

Decision on the Appeal by Malta Further and Higher Education Authority (MFHEA) against the Decision to Inclusion on the Register

Appeals Committee
14 March 2025

Ref. AC/A148

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Application of:	2023-04-14
Agency registered since:	n/a
External review report of:	2024-03-26
Review coordinated by:	European Association for Quality Assurance of Higher Education (ENQA)
Review panel members:	Alberto Ciolfi, Alexandra-Simona Zamfir, Luna Lee Solheim, Tatjana Volkova
Register Committee decision of:	2024-10-11
Appeal of:	2024-12-16
Appeals Committee decision of:	2025-03-14
Attachments:	<ol style="list-style-type: none"> Register Committee decision, 2024-10-11 Appeal by MFHEA, 2024-12-16 Appeals Committee clarification request, 2025-02-07 Register Committee response to Appeal, 2025-03-10

I. The Appeal Case

- On 2023-04-14 Malta Further and Higher Education Authority (MFHEA) applied for registration on EQAR, based on an external review coordinated by the European Association for Quality Assurance of Higher Education (ENQA).
- The EQAR Register Committee deferred the application by its decision of 2024-07-02 and invited MFHEA to make additional representation. On 2024-09-04 MFHEA submitted its additional representation.
- The EQAR Register Committee rejected the application by its decision of 2024-10-11 (hereinafter “the Appealed Decision”).
- MFHEA made an appeal against the decision on 2024-12-16 (hereinafter “the Appeal”).
- The Appeals Committee considered the appeal at its meeting on 2025-02-06. where it confirmed the grounds of the Appeal and considered all of the appealed standards and the holistic judgement, except for standard ESG

3.3 where it requested further clarification by the Register Committee., pursuant to Art.3 (2) of the Appeals Procedure.

6. The Register Committee submitted further information as on the appealed standard as requested by the Appeals Committee on 2025-03-10 (hereinafter 'the response').

7. The Appeals Committee considered the clarification by the Register Committee and made its final decision electronically (via email) on 2025-03-14.

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II. Criteria and Factual Basis for Appeal Decisions

8. The Appeals Committee established its findings following the terms of reference as laid down in Art. 21 of the EQAR Statutes and Art. 1 and 2 of the Appeals Procedure:

EQAR Statutes

Article 21: Appeals

(1) The applicant can file an appeal against decisions of the Register Committee on procedural grounds or in the case of perversity of judgement.

(2) The Appeals Committee shall either reject or allow the appeal. If the appeal is rejected, the Register Committee's decision is final. If the appeal is allowed, the Register Committee shall reconsider the Application, taking due account of the grounds of the appeal and the Appeals Committee's decision.

(3) Further provisions shall be made in the Appeals Procedure.

Appeals Procedure

Article 1: Grounds of appeal

(1.1.) Applicants may, within the scope of appeal outlined in Art. 2 below, appeal against a decision of the Register Committee claiming that

a. the Register Committee has violated EQAR's statutes or secondary regulations, general legislation or any commonly accepted principles of fair and equal procedures ("procedural grounds" according to art. 21 (1) of the statutes); or

b. the Register Committee's decision was unreasonable or disproportionate in the light of the available evidence ("perversity of judgement" according to art. 21 (1) of the statutes), for example in that the Register Committee has

- not considered or misunderstood certain facts and/or evidence duly provided in the proceedings; or*
- based its decision on facts and/or evidence which were not duly provided in the proceedings; or*

- *not used or exceeded the scope of discretion at its disposal; or*
- *based its decision on considerations which are evidently not substantially related to the issue in question; or*
- *failed to consider an aspect which is likely to be of substantial relevance for the decision.*

(1.2.) An appeal is only admissible after the possibility to make additional representation on a Register Committee decision has been used, either as part of the regular process or by making use of the option to do so.

Article 2: Scope of Appeal

(2.1.) An appeal seeks to change the decision that is being appealed. If an applicant wishes to raise its dissatisfaction with the process without seeking a change of the decision, they should make a complaint.

(2.2.) The appeal may only be based on those facts which have been duly introduced into the proceedings of the Register Committee and shall clearly state the grounds for appeal.

(2.3.) EQAR's statutes and further regulations shall be relevant for appeals as in effect when the decision appealed against was made.

(2.4.) Except in case of grave and evident fault, the Appeals Committee will only consider those complaints which the applicant has put forward in the appeal.

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III. Admissibility of the Appeal

9. The Appeal was submitted within 40 days from receipt by MFHEA of the Rejection Decision, as required in Art. 3.1. Appeals and Complaints Procedure (Section 1).

