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Enhancing the University Autonomy in Moldova (EUniAM)

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**Commentary on  
Education Code of the Republic of Moldova  
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## Executive Summary

The following commentary on the Code is restricted to (i) the sections on Higher Education and (ii) those clauses with relevance to the EUniAM report and recommendations, and (iii) comments on clauses which raise issues not directly addressed in the EUniAM project, but which are relevant to the EUniAM project recommendations.

The commentary does not take into account the legal, political, cultural and historical background to the Code. It is evident that there were lengthy discussions and consultations preceding its enactment and that this may have resulted in compromises which would help to explain apparent anomalies and contradictions in the text.

Although the Code proclaims that it is the basis for establishing autonomous institutions, there remain significant restrictions on institutional autonomy. It is understood that as the primary funder of the Higher Education sector, setting the national strategic goals and concerned to ensure effective outcomes the Minister must retain responsibilities and powers, but the extent of regulation represented in the Code could be argued to conflict with the principles of autonomy which the Code proclaims and to impede the development of fully responsible autonomous institutions.

The detail in the Code on some topics and the areas which are subject to Ministerial regulation and/or review retain a level of bureaucracy and control which may have historical justifications, but which may seriously limit modernisation and innovation and will not encourage embedded institutional ownership and willingness to promote change because so many areas are subject to external regulation.

The EUniAM recommendations recognise the interdependence of the Ministry and the Universities and address these relationships and the powers and responsibilities of the Ministry, juxtaposed with the powers and responsibilities which should be allocated to autonomous Universities. This process should be considerably facilitated by the proposed restructuring of the sector with fewer integrated Universities.

Perhaps the main area of concern, in the Code, relates to the hybrid and ambiguous Governance structures. The Code establishes a hybrid body, the Strategic and Institutional Development Council, which is not an effective Governing body.

While there is voluminous detail on definitions of workload, the Code has little detail on the role and powers of the Rector concentrating on the mode of election, period of office and procedures for dismissal. As the commentary attempts to indicate, the Code does not provide either an understanding of or a clear separation between Governance and Management. The role of the Rector is central to such a separation.

The EUniAM proposals, in contrast, provide for a clear separation between Governance and Management. They outline the structure, powers and responsibilities of the Governing Body

(the University Board) and of the Rector and the relations between the Rector and the Governing Board. They make clear that the Rector is appointed (employed) by the Governing body (and not the Minister) and is consequently responsible and accountable to the Governing body.

As the commentary indicates, the EUniAM report is silent on the question of who is the 'employer' of the staff (academic and non-academic) in a University. Normally the formal employer might be expected to be the Governing body, which would delegate responsibility. This has implications for the legal status of a University, which is not addressed either in the Code or the EUniAM report.

One further caveat should be noted. The commentary is based on the English translation and this may explain some of the difficulties in interpreting the objectives of the legislation.

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## **1. ARTICLE 3: BASIC NOTIONS**

### **1.1 Commentary**

It would be helpful if the concept of 'Founder' could be defined in this Article as it seems to be used in the Code in a variety of ways.

## **2. ARTICLE 15: TYPES OF THE EDUCATIONAL INSTITUTIONS**

### **2.1 Excerpt from the Code**

(1) In accordance with the education structure, the educational institutions shall be classified as follows:

- k) Higher education institution – university, academy of studies, institute, high school, school of higher studies and others.

### **2.2 Commentary**

The EUniAM proposal for rationalising and merging Universities would mean that all Higher Education would be incorporated in one of the 6 (+1) Universities. This would simplify structures and ensure effective direction, integration, quality assurance and enhancement of all Higher Education.

It would facilitate progression from short cycle to first cycle and second cycle qualifications and help to facilitate 'permeability' between vocational and academic tertiary education. It would remove institutional status differentiations which are inappropriate in a country committed to the principles of equity, equality, social inclusion, unity and integrity of the educational space enunciated in **Article 7 Fundamental principles of education**.

## **3. ARTICLE 16: ASSESSMENT AND GRADING SYSTEM**

### **3.1 Excerpt from the Code**

(1) In the higher education, additionally to the national grading system, the European Credit Transfer and Accumulation System grading scale shall also be used with recommended grades (A, B, C, D, E, FX, F), necessary to fill in the diploma supplement and to ensure the academic mobility, according to the following:

- a) A: 9,01-10,0;
- b) B: 8,01-9,0;
- c) C: 7,01-8,0;
- d) D: 6,01-7,0;

- e) E: 5,0-6,0;
- f) FX: 3,01-4,99;
- g) F: 1,0-3,0.

### **3.2 Commentary**

The EUniAM report endorses the use of ECTS and the new ECTS Guide (Yerevan 2015). The scale quoted in this Article 16 is seriously out of date. It was an equivalence and not a grading scale. It was abandoned in the ECTS Guide published in February 2009. In the new ECTS Guide Universities are urged to use a statistical profile to help in the translation and transfer of grades. The European Commission is currently funding a project – the EGRACONS project which has developed a tool for the conversion of grades for mobile students. Universities in Moldova will be encouraged to use this tool but it does not specify a grading scale. Indeed it recognises the differences between countries and institutions and the right of Universities to determine their own scales. It should also be stressed that a grading scale needs to be accompanied with grade descriptors which make transparent to learners and stakeholders the basis and implications of each grade in relation to the achievement of the learning outcomes.

## **4. ARTICLE 75: MISSION OF THE HIGHER EDUCATION**

### **4.1 Excerpt from the Code**

(1)The higher education is a key factor for the cultural, economic and social development of knowledge-based society and is a promoter of human rights, sustainable development, democracy, peace and justice.

(2)The higher education shall be aimed at:

- a) creation, keeping and dissemination of knowledge at the highest level of excellence;
- b) training of highly qualified specialists competitive on the national and international labour market;
- c) creation of life-long training opportunities;
- d) keeping, development and promotion of the national cultural and historical values, in the context of cultural diversity

### **4.2 Commentary**

EUniAM endorses these principles and encapsulates them in the report in the following form:

*“The mission of a contemporary university is:*



- *Student-centred, research-based learning and teaching based on learning outcomes*
- *Research - fundamental and applied*
- *Knowledge transfer”*

## **5. ARTICLE 76: THE GENERAL STRUCTURE OF THE HIGHER EDUCATION**

### **5.1 Excerpt from the Code**

(1) The higher education shall be organized in two fields: academic and advanced professional.

(2) The higher education shall be structured in three cycles:

- a) cycle I – Bachelor’s degree (ISCED level 6);
- b) cycle II – Master’s degree (ISCED level 7 );
- c) cycle III – doctoral degree (ISCED level 8 ).

(3) The research, development and innovation activities shall be carried out within the doctoral and postdoctoral training

### **5.2 Commentary**

In addition to the cycles cited above, EUniAM incorporates the short first cycle qualification which was endorsed by Ministers in Yerevan in May 2015. It also abandons the distinction between ‘*academic*’ and ‘*advanced professional*’, which it considers as inappropriate in an integrated, reformed Higher Education system and that is contrary to the principles on which the Code is based (see comments under Article 15 above).

Similar points might be made about **Article 77 Organization of the higher education** and **Article 78 Organizational forms of the higher education** which seem over prescriptive and do not accommodate the possibility of blended learning in all cycles – doctoral study as prescribed in the Code may only be full-time or part-time, whereas increasingly in many fields the potential for distance and blended learning at the doctoral level is being realised. This is an example of legislative prescription, which, under the EUniAM proposals, would be left to the decision of the University.

## **6. ARTICLE 79: UNIVERSITY AUTONOMY**

### **6.1 Excerpt from the Code**

(1) The higher education institutions shall have the status of university autonomy.

(2) The university autonomy is the right of the university community for organization and self-management, exercising the academic freedoms without any ideological, political or

religious interferences, assuming a set of competences and obligations in line with the national strategies and policies for the development of the higher education.

