February 2024 BFUG meeting

Revised concept note: Long-term EHEA Secretariat

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1. Introduction

1.1 State of play

When the BFUG set up the Task Force on updating the Rules of Procedures of the BFUG at the Brno BFUG meeting (November 2022), the group was also tasked to reconsider organisational structures of the Bologna Process and to develop a proposal with one or more options on how a long-term Secretariat could be implemented.

The Task Force concluded that a more long-term arrangement would better support the governing structures of the Bologna Process and thus lead to a more efficient functioning of the EHEA. The issue was discussed at the BFUG meeting in Madrid.

The Task Force explored different options and scenarios. It discarded at an early stage the option of contracting a service provider, and also the establishment of an international organisation as not suitable given the purpose. The provision of a Secretariat by the Council of Europe or EQAR was considered, but neither would be available in the envisaged timeframe. The one remaining option is then the establishment of a private-law entity.

The Tasks Force has also considered the proposal by Belgium French Community to base the Secretariat on "a permanent staff, dealing with logistics & memory of EHEA" in combination with secondments by EHEA members. The Task Force sees this more as a variation of the proposal of the long-term Secretariat, than an alternative. The difference is in essence to what extent the Secretariat's work capacity can or should rely on seconded staff. This has been considered in this note.

Compared to its previous versions, the present Concept note puts an emphasis on:

- 1) How, rather than whether: During the discussions at the May 2023 (Stockholm) and November 2023 (Madrid) BFUG meetings, the majority of the delegations that spoke supported in principle the proposal to set up a long-term Secretariat. On this basis, the TF focuses on the feasibility, development of the model, and the implementation planning, and no longer on the question of whether or not to establish a long-term Secretariat.
- 2) Establishment of a new legal entity under private law: As the Council of Europe requested to "exclude sections pertaining to the Council of Europe's proposal" (letter to the BFUG, 1 Dec 2023) and EQAR came to the conclusion that it could not integrate or provide the Secretariat (Letter to the TF of 22 Dec 2023), this document focusses on the establishment of a legal entity, either as a private non-profit association, or this would be a variation as a foundation.
- 3) Further exploration of issues related to governance, membership, and funding had been requested by several delegations, and taken up in the present note. The TF could not identify any unsurmountable challenge for establishing the Secretariat. That said, a further exploration of detail will only be possible once it has been decided in which legal context the Secretariat will be established, and BFUG members have explored what could be their concrete challenges in engaging with the chosen model. These issues are to be explored after Tirana.
- 4) **Steps up to Tirana and beyond:** Even if the Secretariat would only start in 2027, this requires some steps and decision over the next weeks and at the Tirana Conference. The TF has therefore suggested what the Ministers could adapt in Tirana, including a roadmap for the Secretariat's implementation.

Therefore, the TF invites the BFUG to consider the revised note, in particular from Section 5 onward,

1.2 Background and Rationale

So far, the country hosting the next Ministerial Conference has provided the BFUG Secretariat (or Bologna Secretariat, both terms have been used interchangeably in the past; referred to as Secretariat throughout this document), for a term of 2-3 years, with staff either seconded from ministry, other organisations, or newly recruited.

Since the run-up to the 2010 Ministerial Conference, marking the launch of the EHEA and the transition from a "process" to an "area", the idea of a more enduring arrangement for the Secretariat emerged. This may benefit all countries of the Bologna Process by ensuring better and more continuous technical support, and by providing a stable contact point for stakeholders. It means also that the task of running the Secretariat would be separated from hosting the Ministerial conference, which would stay on a rotating basis.

The Secretariat would be set up as a separate entity, providing sustainable and stable administrative support for the BFUG. The arrangement would be in place without specific time limit, until the Ministerial Conference decides otherwise. Discussions on the modalities have been held from time to time (see <u>Bergan and Geanta 2020</u>), with different options explored, but this never resulted in a concrete and specific proposal for an alternative.

