 in the June paper, the experts have already emphasised that the role of the new HE quality agency in recommending the suspension or removal of licence to MoES should be made explicit in par. 4 of Article 45 of the 2007 version of the Law they were presented with (as mentioned above, this may now be Article 63 in any amended Law).

Consistent with this, the experts welcome that the proposed Article 64, par. 7 (if appropriately reworded) can provide a basis for further emphasising the HE quality agency's role in recommending suspension or removal of licences. However, any amended version of this paragraph should also explicitly state that the agency will pass evidence of illegality directly to the relevant law enforcement agencies.

Recommendation 4: As already mentioned in Recommendation 1, clarification should be provided on the relationship between proposed amendments to the Higher Education Law and Article 45 in the 2007 version of the Law as previously made available to the experts. In particular, the Albanian Government should clarify whether the 'Article 45' mentioned in the proposed Article 64, par. 7, of an amended Higher Education Law refers to the 2007 Article 45, which is now appearing as Article 63 elsewhere in the proposed amendments. On the detail of the proposed par.7, this paragraph should refer to the actions of the new HE quality agency (rather than using the individual term 'inspector'). As already described generally in Recommendation 1, par.7 should make clear that the agency will recommend the suspension or removal of licence to MoES, if evidence from review of a private HEI supports this, but will also provide evidence of more specific illegality (such as fraud) directly to the relevant law enforcement agencies which deal with such violations. Linked to these recommendations on the proposed par. 7 of Article 64, the experts would re-emphasise the importance of Recommendation 6.5 in their June Technical Paper. June Recommendation 6.5 similarly proposed amendments to par. 4 of Article 45 in the 2007 Law (possibly now Article 63 in any amended Law), making explicit the role of the new quality agency in recommending the suspension or removal of licence to MoES.

Article 64, par. 8

The draft amendment proposes the following new par. 8:

'The Council of Ministers' decision in implementation of the Article 45 amended by this law, may determine the administrative measures that can be directly issued/decided by the inspector of the Inspectorate covering the higher education, in implementation of this law and the Law on Inspections.'

As mentioned earlier in relation to the proposed Article 63, par. 5, and Article 64, par. 2, the experts would re-emphasise that it is important the Council of Ministers does not interfere in the on-going operational independence of a new national HE quality agency. In the context of the proposed Article 64, par. 8, this means that 'Council of Ministers' decision' should only refer to either the initial overall establishment of the national agency (i.e. identifying its general powers etc.), or to specific final decisions on the suspension or removal of a private HEI's licence, after recommendation for suspension or removal has progressed from the HE quality agency to MoES

and then to the Council of Ministers. The proposed par. 8 should not imply any role for the Council of Ministers in the agency's own decisions on whether to recommend suspension or removal of licences (or indeed on whether to refer illegality to the relevant law enforcement agencies).

Recommendation 5: As already mentioned in Recommendations 1 and 3, any amended Higher Education Law should make clear that the Council of Ministers will not be involved in the on-going operational activities of a new national HE quality agency. Any reference to 'Council of Ministers' decision' in the proposed Article 64, par. 8 should only relate to either Council of Ministers' decisions about the initial overall establishment of the national HE quality agency (i.e. identifying its general powers etc.), or to Council of Ministers' involvement in specific final decisions on the suspension or removal of a private HEI's licence, after recommendation for suspension or removal has progressed from the HE quality agency to MoES and then to the Council of Ministers. Par. 8 should make clear that the Council of Ministers has no role in the HE quality agency's own decisions on whether to recommend suspension or removal of licences, or indeed on whether to refer illegality to the relevant law enforcement agencies. As already mentioned in Recommendation 4 (for proposed amended Article 64, par. 7), Article 64, par. 8 should also refer to the new national HE quality agency rather than using the terms 'inspector' and 'Inspectorate'. Additionally, as also already mentioned in Recommendation 4 for Article 64, par 7, there should be clarification of whether the 'Article 45' mentioned in Article 64, par. 8, refers to Article 45 of the 2007 Higher Education Law, now appearing as Article 63 elsewhere in the proposed amendments. Finally, as already mentioned in Recommendations 1, 2 and 3, the Law on Inspections should be reviewed for its consistency with the approaches to HE quality review recommended by the experts.