(3) The university autonomy shall encompass the areas of management, structuring and functioning of the institution, teaching and scientific research activity, administration and financing, and shall be mainly performed through:

- a) organizing, conducting and improving the educational and scientific research process;
- b) establishing specialties;
- c) developing curriculum and analytical programs *in line with the state educational standards* (author's italics);
- d) organizing admission of students, taking into account the specific criteria to the profile of the higher education institution;
- e) selecting and promoting the teaching, scientific-teaching and scientific staff, as well as the other categories of personnel in the educational institution;
- f) establishing the assessment criteria for the teaching and scientific activity;
- g) awarding teaching degrees;
- h) eligibility of all management bodies by secret voting;
- i) solving social problems of students and staff;
- j) ensuring order and discipline in the university;
- k) finding additional sources of income;
- l) establishing cooperation relationships with various educational and scientific institutions, centre and organizations in the country and abroad.

(4) Financially, the university autonomy shall be carried out by:

- a) administrating the financial resources through bank accounts, including transfers from the state budget;
- b) using the available resources to carry out the statutory activity, according to own decisions;
- c) accumulating own income from fees, provided services, performed works and other specific activities, according to the classification of provided services approved by the Government;
- d) administering institution's property and ensuring the optimal conditions for the development of the institution's material resources;
- e) using the institution's property and the related rights to achieve the statutory purposes of the higher education institution.

(5) The educational institutions in the military, security and public order fields shall have the university autonomy within the limits set in the regulatory framework of the relevant authorities.

## 6.2 Commentary

In 3.c above, the requirement for state educational standards seems to be in direct conflict with the principle of curriculum autonomy.

The Code proclaims university autonomy (as indicated above), but does not ensure a ‘Clear separation between university governance, leadership and management’. Nor does it establish the legal identity of the University. It may be a translation problem but it is difficult to interpret the nature of the legal entity constituted by a university from the sentence ‘The higher education institutions shall have the status of university autonomy’. Autonomy is subsequently defined in terms of ‘rights’ and not legal identity. This ambiguity is possibly the result of compromise and is apparent in other parts of the Code, which proclaim autonomy on the one hand but limit it considerably on the other.

The legislative proposals in the EUniAM project are based on the following principles:

- *“A clear distinction between the roles and responsibilities of the Government and the Universities reflected and enforced through regulation and institutional university autonomy*
- *A clear separation between university governance, leadership and management”*

The EUniAM proposals (below) seek to reflect these two principles and should be contrasted with those specified in the Code:

*“Implementing the principle of a clear separation between university governance and management the University will establish an effective organizational and management structures, which will include a university governing body and the appointment of the Rector.*

*The University will keep the organisational and management structures under review to ensure that they remain fit for purpose.*

*University governing body (University Board):*

- *Composition 9 -15 members internal and external (majority external)*
- *Chaired by an external member*
- *Rector member ex officio*
- *Clear terms of reference*
- *Subject to external periodic review*
- *Code of practice and training for members*
- *Period – 4 years (members could be re-elected for second term of 4 years)*
- *The process should ensure a rotation of membership to ensure continuity i.e this would mean that normally 25% of the members would retire each year*

*University Board (governing body) is unambiguously and collectively*

- *Responsible for overseeing the university’s activities and will ensure that the responsibilities and powers outlined above are exercised in*

*accordance with the contract with the Division of Higher Education and Core Research Funding Unit and to fulfil the mission of the university*

- *It will establish a code of practice and ethics for its members*
- *It will establish a medium term – four year strategic plan and monitor the delivery of the plan*
- *It will establish a system for risk management and control which will include the prevention and detection of all forms of corruption and action which undermine the integrity of the university*
- *It will ensure that there is an effective annual external audit of the university accounts*
- *It will ensure that the university has established procedures to ensure the quality of learning and teaching, research and knowledge transfer*
- *It will establish appropriate performance indicators for all aspects of the university work*
- *It will monitor performance and value for money*

*University Board is responsible to MERI for the sound performance, financial management, and operation of the university and for ensuring that the terms of the contract with the Division for higher Education are fulfilled*

- *It will provide an annual financial report in the form and at the time specified by the Higher Education Division*
- *It will provide annual data reports and management information in the form and at the time specified by the Higher Education Division*
- *It will present its strategic plan to the Division of Higher Education*
- *It will present the annual report of the external auditors to the Division for Higher Education after it has been reviewed by the Governing Body*
- *It will report to the Division for Higher Education any cases of fraud or corruption that are detected with a statement of the action to be taken*
- *On a five year cycle, it will provide a comprehensive review report to the Division of Higher Education on the achievements of the university with particular reference to the strategic plan. It will ensure that the university complies with all agreed audit and financial reporting*
- *It will ensure that the university estate is developed, enhanced and maintained for the benefit of the whole university community*

*Appointment of the Rector:*

- *The Rector is the Chief Executive appointed in open competition by the University Board*
- *Fixed term appointment - five years term renewable for a further three years term (maximum 2 terms eight years per HEI)*
- *Clear job description and performance criteria*
- *The Rector is responsible to, reports to and is evaluated by the University Board*

*Rector is responsible to University Board for:*

- *Establishing the internal management and academic structures agreed by the Governing Body*
- *The overall leadership and management of the university*
- *The implementation of the strategic plan throughout the university*
- *Ensuring the development and sustainability of the academic, organizational, financial and human resource autonomy of the university*
- *The management of all the university resources*
- *The development and public presentation of the university and all aspects of its work*
- *Representing the university and promoting its interests nationally and internationally*
- *Establishing and leading a high quality, performance driven, senior management team*
- *Ensuring that the Governing Body is provided with detailed accurate timely data on university performance in all areas of its work*
- *Providing an annual performance report*
- *Developing effective communication and integration of students and staff in the work of the university*
- *Diversifying the sources of income and generating an operational surplus*
- *Appropriate delegation of responsibilities and authority*
- *Leading the preparation of the University strategic plan for submission to and approval by the Governing Body”*

## **7. ARTICLE 82: CATEGORIES AND TYPES OF INSTITUTIONS**

### **7.1 Excerpt from the Code**

(1)The higher education shall be organized in universities, academy of studies, institutes, schools of higher studies and others (hereinafter – higher education institutions or universities).

(2)The higher education institutions shall be established, reorganized and closed down by the Government, at the founder’s initiative.

(3) Depending on the higher education programs provided, the higher education institutions shall be assigned one of the following categories:

- a) category A;
- b) category B;
- c) category C.

(4) The higher education institution shall be of category A if it:

- a) provides higher education in one or more professional training areas;
- b) carries out research, development, innovation and artistic creation activities;
- c) provides Bachelor’s, Master’s, and Doctoral degree programs.

(5) The higher education institution shall be of category B if it:

- a) provides higher education in one or more professional training areas;
- b) carries out research, development, innovation and artistic creation activities;
- c) provides Bachelor’s and Master’s degree programs.

(6) The higher education institution shall be of category C if it:

- a) provides higher education in one professional training area;
- b) carries out research or artistic creation activities;
- c) provides Bachelor’s degree programs.

(7) As an exception to the categories listed in the paragraph (3), the Academy of Public Administration shall provide Master’s degree programs, doctoral degree programs and continuous professional development programs for the civil service staff, and shall provide scientific and methodical support to the activity of the public authorities.

(8) The category of the higher education institution shall be assigned as a result of the external quality assessment process in order to accredit the study and institutional programs, and shall be approved by the Government Decision.

(9) The newly established institutions shall be assigned the category C until the institutional accreditation.

### **7.2 Commentary**

While there may be good historical reasons for this cumbersome and discriminatory categorisation, the EUniAM project indicates that it is no longer appropriate. The EUniAM proposals would establish the University as the integrative entity for higher education and remove this categorisation for reasons explained under **Article 15** and **Article 113** and

embodied in the more detailed discussion of the case for the Rationalisation of Higher Education in Moldova (see the full report).

