ED-AFFICHE

European Degree Label

Policy Report on best practices & recommendations on the future development & implementation of joint programmes in Europe

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ED-AFFICHE Policy Report on best practices & recommendations on the future development & implementation of joint programmes in Europe

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Introduction to the ED-AFFICHE Policy Report on best practices & recommendations on the future development & implementation of joint programmes in Europe

About ED-AFFICHE

In 2022, the European Commission launched a call for European University Alliances to examine and facilitate the delivery of a joint European degree label. The ED-AFFICHE Project consortium, composed of six university alliances (**Una Europa, 4EU+, CHARM-EU, EC2U, EU-CONEXUS, and Unite**!) and 51 higher education institutions from 22 different countries, have secured European support.

In consultations with experts, the ED-AFFICHE consortium will propose possible improvements to the criteria associated with the European degree label and co-develop recommendations on the possible assessment procedure, as well as the design and delivery of a future European Degree label.

Together, the consortium has been successful in securing the **support of 19 national and regional ministries in charge of higher education as well as 15 national accreditation and quality assurance agencies.** It is the exchange of best practices between those actors and the open dialogue with their universities that carries the real potential to move forward the European Higher Education Area.

About the document

This document is **a follow-up to the ED-AFFICHE 3.1 Deliverable titled "ED-AFFICHE Analysis of the Obstacles for Transnational Collaboration in Higher Education"** in which the ED-AFFICHE Consortium mapped and analyzed legal obstacles in 20 countries and ranked them in a color-coded grid. The present deliverable 3.2, "ED-AFFICHE Policy Report on best practices & recommendations on the future development & implementation of joint programmes in Europe" compasses **an overview of solutions** for these obstacles derived from consultations with legal experts at university partners and associated entities of ED-AFFICHE, alongside **policy recommendations tailored for the European Commission and member states**. The strength of the ED-AFFICHE approach and proposed solutions, lies in the **diversity and impressive aggregation of feedback, data, and opinions collected over the one year** timeframe of ED-AFFICHE, encompassing input from national and regional authorities, students, employers, quality assurance agencies, university staff, and beyond.

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This deliverable provides an overview of the legal context for transnational collaboration among universities within each of the 22 countries represented in ED-AFFICHE, accompanied by recommendations aimed at facilitating smoother implementation processes for HEIs.

Methodology

This document exists thanks to the valuable input of experts from 51 partner HEIs involved in the ED-AFFICHE project and builds further on the 3.1 Deliverable "**Overview grid on national/regional obstacles**" (submitted in September 2023). In all countries where the ministry is an associated partner to the ED-AFFICHE project, legal experts from universities based in the same country joined forces to **collaboratively identify the legal barriers for the implementation of joint programmes arising from national legislation**. This 3.1 Deliverable was designed to provide a thorough **thematic analysis** of the obstacles caused by the underlying legislations in each country, together with a color-coded grid that signals obstacles to interested parties. In addition to this thematic concretisation, the 3.1 Deliverable looked at **possible solutions** for each of these obstacles separately. These possible solutions originated from two different sources: (i) we looked at the countries that have undergone legislative change to accommodate the European University Initiative or joint programmes in the recent past and describe the solutions found there; (ii) we looked at the wish lists formulated by the legal experts.

After the completion of 3.1 Deliverable, the ED-AFFICHE Consortium discussed if it was possible to move forward from country-specific obstacles and country-specific and obstacle-specific solutions, to more general strategies to approach obstacles, that could serve as policy recommendations for member states and/or for the European Commission. The Consortium distilled from the country-specific and obstacle-specific solutions a sufficient amount of overlapping evidence, to formulate **possible overarching strategies that could solve several or all reported obstacles in a specific country at the same time**. These overarching strategies are described hereunder.

These overarching strategies were presented to the associated partners of ED-AFFICHE project during a **closed workshop part of the mid-term event of ED-AFFICHE in Brussels on 22 November 2023** to test them and provide the Consortium with provisional feedback. This mid-term event managed to gather the attendance of representatives of several ministries and the QA agencies. The overarching strategies were discussed during online and in-person break-out discussions, and an ED-AFFICHE Consortium representative was present in each break-out session to report on the discussion.

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In addition, the ED-AFFICHE team run a **separate trajectory between July and December 2023 parallelly in each of the countries** where the ministry is an associated partner. First, a **questionnaire was sent to each of the ministries**[1] as preparation, asking for the state of play in their country (applicable law to joint programmes, their stance towards the introduction of a European Degree, more specifically possible forms of implementation of the degree/label into their jurisdiction and ways to make the label relevant (codified in legislation) even though it is not a fully-fledged degree). Then, the **country-specific list of obstacles** that was composed for the 3.1 Deliverable, was shared with the relevant ministry, both to check the accuracy thereof and as a preparation for further dialogue between ED-AFFICHE's legal experts and authorities. In order to continue this dialogue, as a next step, in each of the countries where the ministry is an associated partner, a **national workshop** took place. The ED-AFFICHE Consortium chose to keep the format flexible, not to intervene with the dynamics of a specific country. That means that in countries where the HEIs and/or the alliance (members) meet with their ministry in a structural manner, this format could be used for the workshop, whereas in other countries the workshop needed to be organised especially for ED-AFFICHE. The participants of the workshop where also left to be determined in each country separately depending on what would be the most "natural" way to discuss legal obstacles for joint programmes with the ministries. To make this assessment, the ED-AFFICHE Consortium relied on the **insight of the national contact point**, described in Deliverable 3.1, who was also responsible for organizing the workshop. During this workshop, the list of obstacles that relates to the specific country was addressed, to see if and how the ministry was willing to address them. Not only a country-specific and obstacle-specific approach was taken there, but if the ministry was willing to consider them, also the overarching strategies for solutions mentioned above, were discussed. The ED-AFFICHE Consortium drafted a template scenario for these national workshops in order to make sure they were organised in each country in a comparable manner, as well as a template to report back on the workshop to the ED-AFFICHE Consortium. This way, the workshop could be organised internally in each country, often between actors who know each other well from other higher education meetings, using their own national language, instead of members of the ED-AFFICHE Consortium having to be present there, which would also mean the meetings would have to be organised in English. The national workshops were mostly organized in the period of September-November 2023. Although this approach did mean that the ED-AFFICHE Consortium needed to rely on the chosen national contact points to a large extent, it seemed like the most sensible way to move forward in order not to create an impression that a European pilot project was trying to intervene with

[1] Annex 6 – ED-AFFICHE Template for national and regional authorities

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national/regional competences. In some countries, the national contact points were also members of the ED-AFFICHE management team (Flanders, Italy, Spain, Czech Republic, Poland).

During January 2024, the ED-AFFICHE WP3 leaders had a series of **online meetings with each of the national contact points to have an update on the latest state of affairs in each country**, gathering feedback on concrete outcomes that have emerged since the national workshop, or expected outcomes.

1. Overview state of affairs in each associated country on legal obstacles

In Annex 7 to this deliverable, an overview of the state of play in all of the countries where the ministry was an associated partner in the ED-AFFICHE consortium can be found. In general, the different reactions from ministries in those countries can be categorized as follows:

- In some countries, the ministry had **not fully been aware of the obstacle**, and immediately proposed a practical solution during the workshop itself so that the HEIs had a workaround for their joint programmes (e.g. Austria).
- In some countries, the ministry acknowledged the existence of the obstacles, and the HEIs together **drafted a concrete proposal of law to overcome them**, which was then presented and submitted to the ministry (e.g. Poland).
- In some countries, the ministry acknowledged the existence of the obstacles, and even though no concrete proposal of law exists yet, the HEIs and the Ministry are on a very real path towards **change of the legal framework in the immediate future** (e.g. France, Italy).
- In some countries, the **need for a new law on all types of international collaboration was felt rather than a quick fix-up for European Degrees**. This was mostly so in countries that had already changed their legislation in the past for previous new types of programmes or collaborations like Erasmus Mundus or the European University Initiative (e.g. Flanders).
- In some countries, the ministry was **reluctant to form an opinion** yet, first awaiting where the EU will go with the alliances and the European Degree before taking a stance themselves (e.g. the German Länder in our consortium).