10. The Appeal questioned that the Register Committee's judgement was reasonable and proportionate in the light of the available evidence, according to Art. 1.1 (b) Appeals and Complaints Procedure (Section 1).

11. While MFHEA stated that it provided further information and clarification, the Appeals Committee found that the information contained in the Appeal was by and large already provided as part of the application process.

12. The Appeals Committee considered the following standards which the applicant has put forward in the Appeal, i.e., ESG 2.1; ESG 2.2; ESG 2.3; ESG 2.4; ESG 2.5; ESG 2.6; ESG 3.1 and ESG 3.3.

13. The Appeal was admissible.

IV. Judgement on the Case

14. The Appeals Committee considered (1) the ESG standards in question and (2) the request brought forward for the change of the holistic judgement by the Register Committee.

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IV.1 ESG Standards and Interpretation

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ESG 2.1 – *The MFHEA submits that the commitments made in its SAR, the preparatory work to address this issue presented to the ENQA Review Panel and most importantly the actual implementation in January 2024 of the processes in respect of Provider Accreditation are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 of the EQAR Appeals and Complaints Procedure*¹.

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15. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

16. The Appeals Committee noted that the appealed decision clearly notes and welcomes the changes made by the agency following the external review and the planned actions that are about to take place in 2025. The Appeals Committee, furthermore, noted that the Register Committee could not confirm how these changes have been implemented or will be implemented in practice without a panel's insight.

17. The Appeals Committee found this as a reasonable and justifiable ground for retention of the Register Committee decision.

18. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.1 is not substantiated.

ESG 2.2 – *The MFHEA submits that the processes relating to Provider Accreditation and university status described above are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure.*

19. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

20. The Appeals Committee noted that the appealed decision clearly notes and welcomes the changes made by the agency following the external review and the planned actions that are about to take place in 2025. However, the Appeals Committee noted that the Register Committee could not confirm how these changes have been implemented or will be implemented in practice without a panel's insight, which the Appeals

¹Excerpt taken from MFHEA Appeal of 2024-12-16

Committee found a reasonable and justifiable ground for retention of the Register Committee decision.

21. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.2 is not substantiated.

ESG 2.3 – *The MFHEA humbly submits that all of the recommendations relating to Provider Accreditation have been properly implemented and evidence of the same has been properly brought to the attention of the Register Committee and that these are matters of substantial relevance which were not properly considered and that this constitutes a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood, and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure.*

22. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

23. The Appeals Committee noted that the appealed decision clearly notes and welcomes the changes made by the agency following the external review and the planned actions that are about to take place in 2025. However the Appeals Committee noted that the Register Committee could not confirm how these changes have been implemented or will be implemented in practice without a panel insight, which the Appeals Committee found a reasonable and justifiable ground for retention of the Register Committee decision.

24. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.3 is not substantiated.

ESG 2.4 – *The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure.*

25. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

26. The Appeals Committee noted that the appealed decision clearly notes and welcomes the involvement of students in review panels. The Appeals Committee, further, noted that the Register Committee could not confirm how these changes have been implemented in practice without a panel insight especially for the programme review panels, once the new programme accreditation manual is adopted and in use in 2025., The Appeals Committee found a reasonable and justifiable ground for retention of the Register Committee decision.

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27. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.4 is not substantiated.

ESG 2.5 – The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b) (para 1) of the EQAR Appeals and Complaints Procedure.

28. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

29. The Appeals Committee noted that the appealed decision clearly notes and welcomes the changes made by the agency following the external review and the planned actions that are about to take place in 2025. The Appeals Committee, further, noted that the Register Committee could not confirm how these changes have been implemented in practice without a panel insight, which the Appeals Committee found a reasonable and justifiable ground for retention of the Register Committee decision.

30. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.5 is not substantiated.

ESG 2.6 – The MFHEA maintains that the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure.

31. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

32. The Appeals Committee noted that the appealed decision clearly notes and welcomes the actions taken by the agency. However, the Appeals Committee noted that the Register Committee could not confirm how these actions have been implemented or will be implemented in practice without a panel insight. The Appeals Committee found this a reasonable and justifiable ground for retention of the Register Committee decision.

33. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 2.6 is not substantiated.

ESG 3.1 – The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b) (para 1) of the EQAR Appeals and Complaints Procedure.

34. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself.

