

## **ACT 13/2012 of 28 June 2012 governing Unibasq – the Agency for the Quality of the Basque University System.**

All citizens of Euskadi (the Basque Autonomous Community) are duly informed that the Basque Parliament has passed Act 13/2012, dated 28 June 2012, governing Unibasq – the Agency for the Quality of the Basque University System.

### **EXPLANATORY PREAMBLE**

The creation of the European Higher Education Area is an essential reference point for the development of higher education in our country. A key element in this endeavour is to guarantee the quality of university activities, which is the role of the agencies for quality evaluation and accreditation that are being set up as active players in this project.

The Constitutional Law on Universities states that one of the essential aims of university policy is to promote and guarantee the quality of universities. The same Act refers to agencies for the evaluation of university activities as the bodies responsible for such evaluation.

In accordance with the competences granted by the Spanish Constitution and the Statute of Autonomy of the Basque Country with regard to education, Act 3/2004 dated 25 February 2004, governing the Basque University System (published in Official Journal No. 50, dated 12 March 2004) was duly passed in the Basque Autonomous Community. Section 79 of this Act created the Quality Evaluation and Accreditation Agency for the Basque University System, which started its activities on 4 April 2005 when its Board of Directors was first established.

At their meeting in Berlin in 2003 the European ministers of education of the signatory countries of the Bologna Declaration invited the European Network for Quality Assurance in Higher Education (ENQA), in partnership with other organisations involved in quality accreditation, to develop «an agreed set of standards, procedures and guidelines for quality assurance» and «to explore ways of ensuring an adequate peer review system for quality assurance agencies and/or accreditation agencies or bodies, and to inform ministers about such developments in the year 2005 via the Bologna Follow-Up Group».

The outcome of this invitation was the drafting of “standards and guidelines for quality assurance in the European Higher Education Area”, which were approved in 2005.

The third part of this document sets out the European standards and guidelines recommended for external quality assurance agencies, which constitute the basic orientations to be followed by any agency for its recognition within the European area.

For this, the agency must have official status, carry out institutional evaluation activities, be accountable for its work both to the Basque Government and society; it must also clearly and independently define its mission and have sufficient human and physical resources to fulfil it. It must work independently from governmental and university authorities and in accordance with objective, public and internationally comparable procedures and standards.

The ultimate aim of this process is to ensure that entities which are responsible for quality accreditation in Europe share common standards and procedures and that these are public

and transparent, in order to allow the mutual recognition of the evaluation procedures carried out by the different agencies.

The Unibasq agency must opt to become a full member of ENQA and to be registered on the European Quality Assurance Register (EQAR).

This Register provides information about those European quality assurance agencies that have been able to demonstrate sufficient credibility with respect to their compliance with the European standards and guidelines, in a procedure of external evaluation involving independent experts.

In order to bring the Quality Evaluation and Accreditation Agency for the Basque University System in line with these European standards and guidelines, it has been necessary to modify the way in which it is legally regulated and to adopt a specific law about the agency. In this way, the standard about its independence will be met, by ensuring that its evaluation activities are separated from its governance structure and by strengthening the role of the agency as an entity advising the educational authorities on quality assurance issues in higher education.

From a different viewpoint, it was also necessary to prepare this Law in order to highlight the growing importance of evaluation, accreditation and certification activities for the development of quality assurance in higher education, within the framework of the creation of the European Higher Education Area.

Some new features have been introduced into existing regulations in order to demonstrate a clear commitment to the standards and guidelines for quality assurance in the European Higher Education Area.

The Law also changes the name of the agency, in order to provide evidence of a clear commitment to the role assigned to it, which goes well beyond the accreditation and certification of teaching staff and study programmes.

A reference to the agency's accountability to society has been added, its field of activity is being expanded within the context of the creation of the European Higher Education Area and the European Research Area, and its functions are being defined more clearly.

Two articles containing the basic principles of the evaluation activity and the accountability procedures have been added, in order to raise these principles to the level of legal provisions.

The separation between the functions of governance and evaluation is meant to fulfil the principle of independence of the agency in its evaluation activities. Hence, the Governing Board, which includes representatives from universities and the Basque Government, is responsible for the strategic governance of the agency and for setting its objectives, while the Advisory Committee is responsible for planning and organising the evaluation activities and implementing the strategic decisions.

The reason for modifying the composition of the agency's bodies is to seek a greater opening-up of the Basque university system towards the outside. Likewise, student participation in the agency's bodies fulfils another recommendation of ENQA to its members. Lastly, this Act makes certain that the composition of the agency's bodies is in line with the legal provisions about gender equality.

