

Explanatory note: Revision of the draft Rules of Procedure after the Madrid BFUG

BFUG Brussels, February 2024

The Task Force (TF) would like to thank the BFUG members for the suggestions on the draft of the Rules of Procedures (ROP) provided, at and after the Madrid BFUG. There were written comments by 15 parties, i.e. Austria, Belgium Wallonia, Council of Europe, Czech Republic, France, Germany, ENQA, ESU, Estonia, Holy See, Netherlands, Romania, Sweden, Switzerland, Türkiye).

The TF has provided a revised version of the ROP. This explanatory note is intended to inform about and explain the main changes that have been made in the revision (see section 1 & 3)

It also invites the BFUG to take a decision on issues on which conflicting views seem to prevail (section 2)

1. General considerations

The TF has reflected on general and concrete proposals for changes in the ROP, and incorporated them as much as possible. Thereby consideration has been given to whether the changes proposed would help to make the text clearer, but also how they would align with other parts of the text. The TF had also to weigh contradicting suggestions (the amount of detail provided, preferences for wording etc). Naturally, proposals to reuse wording from the current Rules needed to be assessed in the same way, as the decision to revise them had its root in issues of incoherence and inadequate wording.

Some suggestions have not been taken up, as they would have implied adding a considerable amount of detail and enumeration. If that is done in one place, it would have to be done also in other places. This can be problematic also, as more enumeration leads to implicit exclusion. The TF is of the opinion that the RoP should be kept concise and as much as possible generic, also to ensure their validity beyond the current situation.

While on selected issues the TF has sought advice from a professional editor, the entire text would still have to undergo editing, once all, or at least all major issues regarding content, form and terminology have been agreed by the BFUG.

Feedback from a lawyer been requested, but yet to be received and included.

2. Issues for decision by the BFUG

The BFUG is invited to discuss and decide the following issues:

1. Decision making and voting

The Task Force took note of several comments concerning the principle that decisions are best taken unanimously, and voting is to be avoided as much as possible, and how this can be best ensured. In this spirit, it is important to recall that the inability to reach consensus should not automatically result in a vote; instead, the Ministerial Conference (respectively the BFUG) may decide to drop the issue. But the TF finds it important that the Ministerial Conference (respectively the BFUG) is in the position to take a decision, when they have to, and be it by vote.

Q 1. Can the BFUG endorse the following clarifications added in the revision?

- The quorum is counted on the number of possible votes (and not on the number of members).
- While a vote can take place online or by written procedure, there should be no vote in absence and no proxy vote.

Q 2. Is the BFUG in agreement on the issues which – if they were to be put to a vote - a 2/3 majority would be required, as proposed in the ROP?

- Adoption of the priorities of the European Higher Education Area.
- Adoption of communiqués, standards, guidelines, and binding policy instruments or goals.
- The admission and exclusion of members or consultative members.
- Any financial commitments on behalf of the European Higher Education Area. (Pertinent only if there is a decision to have an EHEA budget, most likely in the case of a long-term Secretariat)
- Modifications of the present Rules of the European Higher Education Area.

Q 3 Does the BFUG want to exempt certain decisions from voting? And if so, how can the risks that this may entail be excluded?.

The TF's concern is that the categorical exemption of any issue from voting would imply a risk that the Ministerial Conference or the BFUG might be unable to take decisions even, in cases where there is an overwhelming majority in favour of such

a decision. It would grant any individual member a veto to block a decision, either to prevent the actual decision, or simply to exercise power in pursuance of other goals. This challenge is known from other policy making contexts (EU, CoE, UN Security Council).

To illustrate this for the Bologna Process context, one party could veto the Communiqué, because its text refers to climate change, or gender, contains value statements, or because it wants to block the revision of the ESG, or it wants to have a particular wording or issue included that nobody else can agree on. Would there be any means to prevent this? Therefore, a vote on the adoption of a Communiqué would be indeed very unusual, but it should not be excluded in principle. N.B. a unanimous decision is, implicitly, also a vote.

The requirement for a 2/3 majority would ensure that diversity of opinion is protected and that the Communiqué cannot be adopted by a narrow majority. The sheer existence of a voting option can be expected to enhance the ability to reach consensus without voting.

The TF therefore strongly advises against any exemption from voting.

Q 4. If certain issues are to be exempted from voting, what are they?

