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(VENICE COMMISSION)

**DRAFT FRAMEWORK LAW
ON HIGHER EDUCATION
IN BOSNIA AND HERZEGOVINA**

DRAFT 14 June 2003 rev.

Developed with the support of the Council of Europe

Pursuant to Article IV 4.a) and II 2.3.1) of the Constitution of Bosnia and Herzegovina, at the session of the House of Representatives held on _____2003 and the House of Peoples held on _____2003, the Parliamentary Assembly of Bosnia and Herzegovina adopted the:

**DRAFT FRAMEWORK LAW
ON HIGHER EDUCATION
IN BOSNIA AND HERZEGOVINA**

I - GENERAL PROVISIONS

Article 1

The Framework Law on Higher Education in Bosnia and Herzegovina (hereinafter the Law), shall determine principles of organisation of Higher Education in Bosnia and Herzegovina, responsibility of education authorities in this area, establish bodies for implementation of the Law and international commitments of Bosnia and Herzegovina, and determine the way of quality assurance in the area of higher education.

Article 2

For the purpose of reform of higher education, this Law establishes basic principles and standards of providing Higher Education in Bosnia and Herzegovina, in accordance with provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and Protocols thereto, the Council of Europe Committee of Ministers Recommendations on the Recognition and Quality Assessment of Private Institutions of Higher Education, [R(97)1] on Access to Higher Education (R (98)3) and on the Research Mission of Universities [R(2000)8] and other relevant principles reflected in internationally recognised legal instruments to which Bosnia and Herzegovina is a State party, and in accordance with the Council of Europe/UNESCO Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (ETS No. 165, 1997).

Beginning from the principles and standards determined by this Law, the Entities shall adopt or harmonise their laws on higher education.

1. Definitions

Article 3

In this Law the following terms shall have the meanings indicated:

“Academic staff” includes persons of any rank or title who teach or are engaged in scientific, professional or artistic work at a licensed higher education institution.

“Access” means freedom to apply for admission to study at a higher education institution.

“Accreditation” shall mean a formal confirmation, by or on behalf of the authorities responsible for higher education, that a higher education institution fulfils the generally accepted quality standards and that its qualifications confer on holders (in accordance with applicable law) a number of rights, e.g. access to a further stage of education, to specific occupations, to the use of a title.

“Licensing” shall mean the act of granting permission to provide higher education according to the provisions of this Law.

“Admission” means entrance to study at a higher education institution.

“Diploma” and “Diploma Supplement” shall have the meanings assigned to them by the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region.

“Equivalent” in the context of academic titles and qualifications means generally accepted by the academic community as being of the same or similar status.

“European Higher Education Area” shall have the meaning assigned to it in the Declaration of the European Ministers of Higher Education at Bologna (1999) and the subsequent development of the concept.

“Higher education” shall mean post-secondary education leading to an internationally recognised degree and also other education of equivalent level and content.

“Higher Education Funding Body” shall mean the body of that name established by an Entity Ministry of Education and having the responsibilities set out in this Law, and its successors in title.

“Higher education institution” shall mean a university or college authorised under this Law to provide education services at the level of higher education.

“Private higher education institution” shall mean a higher education institution established by any domestic or foreign legal or natural person pursuant to the provisions of this Law and which seeks to be licensed.

“Public higher education institution” shall mean a higher education institution to be established or has already been established by an Entity and which, in the case of institutions in existence at the date of this Law coming into force, is automatically considered to be a licensed higher education institution.

“Quality assessment” shall mean a range of evaluation procedures concerning the quality of programmes offered by higher education institutions.

“Quality audit” shall mean a formal evaluation of the quality of processes and procedures of a higher education institution.

“State Ministry” shall mean the Ministry designated as responsible for higher education in Bosnia and Herzegovina at the level of the state in accordance with applicable law.

“Student” means a person who studies, either full-time or part-time, at a licensed higher education institution, other than a member of staff of the institution, enrolled for a course or programme at that institution.