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35. The Appeals Committee noted that the appealed decision clearly notes and welcomes the changes made by the agency following the external review and the planned actions that are about to take place later in 2024 or in 2025. The Appeals Committee, further, noted that the Register Committee could not confirm how these changes will be fully translated into the daily work of the agency, as not all have been implemented at the time of the decision, and therefore they remain to be reviewed by an external review panel. The Appeals Committee, found this a reasonable and justifiable ground for retention of the Register Committee decision.

36. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 3.1 is not substantiated.

ESG 3.3 – *The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b) (para 1) of the EQAR Appeals and Complaints Procedure.*

37. The Appeals Committee considered the claim by MFHEA by taking a closer look at the Appealed Decision and the Appeal itself and requested further clarification from the Register Committee.

38. The Register Committee response, provided elaboration and clarification on why MFHEA has been found to be partially compliant with ESG 3.3.

39. The Appeals Committee noted the Register Committee clarification and reasoning for the judgement with ESG 3.3. The Appeals Committee, therefore, concurred with the clarification by the Register Committee and noted that such an explanation should have been elaborated clearly in the Appealed Decision.

40. Therefore, the Appeals Committee concluded that the claim by MFHEA related to ESG 3.3 is not substantiated.

41. Furthermore, the Appeals Committee would like to address its opinion on the following statement by MFHEA in the Appeal.

42. *“Finally the MFHEA wishes to record its concern for the fact that in July 2024 there were a series of reports in Austrian media, wherein it was stated Malta’s application for EQAR registration had been rejected and that EQAR employees indicated that the final decision of rejection would be communicated in October, and MFHEA had poor chances of succeeding. Copies of the Articles may be provided to the Appeals Committee should it deem it appropriate to consider whether this fact impinges on the integrity of the process in terms of Article 1 of the EQAR Appeals and Complaints Procedure. The MFHEA may also provide copies of the official complaint presented to EQAR on this matter.”*

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43. The Appeals Committee wishes to point out that such statements are not in the scope of EQAR Appeals Procedure and therefore this statement has not been taken into consideration. Should the agency wishes to submit an official complaint, it should have done so directly to EQAR, as stipulated in EQAR Appeals and Complaints Procedure (Section 2).

IV.2 Holistic Judgement

44. The Appeals Committee considered the note by MFHEA on the holistic judgement:

“The MFHEA also hereby requests that in the event that the Appeals Committee deems appropriate to change the findings in relation to all or some of the ESG, then it should furthermore consider changing the Register Committee’s final findings in Paragraph 67 and should overturn the Register Committee’s rejection of the MFHEA application in Paragraph 68.”

45. The Appeals Committee has considered whether the case should be referred back to the Register Committee despite upholding the conclusions on each standard as discussed above. This would have been appropriate if the Appeals Committee had found that the Register Committee, if it were to reconsider the case in view of the Appeals Committee’s reasoning as outlined above, would have ample reason to arrive at a different holistic judgement.

46. However, in the case of the Appealed Decision, the Appeals Committee found that the holistic judgement is reasonable and justifiable.

V. Concluding Judgement and Decision

47. Based on the considerations above, the Appeals Committee concluded that MFHEA did not provide convincing evidence for perversity of judgement. The Register Committee’s judgement was reasonable and proportionate in the light of available evidence.

48. The Appeal by MFHEA is admissible, but not substantiated. The Appeals Committee therefore rejects the Appeal.

49. According to Art. 4.3 of the Appeals Procedure, the Appealed Decision of 2024-10-11 is final.

Brussels, 2025-03-25

Paul Zoontjens (Chair)
Carolyn Campbell (member)
Janja Komljenović (member)

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**Appeal submitted by Malta Further and Higher Education Authority (MFHEA)
13th December 2024**

The MFHEA is hereby appealing the decision taken by the EQAR Register Committee dated 11th October 2024 whereby the MFHEA's Application for inclusion on the EQAR Register was rejected. The MFHEA was notified of this decision in a letter dated and received on the 5th November 2024.

The MFHEA is lodging this Appeal in accordance with the [Appeals and Complaints Procedure](#) adopted by the EQAR General Assembly on the 13th April 2022.

The MFHEA has carefully reviewed the Rejection of the MFHEA Application for Registration made by EQAR and appreciates the detailed review of MFHEA's activities and actions taken. The MFHEA has also embraced all of the recommendations made in the ENQA Agency Review.

The MFHEA understands the spirit of the observations and conclusions reached by the EQAR Register Committee on the strength of the ENQA Agency Review report. However, it is felt that there are a number of instances where certain facts or evidence which were duly provided may have been misunderstood or not given due consideration and that certain aspects which are likely to be of substantial relevance were not given due consideration.