2. Tasks and Responsibilities

The EHEA Secretariat has a mainly administrative and technical support function. The strategic and political guidance is with the BFUG. The Terms of Reference of the Secretariat¹ outlines, among others its contribution to the following main tasks:

Management of the EHEA work plan

- supporting the BFUG Co-chairs drafting the work plan,
- supporting its implementation throughout the period, in coordination with the responsible groups;

Administrative and operational support for the BFUG, its Board and all BFUG sub-structures

- assisting in planning the meetings,
- drafting background documents and reports,
- drafting minutes,
- ensuring communication between different bodies;

Consistent communication within and outside EHEA structures

- managing and keeping updating the EHEA website at all times,
- sharing information with members and stakeholders,
- serving as contact point for outside parties interested in the Bologna Process and the EHEA,
- representation of EHEA at external events/meetings within the mandate agreed by the BFUG co-chairs,
- maintaining contact with other structures and initiatives in Europe and beyond (e.g. European Research Area, ASEM);

Support the organisation of the EHEA Ministerial Conferences and Policy Forums

ensuring coordination with the BFUG in close collaboration with the host country

Management of the EHEA finances (especially should the structural changes including the changed status of the secretariat be adopted)

preparing an annual budget,

¹ See https://ehea.info/page-bfug-secretariat

- managing accounting,
- providing annual accounts.

3. Advantages and disadvantages of rotating and long-term Secretariat

Providing the Secretariat of the country holding the Ministerial conference has certain advantages, while also posing significant challenges:

Advantages of a rotating secretariat

emphasises the fact that the EHEA is based on the proactive engagement of its members, even beyond holding the rotating Ministerial conferences; contributes to a sense of broad shared ownership and responsibility;

helps to ensure that the hosting country is responsibly involved for the entire period, and therefore well-prepared to host and organise the Ministerial Conference.

Challenges of a rotating secretariat

host countries have different understandings and approaches to the Secretariat; the Secretariat's neutrality and independence of the hosting country can be challenging to ensure;

usually entirely new Secretariat team, sometimes with little prior experience in the EHEA, needs time to take over from the previous host country and to fully take up its tasks, leading to a period of large and recurrent instability during each handover period;

lack of continuity leads to frequent technical issues, especially in relation to the transfer and further development of the website, the establishment and maintenance of an archive, enhanced vulnerability to cyberattacks with changing hosting and security, etc.;

hosting the Ministerial Conference always comes with the responsibility to provide the Secretariat for a three-year term, which requires significant financial, organisational and human resources investment borne by one single country; despite other EHEA countries occasionally seconding staff, all team members usually come from one single country, which does not reflect the European nature of the Bologna Process.

In order to overcome some of these challenges, the Task Force explored opportunities of a more continued arrangement:

Advantages of a long-term Secretariat

ensure business continuity for all EHEA countries and provide a more continuous, stable and reliable support structure for the EHEA, not relying on countries volunteering;

staffed with an international team of professionals, with a potential for long-term contracts allowing a rolling staff turn-over instead of changing the entire team at once;

enable sustainable staff development and capacity building, so that the Secretariat can gain and maintain a solid knowledge base and expertise in serving the EHEA and its bodies;

provide a stable contact point for stakeholders from within and outside the EHEA; ensure co-ownership of the Secretariat by all EHEA countries;

reduce the financial and logistical burden on the host country of the Ministerial Conference, and allow to focus on content-related issues, thus making hosting more attractive.

Challenges of a long-term Secretariat

necessity to ensure the neutrality and the accountability of the Secretariat, acting under the authority of the BFUG and in line with the guidance documents adopted by the Ministerial conference and the BFUG;

making the staff positions sufficiently attractive to get a suitably qualified international team, and making the team, as much as possible, geographically representative of the EHEA;

financial contributions might be needed from all EHEA countries, thus also including those that would otherwise never host a Ministerial Conference.

4. Principles of a long-term Secretariat

The Task Force suggests a number of general requirements that should be met by any possible arrangement and further suggests that the BFUG uses these requirements to assess the different concrete options for legal forms and structures set out below.

N.B.: As far as these principles concern any Secretariat, regardless of how it is organised, they have also been included into the revised Rules of Procedure (Section VII).

4.1 Independence and Accountability

The Secretariat should be independent of the country or organisation (with)in which it is located. It should operate under the authority of the BFUG and be fully accountable to the BFUG.

The Secretariat should therefore be established as a separate, dedicated entity in order to ensure its independence and minimise the risk of undue influence. The governing structure should be designed in such a way to ensure that the Secretariat is fully accountable to the BFUG itself, both formally and politically.