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2. Overview solutions

2.1 Article per article approach

Before going into the overarching strategies to find solutions for legal obstacles, it is worth mentioning the most evident way to address obstacles, i.e. an "**article per article" approach to change legislation**. The 3.1 Deliverable resulted in a country-specific overview in which the legal obstacles for joint programmes, stemming from the legislation in a particular country, were described. Going through that list and addressing each of these obstacles one by one, trying to reformulate the article in the legislation that is causing the obstacle, is a rational and conventional approach in such cases.

The description of overarching strategies below does not prevent this exercise from being done or being relevant. On the contrary, the proposed overarching strategies even require the obstacle list to be carefully studied one by one first. The application of overarching strategies on the one hand and a careful rundown of an obstacle list one by one on the other, are not mutually exclusive but complimentary. After all, **overarching strategies can only be applied (i) if a ministry has determined that an obstacle exists, (ii) if a ministry has determined if, and if so which, overarching solution can be applied for this obstacle**. Hence, the ED-AFFICHE Consortium aims to refrain from suggesting that any of the overarching solutions will serve as an instant remedy without undergoing a deliberate legislative process before their application. This is also why the project proposal of ED-AFFICHE did not include a deliverable promising changes to the law. This would be impossible in a one-year project that respects both the technical process of qualitative lawmaking and the democratic process behind it. After all: any legal change takes time and needs reflection.

Where the overarching solutions described below can make an impact, is **to assist this process of lawmaking**. Similar problems in different countries could be solved in a similar way, and overarching strategies could be applied to a selection of provisions from the applicable legislation, removing the need to phrase a different wording in each separate article of a legal act that needs change in order to accommodate joint programmes. What the proposed strategies could also achieve, is to **assist member states in the decision if, and if so which, overarching strategy is fit to remove a specific obstacle**.

What the ED-AFFICHE Consortium understood from its consultations with national authorities was that there is a **need for some guidance** in this matter. Many member states expressed their openness and willingness to discuss obstacles for joint programmes if they are created by national/regional legislation (or by the joint application of different legislations from different countries that were never designed

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to be applied at the same time). But most member states also expressed their **concern on parallel action from different member states** on this matter: if each ministry implements legal changes autonomously, without coordinating "who changes what in which way", how can we guarantee that future legislation will sidestep the same challenge? More precisely, how can we preempt future legislation from becoming unwieldy or even unfeasible to apply collectively when a joint programme requires simultaneous adherence to different national legislations?

Some ministries have also pointed out a similar dilemma**: when they update their legislation and others do not**. They worry that enriching their legislation with additional categories or concepts might prove futile if other member states fail to follow suit. This underscores the importance of exchanging information on member states' actions at a European level, emphasizing the need for more than just a coordinated common strategy.

This deliverable aims to answer exactly this need and provide some guidance in this matter.

2.2 Choice of governing law

A choice of governing law is a choice of applicable legal framework. It means that a consortium, instead of applying all legal frameworks applicable to all (universities from) participating countries jointly, takes **a decision to choose only one legislation that will govern the cooperation**. Usually, the legislation of the coordinating university is chosen, although other choices can be made as well (e.g. the university issuing the degree).

A choice of governing law is not necessarily an "all or nothing" choice: it is perfectly possible to make **different choices for different sections of a consortium agreement,** i.e. to apply the legislations from participating countries jointly for some aspects (e.g. students' rights), whereas for other parts of the regulation, one applicable law is chosen (e.g. selection and/or admission procedure).

An example sometimes seen in practice, is that for the legal protection of students (competent courts, legislation regarding student litigation for challenging grades), only one legal forum is chosen, more specifically the legislation from the country the selected court is located in. Another example sometimes seen in practice is that for strictly procedural matters such as enrolment only one applicable legislation is chosen, i.e. the applicable legislation of the country where the students formally enroll (when they do not formally enroll in all participating universities in the joint programme).

The obvious benefit from a choice of governing law is that one of the main difficulties in establishing a joint programme, i.e. the necessity to know and apply all higher education legislations from different

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countries at the same time, disappears. Any **discrepancy in the underlying legal frameworks of the participating countries which make cooperation cumbersome, and sometimes (almost) impossible, is resolved**. If country A has an application deadline that does not match country B's (and if the consortium partners do not aim to have the students enrolled in each HEI), then a choice can be made to apply only one legal text, i.e. the one of the country in which the student enrolls and the application deadline is thus applied.

The strength of this overarching solution is also its weakness. If partners in a consortium agreement can choose to set aside a country's (or several countries') legislation by a joint decision, is that something their legislators and QA agencies would accept as legal? In practice, the solution is currently in use in some of the consortium agreements the ED-AFFICHE Consortium was made aware of by consulted legal experts in the associated member-countries. The legal experts mention that, as long as the technique is used sparsely (e.g. for legal protection or administrative processes), the technique usually stays under the radar – both for the QA agencies who accredit the programme and for the legislators whose legislation is set aside. This leaves programme directors and legal experts of the participating universities, however, with undesirable uncertainties.

The planned recommendation for the European Degree in 2024 might create a unique momentum to settle this issue and **ask member states to take a stance on the legality of this solution, and if legal, for which aspects of the consortium agreement**. Indeed, the legality of this overarching strategy is unclear to the ED-AFFICHE Consortium. It seems reasonable to confirm that the selection of a court from one country is allowed. It is however less evident to state that HEIs can select governing law for the joint programmes they deliver, as it is their national legislation that enables them to deliver the programme and issue a degree that is legally valid in the said country. Since Consortium Agreements mostly contain concrete sections, **having a clear oversight of which sections allow a choice of governing law,** and which sections do not, would be helpful when negotiating them. As long as this uncertainty is not removed, the practical use of this overarching solution is limited a no legal advisor would suggest setting aside the own code on higher education for important matters for fear of rendering the degree invalid.

2.3 Flexibility in legislation (sandbox/deregulation)

An overarching solution for the complexity of applying different sets of legislation at the same time, which is often mentioned by those interviewed by the ED-AFFICHE Consortium, is to **change the applicable legislation in such a way that joint programmes get "sandboxes**". What is meant by such

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"sandbox legislation", is that a **test environment is created in which joint programmes are given room to experiment.** This entails listing a variety of national/regional regulations that are deemed inapplicable to joint programmes (frequently cited are articles within legislation concerning initial accreditation, the necessity for new programs to align with existing national programs from a macro-efficiency perspective, regulations pertaining to student selection, and legislation establishing language requirements for programmes).

This solution can be seen in the Flemish legislation (art. II.151 en II.261 of the Code on Higher Education). The Code on Higher Education stipulates that international joint or double degree programmes that have gone through a European selection process (e.g. Erasmus Mundus) are not considered as "new" programmes and as a result do not need initial accreditation. Unlike other Flemish bachelor's and master's degrees, selection of students on the basis of capacity of the students is allowed for these programmes. The restrictive Flemish rules on the use of foreign languages in education are (to a certain extent) set aside for these programmes. Bachelor and master programmes developed within the European Universities Initiative, even though these programmes "as such" have not gone through a European selection process, benefit from the same exemptions, as the context in which they are created (i.e. the European University Alliance) as a whole has gone through a European selection process. The underlying idea of this legislation is that these programmes (or in the case of the European Universities: the context) have already gone through an external reviewing process which guarantees a sufficient level of quality, for the Flemish legislator to ease up some of its own legislation. It is a matter of *quid-pro-quo*: because of the additional criteria and the attached reviewing process that has already taken place at another level, the Flemish legislator is willing to create a sandbox for these programmes without fear that this will lead to ill thought-through or low-quality programmes. This underlying rationale proves that the creation of sandboxes also depends on the QA culture in a country: only when a legislator is certain of the QA culture in their HEIs, the creation of sandboxes is to be expected. These examples are a good way of demonstrating the strengths and the weaknesses of this approach. From a positive angle, this type of sandbox regulation is a **controlled and safe way for governments to support the HEIs in their country**. It allows governments to determine (i) which flexibility is given (ii) to which programmes (iii) and under which circumstances (in the Flemish example above: (i) accreditation, admission and language regulation ((ii) for joint and double degrees (iii) that have gone to a European review process).

Although the idea of "sandbox" and "flexibility from national legislation" might give a first impression that this requires national/regional governments to let go of control, in reality **this solution allows**

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governments to clearly determine their own boundaries. This approach works very well also with the idea of quality assurance: only if the conditions show that a specific type of programme is qualitative, the sandbox is created. The European Degree (Label) might make good use of this technique, as mentioned hereunder.