Article 64/1 Complaints/Appeal

The draft amendment proposes the following new Article 64/1 on Complaints/Appeal:

'A decision taken by a directing/managing authority and the Council of Ministers according to the articles 64 and 45 of this law, can be subject to appeal according to the existing provisions. A decision taken by an inspector according to the article 64 amended by this law, can be subject to appeal according to the Law of Inspections.'

The experts welcome a specific Article on Complaints/Appeal within the amended Law. However, there are a number of aspects of this proposed Article 64/1 which require further clarification.

Once more, as mentioned above, it will be necessary to clarify the reference to Article 45 in this proposed amendment, and it will be important to review the Law on Inspections for consistency with the experts' recommendations on HE review for quality enhancement and assurance.

More specifically, the experts are not completely clear on the meaning of the term 'a directing/managing authority' in the proposed Article 64/1 on Complaints/Appeal. In the context of the HE quality review system recommended by the experts, they assume this term could refer

to the new HE quality agency and the MoES, and perhaps also other relevant law enforcement agencies (in cases of general dishonesty).

If 'directing/managing authority' covers the new agency, the experts do not think it is appropriate to include a separate reference to 'decision taken by an inspector'. In the system recommended by the experts, the decisions made by individual reviewers and officials of the agency would be agency decisions, and would be appealed on that basis.

This then requires clarification on precise methods of appeal. The experts are not clear on the meaning of 'appeal according to existing provisions'. For example, the 2007 version of the Higher Education Law appears to make only one reference to appeals. Article 44, par. 7, when discussing initial licensing of private HEIs, states that an applicant can appeal a MoES decision to refuse a licence 'at the Court'. For any amended Law, clarification is needed on whether appeals to a particular Court will apply to Council of Ministers' decisions on suspension or removal of a licence after quality review has recommended this through the quality agency and the MoES.

On the other hand, clarification will also be required on whether there is a precise appeal process under a general Law on Inspection which will provide the mechanism for appealing decisions of the new HE quality agency.

Finally, clarification will be needed on whether appeals against MoES decisions within the HE quality review process are made under procedures which apply to Council of Ministers' appeals or those which apply to HE quality agency appeals, if there are differences between these procedures.

In addition, the experts would urge that appeals processes are established which minimise the potential for 'vexatious' appeals, i.e. appeals that are filed only to delay the imposition of sanctions unpalatable to the appellant and which are not based on well-evidenced grounds. For example, the June Technical Paper referred to the opportunity for HEIs to comment on draft HE quality review reports before final 'agreed versions' are published (see Recommendation 8.5 in the June Paper). The experts recommend that detailed protocols will stress that such comments are invited on 'issues of fact', rather than simply 'disputing reviewers' judgments'. Opportunities for dialogue of this sort within the review process itself should reduce the potential for final 'vexatious' appeals.

Recommendation 6: It is important that any amended Higher Education Law contains a section like Article 64/1, Complaints/Appeal, indicating how the HE quality review system will establish mechanisms for complaint/appeal. However, any such section should add a commitment to minimising the potential for 'vexatious' appeals, which are simply made with the intention of delaying the imposition of sanctions unpalatable to the appellant, and which are not based on well-evidenced grounds. When detailed protocols for appeals are developed, they should make appropriate use of earlier opportunities within quality review processes for HEIs to comment on 'issues of fact' within draft reports (but not simply to 'dispute reviewers' judgements'). The possibility of agreed adjustments for these should reduce the potential for

later 'vexatious' appeals. As well as such additions, Article 64/1, Complaints/Appeal should be clarified for the following points:

- (a) whether the mention of 'article 45' refers to Article 45 of the 2007 Higher Education Law, now appearing as Article 63 elsewhere in the proposed amendments (see also comments under Recommendations 4 and 5)
- (b) whether the Law on Inspections is consistent with the approaches to HE quality review being outlined here by the experts (see also comments under Recommendations 1, 2, 3, 5)
- (c) the meaning of the term 'directing/managing authority', and particularly whether this can be interpreted as covering the new HE quality agency, the MoES, and perhaps also other relevant law enforcement agencies (in cases of general dishonesty)
- (d) if 'directing/managing authority' can cover the new HE quality agency, whether this should lead to the removal of separate reference to appeals against an individual 'inspector', as opposed to appeals against the agency
- (e) whether 'appeal according to existing provisions' means that appeal against decisions to suspend or remove licences by the Council of Ministers (after this has been recommended through the quality agency and the MoES) is to a particular Court
- (f) whether there will be a precise appeal process under a general Law on Inspection which will provide a mechanism for appealing decisions of the new HE quality agency, or whether some separate new appeal process will have to be established for the agency
- (g) whether appeals against MoES decisions within the HE quality review process will be made to a Court (e.g. as may be the case with appeals against Council of Ministers' decisions), or will be made in some other way similar to appeals against the new agency (within a new overall approach to HE quality review appeals)