## Article 1: Nature and legal basis

1. The Quality Evaluation and Accreditation Agency for the Basque University System is henceforth to be known as Unibasq – the Agency for the Quality of the Basque University System.
2. The agency performs its functions under the legal form of a public entity submitted to private law and attached to the Basque Government's department responsible for universities; it is a legal person of its own, with full capacity to act and full control over its own capital resources for the purpose of performing its functions in accordance with this Act.
3. The agency's by-laws shall be approved by decree by the Basque Government on the recommendation of the person in charge of the department responsible for universities. The by-laws shall regulate at least the functions of the governing bodies, the agency's operating rules, the appeal system against its decisions, its financial liability system and the accountability procedures to the Basque government and society.
4. As a general rule, the agency's external activities are submitted to the applicable provisions contained in civil, company and labour law, except for decisions concerning evaluation, accreditation or certification activities or implying the exercise of public jurisdiction, which are subject to public law.

## Article 2: Object

1. The object of the agency is the evaluation, accreditation and certification of quality in the Basque university system, taking into consideration its Spanish, European and international dimensions.
2. The agency may also carry out evaluation, accreditation and certification activities at universities and higher education institutions outside the Basque Autonomous Community within the context of the European Higher Education Area, on the basis of prior agreements signed with other agencies, universities or educational authorities outside the Basque Autonomous Community.
3. The agency shall be entitled to take part in the evaluation of other activities and agents within the Basque system of Science, Technology and Innovation, and may also perform these same functions outside the Basque Autonomous Community within the context of the European Higher Education Area, on the basis of prior agreements signed with other agencies, universities or educational authorities outside the Basque Autonomous Community.
4. The agency may establish relations involving cooperation, collaboration, the recognition of evaluation, accreditation and certification procedures and the exchange of information with other regional, national or foreign agencies that are responsible for quality evaluation, accreditation or certification in higher education.

## Article 3: Purpose and functions

1. The purpose of the functions performed by the agency is as follows:

- a) To promote and ensure quality throughout the Basque university system, taking into consideration the Spanish, European and international context.
- b) To help improve the quality of the Basque university system.
- c) To provide society with information about the result of the activities of the agency.
- d) To provide public administrations, universities and other educational or scientific-technological agents with information and guidelines for their decision-making processes in the functional areas of the agency.

2. The agency shall perform the following functions in order to achieve its purpose in accordance with the competencies entrusted to it by the legislation in force, while at the same time respecting the competencies of the Basque Government and of other evaluation agencies as well as the autonomy of universities:

- a) Evaluation and accreditation of teaching and research staff.
- b) Evaluation of study programmes at universities.
- c) Evaluation of individual research merits of academic staff for the purpose of allocating to them additional remuneration, accrediting them in accordance with the competencies attributed to the agency by law, and assessing the achievement of the research objectives set by the Basque Government .
- d) Institutional evaluation and certification.
- e) Advice on matters regarding the quality of the Basque university system.
- f) Any other matter related to the agency's purpose and area of activity that may be entrusted to it by the governmental department responsible for universities.

#### Article 4: Evaluation principles

1. The evaluation, accreditation and certification procedures of the agency must be oriented towards their permanent adaptation to social demand, the permanent need for quality at universities and the continuous improvement of higher education, within the framework of the corresponding European Area.
2. The agency must act fully independently and objectively in the performance of its evaluation, accreditation and certification activities.
3. The standards and procedures to be used, which will be established and published by the agency, must be objective and in line with those used internationally.
4. The evaluation committees must act fully independently and the result of their assessments cannot be changed by any other body of the agency.
5. The evaluation procedures, the standards to be used and the composition of the evaluation committees must be made public prior to the launching of any evaluation procedure.

6. In order to ensure the objectivity and impartiality of its activities, the agency shall establish a code of ethics and make it public.

7. The agency shall provide the means necessary to ensure that all applications are evaluated fairly, irrespective of the official language in which they are submitted.

#### Article 5: Accountability

The agency must be accountable to its internal bodies, to the Basque Government and more generally to society for the results of its work. This accountability process is assured at least by means of the following courses of action:

1. The agency must agree to a multi-annual programme contract with the department responsible for universities of the Basque Government, in which its funding linked to the fulfilment of certain objectives is established. The agency must provide information on an annual basis about the expenditure incurred and the extent of fulfilment of the aforementioned objectives.

2. The agency draws up and publishes an annual report that includes its management plan and an analysis of its compliance with this plan.

3. The agency's accounts are subjected on an annual basis to an external auditing process, the results of which are made public.

4. The results of evaluation, accreditation and certification procedures are made public within the scope of regulations governing data protection.

5. The agency must undergo every five years an external evaluation process involving the participation of international experts.

6. The agency shall approve a four-year strategic plan, to which the annual management plan and annual report of activities and results will need to make a reference.