The BFUG (or a group appointed by the BFUG) should approve the appointment of the Head of the Secretariat, and the Head of Secretariat should report to the BFUG.

4.2 Sustainability

The chosen arrangements, especially the funding model, must be sustainable, and there needs to be a clear perspective on how they can function for a longer term, even if there may be no formal guarantees for certain funding sources to be available beyond a certain time.

Ideally, the arrangement should be enduring and sustainable in the sense that it would continue to function, unless the EHEA bodies decide to discontinue it. At the very least, the chosen model should be secured for two full periods of the EHEA work program; that is, if the Secretariat is established in 2027, it must therefore function at least until the 2033 ministerial conference.

4.3 Staff Requirements

The Secretariat staff must have sufficient capacity, in numbers as well as in profile and competence. The Secretariat must be able to recruit, contract and dismiss international staff with the required profile.

The employment rules of the country where the Secretariat is based should allow the employment of staff on open-ended contracts, at a minimum, for a fixed-term contract spanning at least two work periods.

The Secretariat staff should be international, including nationals of different EHEA countries and aiming for geographic balance. In principle, it must be possible to hire staff from at least any EHEA country, notwithstanding the fact that specific visa/work permit requirements may differ depending on country of origin.

In addition to its own staff, the Secretariat should be able to accept a limited number of secondments from EHEA countries or consultative members. Secondments should follow a set of clear rules approved by the BFUG, ensuring a reasonable geographic balance as well as securing the independence of the Secretariat from seconding organisations.

In particular, it would be expected that the host country of the following ministerial conference seconds a liaison officer for the full duration of the work program that will end with the ministerial conference. This seconded liaison officer will work under the authority of the Head of the Secretariat. The Secretariat will need to cooperate closely with the authorities of the host countries for the organisation of the ministerial conferences.

4.4 Location

The Secretariat has to be in a location that allows the various requirements to be fulfilled. In particular, the rule of law must be ensured so that the Secretariat can operate without influence of the authorities of the country in which it is located.

As the Secretariat is likely to receive funding from different other EHEA countries, the country of location should not have regulations in place that would prevent that.

Furthermore, the location should be reasonably accessible from across the EHEA.

4.5 Non-Profit Principle

Any surpluses remaining from the income allocated to the Secretariat exceeding the costs of it must remain reserved for the Secretariat. While it is useful for the Secretariat to have a reasonable reserve, this should not exceed the usual annual operating costs. If the reserves were to approach that level, the fees for EHEA countries should be reduced.

5. Required Resources

In line with the Secretariat's tasks, responsibilities and principles as described above, the TF estimated the necessary staff and budget.

5.1 Staff

Based on the experiences of the previous Secretariats, the estimated staffing needs are the following:

- Head of Secretariat team leader and overall coordinator, supports BFUG and additional key
 WGs, accountable to the BFUG for the Secretariat's operation. It is an important managerial
 role that needs to be filled by a highly skilled professional with strong expertise in European
 cooperation, understanding of higher education policy and experience in managing a small,
 dynamic team;
- Policy Officers support BFUG/WGs both in terms of policy and logistics. In most cases, one
 officer supports two/three working structures, therefore 4 or 5 officers are usually required;
- Communications Officer responsible for overseeing both internal and external communication;
- Administrative Officer managing administrative tasks in the country hosting the Secretariat;
- Staff dedicated to supporting the organisation of the Ministerial Conferences.

This leads to **approximately 8 FTE** staff needed for a Secretariat, including a staff member seconded from the following Ministerial Conference host country.

The position of the Head of Secretariat should be recruited through an open competition. The BFUG should approve the appointment based on a proposal by the BFUG Board. The Head of Secretariat should report to the BFUG.

It should be clear that the Head of Secretariat is a professional, not a political, role. Hence, (s)he should be appointed for an open-end contract or for a long term (e.g. two work periods, renewable).

Further staff of the Secretariat should be recruited by the Head of Secretariat (within the agreed budget) and report to them. The host country of the next Ministerial Conference should second one staff member to the Secretariat to facilitate liaison with the local organising team. In addition, the Secretariat host country might second one staff member to the Secretariat. Seconding staff should in principle be a possibility open to all BFUG members and consultative members.