This tailor-made part is also the weakness of this approach. **Sandboxes created in country A only benefit programme directors in country B, if their countries chose to apply similar flexibility to similar programmes under similar circumstances**. If, for example, country A creates sandboxes for joint programmes, and country B creates sandboxes for double degrees, then all legal barriers remain when HEIs from both countries cooperate, even though country A and B have both made an important change in their legislation. Similarly, when both countries decide to create sandboxes for joint programmes, but country A choses to give them flexibility for accreditation procedures and country B for language requirements, then the extent to which legal barriers have actually disappeared, is limited. Both language requirements and accreditation will still be restricted by country B's and A's legislation.

Only when two countries both decide to take a similar approach (e.g. give flexibility on the use of languages for joint programmes), programme directors from the participating HEIs can rest assured that they can take a decision solely on the quality of the programme and fitness for purpose, without having to worry about violating legal regulations.

One of the biggest challenges of this overarching approach, is thus **getting countries aligned on the category of programmes that benefit from sandboxes**, and ideally, also listing **for which types of obstacles the flexibility is granted**. It is therefore somewhat problematic that some of the obvious "categories" for which sandboxes could be created, often seem lost in translation: "*review of the literature, university web pages, survey reports and research articles shows a plethora of terms used to describe international collaborative programs, such as double and joint degrees. These terms include: double, multiple, tri-national, joint, integrated, collaborative, international, consecutive, concurrent, co-tutelle, overlapping, conjoint, parallel, simultaneous, and common degrees. They mean different things to different people within and across countries, thereby, causing mass confusion about the real meaning and use of these terms"* (Source: rusc.v8i2.1067.pdf (springeropen.com)).

Terms like joint programmes, joint diplomas or joint degrees, are thus often misunderstood or are used differently in different countries. As the effectiveness of this overarching approach depends on legislators creating sandboxes for the same type of programmes, this feeling of being lost in translation is not very helpful.

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The European Degree (Label) could create momentum to overcome this obstacle. Based on a uniform set of criteria, it would become evident to everyone which programmes qualify as "European Degree (Label)", especially if the policy framework excludes the possibility of self-verification and/or if a web page is set up which lists the programmes that have gotten the title of "European Degree (Label)".

One of the bigger challenges of this approach is that **sandboxes are usually meant to be temporary**. They give oxygen to programme directors and urge them to be creative and come up with the most qualitative programmes, unrestrained by obstacles in national/regional legislation. By giving them the flexibility to experiment, a legislator can take the time to take future legal actions in an evidence-informed way. For the sustainability of (often resource-hungry and heavily negotiated) joint programmes, such temporary nature of sandboxes is problematic. Once a programme is up and running, it is **hard to change the programme in a substantive manner if one country decides to "close" the sandbox and re-apply the national legal framework**. Students who are already enrolled could easily be the victims of this – after all, after their enrollment (and in a bachelor, this might mean 3 or 4 years), they expect the programme not to undergo substantial changes, and often the national/regional law on higher education enforces this continuity. This means sandboxes do not only need coordination as to which programmes and which obstacles are covered under which conditions (see above), **but also on the length thereof and the way in which they will eventually evolve into sustainable legislation**. When a sandbox becomes permanent, this becomes a **process of deregulation**. Example can be given from the the Polish legislation which exempts all joint programmes from some strict regulations regarding design of curricula.

As will be shown below, such deregulation (permanent freedom) was demanded in many interviews the ED-AFFICHE Consortium conducted for some of the mapped legal obstacles.

A last challenge for this sandbox solution is that the **simultaneous use of several sandboxes for different types of programmes undermines the coherence of the system**. In this regard, many legislators have created flexibility for joint degrees and/or for Erasmus Mundus Joint Masters in the past, many have also granted flexibility to their HEIs that are participating in the European Universities Initiative. Most of these sandboxes are simultaneously in place (and for Erasmus Mundus, have gotten a permanent status). When approached by the ED-AFFICHE Consortium on their willingness to create new sandboxes for European Degree (Label), a number of ministries said that a crucial point has been reached with the launch of the European Universities Initiative and the subsequent sandboxes, and

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that **the time has arrived to evaluate all existing sandboxes and create a new, separate legislation specifically for international collaboration, rather than creating yet another sandbox.**

2.4 Flexibility through consortium agreement

A variation on the previous method is the one in which the **sandbox is further conditioned by the conclusion of an agreement between the participating universities on the organization of the joint programme**. Flexibility in the national/regional legislation is granted, *provided that* another regulation is agreed on between the parties and stipulated in a consortium agreement.

In this scenario, the legislation changes in nature: instead of being compulsory/mandatory legislation, the **legislation becomes non-compulsory, e.g. a default rule that only applies if the parties have not agreed on a specific tailor-made arrangement for the joint programme**. This is a technique often used in legal systems, mostly in private law legislation. Many legal systems have always known such provisions for example in labour law, (family/marriage) patrimonial law, contract and tort law,… Provisions that protect the weaker party are mostly compulsory, whereas other provisions in the legislation only apply if the parties did not agree otherwise through means of a contract.

In the realm of education law, this approach isn't commonly encountered. Education law is predominantly viewed as a branch of public law, often compulsory in nature. However, there is no inherent reason why this approach couldn't be applied effectively within education law, particularly concerning international collaboration in higher education.

The recent Spanish legal changes prove this, as it is exactly this technique that was used to grant flexibility to European Universities: if a consortium agreement needs to deviate from Spanish law, this is allowed (Real Decreto 822/2021: Disposición adicional séptima. Titulaciones universitarias conjuntas internacionales en organiza del Programa de Universidades Europeas de la Comisión Europea).

Although different in nature, the practical differences between this technique and the previous one (creation of sandboxes) are only slight, as both result in a **situation where universities can negotiate with their partners in the consortium**, without the restriction of the own national/regional legislation limiting the conversation. Two differences are worth noting:

- The condition that universities themselves **need to stipulate another regulation in their consortium agreement**, means that – albeit indirectly – a quality check of this alternative regulation is possible. In the European Approach, standard 1.3 of the "Standards for Quality Assurance of Joint Programmes in the EHEA" stipulates: *The terms and conditions of the joint*

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programme should be laid down in a cooperation agreement. The agreement should in particular cover the following issues: Denomination of the degree(s) awarded in the programme; Coordination and responsibilities of the partners involved regarding management and financial organization (including funding, sharing of costs and income etc.); Admission and selection procedures for students; Mobility of students and teachers; Examination regulations, student assessment methods, recognition of credits and degree awarding procedures in the consortium. The verification process in the European Approach thus entails **a possibility for QA agency to check the content of the consortium agreement**. If the European Degree (Label) were to make use of this European Approach process for the verification of the European Degree criteria, and if the European Degree criteria elaborate further exactly which joint policies are expected, then a quality check for those aspects where national/regional legislation is set aside, is possible. As such, the necessity to conclude a consortium agreement as a preliminary condition to set aside national/regional legislation, forms a firm reassurance for governments that the "disappearance" of applicable legislation does not result in a lower quality of the joint programme.

- Another notable difference is the **timeline**. Whereas sandboxes by their very nature are considered to be temporary experiments**, the choice to make legislation non-compulsory and act as a default rule, can be sustainable**. Once again, contract law, (family/marriage) patrimonial law, inheritance law (through last will/testament), etc. are the perfect proofs thereof, as they have known such default rules for centuries. The rules are there to cover the situation where parties did not think to regulate their situation, or where parties did not agree, but they give way as soon as parties agree on another rule that is more tailor-made to their specific situation.

A strong similarity between this overarching solution and the sandbox/deregulation solution, is the **need for coordination**. Indeed: when articles in legislation are made non-mandatory and can be set aside through a specific agreement between parties, this creates a powerful dynamic to negotiate freely a consortium agreement that warrants the most qualitative programme, *but only if* all parties around the table benefit from the same freedom. **This technique works best if all governments apply it in a coordinated manner**: are the same topics made non-mandatory in all jurisdictions (admission procedure? Tuition fees? Curricular restrictions? Etc.)? And is this done for the same types of programmes (to negotiate joint degrees? Erasmus Mundus Joint Masters? Multiple degrees? Programmes from European University alliances? Etc.)? If the universities around the table are subject to different types of non-mandatory rules, then the powerful dynamic might quickly disappear as legal restrictions and barriers continue to determine the negotiation for one or more parties.