This appeal is therefore being submitted in terms of Article 1 of the EQAR Appeals and Complaints Procedure.

The MFHEA also submits that this Appeal is admissible in terms of Article 1.2 in view of the MFHEA Additional Representation dated 6th September 2024.

ESG 2.1 - Consideration of Internal Quality Assurance.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

The MFHEA submits that the recommendations in this respect made by the ENQA Review Panel were already addressed in the MFHEA Self-Assessment Report, with work on ensuring that the ESG Standards were included in documents pertaining to provider and programme accreditation commencing even before the on-site Panel Visit and disclosed during the review.

With respect to Provider Accreditation, as explained in the Additional Representation, notice of the coming into force of the new [Accreditation Manual for Higher Education Institutions](#) was published in January 2024. The link provided will give the Appeals Committee visibility of the notice given to providers and also of the Manual. Please also find the link to the application forms which as of January 2024 institutions seeking provider accreditation as higher education institutions are to complete. Provider accreditation is now a two step process with [Part A which relates to the financial eligibility check](#) that is conducted by an independent certified accountant. The link provides access to the application form for Part A. Once Part A of the process is successfully completed, the Institution may proceed to apply for [Part B of](#)

[the Provider Accreditation Process](#). It will be noted that in this Part of the process, which is assessed by an external panel of experts, the applicant is also requested to submit a self assessment report relating to its compliance with the Standards found in the Accreditation Manual for Higher Education Institutions, which Standards reflect the ESG.

The MFHEA is confident of the processes, which have been properly implemented and consistently applied as of January 2024 in respect of the Provider Accreditation of Higher Education Institutions, and that the same fully meet all of the aspirations of the MFHEA at the time it was drafting its SAR and the recommendations made by the ENQA Review Panel. It is also noted that the new more rigorous process has resulted in a reduction in the number of applications which have positive outcome. The MFHEA may provide further evidence of the implementation of these processes.

With respect to Programme Accreditation, as indicated throughout this process and also in the Additional Representations, the new procedures will be implemented in 2025. It is also important to note that, as explained in the SAR and during the Review, the decision to introduce the new Programme Accreditation in 2025 was motivated by a commitment on the part of MFHEA to ensure that all new processes are introduced responsibly following a process of consultation with all stakeholders, that any changes are studied and that all of its officers and relevant stakeholders receive adequate training and preparation for the same. It is considered that pacing the introduction of changes in processes, so as to avoid shocks to the system, also allows for all stakeholder to embrace developments and guarantees smooth transition.

The MFHEA submits that the commitments made in its SAR, the preparatory work to address this issue presented to the ENQA Review Panel and most importantly the actual implementation in January 2024 of the processes in respect of Provider Accreditation are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'.

ESG 2.2 – Designing Methodologies fit for purpose.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

The MFHEA wishes to point out that in its conclusions in Paragraph 15 the Register Committee expressed concern that provider accreditation is a desk based procedure being conducted by MFHEA staff. As explained in the paragraphs relating to ESG 2.1 the [Provider Accreditation Manual for Higher Education Institutions](#) which came into force in January 2024 contemplates a two step procedure: the assessment of Part A is conducted by an independent certified accountant to be approved by the applicant institution and Part B is conducted by an independent and external panel of experts. Therefore the assessment of the facts in this respect is mistaken and the fact that Programme Accreditation is NOT a desk based activity conducted by MFHEA Staff could have been verified and confirmed by the Review Committee. The MFHEA would be willing to submit all applications for Provider Accreditation received since January 2024 and the identity of the accountants and the composition of the peer

review panels appointed in respect of each one. MFHEA has a pool of experts, mainly foreign to avoid conflicts of interest and has also entered into an MoU with the European Students Union to ensure the timely identification and availability of student reviewers who are of the required standard.

With respect to Programme Accreditation, as indicated in the Additional Representations, the new procedures will be implemented in 2025. However it is important to bear in mind that Programme Accreditation is currently and has long been conducted by an independent peer review panel of experts in the particular academic field. As explained in the paragraphs relating to ESG 2.1 the MFHEA chose responsibility over haste when determining when the new procedures relating to programme accreditation should be introduced.