Article 64/1 Sanctions

The draft amendment proposes the following new Article 64/1 on Sanctions:

1. The opening of private institutions of higher education and the exercise of their activities contrary to the provisions of this law and other laws and sub-legal acts, will result in fines for the of (sic) private HEIs, in termination of their activities and in the revocation of the licence.
2. In case of the following violations, the application for licence is denied, the licence is revoked and the Ministry of Education notifies the competent authorities to initiate criminal proceedings against those responsible for:
 - (a) obtaining the licence of operation through fraud, forgery of documents

- (b) representation of false data and any other violation of administrative procedures established in this law
- (c) fraud in the drafting/signing into contracts
- (d) false or misleading claims in advertising, which influence the choice of the students and lead to in (sic) considerable damage/harm for them'

As with Complaints/Appeal, the experts welcome this inclusion of a separate Article 64/1 on Sanctions.

Indeed, the specific sanctions listed as available against private HEIs largely mirror the emphasis in the earlier June Technical Paper on the suspension and removal of licences (see Recommendations 8.2 and 8.5 in the June Paper) and the possible direct referral to law enforcement agencies (see Recommendation 4 in the June Paper).

However, there is one point where the detail of the proposed Article 64/1 differs from the relevant earlier Recommendations by the experts. Article 64/1, par. 2, refers to the MoES notifying the 'competent authorities to initiate criminal proceedings' in cases of fraud etc.. In the June Recommendation 4, the experts recommended that such notification should be made immediately by the new HE quality agency. In order to emphasise the independence of the new agency in assuring HE standards, the experts recommend that the agency, rather than MoES, initially notifies the relevant law enforcement agencies of evidence for such illegality.

Recommendation 7: It is important that any amended Higher Education Law contains a section like Article 64/1, Sanctions, and that the sanctions available against private HEIs include the suspension and removal of licences, and possible direct referral to law enforcement agencies (as already emphasised in Recommendations 8.2, 8.5 and 4 in the experts' June Technical Paper). However, in discussing 'competent authorities' being notified 'to initiate criminal proceedings' against those in HEIs responsible for fraud etc, Article 64/1, Sanctions, should indicate that this notification will be undertaken directly by the new HE quality agency, rather than by the MoES (this is consistent with the experts' earlier recommendation to this effect in Recommendation 4 in their June Technical Paper). Direct notification by the HE quality agency will emphasise the autonomy of the new agency in assuring HE standards, acting independently from MoES.

5 BROADER COMMENTS ON DRAFT AMENDMENTS PROPOSED TO THE LAW ON HIGHER EDUCATION RELATING TO INSPECTIONS AND QUALITY ASSURANCE OF HEIs

As mentioned in Section 3 above, in their earlier June Technical Paper 'Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future

Inspection System’ the experts provided a full range of recommendations for amendments to the Law on Higher Education relating to HE quality enhancement and assurance. These recommendations appeared in the June Technical Paper as Recommendations 6.1 to 6.11, and are reprinted in Appendix 1 of the current paper. As the relevant details in Section 4 above indicate, aspects of June Recommendation 6.5 and June Recommendation 6.6 relate directly to certain of the draft amendments to the Higher Education Law which are currently being assessed. (In the reprint of the June Recommendations in Appendix 1, the relevant parts of June Recommendations 6.5 and 6.6 are highlighted in bold.) While the main focus of the current paper is to assess the specific draft amendments to the Higher Education Law, the experts would stress the continuing importance of all the other recommendations for amendments to the Higher Education Law which were included in their June Technical Paper (i.e. June Recommendations 6.1 to 6.4, the earlier parts of 6.5, and 6.7 to 6.11 – see Appendix 1). In the overall amending of the Higher Education Law, all these June Recommendations should be given full consideration.

Recommendation 8: In producing an amended Law on Higher Education, the Albanian Government should address all the other amendments to the Law recommended in the experts’ earlier June Technical Paper (i.e., June Recommendations 6.1 to 6.4, the earlier parts of 6.5, and 6.7 to 6.11), as well as the amendments which will follow from Recommendations 1 to 7 in the current paper.