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2.5 Shifting competences

A last overarching solution is to **shift competences from the member states to the European Union**. Obviously, this is not a short-term solution that can accompany the roll-out of the European Degree (Label). That being said, it is worth mentioning it. After all, if the previous overarching solutions made one thing clear, it is that **no solution will truly work, if all member states do not act in a coordinated fashion**. That is the logic behind international collaboration: regulations that have as their primary aim to govern international agreements, should ideally be common for parties to negotiate effectively. That can be accomplished by deregulation, or by choosing one applicable legislation of one of the parties, but also by **having a shared regulation through an international treaty or through European legislation**.

For the roll-out of the European Degree, European legislation or an international treaty at EHEA level seems rather unrealistic, given the timeframe. That means a **coordination role for the European Commission**, trying to align and convince member states to act in a coordinated fashion, is the only way forward.

The **scope of this coordination** exercise is not to be underestimated. The object of the regulation needs to be defined (only European Degrees and only within the geographical scope of the EU?). The regulation itself needs to be defined (which barriers are targeted?). And finally, the way in which these barriers are removed, needs to be agreed on. Ideally, this removal of obstacles for the European Degree (or other types of international collaboration) is also accompanied by a wider range of shared regulations on employment of staff, research careers, quality assurance, student rights, fiscal arrangements for scholarships etc. Faced with a full national competence, such wide-scope coordination is ambitious, especially if the European Degree as a label and the European Degree as a qualification would co-exist at a given time.

Imagine if the communication and the subsequent European recommendation on the European Degree were a **European Directive organizing this role-out in the member states**. This would guarantee the much-needed coordination, while still leaving all the maneuvering space to the member states to align themselves with these principles in the way that fits most adequately into their existing national higher education framework. Similarly, if the EU where to issue a **Directive in which a European Degree qualification is launched, this would require all member states to introduce an "new category" of degree into their legal systems** by the same deadline, creating an "empty category" for which new

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legislation needs to be created. A directive coordinating such creation of new legislation and setting a timeline for this, would ensure the effectiveness of the implementation.

It is **worth debating the option of shifting the competences** in education **for** this small aspect of education law, i.e**. international collaboration in higher education**. It could be a powerful enabler for less cumbersome international collaboration, if those legal rules that govern international agreements between HEIs (i.e. the rules that govern international joint and double/multiple degrees) are common. Keeping the principle of subsidiarity in mind, attempting to establish a functional legal framework for European degrees while acknowledging the full competence of the member states is an initial step. Only if such implementation proves unsuccessful could a reconsideration of competences be warranted.

The ED-AFFICHE Consortium has gathered from numerous interviews that some individuals believe member states have already had sufficient time since the initiation of the Bologna Protocol and the Lisbon Convention on the recognition of qualifications, yet satisfactory results remain elusive. The existing array of legal hurdles is perceived as overly cumbersome (as outlined in 3.1 Deliverable), with recognition often far from automatic and the European Approach underutilized. Consequently, the process of internationalizing higher education is viewed as excessively burdensome. In these interviews, there were suggestions of an immediate transfer of competences.

Although the Consortium understands these frustrations, nonetheless it seems too soon to act upon them. After all, the current **European Universities Initiative has shown that most member states are very much prepared to assist their HEIs in their efforts to be international players**. The European Approach seems to have gotten a boost in the last years as well (the EQAR website references 30 programmes that have used the European Approach, 20 of which in the last three years. The number of QA agencies involved increased from 4 before 2020, to 9 in February 2024). And during their workshops with national ministries, the ED-AFFICHE Consortium overall received very positive comments on their work to map legal obstacles and was met with quite a constructive attitude of member states to investigate the removal of these obstacles.

How member states will react to the communication and recommendations on the European Degree (Label) is an interesting testbed. If indeed the constructive attitude of the member states becomes palpable through a collective redrafting of national/regional legislation along the lines that are set out in the recommendation, then insisting on a shift of competences towards the EU for international collaboration in higher education would be inconsistent with the principle of subsidiarity. If, however,

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the European Degree (Label) recommendations would be ignored and the mapped legal obstacles for joint degrees would remain, then asking the question of a shift of competences could become unavoidable.

Which overarching solution for which obstacle?

In our 3.1 Deliverable, the ED-AFFICHE Consortium mapped a number of obstacles that make the creation and implementation of joint programmes cumbersome. The obstacles can be categorized in different manners. The ED-AFFICHE Consortium chose to align closely with the list of obstacles the European Commission had shared themselves with the member states (see methodology of 3.1 Deliverable). The mapping exercise resulted in the following list of level obstacles:

1. Accreditation

1.1 Accreditation (criteria, procedure, time frame) of the programmes

1. Procedural rules/timelines that are country-specific
2. Accreditation criteria that are country-specific
3. Specific legislation for specific programmes
4. Mixture of institutional and programme based accreditation
5. Countries who accept only their own accreditation agency or need its consent
6. The process of collecting signatures and (internal) agreement processes are slow and complex
7. Political approval of accreditation procedure

1.2 Restrictive national legislation regarding the possibility to create an interdisciplinary degree

1. No legislation making it very difficult for universities to maneuver
2. In all degrees, one field of study has to be dominant
3. Possibility to establish transnational interdisciplinary degrees is attached to programing of all relevant initial degrees
4. Difficulties in determining the outcome of the programme. If a country has a list of learning outcomes set for specific degrees without organizing interdisciplinary degrees, then negotiating an interdisciplinary degree becomes difficult
5. Rigid (national) programme structures make interdisciplinarity difficult

1.3 Restrictive national legislation regarding the necessary components of the graduation diploma and the joint diploma and graduation rules

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1. Country-specific documents which underpin the joint degree may clash if they are not the same
2. Countries specify which degree title needs to be on the diploma, i.e., a limited list of degree titles recognized in national law
3. The organ that needs to take the decision on the degree/diploma, is specified in the legislation
4. Necessity of all rectors signing the diploma can be hard to organize internationally
5. Legislation specifying the format of the parchment
6. Legislation specifying the language of the parchment
7. Legislation stating that the university may only print this if the coordinate the programme
8. Lack of specific legislation for joint diplomas (awarding the degree or printing the parchment)
9. (Im)possibility to mention the merits on the diploma
10. Timeframe to take the degree decision
11. Physical presence of students determines possibility to award the joint degree

1.4 Final exams form – possible national/state examinations (not common in all countries)

1. Organization of the diploma thesis regulated
2. Other types of final exams regulated by law

1.5 Percentage of foreign teachers in a degree programme

1.6 Differences in grading scales and workload per ECTS

1.7 Restrictive national legislation forcing programmes to go through a new accreditation procedure every time the consortium partners or the core curriculum change

1.8 High accreditation costs

1.9 Possibility to use the European Approach

2. Quality Assurance of new programmes

2.1 QA of new programmes

2.2 Difficulties in developing an internal Quality Assurance framework for the European University as a whole that addresses all requirements in the different national systems

2.3 Restrictive or diverging legislation regarding QA of a joint programme

3. Flexible Learning Paths

3.1 Stringent national regulations regarding the establishment of full degrees

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1. Law specifying subjects and contents of the programme
2. Countries who consider a joint programme as a national programme and apply the same requirements to it

3.2 Recognition of blended/online learning

1. Concept of online mobility not regulated in the legal system
2. Online learning is regulated in the legal system, yet restricted

3.3 Different appropriation of the Bologna Process tools among partners and within member states and Strong diversity of appropriation of the Bologna Process tools among partners and within member states

1. No legislation on financing of mobility

3.4 Differences in academic years

3.5 Minimum requirements in terms of duration (min. number of semesters to be spent at the home university)

3.6 (Lack of) study progress

2. Different student rights enshrined in legislation

4. Curriculum

4.1 Restrictive legislation regarding the use of languages

4.2 Restrictive national legislation regarding curricula (minimum or maximum ECTS credits per course/minimum ECTS credits for compulsory courses)

4.3 Different intellectual property rights or data protection legislation (development for course material)

4.4. Regulated professions

5. Governance Structure

5.1 Enrolment

5.2 Tuition Fees

5.3 Recognition of previous education (for admission/enrolment)

5.4 Language proficiency validation

5.5 Restrictive legislation regarding selection of students

Finding the right balance between each of these obstacles and the possible overarching solutions is not easy. During the ED-AFFICHE mid-term event on 22 November 2023, this discussion was brought to the associated partners. This question was addressed during some of the national workshops as well.