## **8. ARTICLE 83: ASSESSMENT OF INSTITUTIONS**

### **8.1 Excerpt from the Code**

a) ranking the higher education institutions by categories within the accreditation procedure;

### **8.2 Commentary**

This would not be necessary if the EUniAM proposals are adopted (see also comments on Quality Assurance and Accreditation below).

## **9. ARTICLE 88: THE CREDIT TRANSFER AND ACCUMULATION SYSTEM**

### **9.1 Excerpt from the Code**

(3) The higher education institutions may accept the transfer of up to 30 ECTS credits accumulated during the training in the post-secondary and post-secondary non-tertiary technical and vocational education and training, according to the regulatory framework in force.

(4) The methodology for applying the credit transfer and accumulation system shall be approved by the Ministry of Education.

### **9.2 Commentary**

The transfer limit proposed in the Code is arbitrary and does not take into account or give primacy to an assessment of the learning outcomes and competences which have been achieved through formal and informal learning and experience.

Clause 4 is a further example of the way in which the Code effectively limits the academic autonomy of the University through Ministerial regulation of Credit transfer and Accumulation. In so far as it relates to admission to the University it also appears to conflict with **Article 79 (3) d)** which appears to grant Universities autonomy in the admission of students.

The EUniAM proposal would grant explicit power and responsibility to the University for:

*Developing, encouraging, promoting a variety of modes of study including distance and blended learning, part- time study, work based learning, continuous professional development and other forms of life- long learning*

*Recognition of prior formal and informal learning and experience*

This formulation not only recognises the range of modes of life-long learning but means that a University is able to respond to changing societal needs, the impact of new modes of learning (e.g., MOOCs) and cooperate with business and industry in flexible and innovative ways and recognise and accredit all learning at the appropriate level.

See comments above under **Article 16: Assessment and grading system** and below under **Article 122: General framework for lifelong learning**.

## **10. ARTICLE 94: CYCLE III – DOCTORAL HIGHER EDUCATION**

### **10.1 Excerpt from the Code**

(1) The doctoral degree programs shall be organized in doctoral schools and shall be funded through distinct mechanisms. The doctoral schools shall be organized within the higher education institutions, as well as within the national and international consortiums or partnerships, including the research and innovation organizations.

(2) The doctoral schools shall be organizational and administrative structures, established by the institutions organizing doctoral degree programs in a special area or interdisciplinary areas.

### **10.2 Commentary**

EUniAM proposes that Doctoral Education and Doctoral Schools should be integrated within the new merged public Universities and play a key role in the development of research based learning and teaching in all cycles. Doctoral education is integral to the research dimension of a University and needs a critical mass to be able to provide the resources for the range of Doctoral training required and to provide the environment to stimulate and support Doctoral candidates.

### **10.3 Excerpt from the Code**

(5) The doctoral degree programs can be of two types:

- a) PhD in science, which encompasses the production of original and internationally recognized scientific knowledge. The PhD in science shall serve as a pre-condition for the professional career development in the higher education and research;



b) PhD in arts or sports, which encompasses the production of original knowledge based on scientific methods and systematic reflection related to some artistic creations or sport performances at the national and international levels. PhD (professional doctorate) could serve as basis for professional career development in higher education and research in arts and sports area.

#### **10.4 Commentary**

This is another example of a conservative restriction which does not recognise the variety of Doctorates and routes to a doctorate, which are now available and which open opportunities in all subjects for innovative approaches to Doctoral education. Both in **this Article** and **Article 89** relating to Masters degrees the admission requirements are restrictive and based on formal academic qualifications. There is no acknowledgement of the potential for the recognition of life-long learning knowledge, understanding and competences providing equivalent qualities. Here again the Code is not consistent. EUniAM proposes that decisions on these matters should be an aspect of the academic autonomy of the University.

#### **10.5 Excerpt from the Code**

(10) The enrolment plan for doctoral higher education funded by the state budget shall be approved by the Government.

(11) The person holding the doctoral degree or habilitated doctoral degree may act as a doctorate mentor. The methodology for approval of doctorate mentors shall be approved by the Government.

(12) Doctoral higher education shall end with a publically defended PhD thesis, award of PhD (in the respective field), and issuance of PhD diploma by the institution organizing the doctoral degree program, following the confirmation of the national authority empowered to confirm the scientific titles.

(15) The PhD degree shall confer the right to be enrolled in the postdoctoral programs.

(16) The regulation for organization and implementation of the doctoral and postdoctoral programs shall be developed by the Ministry of Education and shall be approved by the Government.

#### **10.6 Commentary**

This article contains examples of the restriction of University autonomy. Enrolment, the process for approving Doctoral mentors and confirmation of the award of a doctorate all require Government approval. The process outlined in the Code undermines the exercise of autonomy and is protracted and bureaucratic. It is difficult to understand why this should be considered necessary if the University is accredited and has to undergo rigorous quality

assurance. If the EUniAM proposal for the appointment of external examiners for Doctoral examinations is implemented there would be a further safeguard of standards.

Clause 15 seems out of place in the legislation and there may be a translation issue, but it seems unlikely that the legislator would wish to confer a 'right' to enter a post-doctoral programme on the holder of a Ph. D. It is probable that the intention is to say that the award of a Ph. D confers 'eligibility' or 'is a criterion for selection' for such programmes.

## **11. ARTICLE 95: POSTDOCTORAL PROGRAMS**

### **11.1 Excerpt from the Code**

(2) The postdoctoral programs are meant for holders of PhD diploma in science and shall last for at most 3 years.

(6) The postdoctoral programs shall end with publically defending the PhD thesis or based on published scientific works. The PhD title shall be awarded by the institution organizing the postdoctoral programs. The confirmation of title and issuance of diploma shall be carried out by the national authority empowered to confirm the scientific titles.

### **11.2 Commentary**

This article looks like a piece of mistaken drafting or translation with internal contradictions; e.g., clauses (2) and (6) contradict each other.

Here too, adoption of the EUniAM recommendations would make these clauses redundant since Universities would be responsible for all aspects of post-doctoral programmes.

## **12. ARTICLE 96: STATE EDUCATIONAL STANDARDS IN THE HIGHER EDUCATION**

### **12.1 Excerpt from the Code**

(1) The higher education shall be organized and shall be carried out based on the content standards, standards for competence, national reference standards and accreditation standards.

(2) The content standards and standards for competence shall be developed by the Ministry of Education by fields of professional training and shall be approved by the Government.

(3) The national reference standards and the accreditation standards shall be developed by fields of professional training by the National Agency for Quality Assurance in Professional Education, being coordinated with the relevant ministries and shall be approved by the Government.

## 12.2 Commentary

In this article the Code appears to give the Ministry full power to develop and veto content and standards which does not accord with the concept of curriculum autonomy developed by EUniAM.

Prima facie the article seems to be an example of the erosion of University autonomy in curriculum planning and development, but it depends on what precisely is understood by the terms in the Code. Subject benchmark statements and generic and subject specific competences may be appropriate provided that they do not impede innovative curriculum development and an ability to respond quickly to changes in the subject and new stakeholder demands. Regulated professions will also wish to safeguard the public by setting professional standards. In both cases there should be provision for dialogue between University academic and research staff and those stakeholders who are concerned.

The EUniAM proposals for Academic autonomy make clear the powers and responsibilities that should be exercised by Universities:

*“In conformity with the basic principles of the HE sector and the powers and responsibilities of Universities defined above (for more details see sections 3 and 6) University Academic Autonomy:*

- *Will grant – subject to formal accreditation - the power to award degrees in all cycles, (short cycle/Bachelor cycle, Master and Doctoral), which are student-centred, based on learning outcomes and develop competences for employability, established by universities in line with Quality Assurance and Enhancement guidelines set by NAAQA*
- *Will grant the power to manage the Admission of students*
- *Will grant the power to regulate Academic work-load between (i) learning and teaching and (ii) research and knowledge transfer to support the mission of university*
- *Will establish internal quality assurance of teaching and learning, and research and knowledge transfer”*

## 13. ARTICLE 97 NATIONAL FRAMEWORK OF QUALIFICATIONS

### 13.1 Commentary

EUniAM proposes a *new* National Qualification Framework.