6 RECOMMENDATIONS ON SUB-LEGAL ACTS TO ENSURE THE ESTABLISHMENT OF WELL-FUNCTIONING INSPECTIONS OF HEIs

Reviewing the general use of ‘sub-legal acts’ by the Albanian Government

As a final aspect of this Technical Paper, the experts have been asked to make recommendations on what ‘sub-legal acts’ are needed to ensure the establishment of well-functioning ‘inspections’ of HEIs, and what should be their main provisions. ‘Sub-legal acts’ is not a term which equates exactly to terms more commonly used in the experts’ own national educational and legal system. However, from their earlier work on the Albanian system, the experts understand this term to refer to such documents as Decisions, Instructions, Orders and Regulations. These normally seem to be issued by a Minister or Ministry (especially the Minister of Education and Science and MoES), but can also be issued by the Prime Minister or the Council of Ministers. The Albanian Government appears to make very significant use of such documents for the governance of its education system.

The experts appreciate there will be distinctive ways in which frameworks for public law are structured in different national systems, and they wish to give appropriate recognition to the entitlement of the Albanian Government to take distinctive approaches in this area. However, they have commented in earlier work that the Albanian system in areas like education may be over-reliant on a top-down and mechanistic approach to the formulation of policy and the

administration of practice, which are excessively centralised with the national government and its departments. This can lead to the production of a greater number of 'sub-legal acts' documents than the experts are used to in their own system, and the attempt to prescribe centrally a range and level of detail in these which goes beyond what the experts expect central government departments to attempt in their own system. Of course, the experts fully understand the historical reasons for this centralised, prescriptive approach being embedded in Albanian policy and practice. They also fully recognise why the Albanian Government may particularly wish to continue with this approach to ensure that any weaknesses in current practice are addressed robustly, with a stronger chance of positive developments and progress being secured. However, as a general point they would recommend that the Government continuously review its use of 'sub-legal acts' to avoid the retention of over-prescriptive approaches which are excessively centralised with the national government and its departments themselves, rather than increasingly empowering more autonomous bodies within the public governance of Albanian education (such as appropriately independent 'inspection' agencies).

Specifically limiting the use of 'sub-legal acts' for the national HE quality review system

This general point can be applied to the area of HE review for quality enhancement and assurance. However, in this area the experts have made the additional point that European best practice requires an HE quality system operated by a new national agency which will be, as far as possible, independent of central government. This raises the issue of how far 'sub-legal acts' will actually be needed in relation to HE quality review. The experts' general view is that sub-legal acts in this case should be kept to a minimum. If the Higher Education Law is fully amended in the ways recommended, then much of the detail of the new HE quality review system will be included in the Law itself. Thereafter, once the new national agency is established, much detailed documentation should certainly be produced as agency documentation, rather than Ministry documentation. This will apply to the documentation/detail covered in the experts' earlier June Technical Paper in Recommendations 8.1 to 8.5 on 'The Main Content Of HEI Inspection Procedures', and Recommendations 9.1 to 9.5 on 'The Main Inspection Standards, i.e. The Criteria By Which HEIs Are Evaluated'. It will also apply to the greater elaboration of such detail in the further Technical Paper the experts will produce on 'Recommendations for the content of Manuals for the Inspection of Higher Education Institutions'. Such further elaboration should certainly be in agency documentation, not Government documentation. This would follow the approach of the Quality Assurance Agency for Higher Education (QAA) in the UK. For example, the standards for HE in the UK are incorporated in the QAA publication 'The UK Quality Code for Higher Education' (see PACA, June 2012, pp.17-18, 28-29), not in a document of a central government department. It would be consistent with this approach if ownership of the Albanian 'State Quality Standards Of Higher Education Institutions (HEI)' in due course moved from the Albanian Government itself to the new national HE quality agency.