The MFHEA wishes to further more record its concern regarding the observation made by the Register Committee in Paragraph 15 regarding the different methodologies for providers seeking university status as opposed to those seeking accreditation as providers of higher education, and in particular the comment that it was unclear for the panel which methodology is applied when. The MFHEA's processes in this respect are clear: providers are to seek accreditation as higher education institutions and once this is obtained an application may be submitted for university status. Applications for university status are considered by an independent panel of experts which measures the higher education's eligibility for university status against an established set of standards established by Regulation 47 of [the Further and Higher Education \(Licensing, Accreditation and Quality Assurance\) Regulations \(SL 607.03 Laws of Malta\)](#). It is this panel which recommends whether or not the application for university status should be accepted. The MFHEA wishes to note further that the process which is adopted for attainment of university status is an extremely rigorous one and that in fact several applications are rejected and in one instance status which had been awarded was revoked. Further details on this may be provided should the Appeal's Committee so require. This has long been the procedure adopted by the MFHEA and was clearly explained in the SAR and clarifications would have been given to the Review Panel had further explanation of the process been requested.

The MFHEA submits that the processes relating to Provider Accreditation and university status described above are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'.

ESG 2.3 – Implementing Processes.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

As explained in respect of ESG 2.1 and ESG 2.2 the MFHEA reaffirms its conviction that the procedures introduced in January 2024 in respect of Provider Accreditation properly address the concerns which have led to a finding of partial compliance in respect of this Standard.

While the MFHEA can appreciate that certain facts may only be established through an on-site visit conducted by an expert panel, the design of the new [Provider Accreditation Manual for Higher Education Institutions](#), its [publication and coming into force](#), the requirement of an SAR by the applicant, the appointment of independent peer review panels and the fact that onsite visits are now an integral part of the provider accreditation process are all facts in respect of which evidence can and has been brought to the attention of the Register Committee.

With respect to Programme Accreditation, as indicated in the Additional Representations, the new procedures will be implemented in 2025. However it is important to bear in mind that Programme Accreditation is currently and has long been conducted by an independent peer review panel of experts in the particular academic field. This was in fact the reason why in determining the order of the introduction of new processes, new provider accreditation procedures were introduced first.

The MFHEA humbly submits that all of the recommendations relating to Provider Accreditation have been properly implemented and evidence of the same has been properly brought to the attention of the Register Committee and that these are matters of substantial relevance which were not properly considered and that this constitutes a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood, and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'

ESG 2.4 – Peer review experts.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

There are a series of grave errors of fact in respect of the findings of the Register Committee related to this Standard. The statement in Paragraph 26 that at the time of the analysis of the panel, programme accreditation did not involve experts is erroneous. Programme accreditation has always been conducted by external panels of experts and has never been an activity conducted by MFHEA Staff, and this irrespective of the nature or level of the programme. The MFHEA shall at the request of the Appeals Committee provide a sample of historic programme accreditation reports as compiled by independent peer reviewers.

The MFHEA wishes to correct the implication in Paragraph 27 and Paragraph 29 that students were only included on panels following the analysis of the panel. This constitutes an error of fact. All external panels have included students since 2016 and this was made clear in the SAR and during the external review.

In Paragraph 30 the Register Committee has recognised that published programme accreditation reports show the inclusion of students. The MFHEA refers further to the [published audit reports](#) of higher education institutions which confirms the inclusion of students in external peer review panels since 2016.

Should the Appeals Committee so request, the MFHEA can provide further evidence of the consistent inclusion of students in all programme accreditation procedures since September 2023 and all external audit procedures since 2016 and the inclusion of students in Provider Accreditation since January 2024.

The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'.

ESG 2.5 – Criteria for outcomes.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

As outlined in respect of the earlier Standards, the new provider and programme accreditation procedures include clear references to and mirror all of the NQAF Standards. In respect of provider accreditation this has been implemented since January 2024 and may be verified in the links provided above.

In response to observations made by the Register Committee in Paragraph 33, the MFHEA recognises that the application for programme evaluation does not include a reference to the NQAF Standards, however once the new programme accreditation procedures are introduced in 2025 the new application forms will include all of the NQAF standards. The MFHEA's commitment in respect of these recommendations is clear when one considers the new applications to be submitted in respect of provider accreditation.

The procedures relating to university status do not refer to the NQAF Standards because as explained above, the process for obtaining university status is composed of two steps: the first step requires the provider to have accreditation as a higher education institution. It is at this stage that the provider is assessed against the NQAF Standards. The external panel which determines whether a higher education institution should be granted university status in respect of the additional standards set in Regulation 47 of SL 607.03, relies on the exercise conducted in the provider accreditation stage and does not repeat the process.