## **14. ARTICLE 100: INTERNSHIPS**

### **14.1 Commentary**

This article does not mention the need to assess and to award ECTS credits for integrated work placements (internships). Nor does it envisage the potential for developing ‘work based’ degrees in collaboration with employers both of which are envisaged in the EUniAM proposals and the new ECTS Guide.

### **14.2 Excerpt from the Code**

(2) The internships shall be organized by the higher education institutions and shall be carried out within institutions, organizations, companies, associations, and other structures, according to the framework regulation approved by the Ministry of Education.

### **14.3 Commentary**

The Code continues to allocate powers to the Ministry in the field of internships as in the clause above. While the Ministry may wish to protect students from exploitation it would be less cumbersome, more flexible and facilitate future change to require the University to ensure the safeguarding of student interests.

## **15. ARTICLE 101: HIGHER EDUCATION MANAGEMENT**

### **15.1 Excerpt from the Code**

(2) The higher education management shall be focused on the following principles: a) the principle of institutional autonomy and academic freedom; b) the principle of public responsibility; c) the principle of strategic leadership; d) the principle of efficient and transparent management.’

### **15.2 Commentary**

However, the Code circumscribes ‘institutional autonomy’ in ways which could be said to conflict with the principle. The EUniAM proposals seek to address these anomalies.

## **16. ARTICLE 102: SYSTEM OF MANAGEMENT BODIES IN HIGHER EDUCATION INSTITUTIONS**

### **16.1 Commentary**

This prescribes the various bodies which must be established and does **not** as EUniAM proposes leave it to the Governing Body of the University to determine the management and committee structure. Enacted in legislation in this way means that each University is **not**

free to determine, amend, revise its structures, to respond to changing circumstances and the development of its mission and hence is inimical to the concept of autonomy, which is stated to be a focal principle of the Code.

## **17. ARTICLE 103: SENATE OF THE INSTITUTION**

### **17.1 Commentary**

This article designates the Senate as the “supreme managing body” and specifies its basic composition (membership). Its powers, however, equate to those of a Governing Body so that there is **no** clear separation between Governance and Management. The size of the Senate is not specified, but the composition and the evidence from the EUniAM survey suggests that it is generally a large body, which may not be compatible with either effective Governance or Management of an autonomous institution.

The Code does not give the Senate a mandate in relation to curriculum approval but it has the duty “to develop and approve the methodologies and regulations for organization of the academic, research and artistic creation activities and programs within the institution”.

The Rector chairs the Senate but is **not** formally responsible to the Senate because the Rector is appointed by the Minister.

The Code specifies that the “Senate mandate shall last for 5 years, synchronized with the mandate of the Rector”. In theory this could mean that there is no continuity of membership if a completely new Senate is elected. While there may be circumstances in which this would be desirable, as a general rule, it may not be a basis for good institutional Governance or Management. A more normal arrangement might envisage a rotation of membership over time with more regular elections mixing new members with more experienced members. Here too the question arises as to whether it is necessary to prescribe this detail in the Code.

The EUniAM proposal would transfer the responsibility for the detail of the internal structure to the University.

## **18. ARTICLE 104: STRATEGIC AND INSTITUTIONAL DEVELOPMENT COUNCIL**

### **18.1 Commentary**

This is a hybrid type of body. It is neither a Governing body nor a Management body although it has elements of both. Although it appears to have some of the functions of a Governing body with external members its authority is limited and for the most part is subject to the approval of the Senate.

The EUniAM project proposes a clear distinction between the Governing body and the Leadership and Management of the University with the Rector appointed by and responsible to the Governing body (see commentary 6.2).

## **19. ARTICLE 105: ADMINISTRATION OF THE INSTITUTIONS**

### **19.1 Commentary**

This Article is a further manifestation of the restriction of the autonomy of the University to establish its own structures. It specifies an “Administration Board” which does not appear to be defined but may equate to an “Executive Committee”. It is principally concerned with the process for the election of the Rector and other University officers.

If national and/or international candidates for the post of Rector are to be considered, the period of notice for the election of the Rector is very short (two months).

### **19.2 Excerpt from the Code**

Candidates holding scientific or scientific-teaching titles, as well as having at least 5 years of experience in the research and higher education can be elected for the rector’s position.

General Assembly of teaching and research staff and the representatives of students in the Senate and faculty councils, with the vote of the majority members.

### **19.3 Commentary**

The above criteria for appointment are restrictive and would probably exclude successful senior executives with experience outside the University.

The process for terminating the appointment of a Rector seem time consuming and highly public, involving the “General Assembly” and may not be conducive to effective Governance and Management. They are also anomalous in the sense that the employer is the Minister who does not seem to have a role in the dismissal process.

## **20. ARTICLE 106: ADMINISTRATION OF THE PATRIMONY**

### **20.1 Excerpt from the Code**

(1) The public and private higher education institutions have own patrimony, administered under the law.

(2) The buildings and lands, in which the public higher education institutions carry out activity, as of the date of entry into force of the present Code, shall constitute the state

property and shall not be alienated, and the other assets shall be the property of the public higher education institutions.

(3) The public higher education institutions shall be entitled to procure from own resources, as well as from other sources not prohibited by the law, the movable and immovable assets, lands or any other patrimony necessary for their activity. The respective assets shall be the property of the public higher education institution.

(4) The assets owned by the public higher education institution may be leased, rented out or sold only if the obtained revenues are used for the development of the respective institution.

(5) The decisions on assets that are the property of the public higher education institution shall be taken with 2/3 of the votes of the Strategic and Institutional Development Council members, including of the representative of the Ministry of Finance, with the Senate's approval voted by 2/3 members, according to the Institutional and Strategic Development Plan. The founders shall be notified about the taken decisions.

## **20.2 Commentary**

In part the Code reinforces EUniAM view on the ownership of land and property:

- *The Government will transfer the land and real estate to universities*
- *Universities will have the power to purchase property, and to sell real estate/assets with the consent of the Ministry*
- *Universities will have the power to invest revenue from the sale of real estate for the development of the university*

Clause 2 above distinguishes between those assets which remain 'state property' and assets which belong to the Higher Education Institution. The EUniAM recommendation is that **all** existing assets should be 'owned' by the University, subject to safeguards. This is an important feature of University autonomy because it transfers full responsibility to the University for the effective development and management of the whole estate (patrimony).

It is essential that there should be strong and effective procedures to ensure accountability with safeguards to prevent malpractice in the management, acquisition and disposal of assets. However, the decision making processes relating to assets, which are prescribed in the Code (clause 5 above), which require the support not only of two-thirds of the Institutional and Strategic Development Council but also of two-thirds of the Senate, seem cumbersome and bureaucratic and may inhibit effective investment decision making. They are not in accord with principles of modernisation and effective governance and management.

In contrast the Institutional and Strategic Development Council may, with a two-thirds vote and without reference to the Senate, establish a wide range of institutes, centres, units, activities. In this the Council appears to have the powers of a Governing Body. It is a further example of an anomaly in the Code but in this case the power allocated to the Strategic Development Council is in accord with the powers which the EUniAM recommendations propose for University Governing Bodies.

## **21. ARTICLE 107: PUBLIC ACCOUNTABILITY**

### **21.1 Excerpt from the Code**

(1) The public accountability of the higher education institution shall imply the following:

- a) observance of the legislation in force, of the University Charter and the national policies in the higher education area;
- b) enforcement of the regulations in force related to assuring and assessing the quality in higher education;
- c) observance of the university ethics and equity policies covered by the University Charter;
- d) assurance of efficient use of resources and of qualitative managerial act, according to the present Code;
- e) assurance of transparent decision-making processes and implemented activities, according to the legislation in force;
- f) observance of the academic freedom of the teaching and scientific staff, as well as of the students' rights and freedoms.