The continuing overall role for the Albanian Government

Of course, this is not to argue for the removal of the Albanian Government from the role of setting the overall policy framework for Albanian HE, including the enhancement and

maintenance of standards. Along with its many other responsibilities, the Albanian Government is accountable to the Albanian people for the quality of education. Similarly, the experts have not argued for the complete removal of the Albanian Government from all specific aspects of the HE quality process. For example, there will still be involvement of the MoES and the Council of Ministers in the initial granting of private HEI licences and, where required, in the final suspension or removal of such licences. In their earlier June Technical Paper 'Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future Inspection System', the experts recommended that the new HE quality agency should have a role in the initial accreditation and licensing of HEIs (see PACA, June 2012, Recommendation 5 and p.21). However, while stressing the importance of the new agency having the power to make independent recommendations within the system of initial accreditation and licensing, the experts were not necessarily suggesting the removal of a role for MoES (for example through the Directorate of Private Education Development [DPED]), or for the Minister of Education and Science and the Council of Ministers. The concern is simply to ensure that the respective roles of the DPED, the Minister and the Council of Ministers are completely clear vis-a-vis the role of the new quality agency. This also reflects the need – underlined by the experts previously to clarify these roles relative to PAAHE and the Accreditation Council (see PACA, June 2011, Recommendation 11, as revisited in PACA, December 2011, pp. 35-37, and PACA, February 2012, p. 19). Similarly, the experts have made clear in the current Technical Paper that there should be a role for the MoES and the Council of Ministers in the final decision-making on suspension and removal of private HEI licences (see Recommendations 1, 3, and 5 above).

Recommendation 9: Generally, the Albanian Government should continuously review its use of 'sub-legal acts' in public administration with the aim of reducing any excessive and over-elaborated centralisation with the national government and its departments. Specifically for the proposed new national HE quality review system, the details for the operation of an independent national agency should subsequently be developed as far as possible through the agency's own documentation, based on the amended Higher Education Law itself, rather than through additional 'sub-legal acts'. However, an important role should remain for central government in setting the overall policy framework for HE quality review, and in making final decisions at specific stages within the process, such as initial granting, and final suspension or removal, of private HEI licences.

Aspects of the new HE quality review system which must be sufficiently elaborated

If 'sub-legal acts' are to be considered for HE review for quality enhancement and assurance, the most likely areas for inclusion would be:

1. the details on the nature of the new HE quality agency itself, such as its composition and system of governance
2. the protocols and procedures on the relationship between the new HE quality agency and the MoES and the Council of Ministers over the suspension and removal of private HEI licences
3. the protocols and procedures on the relationship between the new HE quality agency and other law enforcement agencies on issues of illegality by HEIs relating to general dishonesty
4. the protocols and procedures on appeals/complaints against decisions taken within the HE quality review system by the new HE quality agency, the MoES and the Council of Ministers respectively

However, in considering these areas, the experts would re-emphasise their view that, as far as possible, core details within these areas should be established in the Higher Education Law itself, and additional details developed in subsequent documentation of the new HE quality agency. This should minimise the need for additional 'sub-legal acts'.

Areas 2, 3 and 4 above have already been covered significantly under earlier Recommendations in the current paper, and the experts do not wish to add a great deal of detail on these aspects. On area 2, the key points to capture in detailed protocols and procedures are that recommendations to suspend or remove a private HEI's licence should initially be made by the new HE quality agency after review of the HEI, and only then move to MoES and finally to the Council of Ministers (see Recommendations 1, 3, 4 and 5 above). On area 3, the key points to capture in detailed protocols and procedures are that, when the new HE quality agency finds evidence of specific illegality (such as fraud) by an HEI, then the agency should provide this evidence directly to the relevant law enforcement agencies which deal with such violations, for appropriate action by these agencies (see Recommendations 1, 4, 5 and 7 above). On area 4, the key points to capture in detailed protocols and procedures have already been specified precisely in Recommendation 6 above, and include the need to minimise the potential for 'vexatious' appeals and also clarify seven particular aspects of any appeals processes (points a. to g. within Recommendation 6 above).

However, some additional comments can be made on area 1 above. As emphasised in Recommendation 1 in the current paper, the review of HE for quality enhancement and assurance in Albania should be taken forward by a new national agency developed specifically for this purpose. Consistent with European best practice, this agency should function with maximum autonomy from central government. This approach was also emphasised in the experts' earlier June 'Assessment of Provisional System of Inspections of Higher Education

Institutions and Recommendations for the Future Inspection System' (PACA, June 2012). In that Technical Paper, the experts specifically recommended that the new HE quality agency should be based on a reformed and strengthened Public Agency for Assurance of Higher Education (PAAHE), developing from and replacing the existing PAAHE and Accreditation Council (see Recommendation 5, PACA, June 2012).