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One of the main reasons why it is not easy to connect solutions with obstacles, is that the list encompasses a wide variation of different types of barriers. Any attempt to categorize them is somewhat arbitrary, but participants during the discussion made a distinction between:

- Barriers that result from a process that is regulated
- Barriers that result from a particular national regulation that is unfamiliar to other countries
- Barriers that result from a measure aimed to protect of preserve a specific national context
- Barriers that result from non-alignment with international standards, guidelines, of Bologna instruments
- Barriers that result from the protection of students' rights
- Barriers that result from fundamental democratic choices on accessibility
- Barriers that result from regulated professions

The color coding above indicates which barrier is most closely connected with which category.

When it comes to connecting these categories to overarching solutions, the following observations were made:

Barriers that result from a process that is regulated. Some participants argued for the importance of making a **choice of governing law** in case when regulations are mostly in place to arrange procedures. If parties can choose the applicable law, i.e. the law from a country where the procedures are in line with the Bologna instruments, accreditation and QA procedures function well. Supporters of this solution also highlight the challenges associated with granting complete freedom to joint programmes to negotiate their own procedures within a consortium agreement. In practice, the diverse procedures of universities, QA agencies, and admissions offices, coupled with limitations in IT systems, present significant hurdles. While joint programme directors may craft an "ideal" process tailored to their programme, practical constraints faced by relevant stakeholders may necessitate revisions. In such cases, directors may find themselves returning to the drawing board to realign their processes with existing procedures and IT systems. For example: if joint programme directors design their own enrolment procedure, only to discover that the universities' IT systems are unable to implement the designed process, then the feasibility of the choices that were made is illusory. In this regard, **selecting a single country and university** (e.g. the one of the coordinating university) would ensure that there is no institutional or legislative barrier being created by the joint programme directors expressing wishes that no one is prepared for.

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However, a counterbalance voiced during the discussion suggests that "processes" must be tailored to suit the intended purpose. This underscores the importance of **negotiating them within a consortium agreement**. The decision on the QA procedure to put in place, requires a joint strategy that takes into account all particularities of the programme. The decision on the admission/selection procedure of students depends on the number of students the programme is able to receive. This is also influenced by the tuition fees being charged, as well as the variety of learning tracks available and the number of universities offering one or more of these tracks. In a joint programme, every aspect is intertwined, necessitating a holistic approach with coordinated strategies to guarantee seamless operation. Finding regulations that are "mostly there to regulate processes" might be an illusion, as underneath each process is a policy choice that needs to be jointly made in a joint programme. Consequently, **the task of designing procedures should be entrusted to the programme directors**.

A last comment heard on this matter is that procedures should not be barriers, as they are just means to an end, and thus are not truly worth fighting over. These participants just asked for a **complete deregulation from the legal side for anything procedural**, so that programme directors can freely decide what makes sense for the joint programme they are designing, taking into account what is feasible on an institutional level.

Barriers that result from a particular national regulation that is unfamiliar to other countries. Barriers that result from a measure aimed to protect or preserve a specific national context. As a whole, barriers that result from national legislation that makes sense in a national context, but simply does not work when international partners are involved received very little understanding. An often mentioned example is the **diploma format** of a certain country such as regulation determining the paper on which a diploma needs to be printed, or regulation specifying the language of a title on the diploma, or regulation determining that the royal seal should be printed on the diploma. Setting a diploma format might work well in a national context, but poses unnecessary barriers in an international context. In general, participants asked for **deregulation to design a diploma format that is recognizable in each of the countries and bears all the names and logos of the participating universities.**

There was however more support for particular national regulations if they protect and preserve a specific national context. Participants thus understood that **language regulation** is often sensitive, and usually put in place to preserve national languages as academic languages. That being said, the final response of the participants remained the same as for the previous paragraph: even when

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particularities in regulation are to be explained by national/regional history and culture, they remain equally difficult to uphold in an international context. International programmes are perhaps not the ideal vehicles for such aspirations, even if the aspiration itself was understood by many participants.

In these cases, the choice of one **legal forum was mostly deemed inappropriate**. Applying the law of a country simply because it is particular, or simply because there are historic reasons for it, seems to be missing the point of a "joint" programme, where joint decisions ought to be made that are fit for purpose and lead to the most qualitative programme, rather than on the basis which country has the legislation that poses the most barriers. Choosing the applicable law on the basis of "the most difficult legislation" threatens to create a counterincentive for member states to actually remove barriers.

Setting aside particularities in national/regional legislation was mentioned by most participants as the apt solution for this type of barriers (e.g. deregulation). Rather than a sandbox, participants here feel that particularities that are tailor-made for the national/regional context should be definitively removed as obstacles for international collaboration.

Barriers that result from non-alignment with international standards, guidelines, of Bologna instruments. Not surprisingly, when participants were asked about countries whose legislation is not (fully) in line with the ESGs, the European Approach, the ECTS system or other quality assurance tools that stem from the Bologna process, they respond that those countries should bring their **legislation in line with what was agreed on during the Bologna process**. Solution no. 1 (article per article approach, tailor-made) is the way forward here, making sure that the national/regional legislation is coherent and that all processes are aligned with each other.

Barriers that result from the protection of students' rights. Participants to the mid-term meeting agreed that issues of students' rights could create difficult situations, covering various aspects from examination litigation to extension of studies for reasons like pregnancy, to scholarships and facilities for students with some form of disability.

For these matters, some participants stressed the need for equality between students. They noted that it would be problematic if different students in the same study programme would be treated differently, simply because they have a different home university or come from a different country. **Giving programme coordinators the freedom to design joint procedures** to deal with these matters for all students equally, was mentioned as a strategy by some**.**

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Others were a bit more hesitant to give complete freedom to programme coordinators to design students' rights and noted that often true freedom of choice does not exist in this regard (for example for students with disabilities where the UN Convention on Rights of Persons with Disabilities needs to be respected, or for student participation rights which are embedded in the principles of the EHEA, and should not be up to the willingness of programme coordinators). As a result, they thought that **minimum standard in legislation** is needed or even required by international law to protect the weaker party (the student). That being said, how such a minimum standard can be set was unclear for the respondents. Some participants argued primarily for a choice of governing law here (the rights granted by the coordinating university, or the rights granted by the country in which the student is studying). This is defended as a compromise between protecting students' rights, acknowledging the legislator's duty in guaranteeing this, ensuring transparency of the applicable rights, and respecting equality between students. Others noted the complexity of this situation if HEIs need to apply legislation from other countries rather than their own set procedures. Applying rules according to the legislation of the country where the student is studying seemed the way forward for them (although "place of studying" might not always be clear, depending on the innovativeness of the joint programme).

A tailor-made approach was mentioned by others as the only true pathway forward for essential components of the education system such as students' rights.

Student agreements to be drafted (cfr. such as is the case for Erasmus Mundus) are a good way to be transparent to students about their rights, regardless of the option that is chosen for the legislation.

Barriers that result from fundamental democratic choices. The most difficult category for participants in the mid-term event were the obstacles that truly define a country's educational framework. Open access to higher education programmes (without a possibility of selection of students) is considered a key element of their system by many legislators. Making sure that this open access is also democratic and sustainable, by ensuring low tuition fees or a complete absence of tuition fees, is considered crucial by some member states as well.

On the other hand, a joint programme with a large amount of embedded physical mobility, is a resource-hungry programme with often only limited places (depending on the number of universities that are involved and the number of incoming students they can take). Especially in interdisciplinary programmes where different universities offer different tracks, being able to distribute students over the available places while trying to respect their first choices, is a difficult task. Being able to develop joint policies for these matters, making sure that selection procedures and student numbers match the

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places being offered, and setting a reasonable tuition fee to deliver the joint programme in a qualitative way, seemed indispensable for some. They argue strongly for matters as selection, selection/admission and tuition fees **to be dealt with in a consortium agreement through joint policies.**

In quite a few countries, foreign programmes have to collect fees by law, exemptions in these regulations (deregulation/sandbox) to develop joint strategies could ease the emergence of joint programmes. Similarly, if a differentiated policy for tuition fees is applied in a joint programme, this is normally a well thought through decision which aims to reach substantial equality in access for all students. Once again, the people interviewed by the ED-AFFICHE Consortium argued for deregulation and freedom to develop joint policies. In addition, fees are usually not collected from students that receive scholarship/salary from the EU. Deregulation and sandbox approaches could be meaningful here as well.