(2) The rector and the Chair of the Institutional and Strategic Development Council shall be responsible for ensuring the observance of the duties deriving from the principle of public accountability.

### **21.2 Commentary**

The EUniAM proposals are broadly in agreement with clause 1 above, except that EUniAM argues that 'academic freedom' (sub-paragraph f above) for the individual should be protected by the grant of 'tenure'.

On the other hand clause 2 is a further instance of the ambiguity of the Code. Normally the Governing Body would be formally responsible "for ensuring the observance of the duties deriving from the principle of public accountability" and the Rector as "Chief Executive" would be accountable to the Governing Body for the execution of these responsibilities.

The Code establishes the Senate as the Governing Body **not** the Strategic Development Council and the Rector is appointed by the Minister which in principle means that the Rector is ultimately responsible to the Minister, who is the formal employer. It is a paradox in the Code that the Senate does not have responsibility for ensuring adherence to the



requirements specified in clause 1 above. EUniAM proposes transparent, unambiguous, separate but interdependent Governance, leadership and management relationships.

## **22. ARTICLE 108: THE ETHICS AND MANAGEMENT COUNCIL**

### **22.1 Excerpt from the Code**

(1) The Ethics and Management Council shall be established at the national level and is an independent deliberative structure. It has the mission to verify the assurance of public accountability of the higher education institutions and shall operate according to the regulation developed by the Ministry of Education.

### **22.2 Commentary**

The EUniAM report does **not** address the role and responsibilities of this Council, although it stresses the need for accountability and transparency in all aspects of Governance and management. The Article does not specify how the Ethics and Management Council will assure “public accountability” – presumably this is covered in the Ministerial ‘regulation’? It does specify a process if “Any individual or legal entity” notifies “the Ethics and Management Council in relation to the non-observance of the provisions set forth in par (1) of the article 107”. In this case the University “Strategic and Institutional Development Council” is required to take action. Here again there is an anomaly because this Council is not the Governing Body, the Senate (the Governing Body) appears not to have a role.

EUniAM makes clear that the University Governing Body is responsible to the Minister through the new Department for Higher Education and is subject to annual audit and in depth five yearly report and review of its work.

## **23. ARTICLE 109: UNIVERSITY CHARTER**

### **23.1 Excerpt from the Code**

(1) The University Charter is the document that shall establish the mission, the academic principles, objectives, the structure and organization of the university and the other higher education institutions.

(3) The University Charter shall be developed and adopted by the Senate, only after being debated with the university community.

(4) The University Charter shall be adopted only after obtaining the positive endorsement from the Ministry of Education.

## 23.2 Commentary

This may be considered an example of an anomaly in the Code since Article 82: Categories and types of institutions states that: “(1) The higher education institutions shall be established, reorganized and closed down by the Government, at the founder’s initiative”.

It might be expected that the ‘establishment’ of a University would incorporate key aspects of its status as a legal entity.

In its proposals for the ‘Powers and Responsibilities of Universities’ EUniAM recommends that Universities should be responsible for:

*“Establishing effective internal organizational and management structures and keeping these under review to ensure that they remain fit for purpose”*  
*“The Rector is responsible for ‘Establishing the internal management and academic structures agreed by the Governing Body”*.

In neither case are the proposals subject to approval by the Minister, indeed this requirement in the Code seems to be contradictory to the basic definitions of autonomy set out in the Code. Moreover, it is an impediment to change and development over time. Note too that the requirement for approval by the Senate may reinforce a conservative, unwillingness to change, which will retain the status quo and resist reform and modernisation.

## 24. ARTICLE 110: RELATIONS WITH THE LABOUR MARKET AND BUSINESS ENVIRONMENT

### 24.1 Excerpt from the Code

(1) The higher education institutions shall collaborate with the business environment by training of the highly qualified staff.

(2) The partnership relations between the higher education institutions and the business environment shall be implemented through:

- a) establishing the roles, interdependency, and responsibilities of all stakeholders involved in the professional training and insertion process;
- b) establishing a facilitating and cooperating framework for interaction between the higher education system and the labour market;
- c) establishing commercial companies to perform economic activities related exclusively to the purposes specified in the Institutional and Strategic Development Plan;
- d) implementing public-private partnerships.

(3) The provision of services by the higher education institutions and business environment, as well as benefitting from these services, shall be tackled on equal and equity basis.

(4) The partnership between the higher education and business environment shall provide for:

- a) establishment of joint centres of professional counselling and guidance, and employment of graduates on the labour market;
- b) organization of job fairs;
- c) creation of joint research incubators and labs;
- d) organization of continuous professional training;
- e) provision of internship places;
- f) employment of highly qualified representatives from the business environment in the development of the National Qualifications Framework, and the Classification of occupations and professional standards;
- g) involvement of the highly qualified representatives from the business environment in monitoring and evaluation of the quality in higher education;
- h) gender mainstreaming in all relevant activities;
- i) providing opportunities for the youth to reconcile studies and family responsibilities;
- j) other activities and legal actions.

(5) The monitoring of graduates' employment on the labour market shall be carried out by the higher education institutions, in collaboration with the employers.

## 24.2 Commentary

EUniAM endorses the need for collaboration with business, but does not elaborate on the detail and nature. Incorporating the range of collaboration in the Code may be considered to be a helpful guide to the range of possibilities but it may also be interpreted as prescriptive (it is expressed in the Code in prescriptive terms "shall collaborate" and "shall be implemented through" and in that sense may undermine University autonomy. It may also be limiting – if it is not in the Code is it permitted?

Clause 5 above is covered by EUniAM under the heading of data collection:

*"The details of data to be collected and reporting requirements will be determined by the Ministry of Education, Research and Innovation in consultation with the sector and other relevant stakeholders. It is expected that as well as the standard range of student, staff, research and financial data the Ministry and universities will be mindful of the recommendation in the Bucharest Communique that: "data collection and referencing against common indicators, particularly on employability, the social dimension, lifelong learning, internationalisation, portability of grants/loans, and student and staff mobility" will constitute part of the data to be collected."*

EUniAM insists that the collection of all data should be national, standardised, comprehensive and consistent. The drafting of the Code could mean that each University collects and interprets the data in a different way which will seriously impair its value.

## **25. ARTICLES 112: QUALITY ASSURANCE AND ARTICLE 113: QUALITY ASSESSMENT**

### **25.1 Excerpt from the Code**

#### Article 112

(1) The quality assurance in higher education shall be carried out through a set of institutional capacities' building actions to develop, plan, and implement the study programs, which would set up and strengthen the confidence of the beneficiaries that the institution providing education meets and improves the quality standards, in line with the assumed mission.

(2) The management of quality in the higher education shall be ensured:

a) at the national level – by the Ministry of Education and the National Agency for Quality Assurance in Professional Education;

b) at the institutional level – by internal structures for quality assurance.

(3) A fully operational quality assurance system shall imply two successive stages:

a) the provisional operation authorization, which is the act for establishing the institution and grants the right to carry out the educational process and to organize the admission to education;

b) the accreditation, which besides the rights set forth in item a) of this paragraph, shall grant the right to organize the graduation exam, as well as the right to issue diplomas, certificates, and other study documents, recognized by the Ministry of Education.

#### Article 113

(1) The quality assessment in higher education shall include a multi-criteria examination of the extent in which the institution providing training and its programs meet the national standards of reference.

(4) The external assessment of quality in the higher education shall be performed by the National Agency for Quality Assurance in Professional Education or by another quality assessment agency listed in the European Quality Assurance Register for Higher Education (EQAR).

(5) The quality assessment in the higher education shall encompass:

a) the institutional capacity;

b) the educational efficiency, including academic outputs;

c) the quality of initial and continuous professional training programs;

d) the institutional management of quality;

e) the results of scientific research and/or artistic creation;

f) the compliance between the internal assessment and real situation.