“Study” and “studying” mean the process by which a student undertakes a programme planned, organised and provided by a licensed higher education institution, upon completion of which the student acquires a title, a corresponding academic title or academic degree.

“Subject group” means a set of cognate academic disciplines determined by the relevant Entity Ministry of Education.

2. Higher Education: Objects and Meaning

Article 4

The objects of higher education are:

- (a) To establish, develop, protect and transmit knowledge and skills through teaching and scientific work and research; and
- (b) To provide opportunities for all the citizens of Bosnia and Herzegovina with the ability to benefit from such education, throughout their lives.

Article 5

For the purpose of this Law, the term “higher education” includes:

- (i) a degree of the first cycle (the degree of Bachelor or equivalent) taken after the equivalent of at least three years of full-time study after obtaining a secondary school leaving certificate;
- (ii) a degree of the second cycle (the degree of Master or equivalent) taken after obtaining a degree of Bachelor ; and
- (iii) a degree of Doctor or equivalent.

II - PRINCIPLES

1. Access to Higher Education

Article 6

Access to higher education carried out by licensed higher education institutions in Bosnia and Herzegovina shall not be restricted, directly or indirectly, on any actual or presumed ground such as sex, race, sexual orientation, physical, or other impairment, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth, age or other status.

All students who attended and completed secondary school of duration of four years shall have access to higher education.

Article 7

Students who have completed secondary school abroad shall submit evidence on completion of secondary school – certificate or diploma for evaluation to the Centre for Information, Recognition and Quality Assessment (CIRQA). The recognition shall be given, as a rule, to the certificate or

diploma that shows completion of at least twelve years of education and gives to holder the right to apply to a university or to take a university enrolment test in a given foreign country,

Article 8

Higher education may be undertaken full-time, part-time, by distance learning and in any combination of these modes of study, as provided in the statute of the institution awarding a higher education qualification.

2. Higher Education Institutions

Article 9

Higher education institutions in Bosnia and Herzegovina shall be universities and colleges only.

The title 'university':

(i) shall be limited to higher education institutions undertaking both education and research, offering diplomas and degrees up to and including doctoral level, with objectives including the advancement of knowledge, thought and scholarship in Bosnia and Herzegovina, the educational, scientific, cultural, social and economic development of Bosnia and Herzegovina, the promotion of democratic civil society citizenship and the achievement of the highest standards in teaching and learning; and

(ii) shall be granted by the Entity Ministries of Education only to an accredited higher education institution with an independently audited enrolment, of at least 3000 students and providing courses or programmes of the first cycle in at least five different subject groups.

The title "college"

(i) Is limited to a higher education institution that has been accredited to offer diplomas and degrees of the first cycle, with objectives including the preparation and training of individuals for the scientific, cultural and economic development of Bosnia and Herzegovina, and promotion of democratic civil society citizenship and achievement of high standards in teaching and learning;

(ii) Shall be granted by the Entity Ministries of Education only to an accredited higher education institution with an independently audited enrolment, of at least 500 students and providing courses or programmes in at least one recognised subject group.

An independent audit of enrolment to a higher education institution shall be regulated by secondary legislation.

Article 10

Higher education institutions may not be restricted in their freedom to conduct the following:

- (a) To innovate in the provision of higher education within their licences; and
- (b) To offer courses for the acquisition of skills necessary or expedient for the purposes of realising the objects of higher education.

Article 11

Higher education may be delivered by any licensed higher education institution without restriction as to the length or structure of the academic year.

Students at higher education institutions may be charged tuition and other fees in accordance with the provisions of this Law and laws, i.e. other regulations made by the Entities.

3. Institutional Autonomy and Legal Personality

Article 12

The formal responsibility for all activities of a licensed higher education institution shall be vested in the governing board of the university or college (hereinafter: the governing board).

The number of members of the governing board, duration of the term of office, structure of the governing board, chairing of the governing board and other issues concerning the governing board shall be regulated by the statute of higher education institution.

All categories of staff of higher education institutions and students are represented in the steering board.