Given the delicate nature of these discussions, most interviewees stressed the need for member states to have joint discussions on these matters making sure countries proceed in a coordinated fashion, as programme coordinators are reluctant to take legal risks for crucial components of their education system.

Barriers that result from regulated professions. The data collected through the legal experts in the associated countries are insufficiently precise for the ED-AFFICHE Consortium to come to policy recommendations for regulated professions. The main message seemed to be that **these matters are very specific, excluding the possibility for overarching solutions**, as only a tailor-made approach is thinkable. This is all the more true, since the number of applicable legislations is higher. Joint programmes for regulated professions have to respect more regulators (e.g. also the Ministries of Health for joint programmes in Medicine etc.), and these may be more diverging in their approach when compared to education regulators. As a result, there are barely any joint programmes in these areas.

Conclusions

Although any categorization of legal obstacles is somewhat arbitrary and although for most of these categories, different solutions could effectively work, it was clear that a **form of deregulation** (either by setting aside national/regional legislation temporarily or permanently, or by making the legislation work as a default rule that can be set aside through a consortium agreement) was the preferred option for most types of barriers. Most respondents did not distinguish between the different methods for deregulating (often being sufficiently aware of the mechanisms to deregulate) and only expressed the

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aim of less (or less detailed) regulation. Only **for students' rights**, there was some push to have a minimum legal standard imposed. For all **barriers that are related to procedures**, choice of governing law was preferred by some, although mostly for pragmatic reasons (tapping into existing institutional (IT)processes and regulation,…) rather that for content-related reasons. Deregulation was preferred by others.

For **tuition fees and open access**, the views of the participants were too split up to be able to derive a policy recommendation from them. For the ED-AFFICHE Consortium, designing joint policies for admission and selection and clearly embedding them in a consortium agreement is quite logical. The number of students in a programme (especially a programme with a high level of physical mobility) is so crucial for the design and the delivery of the programme, that we feel programme directors might be reluctant to design ambitious flexible learning paths for students as long as there is uncertainty of the intake which may render these innovative paths unworkable. The fear that universities would not be able to cater for all students, might actually lead to "safe choices" in programme design, thus preventing the joint programmes from reaching their full potential.

3.Recommendations

Section 3 of the document aims to furnish valuable recommendations for streamlining processes associated with joint degrees for the European Commission and member states. Recommendations specifically tailored for HEIs will be included in the final version of this deliverable. These recommendations are grounded in data, best practices, and insights gleaned from various stakeholders throughout the duration of the ED-AFFICHE project.

3.1 Recommendation for the European Commission

Based on the above, several recommendations can be proposed for the European Commission. If one of the objectives of the European Union's policy initiative is to eliminate legal barriers, then:

Database

- The ED-AFFICHE consortium advises the European Commission to **work on a database** to expand our 3.1 Deliverable further. We think it is crucial to facilitate the work of programme directors and HEIs by:
    - Giving a clear overview of the national/regional legislation that should be followed when designing a curriculum and go through an accreditation process.

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- Signal the legal obstacles for the design and the delivery of joint programmes that are to be expected if a HEI from this country is party to the consortium agreement and needs to apply the aforementioned legislation.

Such database should be set up including all countries in the EU, and ideally, including all countries in the EHEA. We think such task sits firmly within the competences of the EC and would be welcomed by all HEIs, as much as it would be a gamechanger in the way the Commission is able to communicate with the national/regional ministries when addressing the internationalisation of higher education. It would also be **supportive for HEIs**: although many programme directors and university staff members possess a clear understanding of their procedures and their limitations, sometimes they do not know whether a process is designed the way it is because of a legal obligation or simply for policy/pragmatic reasons. Similarly, they are often not sure whether a certain obligation is laid down in the law, or in an institutional regulation. Having **one single website that lists the compulsory legislation that cannot be set aside during the negotiations** would be beneficial for the quality and the effectiveness of these negotiations.

- The ED-AFFICHE consortium advises the European Commission to **keep this database continuously up to date**. This will require a network of legal experts and ministries to be involved in the drafting and updating of the database. The **national contact points and the legal experts from countries associated to the project and consulted in the framework of ED-AFFICHE** could be a good starting point to form a broader group of professionals (the consortium could ask all of them if their names can be communicated to the European Commission). The other pilot projects might have relevant contact points in other countries, so it seems wise to get organized rather quickly so that the knowledge does not get lost after the end date of the pilot projects.
- The above database should be **made publicly available**. It is essential that programme directors can find this information, especially since the guidebook on joint degrees, as well as the last version of the criteria the European Commission presented to the pilots, stress the importance that all joint policies in the Consortium Agreement respect all the applicable national and regional legislations. Also when building a EMJM proposal, this information is essential. Currently, each team must investigate these matters on their own, such a database would be a facilitator in EMJM applications.
- The aim of this database is not only to assist programme coordinators and HEIs, but also to **raise awareness among the member states' authorities** of their own legislation. The ED-AFFICHE Consortium noticed that often, ministries were surprised by the obstacles that were presented to

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them, as many of the obstacles result from legislation which makes a lot of sense in a national context, and thus is not "on the radar" as problematic, until one of their HEIs gives them the message that this provision is particular in an international context. Moreover, legislators are often not aware that different provisions are not corresponding to the practice of designing and conducting international joint study programmes, as this knowledge stems only from active participation in such endeavours. As a result, the ED-AFFICHE Consortium also noticed that member states were actually quite willing to look at their own obstacles closely when presented with them. Ideally, the above database thus becomes a **living community** that forms the basis for continuous discussions between legal experts, HEIs and ministries on the mapping, and possible removal, of obstacles. Making this a continuous process will be essential: although an initial mapping exercise will reveal many legal obstacles, some are only bound to be discovered while implementing joint programmes as they were on no one's radar as problematic yet.

Coordination

- The ED-AFFICHE consortium advises the European Commission to take on **a coordination role**. This policy recommendation remains the same, regardless of the pathway for the European Degree or the entrance points chosen by the member states. Irrespective of the question whether the European Degree is a label or a qualification, it has the chance to become a **powerful enabler to remove legal obstacles** if someone takes the lead in organizing these legal consequences – they do not result automatically from the introduction of a European Degree (Label).
    - **A label** in itself does not remove obstacles, although when used as the "access point" to sandboxes, it could be a **powerful enabler for the removal of the obstacles**. The label can be a common denominator for legislators. It is a clearly **recognizable "category**" to write into national/regional legislation, and to create a legal framework around making the design and the delivery of these European Degree Label programmes easier. First, this requires member states to incorporate this European Degree Label into their legislation. And secondly, this requires coordination as to how this is written into their legislation: if this new category of European Degree Label is used to create space for joint programmes, then which obstacles are removed for them, and how? Only if all **member states act in a coordinated fashion and remove the same types of obstacles** while using the same technique for doing so (e.g. overarching solutions), the work of programme coordinators will have truly been eased up. Otherwise, barriers will have shifted, but not disappeared.

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- **A European Degree** as a qualification does not remove obstacles in itself either. But the momentum for member states to remove obstacles for them is evident. After all, when member states decide to act upon the recommendation and introduce this new qualification into their legislation, they do not only create a recognizable category (just like the label above), they also create a completely *new*, and thus "*empty*" concept in the law, to which none of the existing codes on higher education apply. This European Degree will thus start from scratch: none of the national/regional legislation will apply to it, unless member states choose to make the existing framework for national or joint degrees applicable. There is a momentum there: with the proper coordination, this **moment in time when all member states need to fill up a new, empty, category in their legislation could be a powerful enabler to avoid conflicting national legislation**, if they have agreed on a recommendation by then determining exactly which new rules will be created for this new concept.

  Timing is important there: if member states write a European Degree into their legislation without guidance on which rules (admission, QA, accreditation,…) to apply to it, the chance is real that they will just copy-paste the framework that is already in place for joint degrees, making the European Degree lose all potential to remove obstacles. On the contrary, the same obstacles that existed for joint programmes, will then have shifted to the European Degree .
- In both instances, apart from coordination of legislative efforts, coordination of the processes to be applied by staff in HEIs should also be coordinated through some sort of guidebook with practical instructions (see below).