## 25.2 Commentary

It is worth noting that the revised ESG approved by Ministers in Yerevan in May 2015 states: “Higher education institutions have primary responsibility for the quality of their provision and its assurance”.

The EUniAM proposals are based on this principle. They stress the distinction between ‘**Quality Assurance and Enhancement**’ on the one hand and the process of ‘**Accreditation**’ on the other.

The EUniAM project therefore recommends that the National Agency for Quality Assurance in Professional Education be renamed as the **National Agency for Accreditation and Quality Assurance (NAAQA)**.

## 26. ARTICLE 114: EXTERNAL ASSESSMENT FOR PROVISIONAL AUTHORIZATION OR ACCREDITATION

### 26.1 Commentary

This article indicates that an institution may receive ‘provisional authorization’. EUniAM does **not** endorse this (provisional) concept which it views as inimical to genuine institutional autonomy and to the establishment of categorical accreditation, which safeguards learners and the public. It is also concerned at the conflation of the terms ‘authorisation’ and ‘accreditation’ since this potentially confuses the understanding of accreditation. It also argues for a fully independent National Agency.

As an aspect of its commitment to Quality Assurance and Enhancement and to contribute to the integrity and equity of the examining process EUniAM proposes a system of examining involving double marking, independent External Examiners managed through an independent secretariat and detailed statistical analysis of marks and results. It considers that this would significantly enhance the confidence of stakeholders and the international recognition of Moldovan qualifications. It will also contribute to the development of best practice in the assessment of learning outcomes.

EUniAM proposes to establish **External Examiners Secretariat**:

*In order to guarantee/safeguard the quality of performance in final examinations at public Universities the MERI in consultation with the NAAQA will establish an external examiners secretariat.*

*All Universities will be required to appoint external examiners for final examinations who will be nominated on a random basis by the External Examiners secretariat*

*All Universities will establish a system of independent anonymous double marking for all final examinations. All oral (viva voce) final examinations will consist of two examiners. Random video recording of oral examinations will be instituted*

*All Universities as part of their quality process will produce an internal statistical and qualitative analysis of examination grading and results at the end of each year*

*The External examiners secretariat will establish standards and guidelines for external examiners*

*It will be responsible for recruiting, training, certifying and reviewing a national team of external examiners*

*External examiners will have the following duties:*

*Reviewing the requirements for the degree programme examinations, including, where appropriate, reviewing question papers for written exams to ensure that they are consistent with the learning objectives and outcomes defined in degree regulations/curriculum*

*Ensuring that exams are conducted in conformity with current rules*

*Ensuring that the assessment and grading of examinations is consistent, equitable, conforms to best practice and respects the published assessment and grading criteria. This may involve random selection of examination scripts for review, attending meetings of internal examiners, arbitrating in the event of a dispute between internal examiners*

*Providing an evaluation report on standards and procedures at the end of the examinations for which they are appointed*

## **27. ARTICLE 115: NATIONAL AGENCY FOR QUALITY ASSURANCE IN PROFESSIONAL EDUCATION**

### **27.1 Excerpt from the Code**

(1) The National Agency for Quality Assurance in Professional Education is an administrative authority of national interest, with legal personality, autonomous to the Government, independent in its decisions and organization, and funded from the state budget and own revenues.

(5) The National Agency for Quality Assurance in Professional Education shall be composed of the subdivision for assessment of programs and institutions providing professional training programs in higher education, the subdivision for accreditation of programs and institutions providing professional training programs in higher education, and the subdivision for technical and vocational education and training, as well as other subdivisions necessary to achieve its tasks, established by the Management Board.

(12) The duties of the Chair, Deputy Chair, Secretary General and Profile Commissions, the procedures for selecting and appointing the members of the Management Board and Profile Commissions, the structure and the number of personnel for the administrative apparatus, as well as the fees charged for assessment procedures shall be established by the Management Board through the Regulation for Organization and Operation of the National Agency for Quality Assurance in Professional Education and *shall be approved by the Government* [own italics].

## 27.2 Commentary

Clause 5 seems to recognise the distinctive roles of accreditation and quality assurance, but it does not distinguish clearly between them. EUniAM prefers the use of the term ‘**Quality assurance**’ to ‘**Quality assessment**’, since the former reflects the understanding of the process developed in the ESG.

The requirement in clause 12 that appointments be approved by the Government appears to be at odds with the autonomy proclaimed and apparently established in clause 1.

The EUniAM proposal is set out below. It is important to stress that in accordance with the commitment to genuine institutional autonomy EUniAM proposes that once accredited the University should be free to develop its own areas of study and degrees in each cycle (short, first, second and Doctoral):

*“The Government to establish an autonomous and independent National Agency for Accreditation and Quality Assurance (NAAQA) which shall be subject to external periodic review*

*The twin roles of the National Agency for Accreditation and Quality Assurance to be clearly distinguished*

*Both public and private HEIs will be subject to the requirements of NAAQA Accreditation will involve:*

*Responsibility for establishing and publishing criteria for the recognition of HEIs*

*Recognition shall grant the HEI the right to offer higher education programs in all cycles and award qualifications which will be recognized nationally.*

*Normally accrediting the HEI as a whole but partial accreditation may be awarded to a named program or programs if the HEI as a whole is judged not to meet the criteria for institutional accreditation.*

*Periodic review of HEIs to ensure that they continue to satisfy the national accreditation criteria*

*Quality Assurance will entail:*

*The establishment and publication of standards and codes of practice for Quality Assurance in HE in Moldova in conformity with the Standards and Guidelines for Quality Assurance in the EHEA endorsed by the Bologna meeting of Ministers in Yerevan in May 2015.*

*Procedures for the periodic external review of University Quality Assurance in conformity with the Standards and Guidelines for Quality Assurance in the EHEA.*

*Policy and procedures for the quality assurance and enhancement of its work.*

*Registration as a member of the European Association for Quality Assurance (ENQA) at the earliest opportunity”*

## **28. ARTICLE 116: SCIENTIFIC RESEARCH**

### **28.1 Excerpt from the Code**

(1) In the institutions providing higher education programs, the research, development and innovation, and artistic creation activities shall be carried out for the purpose of knowledge production and training of the highly qualified specialists.

(2) In the higher education institutions, the research, development and innovation activities shall be carried out within departments, laboratories, and other own units and/or in partnership with other institutions, economic units, or public authorities.

(6) The higher education institutions can receive the institutional funding provided through competition for the research activities, based on the evaluation of the international relevance and the economic and social impact of the achieved results. The competition conditions, the international relevance assessment methodology, the economic and social impact, including the amount of the institutional funding shall be developed by the national authority for research, development and innovation and shall be approved by the Government.

### **28.2 Commentary**

EUniAM endorses the commitment to research embodied in the Code but considers that the monopolistic funding of research through the Academy of Science and the fact that there is



a perceived conflict of interest in the allocation of funding to its own research institutes is inimical to the letter and the spirit of the Code cited above.

EUniAM is concerned that this means that research in Universities is under-developed and of a disappointing quality and that as a result there is an inadequate basis for high quality doctoral Schools in Universities. It proposes that the **Academy of Science of Moldova should be dis-established** and that all the current Academy research institutes/units should be integrated in the restructured public Universities together with a fundamental reform of research funding through a new **National Agency for Research and Innovation (NARI)**.