A variation has been proposed by Belgium French Community², to establish "a permanent staff, dealing with logistics & memory of EHEA", who would be supported by "a rotative staff: composed of EHEA members, (being chosen on voluntary basis – to be decided – or follow the future incoming co-chairs), as this would help to secure the "appropriation" of the Secretariat by the EHEA by member states.

The Task Force did not perceive this proposal as an alternative to a long-term Secretariat. It implicitly requires about the same decisions and measures: recruitment and contracting of albeit only one staff, rental of premises, and a budget etc., which in turn makes the establishment of a legal entity necessary. As secondment is included as an option for the long-term Secretariat, the difference between the two proposals is, in essence, about the ratio of, and reliance on contracted staff and seconded staff.

The Task Force's main concern about the proposed high number of seconded staff is that this might entail the same challenges as experienced with the rotating secretariat, namely that staff (all but one) are frequently changing. In addition, the overall staff capacity would likely vary. The one contracted staff member would face a high workload and a difficult management situation.

Therefore, the Task Force advises a ratio of not less than two-thirds contracted staff to one third seconded staff, and only provided that continuity can be secured through commitment to a reliable and binding schedule for secondment. Staff should be seconded for at least 1 year, but preferably for the full duration of the work programme, for example to support a certain number of working structures over the entire working period, or for specific tasks. All this would be feasible under the above proposed scheme, but may need further consideration also regarding the management and cost implications.

5.2 Budget

Based on previous experiences, the total cost of running the Secretariat varied greatly depending on the country, especially due to different levels of staffing and local salaries. As the intention is to employ staff from different EHEA countries, salaries and employment condition must be sufficiently attractive, regardless of the location of the Secretariat. Moreover, there has been no explicit reporting of the actual costs covered by host countries, e.g. in-kind contributions such as office space or staff covered by national budgets.

The following is an estimate of the annual costs based on different past examples and the staff needs described above. As described, costs might vary, possibly up to +/-20%, thus the below calculation should be seen as a rough estimate.

Item Estimated cost (EUR)

Staff salaries (ca. 8 FTE)	675 000
Travel/meeting costs (BFUG and EHEA structures, occasional external representation)	65 000
Office space	75 000
Other administrative costs	50 000
Total	865 000

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² The Belgian French Community is itself in favour of retaining the present approach of a rotating Secretariat, but would see its proposal as an acceptable alternative.

5.3 Financial Contributions by EHEA Members

In order to share the costs of the Secretariat fairly and to ensure sustainable funding, the TF recommends that the Secretariat be financed by annual contributions by EHEA countries, differentiated based on GDP and GDP per capita, similar to the system currently used by EQAR.

Moreover, it is expected that the European Union continues to make available funding of ca. EUR 250 000 per year dedicated to the EHEA Secretariat through the Erasmus+ programme.

The exact amount of the contributions should be agreed by the BFUG once the location of the Secretariat has been decided upon. As an example, the TF calculated indicative annual contributions adding up to the estimated costs as above (excluding the EU grant):

Indicative annual contributions per country (EUR)

Example based on the current EQAR fee system: countries are assigned to one of four brackets based on an index calculated from their GDP (absolute) and GDP per capita. See https://www.eqar.eu/assets/uploads/2022/04/GA 06 1 Membership Fees v1 0.pdf for details and for the allocation of countries to the four brackets.

Lowest bracket			Highest bracket
7 500	15 000	22 500	30 000

6. Legal Form and Structure: Private-law legal entity

Based on the above requirements, the TF explored several models for legal forms and structures for a Secretariat, in consideration of the above requirements, and of the prior work on the topic (see Bergan & Geanta (2020)), which were described in detail in the Concept note for the Madid BFUG.

Establishing a **private-law legal entity as a non-profit association** appeared as a feasible and appropriate form for the Secretariat, confirmed also by the good experience made with the setup of EQAR. An alternative could be a **private-law legal entity as a foundation**.