- The foregoing means that for both tracks (degree or label) a strong process needs to be created in which **member states are involved** while drafting the upcoming recommendation, not only to discuss the concept and entry-points for the European Degree, the criteria, the verification method, the (re)award of the European Degree and the QA thereof, but also in designing a **pathway towards the removal of obstacles** in a joint and coordinated fashion. In order for such co-creation process to be successful, **we would encourage the Commission to continue the work initiated by ED-AFFICHE Consortium**:
  - This means that legal obstacles need to be listed for all countries (ideally of the EHEA), see first recommendations above.
  - This list then needs to be categorized and prioritized

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- Member states then need to agree jointly how they want to deal with each category or each item on the list. If an overarching strategy is used (see above), then they need to use the same overarching strategy for the same obstacle.

- The ED-AFFICHE consortium encourages the European Commission to **showcase success stories**. During the ED-AFFICHE project work, we discovered how important good examples are: many legislators are willing to act but are also looking around to see how other countries are reacting. For a topic that is in essence cross-national, this is certainly understandable. But it means that evidence of change from one member state could be very inspirational to others. During the ED-AFFICHE project phase, we showcased legislations that were made more flexible for joint and multiple degrees (Flanders) or for European Universities (Spain) – references to both legislations above. The ED-AFFICHE Consortium itself was able to achieve legal changes or initiate legislative processes. These **evolutions need to be carefully tracked**, and the European Commission should organize an event where the concrete evidence of change is brought to the attention of fellow-ministries.

Conceptual clarity/policy choices

- The ED-AFFICHE consortium also encourages the European Commission to **provide a roadmap for the future of the European Universities and the European Degree**, and the way they may be connected, for example through the means of cross-institutional accreditation or label-awarding. It became clear during some of the workshops with the ministries that they had reached a saturation point where the number of "new" international terms to be added in the legislation for special treatment had been reached. They fear undermining the coherency in their legislation. Both flagships – European Degree and European Universities – could become victims of each other's success if countries are willing to accommodate one, but then feel it would be exorbitant to also accommodate the other. There are a number of countries where the European University Initiative is now actively supported by legal changes. Without **a clear signal on how the European Degree interacts with the European Universities**, authorities might feel reluctant to add the European Degree on top of the legal changes they already made, especially if they have also already made changes for Erasmus Mundus Joint Masters and similar European funding instruments.
- Similarly, The ED-AFFICHE consortium asks the European Commission to **develop a clear vision on the way the European Degrees and the joint degrees interact**. What is the narrative behind both concepts, if they continue to co-exist? How large does the European Commission see the percentage of joint degrees that would fit the criteria for the quality label or the European Degree?

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When thinking strategically of "which category to add into national law" and "which category to negotiate legal changes for", this is an important question. If the number of European Degrees remains too low *vis-à-vis* the total number of joint degrees (which is not that high to begin with), then starting up an entire process of co-creation with the member states to come to an easier legal framework for the European Degree, from which eventually only a small number of programmes would benefit, could be a tactical mistake. **A similar question can be asked about the European Degree and the Erasmus Mundus Joint Masters.**

Funding

- We encourage the European Commission to **give sufficient attention to the financial aspects** of European Degrees, both for HEIs developing the programmes and for students studying in these programmes. As this matter is mostly connected to the European Degree itself rather than the legal obstacles for joint degrees, the relevant recommendations are formulated in Deliverable 4.2.

Coordination

- The ED-AFFICHE consortium encourages the European Commission to write a **concrete guidebook on the implementation of European Degrees for HEIs,** detailing a step by step approach to be taken by the relevant staff in the HEIs. In order for the European Degree to reach its full potential to remove legal obstacles, it is not only necessary to remove the obstacles in the legislation themselves, but also to make sure that they are not unintentionally reintroduced by HEIs applying their own institutional regulations to the European degree. Staff in HEIs need a **coherent instruction, clear to everyone, how to adopt the European Degree in practice.**
- The ED-AFFICHE consortium encourages the European Commission to provide a **model consortium agreement** that lists the topics/sections to be dealt with through joint policies, when implementing the European Degree further (see Deliverable 4.2). Such a model consortium agreement would not only make the implementation of the European Degree much easier, it would also be an important enabler to remove obstacles for any joint programme as the model consortium agreement (apart from the sections related to the criteria for the European Degree (Label) - which should be clearly distinguishable in the agreement) can be used as a basis for any other joint programme as well.

Link to the Bologna process

- We encourage the European Commission **not to lose sight of the Bologna actors**:
    - The **QA agencies will become important actors**. If they award the European Degree through the European Approach, they will check the consortium agreements and joint

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policies. Their willingness and ability to verify the criteria is crucial. That means actively involving them when the concrete indicators and operationalisation of the European Degree is discussed, is also crucial. We go more into depth on this in our 4.2 Deliverable.

- **The member states of the entire EHEA** would ideally align themselves with the new concept of European Degree. As stated before: in order for legal obstacles to truly be removed, all member states of the participating HEIs must have acted in a coordinated fashion. If HEIs involve partner institutions located outside the EU in their European Degree consortium, then this need for cooperation extends to the EHEA countries: only if they respond to the coordination effort in a similar way as the member states of the EU, the obstacle will truly disappear. Otherwise for all programmes with a HEI from outside the EU; designing and delivering a joint programme will remain cumbersome.
- We thus **call upon the European Commission to take an active role in this coordination process**, not only *vis-à-vis* the member states of the EU, but also for the other EHEA countries. We ask the Commission to start up this process in Tirana, as no time is to lose to start convincing the entire EHEA of the added value of the European Degree.
- We encourage the European Commission to (assist in) an **update of the existing Bologna toolset** (European Approach for Quality Assurance of Joint Programmes, ESGs, Erasmus+ and Horizon Europe funding schemes, communications on diploma supplement form, etc.) to reflect and be compatible with European Degree (Label) initiative/criteria/terminology. We address this issue in Deliverable 4.2, "ED-AFFICHE Policy recommendations on the future of European Degree label", bur for the removal of legal obstacles for any joint programme, such update could truly be an enabler as other joint programmes make use of the same Bologna or EU tools.

3.2 Recommendations for Member States

In addition to the recommendations for the EC, a number of suggestions for the member states can be introduced as well to supplement changes that should be implemented on a European level:

Remove legal obstacles

- We encourage member states to **set up a structural working group** in which **members of government interact with HEIs in their country** that are party to a European Universities alliance,

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or other HEIs that offer joint programmes. We learnt during the ED-AFFICHE project that many obstacles only emerge during the delivery of a joint programme, on the one hand because the complete legal framework is not sufficiently known to all, on the other hand because unproblematic rules might surprisingly end up being problematic, if the joint application of different rules showcases their incompatibility. Such a "discovery while doing" approach is very demanding for the staff member involved and could be avoided by creating a working group in the member state where the different universities meet, discuss barriers they encountered, and can bring these matters to the attention of the legislator.

- We encourage member states to **clearly distinguish between national programmes in their legislation, and joint programmes** that are designed to function in an international context. The desired technique of law making varies greatly between both situations. When designing a legal framework for international collaboration, detailed regulation is to be avoided. If a number of national legislations need to be applied jointly, this is destined to fail if all national frameworks carry the same amount of detail that is often connected to the regulation of national programmes.
    a. Although this is true for all legislations, this is all the more true for regulation of administrative processes that are mainly operational, rather than being an end on its own. QA processes are there to reach the aim of quality, not for the sake of the QA process itself. Deregulating these processes so that programme directors can design qualitative joint strategies seems like a quick win, as long as the aim itself (in this example: quality) can be verified.
    b. Likewise, legislation that only pins down the specific form of a diploma without impacting the quality of the programme itself, seems like a quick win to deregulate for joint degrees, making sure that the "jointness" of the programme can be mirrored in the joint diploma that is awarded.
- As understandable as some **protective policies** are (like protection of the national language as an academic language), we nonetheless encourage member states to have a clear vision of the type of programmes where such policies are appropriate. For the ED-AFFICHE Consortium, it is clear that **joint programmes that will operate in an international context are less suited** for such national/regional strategies.