Agreement to the statute of higher education institution [verb missing – transl. note] by the competent ministry in accordance with the law.

Article 13

A university shall be managed by a rector and a college shall be managed by a director, in accordance with the law and the statute of the higher education institution.

The rector, i.e. the director of a college shall be selected by the governing board, in accordance with the law and the statute, and shall be accountable for his/her work to the governing board of the higher education institution.

Article 14

Unless provided otherwise by this Law, each licensed public higher education institution being either a university or a college, shall have full legal personality in relation to the matters dealt with in this Law including powers to:

- (a) Dispose of and manage land and buildings already owned by them in accordance with applicable laws;
- (c) Receive and manage funds from any legal source;
- (d) determine and collect tuition and other fees in accordance with law;
- (c) Employ staff;
- (d) Enter into contracts for goods and services;
- (e) Form legal relationships with students;
- (f) Establish commercial enterprises for educational and research purposes;
- (g) Enter into agreements with other higher education institutions in Bosnia and Herzegovina and with institutions internationally;
- (i) have other powers necessary for the efficient discharge of their functions.

Article 15

The statute of a higher education institution shall provide for an organisational structure within the institution, which shall comprise units, which may include faculties, institutes, departments, centres, academies or schools.

In order to promote and ensure integration of the academic, financial and physical planning and development of the institution, such units shall have no legal personality which is independent of the institution.

For the purpose of promoting initiative by units, the statute of the institution shall specify in what manner and to what extent units shall exercise academic and financial authority and take responsibility within the institution.

Article 16

Higher education institutions shall enjoy freedom of teaching and in scientific and research work within their licences, without interference from public authorities, unless provided differently by law.

Article 17

Higher education institutions shall have the rights, in accordance with provisions of this Law, to:

- a. Elect their governing and management bodies and fix their terms of office;
- b. Arrange their structures and activities with their own rules pursuant to this Law, other applicable laws and their statutes;
- c. Choose teaching and other staff;
- d. Admit students and determine methods of teaching and assessment of students;
- e. Independently develop and implement curricula and research projects;
- f. Within the available financial provisions, choose subjects to be taught; and
- g. Grant titles to professors and other staff.

Article 18

The premises of licensed higher education institutions shall be inviolable.

Without permission given by the rector of the university, the director of the college or a person they authorised, police and other prosecution and law enforcement agencies shall not have access to the university or college.

Exceptionally, in order to prevent an impending offence or an offence already taking place, necessary measures may be undertaken, given that the university or college shall be informed immediately about any activities undertaken.

Article 19

The special status granted by the preceding paragraphs of this Law to licensed higher education institutions shall be accompanied by the requirement that each institution exercises its functions in a manner which demonstrates accountability to the state, to the citizens and to its staff and students.

The mechanisms for such public accountability including, but not limited to, financial accountability, shall be prescribed by legislation of the Entities.

4. Rights and Obligations of Academic Staff

Article 20

Every higher education institution shall include in its statute or equivalent basic document that academic staff have the freedom, within the law, to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their job or any privileges they may have with the institution.

The right of academic staff of higher education institutions to freedom of speech may only be restricted by law.

Article 21

The statute of any public higher education institution, and the basic document of any private higher education institution shall, as a condition for their accreditation, contain provisions which:

- a. Secure for staff freedom of organisation and assembly in compliance with the law; and
- b. Protect staff against discrimination on any ground such as sex, race, sexual orientation, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status.

Article 22

Academic staff of higher education institutions shall have the freedom to publish the results of their research, in compliance with rules made by the university relating to the exploitation of intellectual property rights for the benefit of the institution and the rights of third parties.

Article 23

Academic and other staff shall enter into a contract of employment with the higher education institution.

The contract of employment may restrict the right of the staff member to enter into any other concurrent employment.

Academic and other staff have the following general obligations in addition to those established in the contract of employment:

- a. To observe rules made by the institution;
- b. To have due regard to the rights of other staff and students; and
- c. To give due and full attention to their duties and participate in academic activities.