On detailed organisational structure, the experts recommended that the agency reflects the type of European best practice to be found in the QAA in the UK and Scotland. This should involve an agency whose corporate governance is based on an independent board, and with a core permanent staff employed by the agency, and appointed on the basis of their relevant expertise. The actual work of review should be undertaken by teams of reviewers working on behalf of the agency. These teams should largely comprise peer reviewers, appointed from senior academics who meet relevant criteria, and including international academics. Teams should also include student reviewers. All reviewers should be appointed on a 'review by review' basis from a pool of nominated reviewers, but may be re-appointed to serve on more than one review. (See PACA, June 2012, p. 21.)

The June Technical Paper emphasised that the experts remain unclear on many of the details of the composition of the existing PAAHE and the Accreditation Council, and they anticipated further dialogue with the MoES on how the arrangements and staffing of the new HE quality agency would develop from the existing bodies (ibid). Certainly, the 2007 Higher Education Law provides some further details on the Accreditation Council. Article 60, par. 3 and 4, indicate members of the Council are nominated for 5-year terms by the Minister of Education and Science from candidates proposed by the groups represented. These groups comprise the MoES, PAAHE, HEIs, 'experts in certain fields', the Council of Higher Education and Science and there is also a student representative. The Chairman of the Council appears to be appointed by the Council of Ministers on the proposal of Minister of Education and Science, after initial proposal from the Council itself.

However, the experts would re-emphasise Recommendation 6.1 in their June Technical Paper, requesting clarification on how the new agency will be developed from the existing PAAHE and Accreditation Council. In particular, they would now add more specific points to be clarified. For example, the details in Article 60, par. 3 of the 2007 Law appear to suggest a number of important ways in which the current arrangements for the Accreditation Council would have to be amended if the Council is to develop into the type of independent board envisaged for the new HE quality agency, comparable with European best practice such as the Board of the QAA in the UK (see QAA UK 2012 for further details on the QAA Board and other aspects of QAA corporate governance). It will be appropriate to have HEI and student representation on the independent board of a new HE quality agency, but it may not be appropriate to have direct representation from MoES or employees of the agency itself (presumably current PAAHE representatives are PAAHE staff). Consideration should also be given to a new independent board including representatives of key national employers and professions, who will clearly have views on the qualities being sought from graduates entering employment in their various fields. If the new agency is partly to reflect the appropriate autonomy of the HE sector, consideration

should be given to HE representation on the board being a majority, rather than ‘in balance’ with other parties (see Article 60, par. 3). A transparent system of ‘public board’ appointments will need to be developed to establish a wider approach than simply appointment of members and a Chairman by the Minister and Council of Ministers following Ministerial recommendation. This could include the new board itself electing its own chairman and appointing new members, once an initial board has been established. It could also include consideration of any potential use of a form of the ‘Selection Commission’ approach currently used for the selection of experts for membership of the Council of Higher Education and Science (see Article 66, par. 2 of the 2007 Law). Reference to the current Council of Higher Education and Science also re-emphasises the need for clarifications on the role of the Council of Higher Education and Science in relation to any new HE quality review system, as previously requested in Recommendations 6.1 of the experts’ June Technical Paper. This may even include consideration of whether or not the Council of Higher Education and Science could be merged with the new HE quality review agency. However, as with moving from the current Accreditation Council to a new independent board for the HE quality agency, any future position on the Council of Higher Education and Science in relation to HE quality review will have to address the current level of direct Ministry and Council of Ministers’ involvement in the Council.

Consideration of all these specific points emphasises the underlying issue in clarifying details on the new HE quality agency, such as its composition and system of governance. The detailed establishment and operation of the agency’s system of governance, particularly its board, must ensure that the agency functions as genuinely independent of the central Albanian Government.

As previously mentioned, the experts would urge that, as far as possible, such details on the nature of the new HE quality agency (and on its relationship with the MoES and Council of Ministers, its relationship with other law enforcement agencies, and relevant appeals/complaints procedures) are established in the amended Higher Education Law itself, and developed in subsequent documentation of the new agency, with minimal use of additional ‘sub-legal acts’.