The MFHEA also rejects the observations made in Paragraph 34 regarding the clarity on which standards and procedures are applied in its activities. The MFHEA has always been clear on its functioning and on which regulations and manuals are to be applied to each process; this clarity is also enjoyed by the providers regulated by the MFHEA. Even a cursory review of the MFHEA website will provide visibility of the procedures and guidelines related to each QA activity undertaken by the MFHEA. The documents are all published, exhaustive and clearly indicate the process to which they relate.

With regards to the lack of clarity regarding whether the panels recommendations have been properly introduced, the MFHEA refers the Appeals Committee to the [application forms](#) to be submitted by institutions seeking provider accreditation.

The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'.

ESG 2.6 – Reporting.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

The MFHEA reminds that even at the time of the panel analysis all EQA Audit reports and all Programme Audits (Reaccreditation) were published on the MFHEA website. Furthermore the details of all accredited providers and all accredited programmes are also published. Similarly any appeals filed with respect to any QA decision are published on the MFHEA website as are all the corresponding decisions of the Appeals Committee. Similarly any licence conditions or restrictions attached to a provider licence are published.

Since January 2024 all reports from programme accreditation procedures are to be published, as this is a rigorous and lengthy process none have as yet been concluded. However the new [Accreditation Manual for Higher Education Institutions](#) clearly places this obligation to publish on the MFHEA. The same will apply to programme accreditation.

The MFHEA maintains that the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT'.

ESG 3.1 – Activities, policy and processes for quality assurance.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

The MFHEA would like to begin by drawing the Appeal Committee's attention to the fact that the ENQA Agency Review found that the MFHEA is compliant with ESG Standard 3.1, but the EQAR Register Committee elected to downgrade this to one of Partial Compliance.

The issues raised in Paragraph 44 are properly addressed in the [Quality Assurance Development Plan 2023-2025](#) which has been published, and in the MFHEA Strategy & Action Plan 2023 which is an internal document (due to the sensitive reflections made therein) but the main findings of which were incorporated in the SAR. However the main clear and explicit

goal of the MFHEA remains the implementation of all matters identified as requiring action in its SAR and the implementation of all of the recommendations made in the ENQA Agency Review and by the EQAR Register Committee.

With regard to the issue raised in Paragraph 45, the MFHEA reiterates the commitments made throughout this application process. This feedback has been accepted by the MFHEA and was reflected in the decision taken that from early 2025, there will be two separate and distinct units within the MFHEA, the Further Education Unit and the Higher Education Unit. The Units will be responsible for the provider and program accreditation in the respective sector. Officers are currently undergoing training prior to deployment in the separate Units and information meetings are being held with Providers. Both internal and external information meetings and training are focusing on highlighting new procedures and explaining the objectives of these changes as part of the long term goals of the Authority. As part of the implementation of this distinction of higher education and non-higher education activities, the Consultation Document on Higher Education Programme Accreditation Standards was issued in November 2023. The new procedures will be adopted in 2025. One of the main changes which will result with the introduction of these new standards is that there will be two separate accreditation processes – one for higher education programmes and providers and one for non-higher education programmes and providers. The new provider accreditation standards and procedures for Further Education Institutions were launched this month while the new program accreditation standards for Further Education Programs will be launched in 2025.

The MFHEA also reminds that EQA Audit procedures have always distinguished between further and higher institutions, through the Guidelines for EQA audits of Further Education Institutions and Further Education Centres and EQA Provider Audit Manual of Procedures (2015), which clearly define these differences. Furthermore, in September 2024 the MFHEA issued the revised Standards and Audit Manual of Procedures for Further Education Institutions for public consultation. Following a peer review in December, the manual will be finalised and published and will come into effect in March 2025.

The MFHEA notes further an error of fact in Paragraph 46 regarding the involvement of students in the MFHEA governing bodies – that is the Board and the QAC. The MFHEA draws attention to the fact that the required legislative changes have in fact been made and can be easily verified. Please refer to Article 9 and Article 7 of the [Further and Higher Education Act \(Cap 607\) of the Laws of Malta](#). In fact the law requires one member of the [MFHEA Board](#) to be a student. Ms Nicola Cushchieri is the current student member. Two members of the QAC are required to be students. The current student [members of the QAC](#) are Mr Claudio Cauchi and Ms Pamela Zerafa.

Therefore the concerns raised by the Committee in Paragraph 47 are unfounded as the plan to create a clear distinction between QA activities related to further as opposed to higher education, is properly defined and well underway and the legislative changes required for student involvement have been adopted.