The following provides examples how a new legal entity could be established and function. At this stage, this has to remain rather generic, as this would also depend on the rules of the EHEA member country where the Secretariat will be physically based³,

6.1 Non-Profit Association

Purpose and membership

An association is conceptually based on members (= EHEA members) that associate around a common cause or activity (= supporting the EHEA, through a long-term Secretariat), which is not of a commercial nature (self-evident).

³ The EU legal forms, such as European Economic Interest Grouping (EEIG) or *Societas Europaea* (SE), were not found suitable when EQAR was established. Theoretically, the legal entity could be established in country A while the physical location would be in country B. As this would usually create unnecessary additional complications, this option was not considered further.

The membership and governing structure of the association could be based on and linked to the existing EHEA concepts and bodies to the greatest possible extent:

- The EHEA members would be members of the association, forming its general assembly (GA) with identical voting rights as in the BFUG. Ideally, the country's representative in the GA and the BFUG should be identical, for practical reasons and to ensure the BFUG's ultimate authority.
- The regulations should be flexible and allow countries to have either the ministry responsible for higher education itself or another organisation designated by it, e.g. a national public agency, act as member of the association. This should, however, not change the participation of the BFUG, where countries are represented by the public authority responsible for higher education or representatives designated by this public authority and acting on its behalf.
- Consultative members of the EHEA would be consultative members of the association likewise. They would automatically be considered as such and be invited to participate in the GA - without voting rights - based on their status in the BFUG. They would not be expected to become members or to contribute financially.

Funding

Members would be expected to pay annual membership fees, which would cover the Secretariat costs. Given its financial contribution through a grant, the European Commission would be considered a member automatically, without paying a separate and additional annual fee.

Governance

The BFUG Board, or a Secretariat Governing Board established for this purpose, would serve as the association's board of directors. In most jurisdictions, the board of directors is in charge of the ongoing management of the association within the decisions of the GA. The board would usually delegate a number of everyday tasks to the managing director.

The **Head of the Secretariat** should serve as managing director.

Establishment

A non-profit association is relatively easy to establish in most EHEA jurisdictions, even though the details and regulatory framework differ slightly between jurisdictions. A small group of countries, could act as founding members. In the case of EQAR, for example, the E4 Group were mandated by ministers to act as founding members.

6.2 Foundation

Purpose, but no members

In practice, foundations are another legal form frequently chosen for non-profit organisations with a specific and fixed purpose. For example, some small EQAR-registered agencies are established as foundations. While a foundation also has a defined cause or activity, it does not have members.

Governance

The foundation is governed by a board, usually appointing new board members itself. But its statutes could stipulate that the board of the foundation needs to appoint the BFUG-nominated members. The statutes could regulate that certain decisions, such as the selection of the Head of Secretariat, need to be taken by the board based on and following a decision of the BFUG.

The **Head of the Secretariat** would serve as managing director of the foundation.

Funding

The ROP EHEA set the rules and conditions for its members to pay an annual contribution into the foundation on an annual basis. The regulations should be flexible and allow countries to decide whether the ministry or another organisation designated by it, e.g. a national public agency, practically pays the financial contribution.

A foundation may be required to have a public-interest/non-commercial nature to benefit from advantageous taxation regimes, but this would presumably be simple to demonstrate in this case.

Establishment

Most EHEA jurisdictions offer the possibility to establish (charitable) foundations. Even though foundations are often created with a substantial foundation capital, several countries have no minimum requirements.

As for the association, a small group of countries, represented by their BFUG representatives, could serve as the initial board members. The foundation statutes could be designed in such a way to ensure compliance with the principles set out above.

7. Location

The new legal entity should be set up in an EHEA country. There are two ways in which a location could be chosen:

- 1. The BFUG could make a decision on a desired location without specific involvement of the country in question. This would underline the Secretariat's complete independence of the location country and exclude any interference in its operations.
- 2. The BFUG could issue a "call for hosts" for countries to express interest in having the Secretariat located in their territory, or for organisations to propose setting up the Secretariat in a specific country. While this raises potential questions about the host country's influence on the Secretariat's operation, this could have economic as well as symbolic benefits.

In either case, the location would have to fulfil the requirements set out under 4.5 above.