Recommendation 10: It is essential that the proposed new national HE quality review system is based on sufficiently clear and full details on:

- (a) **the nature of the new HE quality agency itself; in particular, details which confirm that the composition and system of governance of the new agency ensure that the agency functions as genuinely independent of the central Albanian Government, especially with an independent board whose membership and method of appointment reflect European best practice for corporate governance of such independent agencies, and which do not involve the direct and extensive role of central government to be found with current Albanian bodies such as the HE Accreditation Council and the Council of Higher Education and Science**
- (b) **the protocols and procedures on the relationship between the new HE quality agency and the MoES and the Council of Ministers over the suspension and removal of private HEI licences**

- (c) **the protocols and procedures on the relationship between the new HE quality agency and other law enforcement agencies on issues of illegality by HEIs relating to general dishonesty**
- (d) **the protocols and procedures on appeals/complaints against decisions taken within the HE quality review system by the new HE quality agency, the MoES and the Council of Ministers respectively**

However, as far as possible, core details within these areas should be established in the amended Higher Education Law itself, and additional details developed in subsequent documentation of the new HE quality agency. Therefore, there should be minimal use of additional 'sub-legal acts', if these are required at all.

7 CONCLUDING REMARKS

As mentioned in the Introduction, this is the second of three Technical Papers which the experts are providing between June and September 2012 on review of Albanian HEIs for quality assurance and enhancement. In the first Technical Paper - 'Assessment of Provisional System of Inspections of Higher Education Institutions and Recommendations for the Future Inspection System' (PACA June 2012) - the experts generally recommended that HE quality review for enhancement and assurance should be taken forward by a new independent national agency specifically responsible for HE quality. Within that paper the experts included a section making recommendations for amendments to the Law on Higher Education, intended to help achieve the HE quality review system they propose.

Since the first Technical Paper, the experts have received the draft amendments proposed to the Higher Education Law relating to the inspection of HEIs. The current paper has assessed these draft amendments in detail, and has produced a series of recommendations on these proposed amendments specifically, and some other aspects of an amended Law more generally. These recommendations are designed to ensure that an amended Higher Education Law achieves the type of national HE quality review system proposed by the experts. In the current paper, the experts have also specified key areas where detail must be elaborated sufficiently if their proposed HE quality review system is to be established and function well. However, they have recommended that, as far as possible, this detail should be established in the amended Higher Education Law itself, and additional details developed in subsequent documentation of the new HE quality agency, with minimal use of additional 'sub-legal acts'.

The underlying aim of this second paper has been to sustain the general argument that Albania should develop HE quality review for enhancement and assurance through a new independent national agency specifically for this purpose. The third Technical Paper will develop the details of this new approach further by considering the content of Manuals for HEI quality reviews to be undertaken within the new system.

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APPENDIX 1 - THE RECOMMENDATIONS ON THE HIGHER EDUCATION LAW FROM THE JUNE TECHNICAL PAPER

Recommendation 6.1: Within Chapter IX of the 2007 Higher Education Law (Quality Assurance In Higher Education – Accreditation), Article 60 should be amended to reflect the future establishment of the newly strengthened and independent national agency for HE quality enhancement and assurance as recommended in this Technical Paper. Any amendments should clarify how this new agency will build upon and incorporate the existing PAAHE and Accreditation Council, and demonstrate the independence from central government required by European best practice. Similarly, Article 61, par. 2 (and consequently also Article 65, par. 2d) should be amended to clarify the relationship, if any, between a fully independent national HE quality agency and the Council of Higher Education and Science. In particular, Article 61, par. 2 should be amended to indicate that the new HE quality agency will have full responsibility for proposing national standards of quality in HE. More specifically, within Chapter IX, Article 62, par. 4 should be amended to confirm the recommendation elsewhere in this Technical Paper that institutional HE quality review takes place every 4 years, or additionally if there is specific cause for concern. Article 59, par. 2 should be amended to reflect the finally agreed title of the new HE quality agency. Article 61, par. 1 should be amended to indicate that the main external review for quality enhancement will be at institutional level.

Recommendation 6.2: Chapter II of the Law states the criteria to be met by HEIs in terms of the cycles of education offered, and the minimum number of faculties, departments and full-time academic staff an HEI should have (for example, Article 5, par. 4; Article 6, par. 1, 2; Article 9, par.2; Article 12, par.3). The Law should be amended by the inclusion of a general statement, either in Chapter II or Chapter IX, to indicate that such criteria will be part of the standards to be considered by the new HE quality agency in reviewing HEIs, either at regular reviews or additional ‘cause for concern’ reviews (as will be discussed in more detail elsewhere in this Technical Paper).