#### Article 6: Structure

1. The Governing Board and the Director are the governing bodies of the agency.

2. The Advisory Board and the Evaluation Committees are the technical bodies of the agency.

3. A balanced presence of men and women shall be sought in the appointment of the members of the agency's technical bodies and a minimum presence of 40% of each gender must be ensured.

4. The members of the agency's bodies shall be suitably skilled and prepared to perform their functions.

5. Being a member of the governing and scientific-technical bodies of the agency is incompatible with the performance of a single-person managerial position at all institutions that may be potentially evaluated, except for the three university rectors of the Basque university system, in accordance with Article 7.

6. Members of the agency's bodies act in their own name in full independence of judgement, and not as representatives of any constituency to which they may belong.

7. Members of the agency's bodies shall lose their status in case one of the following reasons occurs:

- a) Termination of their term of office.
- b) Resignation.
- c) Permanent disability or death.
- d) Supervening incompatibility.
- e) Serious, reiterated and deliberate non-fulfilment of their functions and duties.

#### Article 7: The Governing Board

1. The members of the Governing Board are:

a) The Chairperson, who is the minister of the Basque government's department responsible for universities or the person delegated by him/her.

b) The deputy-minister of the Basque government's department responsible for universities or the person delegated by him/her.

c) The director of the agency.

d) The rectors of the universities of the Basque university system.

e) A person with recognised academic merit appointed by the rector of the University of the Basque Country.

f) Six persons appointed by the Basque University Council by a majority of three fifths of its members. For the appointment of these persons, the following must be taken into account:

– Three of these six persons must carry out their work outside the Basque Autonomous Community and at least one of the three must do so outside Spain.

– Two of these six persons must carry out their work outside the university community.

g) One student member, who must be elected by the specific body for the participation of Basque university students.

2. The persons that are members of the Governing Board must not carry out any evaluation, accreditation or certification activity for the agency.

3. The Governing Board is responsible for the governance of the agency in strategic and structural terms, in particular with regard to the following functions:

a) The drafting and approval of the proposed by-laws for the agency's, pursuant to Article 1.3 of this Act.

- b) The appointment of the agency's director, as well as his/her dismissal in case of improper management or failure to fulfil his/her duties.
  - c) At the request of the director, the appointment of a deputy director who shall be in charge of the coordination of the agency's staff and of the functions assigned to him/her by the agency's director.
  - d) The governance of the agency and the approval of its strategic and annual management plans.
  - e) The approval of the agency's preliminary budget plan.
  - f) Upon the proposal of the director, the appointment and, in due case, the dismissal of the members of the Advisory Board.
  - g) Any other function attributed to it by this Act or any function which is not explicitly assigned to another body of the agency and which is related to the strategic governance of the agency.
4. Except for the *ex officio* members, the members of the agency's Governing Board are appointed for a period of three years and may complete two consecutive terms; they cannot be discretionally dismissed.

#### Article 8: The Director

1. The director is appointed by the agency's Governing Board on the recommendation of its Chairperson, on the basis of his/her competency and experience, for a four-year period that may be renewed for a further period upon the recommendation of the Chairperson and with the agreement of the agency's Governing Board.
2. The position of the director of the agency is equivalent to a top management position at a public entity submitted to private law, which entails full managerial responsibility and requires full and exclusive dedication to the work for the agency.
3. The director is responsible for performing the following functions:
  - a) Management of the agency in all areas of activity.
  - b) Representation of the agency.
  - c) Execution of the agreements reached by the Governing Board, follow-up of the recommendations of the Advisory Board and implementation of the decisions of the Evaluation Committees.
  - d) Appointment and dismissal of the members of the Advisory Board, in accordance with the Governing Board, and appointment and dismissal of the members of the Evaluation Committees, upon the recommendation of the Advisory Board.
  - e) Any other function assigned to the director by this Act or ensuing regulations, as well as any managerial function that is not explicitly the responsibility of another body of the agency.
4. The director may not be discretionally removed from his/her position by the Chairperson of the Governing Board during his/her term of office.

## Article 9: The Advisory Board

1. The members of the Advisory Board are the director of the agency, who chairs it, and ten persons with a proven track record in academia or quality assurance who are appointed by the agency's director. The majority of members of this Board must be from outside the Basque university system, it must include at least one student, and three of its members must carry out their work outside Spain.

2. The Advisory Board is the technical body that must ensure the quality and credibility of the agency's activities, in particular by means of the following activities:

a) Advice to the Governing Board and the director of the agency in the performance of their functions.

b) Approval of the evaluation procedures and criteria to be used by the agency. These criteria must be objective, public and comparable to those used within the European Higher Education Area.

c) Submission of proposals to the director of the agency for the appointment and, in due case, the dismissal of members of the evaluation committees.

d) Safeguard of the impartiality and objectivity of the evaluation, accreditation and certification procedures.

e) Any other function assigned to it by this Act or related to the evaluation procedures but not explicitly assigned to another body of the agency.