Article 24

The appointment of academic staff shall be, in all cases other than temporary or visiting appointments, made through a public competition, in accordance with criteria set by the law, the statute of the higher education institution and generally accepted standards for the profession concerned.

Article 25

Protection of rights of academic and other staff of the higher education institution shall be exercised in accordance with the statute and other official documents of the higher education institution. Any final decision of the higher education institution may be challenged before a court of a competent jurisdiction.

5. Rights and Obligations of Students

Article 26

Students who are admitted to and enrolled in a higher education institution enter into a contractual relationship with that institution.

Students are entitled to the following rights, which may be elaborated further in the statute of the institution:

- a. To attend all lectures, seminars and other forms of teaching organised in their subject(s) according to their position and, subject to capacity, other organised teaching;
- b. To use the facilities of libraries and other services provided for students located at the institution;
- c. To participate in elections for student positions in students' representative bodies and other bodies established under the statute of the institution; and
- d. Have the right to recognition of transfer of credits between accredited higher education institutions within Bosnia and Herzegovina, on the basis of bi-partite or other agreements.

Article 27

Students enrolled at a university or college have the following obligations:

- a. To observe rules made by the institution;
- b. To have due regard to the rights of staff and other students; and
- c. To give due and full attention to their studies and participate in academic activities.

Article 28

The statute or equivalent basic document of any higher education institution shall contain provisions which:

- a. Secure the students' freedom, within the law, to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their position or any privileges they may have with the institution;
- b. Secure the students' freedom of speech, organisation and assembly, within the law;
- c. Protect students against discrimination on any ground such as sex, race, sexual orientation, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status; and
- d. Provide fair and impartial mechanisms for dealing with disciplinary questions affecting students.

Article 29

Students have the right to express their views on the quality of the teaching or other facilities of the institution and the statute shall make provision for dealing fairly with complaints.

The circumstances in which students may be removed from registration for academic or disciplinary reasons, and procedures for appeal, shall be elaborated in the statute of the institution.

Students shall have the right to challenge any decision or action of a higher education institution in relation to them before a court of competent jurisdiction.

Article 30

The statute or other basic documents of a higher education institution shall provide for the establishment of a students' representative body.

A representative body shall represent students' interests and shall contribute to the social, cultural, academic and physical recreation needs of students on the basis of democratic principles and in accordance with the law.

Article 31

Persons who have completed courses of study and received the degree for which they were enrolled cease to have the status of student.

III - RESPONSIBILITIES OF THE AUTHORITIES

1. The State Ministry

Article 32

The State Ministry shall be responsible for the implementation of this Law and for:

- a. Co-ordination and development of higher education in Bosnia and Herzegovina in consultation with other relevant Ministries;
- b. Promoting the integration of teaching and research and the stimulation of research programmes within universities;
- c. Promoting mobility of students and staff within the European Higher Education Area and internationally;
- d. Promoting links between higher education institutions in Bosnia and Herzegovina and higher education institutions regionally and internationally.

2. The Entity Ministries of Education

Article 33

On the basis of this Law and laws and other Entity regulations, the Entity Ministries of Education shall be responsible for:

- a. Planning and developing higher education in the respective Entity;
- b. Creating, merging and closing public higher education institutions following the decision of the Parliament or National Assembly;
- c. Licensing public higher education institutions according to published norms, which shall set standards for academic and other staff, premises, equipment, library and computer facilities;
- d. Regulating the activities of public higher education institutions in accordance with this Law, approving their statutes and prescribing in what circumstances and at what level tuition and other fees may be charged to students;
- e. Within the general provisions of the applicable law for the funding of public services in Bosnia and Herzegovina, allocating funds to public higher education institutions for teaching and research, pursuant to Article 3 of this Law;
- f. Developing one or more schemes for student financial support, including proposals for inter-ministry agreement in this area;
- g. Promoting equal opportunities for access to higher education, in staff development and training, in lifelong learning and in all other aspects of higher education;
- h. Supporting and encouraging stronger links between the higher education sector, industry, commerce and society;
- i. Promoting links between higher education institutions located in the Entity and higher education institutions in other parts of Bosnia and Herzegovina, neighbouring countries and regions;
- j. Providing, in accordance with the law, and as deemed appropriate, financial and technical assistance to private higher education institutions and to students enrolled therein.