EUniAM proposes the following:

*“The Government to establish a National Agency for Research and Innovation responsible to MERI for:*

*Allocation of core and competitive research funding based on objective published criteria*

*Instituting calls for research proposals*

*Establishing eligibility and evaluation criteria*

*Organization of external objective and quality assured evaluations of applications*

*Organization of audit of research grants*

*The NARI should provide three funding routes which will be subject to different criteria and procedures (i) core funding; (ii) independent research funding; (iii) strategic research funding*

*Private universities may apply for competitive-based ‘independent’ and ‘Strategic’ research funding*

*ARI will provide a separate budget for investment in high-cost equipment on a competitive basis for public universities*

*In consultation with NARI other ministries may publish Calls for research applications, and establish relevant and equitable eligibility and evaluation criteria. The evaluation/assessment of other Ministry applications will be conducted in close consultation and cooperation with the NARI*

*Private sector organizations may initiate research projects directly with universities.”*

## **29. ARTICLES 117-120 (OF CHAPTER V. HIGHER EDUCATION PERSONNEL)**

### **29.1 Excerpt from the Code**

Article 117

(1) The higher education personnel shall encompass:

- a) scientific-teaching personnel: university lecturer, university associate, university professor;
- b) scientific personnel: scientific researcher, senior scientific researcher, coordinating scientific researcher and main scientific researcher;
- c) teaching personnel: university assistant, trainer, concert master, training master, mentor;
- d) auxiliary teaching personnel: librarian, IT specialist, laboratory assistant, accompanist;
- e) other categories of personnel: administrative and technical staff, secretary-referent, technician, engineer-technician, doctor, nurse, as well as auxiliary and service staff.

(2) The following titles are in the higher education:

- a) scientific – PhD doctoral and habilitated doctor degrees;
- b) scientific-teaching – University associate and University professor.

(3) The scientific-teaching titles “University associate” and “University professor” shall be awarded depending on the area of science by the Senate of the higher education institution and shall be confirmed by the National Authority empowered to confirm the scientific titles.

(4) The award of scientific-teaching titles shall be ruled by a regulation developed by the Ministry of Education, and shall be approved by the Government

(5) The higher education personnel shall be guaranteed the right to the academic freedom, in line with the provisions of the University Charter.

(6) The higher education personnel shall have the rights and duties deriving from the University Charter, individual employment contract, as well as from the legislation in force.

(7) The protection of employees’ rights, as well as the protection of the intellectual property rights for the scientific, cultural, and artistic creations results shall be guaranteed and ensured in line with the provisions of the University Charter and the legislation in force.

(8) The scientific-teaching and scientific personnel shall be entitled to publish studies, articles, volumes or art works, to apply for obtaining national and international grants, without any restrictions of the academic freedom.

#### Article 118

(1) The teaching, scientific-teaching, and scientific positions in the higher education shall be filled in based on competitions, in line with the framework regulation approved by the Ministry of Education.

(2) The part-time employment of the teaching, scientific-teaching, and scientific personnel shall be based on equivalence of positions, as follows:

- a) the position of scientific researcher is equated with the position of university assistant and vice versa;
- b) the position of senior scientific researcher is equated with the position of university lecturer and vice versa;
- c) the position of coordinating scientific researcher is equated with the position of university associate and vice versa;
- d) the position of main scientific researcher is equated with the position of university professor and vice versa.

## Article 119

(1) The scientific-teaching workload shall include:

a) class teaching activity (direct contact with students) carried out through;

- course hours;

- seminars, laboratory works, practical works, designing works, teaching/clinical internships and other forms approved by the Senate;

b) non-class teaching activity:

- management of internships;

- management of didactical-artistic or sport activities;

- management of bachelor's, master's, and doctoral projects or theses;

- monitoring students' individual activities;

- evaluation and monitoring activities;

- consultations, direct guidance of the student's individual activity;

- other activities, provided by the institutional regulations;

c) research, technology transfer, sport or artistic creation activity carried out through:

- performance of scientific research or artistic creation;

- development of curricula;

- development of software products;

- publication of scientific articles;

- patenting the research results;

- development and editing monographs, scientific compilations;

- development of doctoral theses;

- development of musical, literary, plastic art, decorative, and design creations;

- setting of performances;

- playing central roles in theatre, cinema and/or TV performances;

- participation in scientific projects and coordination of scientific projects;

- participation in scientific conferences, artistic festivals and sport competitions;

- other activities provided in the institutional regulations;

d) methodical activity carried out through:

- preparing for course teaching;

- development of course support;

- didactical design of activities, including of individual activities;

- development of curricula;

- development of methodical recommendations for students;

- development of methodologies and tests for evaluating the academic outcomes;

- implementation of methodological seminars;

- other activities, provided in the institutional regulations.

(2) The workload of the research activity for the scientific researchers holding titles shall be established in line with the legislation in force.

(3) The teaching activity shall be quantified in conventional hours within a time unit, as a rule, week, semester, and year.

(4) In the higher education, the time unit for the course, seminar, lab activities, and practical work shall account for two conventional hours. The conventional hour in the higher education shall account for 45 min.

(5) The activities included in the scientific-teaching workload and provided under the par. (1), letters b), c) and d) of the present article, shall be quantified in conventional hours, through a methodology approved by the Senate of the higher education institution, depending on the profile and specialization.

(6) The annual didactic workload of the teaching staff shall include the direct guidance of the student's individual activity.

(7) The course hours shall not be introduced in the didactical workload of the university assistant.

(8) The total amount of the working hours in a scientific-teaching workload, carried out by cumulating the activities mentioned in par. (1) of the present article, shall account for a total of 35 astronomic hours per week.

(9) The Senate of the higher education institution shall establish differentially the scientific-teaching workload based on its own methodology.

(10) The activity workload of other categories of higher education personnel shall be established in compliance with the Labour Code.

(11) The higher education management personnel (rector, pro-rector, dean, head of department or head of chair) may cumulate scientific-teaching and research positions, in line with the institutional regulations.

(12) The didactical workload set forth in paragraph (1), letters a) and b) of the present article may be reduced for carrying out the activities provided in par. (1) letters c) and d) of the present article, according to the methodology approved by the Senate.

#### Article 120

(1) The assessment of the personnel involved in the higher education teaching and research activity shall be part of the quality assurance system and shall be performed periodically, in line with the institutional regulations.

(2) The assessment of the personnel involved in the higher education teaching and research activity shall be carried out depending on the teaching performance, research performance, participation in the academic life, and other criteria set forth in the institutional regulation.

(3) The assessment of the scientific-teaching personnel shall be carried out by:

a) administration of the institution;

b) head of chair or department;

c) quality assurance commission;

d) peers and experts;

e) students;

f) other competent structures.

(4) The assessment of the scientific-teaching personnel by students shall be compulsory.

## 29.2 Commentary

**Human Resource Autonomy** is one of the key areas identified in studies which define University autonomy (see e.g. the EUA Autonomy scorecard). It provides the basis for the University to recruit, retain, develop and help to motivate staff - academic and non-academic.

The Code is highly prescriptive (see above) in defining: categories, status, titles, and even requiring that the award of titles 'shall be ruled by a regulation developed by the Ministry of Education, and shall be approved by the Government'. It is essentially a bureaucratic instrument which leaves little, if any, discretion or freedom to the University.

Curiously the Code does not appear to define who the employer of University staff is. The legal advice within the EUniAM project suggests that the Rector is the formal employer but this does not appear to be explicit in the legislation. It has also been suggested that the Rector would be expected to sign all letters (contracts) of appointment. This would be an inappropriate use of the time of the person appointed to be the Chief Executive and leader of a complex organisation – indeed it should be expected that the number of documents requiring the approval and signature of the Rector should be kept to a minimum with authority delegated to a number of officers to sign on behalf of the university. The Rector would then sign only the most important legal documents and institutional agreements.

If the EUniAM proposal for the establishment of a Governing Body – the University Board – is accepted then it would be logical to make that body the formal employer not only of the Rector but all other staff (academic and non-academic). In practice the employment of other staff would be delegated and might be expected to be the responsibility of the University Human Resource Department with staff within that department designated to sign letters (contracts) of appointment on behalf of the University.

The Code defines in elaborate detail the basis for measuring workload. It is difficult to reconcile this level of detailed prescription on human resource management with the commitment to grant autonomy to Universities. It seems not only to be contrary to the definition of autonomy in **Article 79** but also to the ethos of autonomy which needs to be engendered if institutions are to develop their identity and accept the responsibilities which autonomy entails.