3. The members of the Advisory Board are appointed for a maximum period of three years. Fifty per cent of them shall be renewed every two years.

## Article 10: The Evaluation Committees

1. The evaluation committees are the scientific-technical bodies through which the agency performs its evaluation, accreditation and certification functions.

2. The evaluation committees are composed of the following:

– Academics with a proven track record. Each committee shall comprise a majority of academics from universities outside the Basque university system.

– Students from the areas to be assessed, in the evaluation of programmes and activities that may have a direct impact on students; student members are appointed by the specific body for the participation of Basque university students.

– Professionals with a proven track record in the knowledge area to be evaluated, in the procedures for the evaluation of study programmes.

3. The agency defines the conditions for the participation of students and professionals in evaluation activities, in particular by determining in which programmes they may take part. The participation of students must be guaranteed at least in institutional and programme evaluation, and they shall not be allowed to take part in the evaluation and accreditation of individual teachers/researchers or administrative/service staff.



4. The members of the evaluation committees are appointed for a three-year period and may not be re-appointed in the three years following the end of their term.

5. The agency shall propose a basic training programme to the members of the evaluation committees who so wish after their appointment; such training shall be specifically designed to prepare them to perform evaluation tasks.

#### Article 11: Staff of the agency

1. The agency has full responsibility for the contracting, management and training of its staff.

2. The agency's staff comprises:

a) The agency's own staff, contracted in accordance with labour regulations on the basis of the principles of equality, merit and capacity.

b) Staff seconded from the public administration of the Basque Autonomous Community and from Spanish public universities.

3. The agency shall ensure that both official languages of the Basque Autonomous Community are used in its external relations. The right of natural persons and legal entities to be attended in Euskera (the Basque language) as well as in Spanish shall be guaranteed in their oral and written communications with the agency.

#### Article 12: Funding

1. The agency has its own budget, which it administers independently in accordance with the corresponding regulations of the Basque Autonomous Community.

2. The general budget of the Basque Autonomous Community shall allocate to the agency the resources it needs to perform its functions in accordance with a multi-annual programme contract, without prejudice to any other income it may have at its disposal, including from its own activities.

3. In carrying out its activities, under no circumstances may the agency receive money from the entities it has to evaluate, except for the fee or price for the evaluation, accreditation or other services requested by these entities.

4. The agency's economic and financial operations and the control of its accounts shall follow the applicable regulations of the Basque Autonomous Community, in accordance with the legal status of the agency as established in this Act.

#### Article 13: Capital resources

The Basque Autonomous Community shall allocate to the agency the assets and capital resources necessary for the performance of its functions.

The agency's capital resources shall form part of the capital resources of the Basque Autonomous Community and shall be submitted to the regulations applicable to them.

ADDITIONAL PROVISION

All regulatory references made to the Quality Evaluation and Accreditation Agency of the Basque University System in Act 3/2004 dated 25 February 2004 governing the Basque University System and in any other regulation shall be deemed to refer henceforward to Unibasq – The Agency for the Quality of the Basque University System.

#### TRANSITORY PROVISIONS

First: Composition of the agency's bodies

The composition of the agency's bodies shall be brought into line with this Act within a period of three months following its publication.

Second: Within a maximum period of three years following the adaptation of its by-laws, the Unibasq Agency shall align its procedures, activities and legal operations in such a way that it may become a full member of ENQA and be registered on the European Quality Assurance Register (EQAR).

The Basque Government shall refer to the Basque Parliament any change in the present Act that may be necessary for this purpose.

#### REPEALING PROVISIONS

The following provisions are duly repealed:

- a) Sections 79 to 88 of Act 3/2004 dated 25 February 2004, governing the Basque University System.
- b) Any other provisions that may be in contradiction to those set out in the present Act.

#### FINAL PROVISIONS

First: Within a period of six months following the publication of the Act, the Basque Government shall issue any provisions deemed necessary for its implementation, including for the adaptation to this Act of the by-laws of Unibasq – The Agency for the Quality of the Basque University System.

Second: this Act shall come into force on the day following its publication in the Official Journal of the Basque Autonomous Community.

Consequently, I hereby order all citizens of Euskadi (the Basque Autonomous Community), individuals and authorities, to abide by and enforce this Act.

Vitoria-Gasteiz, on the 2 July 2012.

The Lehendakari (Basque President),

FRANCISCO JAVIER LÓPEZ ÁLVAREZ