There has been a proposal to exclude the following:

- Adoption of the priorities of the European Higher Education Area
- Adoption of communiqués, standards, guidelines and binding policy instruments and goals

2. Exclusion of members and consultative members

It has been proposed to not exclude, but only suspend members and consultative members. One could argue that continued suspension has in practice the same effect as exclusion, and is easier to lift, once the situation has improved, even if this takes many years.

However, there may be cases where exclusion is the more or only appropriate reaction. The Task Force advises therefore not to limit the Ministerial Conference in its decision making, and keep the option of an exclusion open, even if one hopes of course that this provision will be used sparingly.

It would also underline if a decision on suspension is taken or endorsed by a Ministerial Conference, only Ministers could decide to lift it. This would retain the right of the BFUG to suspend a member or consultative member from its rights of representation, for a period limited by the next Ministerial Conference (which could either endorse the suspension, lift it, or turn it into an exclusion).

Q 5. Does the BFUG agree on the need to have exclusion of members, consultative members and partners included in the ROP?

Q 6. Would it also agree that a suspension decided or endorsed by the Ministerial Conference, would need to be lifted by it?

3. Issues for information

The following lists some revision decisions that the TF has taken, based on comments and suggestions received. It also includes some proposals that the TF could not consider, but that it wants the BFUG to be aware of.

These issues are presented here for information, but of course, they can also be discussed and decided upon by the BFUG.

3. Structure – relating the ROP-EHEA with the ROP-BFUG

As the BFUG in its majority accepted and confirmed the present approach of one document with two parts, the TF has considered proposals on how to improve the complementarity between the two parts, by trying to

- limit the overlap between the two parts, as this brings with repetition, but also the risk of contradictions;
- limit the ROP-EHEA on what has to be endorsed, but also known by Ministers, and avoid the inclusion of too much details in the ROP- EHEA.
- rather enhance cross-referencing between the ROP-EHEA and ROP-BFUG, also as they are one document.

4. Changes in the RoP EHEA

Madrid	New text
<u>Rules of Procedure of the EHEA</u>	<u>Rules of Procedure for the EHEA</u>
WE, the Ministers responsible for higher education of the <u>member States</u> of the European Higher Education Area,	WE, the Ministers responsible for higher education of the States, <u>which are members</u> of the European Higher Education Area,"
Considering that over its 25 years of existence, the <u>European Higher Education Area/Bologna Process</u> have provided a successful and unique model for coordinated policy reform	Considering that over its 25 years of existence, <u>the Bologna Process and the European Higher Education Area</u> have provided a successful and unique model for coordinated policy reform
Any member or consultative member may withdraw from the European Higher Education Area upon notification in writing, duly signed by its appropriate authority, to the Co-Chairs	Any member, consultative member or partner may withdraw from the European Higher Education Area upon notification in writing duly signed by its appropriate authority, to the

<p>with a copy to the Secretariat of the European Higher Education Area. <u>If the notification is given before 1 September, any financial consequences shall take effect at the end of the financial year, if given on or after 1 September, at the end of the next financial year.</u></p>	<p>Secretariat of the European Higher Education Area, in attention to the Co-Chairs, <u>Withdrawal will be effective after one month.</u></p>
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5. Role of consultative members in decision making

While consultative members have no voting rights, they play an important role in decision making. This includes also opinion polls in the BFUG and Board; for example, they should be counted in the necessary number of parties required to call for an extraordinary meeting – which is not voting.

6. “Binding”

The ROP text uses “binding” to emphasise that while voluntary in nature, EHEA members and consultative members have agreed on certain commitments. While this is a political, and not a legal commitment, it is suggested not to replace “binding” with “politically binding”, as this would weaken the text, and potentially raise other concerns.

It is also assumed that everybody is aware that the EHEA and the participation in it is not based on a legally binding international treaty. On the other hand, while participation in the EHEA is voluntary, it is assumed that once a party has joined, it feels bound by its commitments. Otherwise this would become an “a la carte menu”, which would undermine the trust and functioning of EHEA-wide cooperation and mobility.