The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground

of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT' in accordance with the finding made by the ENQA Panel.

ESG 3.3 – Independence.

The MFHEA is requesting that the Appeals Committee reconsiders the finding of Partial Compliance in respect of this Standard and that it be changed to a finding of Compliance.

The MFHEA would like to begin by drawing the Appeal Committee's attention to the fact that the ENQA Agency Review found that the MFHEA is compliant with ESG Standard 3.1, but the EQAR Register Committee elected to downgrade this to one of Partial Compliance.

The MFHEA would like to draw the Appeal Committee's attention to the Additional Representations made by the MFHEA in respect of this Standard.

The MFHEA wishes to register an error of fact in Paragraph 51 wherein the Register Committee observed that the removal of a Board Member can only be done by the Prime Minister. The MFHEA wishes to point out that in terms of Article 11 of the [Further and Higher Education Act \(Cap 607\) of the Laws of Malta](#), a member of the Board may be removed or suspended from office by the Prime Minister, however this only upon the recommendation of the Board on the specific grounds of inability to perform the functions of his office as required, either because of mental or physical illness, or for any other reason due to which the member would no longer be fit to occupy such office. Therefore it is clear that the Prime Minister can only action a recommendation of the Board, which recommendation can only be made on very specific grounds.

The MFHEA once again rejects the fact that the small size of Malta's educational system is being presumed by the Register Committee to represent a barrier to independence. Such statements have no place in a process related to an application for registration on the EQAR Register. Is the MFHEA to understand that our country's size, a factor which can never be altered, is to be considered as an element which precludes registration?

The MFHEA wishes to record a further error of fact in paragraph 53, wherein it is stated that the Chairperson of the QAC is a member of the Board. The MFHEA once again wishes to draw attention to the fact that the [Chairperson of the QAC](#) has not been appointed to [the Board](#) and this so as to properly reflect the ENQA Agency Review pending the legislative amendments.

In Paragraph 56 it is stated that there are inconsistencies regarding which decisions of the QAC are to be endorsed by the Board. However, the MFHEA reminds that in terms of Article 17(2) of the Further and Higher Education Act (Cap 607) of the Laws of Malta, all decisions taken by the QAC are to be communicated to the Board which shall take a decision related to licensing on the basis of the audits conducted by the QAC.

The MFHEA maintains that the errors of fact highlighted in relation to this Standard are matters of substantial relevance which were not properly considered and constitute a ground of appeal in terms of Article 1.1 (b)(para 4) of the EQAR Appeals and Complaints Procedure and that furthermore the facts described above were not properly considered or understood and constitute a ground of appeal in terms of Article 1.1 (b)(para 1) of the EQAR Appeals and Complaints Procedure. The MFHEA therefore requests that the finding in relation to this Standard be changed to 'COMPLIANT' in accordance with the finding made by the ENQA Panel.

Finally the MFHEA wishes to record its concern for the fact that in July 2024 there were a series of reports in Austrian media, wherein it was stated Malta's application for EQAR registration had been rejected and that EQAR employees indicated that the final decision of rejection would be communicated in October, and MFHEA had poor chances of succeeding. Copies of the Articles may be provided to the Appeals Committee should it deem it appropriate to consider whether this fact impinges on the integrity of the process in terms of Article 1 of the EQAR Appeals and Complaints Procedure. The MFHEA may also provide copies of the official complaint presented to EQAR on this matter.

Conclusion

As stated in its SAR and all communications made by it in the course of this process, the MFHEA views this application process for EQAR Registration as a formative exercise of improvement and embraces all of the recommendations made and understands that fulfilling the same will provide an invaluable tool in the continuous development and improvement of the MFHEA. The MFHEA therefore wishes to clarify that this appeal is being filed so as to correct factual inaccuracies and highlight actions taken towards meeting recommendations made which were not properly understood or considered and should not be interpreted as a lack of appreciation of the values and quality secured by the proper implementation of the ESG.

The MFHEA hereby humbly requests that the Appeals Committee favourably considers all of the above submissions made by the MFHEA.

The MFHEA also hereby requests that in the event that the Appeals Committee deems appropriate to change the findings in relation to all or some of the ESG, then it should furthermore consider changing the Register Committee's final findings in Paragraph 67 and should overturn the Register Committee's rejection of the MFHEA application in Paragraph 68.

Whilst thanking the Appeal Committee's attention in considering this Appeal, the MFHEA remains available to provide any further evidence or clarification.