The TF recommends that the BFUG agree on a call for hosts that could be launched immediately after the Tirana Ministerial Conference, provided that Ministers agree to establish a Secretariat in line with the proposal. Expressions of interest should:

- specify the location proposed;
- explain the motivation for proposing this location;
- briefly elaborate for each principle (in section 4) how it can be assured for a Secretariat in that location;
- propose a legal form under which to establish the Secretariat;
- include a budget estimate (based on the required resources described in section 5) that would be realistic for a Secretariat established in this location.

The following criteria could be used to rank possible locations or host country offers, respectively:

- suitability and flexibility of the country's legal framework and the proposed legal form;
- openness and flexibility of employment regulations in terms of hiring nationals from other EHEA countries as well as receiving secondments.
- accessibility of the proposed location from across the EHEA;
- ability to meet the principles described in section 4;
- cost (budget required for usual salaries, premises, other costs and taxes).

• potential commitment of the country (if any, with a clear indication that this should not impact the neutrality and independence of the Secretariat, the approach should be generally open for in-kind contributions, e.g. provision of an office space).

Once the location has been agreed, the legal form and its governing structure could be developed in full detail.

8. Roadmap and Next Steps

With regard to the Secretariat, the TF recommends for the Tirana Communiqué that Ministers:

- 1. Decide to modify the arrangements for the EHEA Secretariat so that the Secretariat will be established from 1 July 2027 on for a longer-term basis, and will no longer need to be provided by the hosting party of the next Ministerial Meeting;
- 2. Agree that the financial support for, and the governance of the Secretariat shall be shared among the members of the EHEA;
- 3. Mandate the BFUG to ensure that the new secretariat arrangements, including its financial aspects, be effective as of 1 July 2027, in agreement with Appendix X;
- 4. Decide that these arrangements shall be assessed after the completion of the first two full periods of operation.

The Appendix should include the principles (section 4) and the following roadmap.

In order to set up the EHEA Secretariat such that it would take up its function in 2027, the TF proposes the following roadmap, which provides sufficient time for working out the details and the proper set-up, including the financial arrangements that will require different approaches for EHEA members, in line with their national provisions. The implementation might benefit from establishing a dedicated BFUG Task Force for the period 2024 - 2027, which would support the BFUG, be a partner to the potential countries/organisations applying for hosting the secretariat and would report to the BFUG on progress.

Planed work until the Tirana Ministerial Conference

February 2024	BFUG	 consider the current, revised concept note discuss and agree on the roadmap
March 2024	TF	 revise the concept note if necessary prepare the draft call for hosts prepare the appendix to the Tirana Communiqué
April 2024	BFUG	 consider and agree on the text for the Tirana Communiqué agree on the call for hosts (provisionally) decide how to continue work after Tirana (i.e. either establish a new structure, or prolong ad interim the present TF until the next BFUG establishes the new structure)
May 2024	Ministerial Conference	 agree to change the approach for the EHEA Secretariat approve the principles and roadmap mandate the BFUG to decide on the location and on the details for establishment of the Secretariat from 1 July 2027

2024/2025: call for hosts and selection of a location

June 2024	BFUG	 extraordinary BFUG (online) meeting if needed to finalise call launch the call for hosts (Secretariat in consultation with co-chairs)

October/ November 2024	BFUG	 update to the BFUG on expressions of interest
December 2024		deadline for expressions of interest
Jan/Feb 2025	TF	 evaluate expressions of interest prepare proposed shortlist for the BFUG
spring 2025	BFUG	 review expressions of interest shortlist no more than 3 locations formulate additional questions for the shortlisted bids
afterwards	TF	 address the BFUG's questions with the shortlisted countries review additional information prepare proposal for final selection

Second semester 2025 and onwards: implementation

autumn 2025	BFUG	• final decision on the location
throughout	BFUG TF Host	establish the new legal entity
spring 2026	BFUG	 update on progress, decision on financial contributions, payable as from 2027 launch recruitment for the Head of Secretariat
autumn 2026	BFUG	 final approval of the detailed arrangements, in particular the statutes of the new legal entity recruit Head of Secretariat
spring 2027	BFUG	• (backup)
first half of 2027	Head of Secretariat	 recruit additional staff training secretariat staff
May/June 2027	Ministerial Meeting	official launch of the secretariat
1 July 2027	Secretariat	operational and ready to take over from the 2024-2027 rotating Secretariat