Article 34

The Entity Ministries of Education shall ensure that legislation provides for equal treatment throughout Bosnia and Herzegovina of the recognition of academic titles granted by public higher education institutions and for the charging of tuition and other fees to students in the entire Bosnia and Herzegovina.

IV –OTHER BODIES IN HIGHER EDUCATION

1. Higher Education Co-ordination Board

Article 35

On the basis of the agreement between the competent State ministry and competent Entity ministries, the Higher Education Co-ordination Board may be established as an advisory body for higher education.

The composition, financing, conditions of work and other issues shall be prescribed by the agreement referred to in the preceding paragraph.

2. Higher Education Funding Bodies

Article 36

For the purpose of promotion of greater efficiency and effectiveness in the provision of higher education in the Entity, a higher education funding body – fund (hereinafter: the fund) shall be established by each Entity Ministry of Education, in accordance with the law.

The fund shall be responsible for administering funds made available to it by the Entity Ministry of Education for the purposes of providing financial support for higher education institutions in the relevant Entity for teaching, research or related activities according to published criteria.

An Entity Ministry of Education may give general policy directions on the administration of funds, provided that no such directions shall not be given in respect of any particular higher education institution or institutions.

Article 37

The fund may make grants, loans or other payments to the governing body of any accredited higher education institution in respect of expenditure incurred or to be incurred by them for the purposes of any activities eligible for funding, subject to such written terms and conditions as the body deems appropriate to apply, including but not limited to obligations relating to financial accountability, reporting, efficiency, provision of information and audit.

The terms and conditions under which the fund may make any grants, loans or other payments pursuant to this section, may enable it to require repayment in whole or in part of any sums paid by the body, if any of the terms and conditions subject to which the sums were paid have not been complied with.

Article 38

Neither an Entity Ministry of Education nor the fund may impose terms and conditions on the allocation of funds to higher education institutions which:

- (i) have the effect of discouraging any higher education institution from maintaining or developing its funding from other sources;
- (ii) are framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection or appointment of academic staff and for the admission of students.

3. The Centre for Information, Recognition and Quality Assessment (CIRQA)

Article 39

Pursuant to the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region, the Council of Ministers of BiH shall establish with a special decision the Centre for Information, Recognition and Quality Assessment (hereinafter: CIRQA).

Pursuant to the Convention referred to in the preceding paragraph, CIRQA shall have act as the National Information Centre.

Article 40

CIRQA shall be financed from the budget of the Institutions of BiH.

Article 41

CIRQA shall be governed by a Board, the composition and mandate of which shall be determined by the Decision of the Council of Ministers in such a way as to reflect the diversity of provision of higher education in Bosnia and Herzegovina.

Article 42

CIRQA shall be responsible for the format and general content of the Diploma Supplement issued by accredited higher education institutions.

Through the international network of information centres (the ENIC/NARIC network) CIRQA shall provide information and recommendations regarding foreign higher education institutions and programmes, as the basis for recognition of degrees and diplomas for the purpose of further study at higher education institutions in Bosnia and Herzegovina.

CIRQA shall provide for Entity Ministries information and recommendations necessary for the recognition of foreign degrees and diplomas as equivalents to those granted in Bosnia and Herzegovina.

Article 43

CIRQA shall be responsible for:

- (i) establishing clear, transparent and accessible criteria governing procedures for accreditation, quality audit and quality assessment of higher education institutions in Bosnia and Herzegovina;
- (ii) appointing panels of experts, each panel to include international experts, to carry out such procedures;
- (iii) hearing and deciding on appeals on technical issues arising from the outcomes of such procedures;
- (iv) making recommendations to Entity Ministries on applications for accreditation or re-accreditation under the provisions of this Law.