Dr Rose Anne Cuschieri
CEO
13th December 2024

EQAR Appeals Committee

Brussels, 10 February 2025

Appeals Committee – Clarification request from the Register Committee [A148 MFHEA]

Dear Register Committee members,

As you have been informed the Appeals Committee has received an appeal by the Malta Further and Higher Education Authority (MFHEA) on the 'Rejection of the Application by the Malta Further and Higher Education Authority (MFHEA) for inclusion on the Register'.

In order to make its decision on the submitted appeal, the Appeals Committee would like to request further clarification from the Register Committee.

The Committee would request additional clarification on the following standard 3.3:

- Could the Register Committee clarify further the reasoning for their judgement of partial compliance with ESG 3.3, even after the additional representation by MFHEA.

The Register Committee is welcomed to provide any additional reflection on the appeal.

For the Appeals Committee,

Paul Zoontjens (Chair)

Carolyn Campbell

Janja Komljenović

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Register Committee Response

Regarding the request by the Appeals Committee on the appeal by MFHEA

Register Committee

10 March 2025

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 Author RC
 Ver. 1.0
 Date 2025-03-04
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Per the request of the Appeals Committee from 2025-02-06, and per the Appeal submitted by MFHEA, please find the response of the Register Committee on the raised question.

1. ESG 3.3 – Independence

Regarding paragraph 51 of the Rejection Decision, the Register Committee accepts that the Prime Minister can only remove or suspend a Board member on the recommendation of the MFHEA, and can clarify this in its rejection decision if requested by the Appeals Committee.

The Register Committee, however, would like to restate that despite this there are still concerns that the organisational independence of the agency is constrained by the Board's strong link to and dependency on the government. As previously noted, a minimum of 3 out of 6 and up to 6 out of 9 Board members are nominated by the Minister responsible for education.

The Register Committee would like to clarify that the judgement of partial compliance with ESG 3.3 has been made on the grounds of concerns raised in paragraph 53 of the rejection decision. This relates to the inconsistencies regarding which accreditation procedures and which decisions are endorsed by MFHEA Board, an issue that has been raised by the panel in its external review report.

While the legislation referred to by MFHEA in the appeal appears to be clear, the panel pointed out issues concerning this: "The panel found some inconsistency in what accreditation procedures and which decisions are being endorsed by the Board. This concerns especially the EQA audit and the QAC decision endorsed by the Board in a form of the "Cover Letter" that is published together with the report." (External review report, page 30). Per the Register Committee this inconsistency, noted by the panel, could potentially affect the independence of formal outcomes and shows the unclarity whether the final decision is with the QAC or Board.

Considering the membership of the head of the QAC in the MFHEA Board, which has been raised by the panel and noted by the Register Committee in paragraph 53 and appealed as incorrect by the agency, the Register Committee would like to clarify the following:

- when final decisions are being prepared by the Register Committee, especially decisions following additional representation, it is of utmost importance, and for the transparency of the work of the Committee that paragraphs which were part of the initial deferral

decision, are included in order to provide context for the additional representation, which in this case is outlined in paragraphs 54 and 55 in the rejection decision.

- therefore, the context for the decision on this issue is clarified in the following paragraph 56., where the Register Committee took note of the change made since the panel's visit in the distinction between the two bodies, where the new Chair of the QAC is no longer a member of the Board. Nevertheless at the time of the additional representation, as mentioned by MFHEA, the legislative changes for this to happen had not yet taken place. Furthermore the higher education law which has been referenced in the appeal still defines the Chairperson of the QAC as a member of the Board (see article 8, section 2, point c.), providing evidence that the legislation has not yet been amended. The Committee noted that MFHEA has taken some actions related this matter, but it remains to be reviewed by a review panel how these changes are being implement in practice.

Considering the above mentioned reasonings, the Register Committee could not follow the panel's judgement and found MFHEA to be partially compliant with ESG 3.3.

Furthermore, the Register Committee would like to point to recent precedents on standard ESG 3.3 from an application for registration by a different agencies, where the Committee found that agency to be partially compliant due to planned legislative changes which had yet to be passed, and subsequently verified by an external ENQA review panel to determine whether the changes have been properly implemented. (see PKA renewal decision from 2024-04-04). Furthermore, besides the above mentioned case, the Committee would like to note that there are other recent precedents on this standard where the Register Committee found agencies to be partially compliant, where the government (regional/national) plays significant role in appointment of individuals in the decision making bodies of the agencies, i.e., CYQAA, AQUIB etc., and where planned legislative changes are to take place.

Register Committee

10 March 2025

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