Recommendation 6.3: Similarly, Chapter IV of the Law details the features of the three successive cycles of HE (Article 26), the elements of associated academic programmes (Article 27), the requirement for a detailed academic transcript (Article 31.3), and admissions criteria for the three cycles of HE (Articles 33, 34). Again, the Law should be amended by the inclusion of some general statement, either in Chapter IV or Chapter IX, to indicate that such features will be part of the standards to be considered by the new quality agency in reviewing HEIs, either at regular reviews or additional ‘cause for concern’ reviews (as will be discussed in more detail elsewhere in this Technical Paper).

Recommendation 6.4: In Chapter V of the Law, dealing with the opening, change and closure of public HEIs, references to the ‘Council of the National Accreditation Agency/Council of Accreditation for Higher Education’ in Article 41, par. 6, and Article 42, par. 3, should be amended to reflect how the new national HE quality agency will be described in this context.

Recommendation 6.5: In Chapter VI of the Law, dealing specifically with Private HE, references to the 'Council of Accreditation of Higher Education/Accreditation Council of Higher Education' in Article 44, par. 4, and Article 44/1, par. 3, should also be amended to reflect how the new national HE quality agency will be described in this context. **Article 45, par. 3 should be amended to clarify that the details listed will be provided to the national HE quality agency during the agency's annual engagement with each HEI, as recommended elsewhere in this Technical Paper (even if also submitted to the MoES). Article 45, par. 4 should be amended to indicate the role of the new national HE quality agency in recommending the suspension or removal of licence to MoES, after review of a private HEI proposes this.**

Recommendation 6.6: **In Chapter X of the Law, dealing with the relationship of the state with HEIs, Article 64 par. 1 should be amended to provide that the new national HE quality agency will undertake a full review of each HEI every 4 years, and have an annual engagement with each HEI, as detailed elsewhere in this Technical Paper.**

Recommendation 6.7: In Chapter XI of the Law, dealing with 'Intermediate Structures' in HE, Article 67 should be amended to clarify the relationship, if any, between the 'Academic Qualification Commission' and a new, fully independent national HE quality agency. Indeed, Article 67 should be deleted if the Albanian Government considers that this strengthened new agency removes the need for the Academic Qualification Commission.

Recommendation 6.8: In Chapter XIV of the Law, dealing with 'Provisional and Final Provisions', Article 90 should be amended to state explicitly that the new national HE quality agency will seek full membership of ENQA as soon as possible (probably after two years of operating in its new form). At the time of writing, the experts understand that the PAAHE only has affiliate status with ENQA.

Recommendation 6.9: Chapter VIII of the Law deals with students. The experts are not completely clear if this Chapter refers specifically to students in public HEIs, or can apply also to private HEIs. While not necessarily suggesting particular amendments, the experts recommend that Chapter VIII should be reviewed. If the Albanian Government wishes this Chapter to apply to both public and private HEIs, then it should be amended accordingly, and a statement included that the chapter can be used as a point of reference to illustrate relevant aspects of the standards used in HE quality review when considering the student experience, for example as detailed subsequently in Recommendation 9.4.

Recommendation 6.10: Chapter VII of the Law deals with HEI staff. Again, the experts are not completely clear if this Chapter refers specifically to staff in public HEIs, or can apply also to private HEIs. Again, while not necessarily suggesting particular amendments, the experts recommend that Chapter VII should be reviewed. If the Albanian Government wishes this Chapter to apply to both public and private HEIs, then it should be amended accordingly, and a statement included that the chapter can be used as a point of reference to illustrate the type of information on staff to be provided by HEIs within the national HE quality system, for example in annual reporting to the national HE quality agency (see Recommendation 7.3) or in public

information which will be evaluated during HE quality enhancement and assurance reviews (see Recommendation 9.5a).

Recommendation 6.11: Chapter III of the Law deals with the 'Management and Administration' of HEIs. The experts judge that this Chapter refers essentially to public HEIs. The experts have no immediate actions to propose on this Chapter because they see the HE quality review under discussion in this Technical Paper as relating to quality and standards of student learning, assessment and awards, and not issues of HEI governance as such. However, as a medium-term action, the experts recommend that the Albanian Government maintains an on-going review of governance issues, applicable to both public and private HEIs, with a view to judging whether or not such issues should be included more explicitly in HE quality enhancement and assurance at some time in the future.'