7. Role and competences of the Board and the Co-Chairs/ Vice-Chairs

The TF tried to further clarify the role of the Board, the co- and Vice-Chairs throughout the ROP, without adding new features (also as no suggestion on changes of their role and competences have been received)

The draft ROP describe the role of the Board as preparing the meetings of the BFUG, providing advice for the BFUG’s decision-making and also – on request of the BFUG – as taking up other specific tasks. The Board has also an important function in advising and supporting the Co-Chairs. In this regards, the TF felt also the need to ensure that in case of any emergency, it would not only be to the Co-Chairs, but to the Board under the lead of the Co-Chairs, to consult with each other and take action, with the clear understanding that the BFUG has to be informed and consulted as rapidly as possible and may revoke steps taken by the Board.

The role of the Co-Chairs is to lead the BFUG and the Board in the follow-up on the work programme, whereas the Vice-Chair supports the process throughout the working period and enables the collaboration with the authorities of the hosting country of the Ministerial Conference.

8. EHEA Secretariat or BFUG Secretariat

EHEA Secretariat and BFUG Secretariat, have been used alternatively, the latter one probably more frequently. The TF proposes to stay with EHEA Secretariat, as the Secretariat does not only support the BFUG, but also the Ministerial Conferences, the Global Policy Forum and generally serves as a contact and information point for the EHEA.

9. Governance of the Secretariat

The TF thinks that the SEC should be governed by the BFUG (in ways still to be determined). This includes the hiring and, if required, dismissal of the Head of the SEC, as this should not be an issue to be decided by Ministers.

10. Role of Co-Chairs and Secretariat in communications

The revised document clarifies the role of Co-Chairs and the SEC in communications: All communications of members, consultative members, the BFUG and its working structures should be directed to the Co-Chairs in copy of the SEC.

The SEC has to forward all major communications it receives and which would require a decision, to the Co-Chairs, the Board or the BFUG.

11. Change of the length of Co-Chairing for non-EU parties

CoE suggests: "The current system, where two Co-Chairs lead for a six-month period, presents challenges in maintaining continuity within the Bologna Process. To enhance the stability and effectiveness of the EHEA management process, it may be beneficial to revisit this approach. Considering the composition of the EHEA, with 47 participating countries, including 27 EU member States and 20 non-EU member States, there is an observable imbalance in the frequency of chair rotations. This is particularly evident as the EU Co-Chair's term is aligned with the EU Presidency, while the non-EU Chair's term is not similarly structured. In light of these observations, the Council of Europe proposes for the BFUG's consideration, an extension of the Co-Chairmanship term for the non-EU Chair to 12 months. We believe that such an adjustment would greatly contribute to a more consistent and effective progression of the Bologna Process, ensuring smoother transitions and more sustained leadership."

TF does not see how this proposal would bring greater balance or equity. (N.B. the EHEA has 49 members, as Russia and Belarus have been suspended, but not excluded).

12. Changes in the Membership requirements

CoE proposes: "Membership of the European Higher Education Area (EHEA) is presently confined to States that are party to the European Cultural Convention, which currently includes 50 member States. Excluding Russia and Belarus, the only two countries not yet part of the EHEA are San Marino, which is actively seeking membership, and Monaco. This situation indicates that the EHEA has almost reached its maximum expansion within its current geographical parameters.

In light of this, it may be worthwhile for the BFUG to consider the possibility of expanding the geographical boundaries of the EHEA. Such an expansion could form a key part of the strategic discussions regarding the future direction and evolution of the Bologna Process.

It is also noteworthy to mention that the CoE/UNESCO Lisbon Recognition Convention currently has 56 Contracting Parties. This fact might provide an additional perspective for the BFUG as it considers potential adjustments to the EHEA's membership criteria and geographical scope."

The TF would not see any compelling reason for this change, also as so far, there has been no discussion on the need to extend the membership of the EHEA. It also believes that there is no alternative to the European Cultural Convention if the EHEA is to remain European. The LRC includes Canada, Israel, Australia, New Zealand, Tajikistan, Turkmenistan and Kyrgyzstan among its parties, and the US has signed, if not ratified the Convention. If the LRC were to provide the geographical framework for the EHEA, these States - with the possible exception of the US unless it ratifies - would be eligible for membership of the EHEA. It is recalled that Israel applied for membership some time back but that the application was not considered because Israel is not a party to the Cultural Convention.

13. Development of a Code of Ethic

The BFUG would have to decide how to develop the Code of Ethics. The TF suggests to include this into the TOR of the next Task Force on the Rules of Procedure and the Secretariat.