V - QUALITY ASSURANCE

1. Accreditation

Article 44

All higher education institutions in Bosnia and Herzegovina may apply for accreditation by the relevant Entity Ministry of Education, in compliance with this Law.

At the time of this Law coming into force, the existing universities in Bosnia and Herzegovina shall be considered to be accredited and shall be required to apply for review of accreditation within two years of the date of entry into force of this Law.

A higher education institution seeking accreditation for the first time shall apply to the Entity Ministry of Education at least one year in advance of the date from which accreditation is sought.

Re-accreditation of higher education institutions shall be carried out at intervals prescribed by the relevant Entity Ministry on advice from the Centre for Information, Recognition and Quality Assessment (CIRQA).

Article 45

Failure by a licensed higher education institution to obtain accreditation or re-accreditation will result in a further accreditation event in not more than one year.

A second failure to obtain accreditation will result in the revocation of the licence. Revocation may be appealed before a court of competent jurisdiction.

Temporary accreditation may be granted by the relevant Entity Ministry of Education, in accordance with the Law.

Alternative:

Accreditation and licensing of higher education institutions in BiH shall be conducted by the responsible State Ministry.

2. Quality Assurance and Assessment

Article 46

Licensed higher education institutions have the primary responsibility for the quality of their courses and programmes.

Self-evaluation procedures shall include evaluation of courses and programmes by the students.

Periodic quality audit and assessment of courses and programmes of accredited higher education institutions shall be carried out under the authority of the Centre for Information, Recognition and Quality Assessment (CIRQA).

3. Degrees and Diplomas

Article 47

An accredited higher education institution shall have the power to award the degrees and diplomas specified in its accreditation certificate.

The statute of a higher education institution shall specify the degrees and diplomas awarded by the institution and shall include power to adopt academic and other rules governing the award of such degrees and diplomas.

First cycle degree and other courses leading to a diploma offered by public higher education institutions shall be flexibly constructed so as to allow entry and exit at appropriate points with the award of credits and/or qualifications, depending on the progress made by an individual student.

In formulating its rules a public higher education institution shall take into account the current European Credit Accumulation and Transfer System.

A higher education institution shall otherwise have the freedom to organise its curricula, its assessment and examination schemes by means of rules which are transparent, fair and readily accessible to students.

Article 48

Only those degrees and diplomas awarded by accredited higher education institutions shall be recognised by the State or the Entities for the purposes of employment or the holding of any public office, or the CIRQA, provided that the degrees and diplomas of existing graduates of the universities in Bosnia and Herzegovina shall be deemed to be recognised for these purposes. (?)

It shall be the duty of every accredited higher education institution to provide each person awarded a degree or diploma with a Diploma and a Diploma Supplement issued under the seal of the higher education.

Article 49

Once awarded, a degree or diploma may only be revoked in specified circumstances set out in rules contained in the statute of the higher education institution and subject to appeal before a court of competent jurisdiction.

The State Ministry may, in consultation with other relevant governmental bodies, prescribe in form of a rule the educational requirements additional to the award of a degree or diploma, for entry to any profession which may be regulated by any other law or by the terms of any international convention or agreement.

VI – CONCLUDING PROVISIONS

1. Applicable Law

Article 50

The Law shall supersede any provision of other laws not compliant with it.

All State and Entity laws as well as other relevant regulations shall be harmonised with the provisions of this Law no later than 6 (six) months after this Law has come into force, with the exception of provisions relating to the structure of academic programmes, degrees and credit accumulation and transfer which shall be subject to a period of transition.

Entity Ministries of Education shall, in consultations with the State Ministry, jointly prescribe duration of the first cycle and transitional provisions for period 2004 – 2010.

2. Application of this Law in the Brcko District

Article 51

The Brcko District shall, in accordance with this Law, adopt its own regulations setting the issue of establishment and functioning of higher education institutions from the Entities in its territory.

3. Entry into Force

Article 52

This Law shall enter into force on the eighth (8th) day of the date of its publication in the Official Gazette of Bosnia and Herzegovina.