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Adapt legislation to Bologna tools and EU initiatives

- We encourage member states to **cooperate with the flagship initiatives of the European Union** (European University Initiative and European Degree), as their success depends on the way member states facilitate their HEIs participation.
- We encourage the member states to **fully align their legislation and processes with the Bologna tools, especially the European Approach**. This procedure will probably become the preferred verification method for the award of the European Degree (Label), meaning that the acceptance thereof is crucial for the HEIs to be able to issue such European Degree (Label) to their students.

Coordination

- We encourage member states to **organize themselves within the Bologna follow-up** group to tackle legal obstacles. That means first and foremost to assist in the described above mapping exercise, but also to organize themselves (priorities and joint strategies to remove the obstacles). Even though we encourage the European Commission to take the lead here as coordinator, especially if their European Degree becomes the main driver for such change, the ultimate geographical scope of the project is wider than only the EU (i.e. the entire EHEA) and the competence to actually make the changes remains firmly in the hands of the member states as well. That means that a **constructive and willing group of member states could be highly effective in removing obstacles for joint programmes**, regardless of the future the European Degree might have.
- We encourage member states to **have open discussions with each other** on the issues that are most delicate to address for programme directors: **selection of candidates at the gate, tuition fees/accessibility, and students' rights**. These are issues for which programme directors are reluctant to take legal risks (such as flexible interpretation of legal rules), as they know how essential and delicate these matters are. It is primarily for the member states to take a stance and **to decide if they feel confident with a choice of governing law** (e.g. the legislation of the HEI where the student is enrolled applies, excluding the legislation of the other member states that are present through their HEIs in the consortium). Or would they opt for another approach: do they feel confident for these matters to be regulated in the consortium agreement? Or do they prefer a minimum standard to be set in their own legal system law (but then how to make sure that this minimum standard is compatible with the one of other countries in the same joint programme?).

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Funding

- We encourage member states to have a look at the **parameters that are used to finance HEIs** in their countries. As European Degrees will bring digital teaching to a next level (joint course delivery online; digital mobility) and as joint programmes with many partners will almost by definition lead to a situation in which universities will award the degree to students who have not physically studied in their university, any parameter of financing based on physical presence becomes an obstacle for HEIs to engage in a joint programme. They feel reluctant to become a degree awarding party, as they feel this would be unfair towards the other universities in their country or their legislation, if they were to boost their student numbers by awarding degrees to students they have never actually seen in their university. Designing financial parameters for joint programmes that are different from classical national degrees or double degrees, could be a way to overcome this obstacle. Obviously, the foregoing also requires member states to amend their legislation (if necessary) to **make sure that issuing degrees to students that were not physically present, is possible**.
- Other aspects of funding are less related to obstacles in legislation and are thus discussed in 4.2 Deliverable.

3.3. Recommendations for HEIs

- **Maintain an active role during the ongoing negotiations about European Degree (Label) in your country**. The dialogue started in 19 countries with ED-AFFICHE and many more can be taken into account if all the 6 pilot projects are considered. It will be further amplified when the European Commission intensifies its communication on the matter with member states. Responsible ministries will require informed feedback from HEIs in their country to report back to the EC, and any implementation on national level will require finding a balance between the EC's recommendations, legal framework of the country in question, and preferences and needs of HEIs in that particular region. Playing an **active role** during the process is therefore essential for assuring the voice of HEIs is not overlooked.
- Develop a **strategy** that **defines the place of transnational joint programmes within the educational portfolio of your HEI**. This strategy would be ideally developed and adopted centrally and, as a result, **reflect what purpose joint programmes should play in medium to long term timeframe**. Such material can set priorities as to what types of joint programmes are to be developed, in which scholarly fields, with what partners, what type of degrees they should strive to issue, what portion of them should aim for securing external funding, how many students should

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they accommodate, and other similar questions that can serve as a basis for any medium and short term decisions. If a HEI is a member of European University alliance, then such strategy should ideally reflect the position and goals of the alliance as a whole as well.

- **Adapt existing institutional regulations and procedures to reflect the needs and particularities of transnational joint programmes**. Regularly, HEIs execute regulation pertaining to all issues connected to standard domestic study programmes – from admission procedures, to enrolment, teaching, examination, accreditation, tuition and fees, data storage, diploma and diploma supplement forms etc. If these regulations do not contain sections tailored to account for the needs and purposes of education designed in transnational environment, practice of conducting joint programmes might become very complicated. The amendments and possible exemptions should be made in a manner that makes it clear that they do not lead to downgrade of quality of education but are much needed (often necessary) leeway when designing a study programme that must satisfy multiple sources of regulation. This means institutional regulations applicable to joint programmes should be **sufficiently lean** not to reintroduce obstacles that had been removed by the legislator, and **not to add to the complexity** of multiple national/regional legislations being already applicable to the programme.
- Dedicate corresponding attention to **development and updates of IT tools and services**. The processes affiliated with the life cycle of students in higher education usually branch out into several fields – from verification of previous education, admission, registration and enrolment, history of exams taken, mobility tracking, to diploma and diploma supplement creation and reporting to national databases. All these processes require functioning IT environment to function smoothly, and in the case of joint programmes, they need to account for students that spend significant portion of their study (and undergo these processes) abroad. As for the joint programmes themselves, the situation is also more complex and demanding, since they are not realized by any singular HEI, but by a collective of them. As a result, the registration of affiliated accreditation and curricula and their embedding into the IT milieu of any HEI can cause additional complications – concrete parts of the joint programme are realized all around the partner institutions who are together co-responsible for the successful process on a general level. When both aspects are combined (student centred IT processes and transnational nature of the joint programme in question), IT tools that are not adapted to the added complexity can cause various problems in data tracking, reporting and exporting.

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- Create a **dedicated support network in the HEI for joint programmes**. This layer, while not imperative, can host materials such as guidelines, guides, template agreements, good practice examples, FAQ sections, recommendations, clusters of contacts and other useful information. All these materials can prove invaluable for unexperienced users – and when the desired outcome is the increase of engagement from withing the academic community (for instance increasing the number of joint programme directors or submitted proposals for external funding) the importance of this type of support can be hardly overstated.
- Implement or boost **internal funding instrument**s that are designed to compensate faculties and departments for their participation, realization or coordination of transnational joint programmes. These activities produce additional workload connected to their transnational dimension – travel, information sharing, decision making, dispute resolution, technical implementation, all these types of actions are more demanding both in terms of temporal and financial resources. Internal funding schemes that reflect this can prove to be very important motivator **to incentivise increase and seamless realization of transnational joint programmes** and prevent situations in which while on the diplomatic level internalization is endorsed and supported, economic policies do not reflect the situation in corresponding manner.
- Create **dedicated FTE positions to support the emergence of joint programmes**. The process of their design, implementation and practice requires expertise in several intertwined, yet distinct fields – from curricula design, accreditation procedures, quality assurance, funding models, international relations, project proposal writing and project implementation to reporting. Personnel trained and specialized in these areas can severely reduce impact of the extra workload, otherwise borne by the programme directors and or by closely adjunct academic staff which in turn limits the time they can dedicate to teaching and research.
- Since transnational education occurs on a stage that transcend national level, we recommend for any HEI in EHEA interested in facilitating these activities to **adopt the tools connected to the Bologna process**. Any singular definition of key notions and concepts (“joint programme”, “joint degree”, “double degree”, “dual degree”, “European degree/label”) or standards (Cf. B. Standards for Quality Assurance of Joint Programmes in the EHEA - EQAR) can create the risk of collision with the definitions and standards adopted on more central level by EU’s and EHEA’s bodies. Compatibility of the most basic principles and their definitions across the spectrum of different member states proved again and again as a critical point for any future development.

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- Following consultations with joint programme directors and coordinators, it is advised to incentivize university staff participation in joint programmes by providing **recognition for both career advancement and financial compensation** to academic and administrative personnel involved. Ensure **adequate recognition for teaching activities performed abroad**, enabling teachers to engage in the internationalisation effort without facing institutional barriers.

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Annexes

Annex 6 – ED-AFFICHE Template for national and regional authorities

Annex 7 – Countries report: Overview state of play in the associated countries

Annex 8 – ED-AFFICHE Analysis of Obstacles for Transnational Collaboration in Higher Education (updated version)

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