14. Additional rules and guidelines for the BFUG and its substructures

Suggestions have been made to introduce greater detail on the organisation of BFUG and Board meetings etc. Rather than including these into the ROP, the TF suggests to develop these additional rules and guidelines with all necessary detail for the BFUG and its substructures as separate documents, to be annexed rather than to include into the ROP. It would make their use more convenient, and would keep the ROP at a reasonable length.

15. Substructures rather than working groups

The revision took up the suggestion to use "substructures" rather than "working

groups”, as a generic term to include working groups, Task Forces, ad hoc groups etc. but also the Secretariat.

16. Composition of the ad-hoc group supporting the road map for aspiring members

The current ROP stipulate: “an ad hoc BFUG group should be established, to guide the country in the entire admission process, as well as recommend its findings to the BFUG. The group should be composed by the BFUG troika of the specific BFUG work period in which the application is received, the Vice chair, as well as other members including BFUG Secretariat, CoE and two other BFUG members.”

The TF advises to keep the composition of the ad-hoc group more flexible, as this would allow the involvement of colleagues with profiles (re expertise, language skills, country or organisational background), whose expertise might be most useful to the aspiring member.

17. Association of experts

The draft revised ROP refer to members, consultative members and EHEA partners. EQAR is mentioned as an institution established in the framework of the Bologna Process.

It has been proposed to include in addition “associated experts” - in reference to the current ROP: “Further technical experts, such as Eurostat, Eurostudent or Eurydice, may be associated to the BFUG and invited to events upon specific request.”

The TF did not follow this suggestion, because it is undefined what “association” would mean, and whether it is about the organisation or individuals. If about the organisation, they could become an EHEA partner, though for Eurostat and Eurydice this might not be an option, as they are part of the EC.

Beyond, this does not seem to concern membership, but rather the ways in which the BFUG organises its work. The TF suggests therefore not to associate experts, but to make clear in the ROP that the BFUG may solicit the expertise it needs.

18. Inclusion of “Bologna Global Dialogue Partners”

It has been suggested to include as an additional status “Bologna Global Dialogue Partners”. This seems to refer to a proposal made for inclusion to the Communiqué by the CG CPDE (update presentation of CG Global at the Madrid BFUG (“We ask the CG GPD to continue and extend its work, and to organize appropriate procedures for acknowledging the countries and regions that evidence their desire to become “EHEA Global Dialogue Partners’.”)

The TF would not include this, until the status has been defined and agreed by the BFUG.

19. Drafting of the Global Policy Statement

The TF proposes that the BFUG decides who to task with the drafting of the Statement to be submitted to the Global Policy Forum for adoption, in

consideration also on how to achieve coherence with the Communiqué.

20. Chair of the drafting committee for Communiqué

The TF proposes that the BFUG appoints the chair of the drafting committee, or leaves it to drafting group to decide on the chairing agreement.

21. Frequency of Bologna Ministerial Conferences

Options could be

- At least every 3 years
- Usually every 3 years
- Leave it completely open

The TF is of the opinion that it would be important to indicate the interval of the Ministerial Conferences without being overly prescriptive, but at the same time convey the importance of maintaining a certain rhythm and avoiding delays and postponement. "At least every 3 years" would signal this, without preventing a conference to take place already after two years, but as much as possible avoiding longer periods, which would affect the political momentum of the EHEA.

22. Online BFUG meetings

There has been a proposal to have one of the two annual BFUG meetings organised virtually, also for ecological purposes.

The TF did not take up the suggestion, as it believes that the physical meetings are important. But the proposed text does not completely exclude a BFUG to take place online. The ROP as proposed read: "Regular meetings of the BFUG Board shall be held at least once under each Co-Chairmanship, in presence if at all possible.

23. Minutes of meetings

The TF proposes to set the intervals for the preparation of minutes by 10 days (within 10 days Secretariat sends draft to the Co-Chairs, who approve within 10 days etc.). (If the intervals were 2 weeks/15 days, finalizing of the meetings could last 2 months)².

24. What are days in the EHEA?

The ROP are to include an explanatory that days are calendar days, also as there is no shared understanding in the EHEA on what working days would be.

Time periods have been aligned as 6 months, 1 month, 2 weeks and 10 days.