It is a *sine qua non* that Universities must respect national legislation on employment rights but this is presumably covered in general Labour law.

EUniAM proposes a simple legislative commitment to Human Resource autonomy (see below in italics) which respects national legislation and commits the University to effective

management, development, retention and motivation of the total staff complement – academic and non-academic.

Article 119 is suggested to be replaced by the EUniAM proposal:

*“Following the basic principles of HE sector as well as universities powers and responsibilities (for more details see sections 3 and 6), public universities are free to:*

- *Appoint, review and evaluate academic and non-academic staff*
- *Establish titles, levels, career path, including criteria for tenure, and conditions of appointment, including remuneration subject to national legal requirements for all staff (academic and technical)*
- *Establish effective staff development and training programs*

This should be contrasted with the restrictive terms of the Code, which will prevent change, development and innovation in Human resource management.

### **30. ARTICLE 122: EDUCATION IN THE MILITARY, SECURITY, AND PUBLIC ORDER AREA**

#### **30.1 Excerpt from the Code**

(1) The education in the military, security, and public order area shall be an integral part of the national education system.

#### **30.2 Commentary**

This accords with the EUniAM proposal for an integrated system of merged Universities – noting that the EUniAM proposal involves merging the current institution with other Universities. This will give students in the military, security and public order fields access to a much wider range of relevant subjects in larger multi-disciplinary Universities. It will enhance the quality of their education in a strongly research based, learner centred environment and enrich their general formation and education through close contact with students in a wide range of other subjects.

### **31. ARTICLE 123: GENERAL FRAMEWORK FOR LIFELONG LEARNING**

#### **31.1 Excerpt from the Code**

(1) Lifelong learning shall include the learning activities carried out by a person during the whole life, for training and developing skills from personal, civic, social, and professional perspectives.

(10) The certification of the knowledge and competences acquired in the non-formal and informal education contexts may be carried out by the authorized structures based on a regulation, approved by the Ministry of Education.

### **31.2 Commentary**

EUniAM proposes that Life Long Learning should be integral to the mission - powers and responsibilities of a University and does not envisage that this should be further subject to Ministerial regulation.

In accord with the Bologna process and the revised edition of the ECTS Guide (Yerevan 2015) the EUniAM report argues that the procedures and criteria for the recognition of prior learning and experience should be fully integrated and transparent in the University admission processes. It follows that the EUniAM recommendations do not correspond with the limitations specified in the Code and do not anticipate that this would be a further area which needs to be covered by regulation.

## **32. ARTICLE 133: CONTINUING PROFESSIONAL TRAINING**

### **32.1 Excerpt from the Code**

(1) The professional development of the teaching, scientific-teaching, scientific and management staff shall be compulsory during the entire professional activity and shall be regulated by the Government.

### **32.2 Commentary**

This is another example in the Code of an impairment of University autonomy through government regulation.

EUniAM is committed to continuing development and training for all staff but views this as a University responsibility central to the University mission and quality management and a responsibility of the Human Resource Department and hence not subject to Government regulation. It considers that staff development is an aspect of quality assurance and enhancement, which will be subject to periodic external review and evaluation. It recognises that the quality of staff will be central to the recruitment of high quality national and international students and that student feedback will reflect on the success of the University and its staff. It proposes that in the grant of powers to the University this responsibility should be explicit through a requirement to: *“Establish effective staff development and training programs”*.

### **33. ARTICLE 140: DUTIES OF THE MINISTRY OF EDUCATION**

#### **33.1 Excerpt from the Code**

(1) The Ministry of Education shall:

- a) develop and promote the state policies in the education and research area in the higher education;
- b) develop draft legislative and normative acts in the education and research area in the higher education, and shall exercise the state control over the enforcement of such acts;

#### **33.2 Commentary**

This Article covers all branches of education.

The EUniAM proposal is to rename the Ministry and establish within it a Department with responsibility for Higher Education. Its proposals are based on a clear statement of the powers and responsibilities of the Ministry which are coupled with a precise recognition of the powers and responsibilities of autonomous Universities. They exclude the detailed regulation of most aspects of University life and work, which the current Code requires, and which are not compatible with the establishment of autonomous Universities as envisaged in Communications from the European Commission. EUniAM proposes:

*“The Ministry of Education becomes: The Ministry of Education, Research and Innovation (MERI) to reflect the mission of the Ministry*

*MERI shall be the sole ministry for relations with universities relating to learning and teaching, research, and knowledge transfer*

*All funding for higher education and research to be managed by MERI*

*MERI to establish a high level Higher Education Division (as part of MERI) with terms of reference/responsibilities as set out below*

*The Division for Higher Education must be provided with adequate (number, quality, level) staff resources to manage the range of responsibilities.*

*The Higher Education Division will be responsible inter alia for:*

*The development of a five year strategic plan for higher education*

*Consultation with the Higher Education sector on a systematic and regular basis*

*The allocation of recurrent and capital funds for learning and teaching to public universities on the basis of contracts and a transparent and published funding formula based on student numbers and outputs*

*The definition of consistent and coherent Higher Education data fields.*

*Collection, collation, analysis and publication of management and performance data,*



*The commissioning of a high level, integrated MIS (student/learning and teaching /FTE and academic and technical staff)*

*The establishment of financial and audit report requirements for public universities*

*Arranging for periodic audit and review visits to universities to test the quality, effectiveness reliability of financial and data management systems*

*Review of university strategic plans and other matters to be determined by MERI*

*Establishing sector performance indicators related to learning and teaching*

*Seeking reimbursement of any unused funds resulting from under recruitment of students and/or lower student outputs than specified in the contract with the university or in the event of the detection of misuse of funds”.*

## **34. ARTICLE 143: SOURCES FOR EDUCATION FINANCING**

### **34.1 Excerpt from the Code**

(1) The priority source for financing the public education system shall be:

b) allocations from the state budget for the institutions of technical and vocational, higher education, and other educational institutions subordinated to the Ministry of Education;

(2) The transfers with special destination shall be carried out by the Ministry of Finance, in line with the allocation formula proposed every year by the Ministry of Education and shall be approved by the Government.

(6) The educational institutions may also benefit from other financing sources, namely:

a) revenues from provision of fee-based educational, scientific, and technological transfer services, according to the law;

b) revenues from selling items manufactured during the training process (in teaching households, testing workshops and others), as well as revenues from renting out premises, equipment, land, and other assets under public and private ownership;

c) grants, sponsorships, and donations;

d) other legal sources

### **34.2 Commentary**

The EUniAM proposals could be accommodated in this article. They state that funding for Universities should be based on a transparent, published formula which is performance (output) based both for “*research and knowledge transfer and for learning and teaching*”.

They envisage that Universities might generate income through a variety of activities. The proposal gives greater freedom to the university in the allocation of funds internally:

*“Universities are free to allocate the block grant in ways determined by the university Governing Body subject to the requirements of the contract with the Government and respecting principles of accountability  
Funding for research should be allocated on the basis of a transparent, published formula in the form of ‘core’ funding to cover basic institutional research infrastructure”.*

## **35. ARTICLE 155**

### **35.1 Excerpt from the Code**

The employment contracts of the individuals, who on September 1, 2018 hold the scientific-teaching positions in the higher education institutions without fulfilling the conditions provided in the paragraph (3) of the article 132 shall lawfully terminate.

### **35.2 Commentary**

It may be appropriate to consider a timetable for implementation which fits with the reform of Doctoral education, the establishment of high quality doctoral schools and the integration in Universities of the Academy of Science Research Institutes which will reinforce the research capacity of Universities.

In the case of long serving staff with a research record Universities may also wish to consider in the context of the commitment to life-long learning whether staff can demonstrate the achievement of Doctoral cycle level achievements for which recognition could be granted.