



Original Article

# The European Standards and Guidelines for Quality Assurance in the European Higher Education Area in Portugal and the Czech Republic: Between the *Worlds of Neglect and Dead Letters*?

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The paper enquires into the institutional impact of European policies, as embodied by the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG). Theoretically, the work departs from the ‘worlds of compliance’ framework in relation to EU law implementation to study EU initiatives under the Open Method of Coordination. Empirically, it presents how ESG are taken up by higher education institutions in Portugal and the Czech Republic. The study finds a substantial misfit between the modes of governance traditionally ascribed to Portugal and the Czech Republic and the identified patterns of ESG translations in those countries. *Higher Education Policy* (2017). doi:10.1057/s41307-017-0050-z

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## Introduction

In recent years, studies on interactions between European Union (EU) policies and policy sectors of the EU member states have also been made in the higher education field. Building upon a structural–organisational approach (Egeberg, 2003), the studies address changing governance dynamics of higher education policies in the wake of EU-supported Bologna or Lisbon reform agendas (de Boer *et al.*, 2007; Magalhães *et al.*, 2013b, c; Neave and Veiga, 2013; Veiga, 2012). In doing so, they analytically converge on higher education governance, taking on



more organisationally complex and hybrid forms with evolving multi-actor, multi-level frameworks to account for stronger managerial elements, weaker academic-professional elements and stronger environmental (political) pressures (Christensen, 2011). This underlies a ‘common grammar’ of European governance that affects policy implementation of EU initiatives (Magalhães *et al.*, 2013a), not least through the focus on policy instruments as ‘a fruitful avenue to demonstrate and interpret changing forms of governance’ (Le Galès, 2011, p. 143).

The present paper adds to the links between policy and governance by exploring the extent of transposition of European quality standards within the European multi-level system. As a pan-European policy initiative supported by the Commission within the Bologna Process, the Standards and Guidelines (ESG) for Quality Assurance in the European Higher Education Area (EHEA) operate on the ‘soft law’ principle of the Open Method of Coordination (OMC). More specifically, the paper narrows a gap in the theory-substantiated exploration of EU initiatives whose transposition to national settings falls outside of mandatory directives (Treib, 2014). Empirically, the paper covers Portugal and the Czech Republic, as these two countries have received comparatively little attention in EU compliance research to date (Falkner and Treib, 2008). The two countries further share a historic experience with totalitarian regimes – lasting until 1974 in Portugal and 1989 in the Czech Republic (Cerych, 2002; Sobral, 2012) – as well as having very similar socio-economic characteristics, i.e. population size (about 10 million) and the level of gross domestic product per capita (circa 80 per cent of the EU average) (Eurostat, 2013).

Taking up the analysis of Part 1: European standards and guidelines for internal quality assurance within higher education institutions (ESG1) orients our research towards patterns of translating and practising the ESG1 by HEIs, including accounting for the state–university interface. Examination of that interface is important to our study inasmuch as it enables analysis of translation–delivery mechanisms as affected by the policy-centre unit(s) (Ministry, quality assurance agency), potentially serving as channels for the European standards (Gornitzka *et al.*, 2007).

In line with such orientation, the article aims to ascertain the extent of (mis-)alignment with the ESG1 by selected HEIs in Portugal and the Czech Republic. This is done by identification of similarities and differences in the translation process and their bearing on institutional practices and realities. Second, the findings from the translation process are utilised to draw implications on the degree of (mis-)fit between institutional ESG1 take-up patterns and EU policy implementation styles. This aim is due to ‘the creeping competence’ of the European Commission enlarging its intervention in higher education issues (Amaral and Neave, 2009) that, to some extent, also compromises the (mis-)alignment processes.

To address these aims, the remainder of the paper opens with an exposition of theoretical assumptions followed by an overview of methods of enquiry into ESG1 implementation. Next comes the empirical part, outlining how and through which patterns the ESG1 are taken up by HEIs in the two countries. The paper continues



with a discussion of the degree of fit between the identified patterns and their implications for the ‘macro’-EU-level implementation styles attributable to Portugal and the Czech Republic. The resulting findings are finally discussed for their international significance.

## Theoretical Underpinnings

Numerous investigations into EU policymaking and its effects on responses, discourses and policies of the EU member states have given ground to the concept of European governance. Bringing to the fore the EU as a political system and its impact on national policymaking, the European governance concept accentuates the importance of political management of rule systems (Magalhães *et al.*, 2013a). For higher education, as an area under exclusive jurisdiction of EU member states, management of rules proceeds through the OMC, shifting from the Community Method to ‘soft-law’ coordination (Gornitzka, 2006).

The OMC is referred to as a new form of collective action to foster compatibility, consistency or convergence between member states’ public policies. In the education policy area, the OMC has been linked to applying guidelines, exchange of experience, peer learning indicators and benchmarks (Munkholm and Olsen, 2009). Other means characteristic of the OMC entail fixing union guidelines, including timetables for goal achievement, and performing periodic reporting on results (Gornitzka, 2006). Hence, the application of the OMC to guide transposition of the legally non-binding ESG fits well in the prevalent use of this ‘soft method of coordination’ thus far.

Cross-sectoral applications of the OMC show some stimulating effects on policy learning and diffusion of ‘good practices’, not least through experimentation, deliberation or the potentiality of ‘naming and shaming’. However, in higher education, the evidence of achieving a sufficient level of coordination and monitoring through this method seems to have been ambiguous to date (Veiga and Amaral, 2006, 2009). Overall, the effectiveness of the OMC applications seems to depend on how it is contextualised and how the balance between ends and means in the translation process is managed (Visser, 2005).

The concern with coordination of concerted action within public sector performance processes makes EU governance studies conceptually akin to implementation research (Hupe and Hill, 2007). In the EU implementation research, the prominent overarching framework for the analysis is the ‘worlds of compliance’ framework (Falkner *et al.*, 2005). This framework was originally developed in the mid-2000s for studying transposition of the binding EU social policy directives in selected EU-15 states, falling under the application of the Community Method (CM) based on the ordinary legislative procedures. Since then, the framework has been used both for qualitative (e.g. Falkner *et al.*, 2007; Falkner



and Treib, 2008; Falkner, 2010) and quantitative (e.g. Toshkov, 2007, 2010; Steunenbergh and Toshkov, 2009) enquiries into (social) policy developments across the EU-28. These enquiries present somewhat contradictory evidence on the framework's explanatory power of transposition performance across the individual EU countries (Toshkov, 2007) that may be due to discrepancies between qualitative and quantitative data used as an input for analysis (for detail see Falkner *et al.*, 2007).

The reasons for application of the 'worlds of compliance' framework, originating from analyses of binding EU social policy directives, in this qualitative, OMC-focused study are fourfold. First, higher education is a fundamental ingredient underlying formation and realisation of many EU priorities cutting across sectors (such as business environment, social protection and cohesion, fiscal stability, public administration) typically governed by the 'binding' CM or 'soft' OMC (Capano and Piattoni, 2011). Second, the process of transposition of EU policy initiatives through incorporation into national and institutional (by-)laws and implementation of practices applies both to CM- and OMC-governed agendas. What differs is *the extent of enforcement* in translating (mandatorily) set goals and in their practical application which is behind the differences among the identified 'compliance worlds' (cf. Falkner *et al.*, 2007). Third, further research evidence suggests that the OMC has also been found to reinforce centralisation in national patterns of EU policy coordination (Borrás and Peters, 2011), thus pointing towards the interplay between open coordination and a hierarchical mode in some instances of EU governance (Borrás and Jacobson, 2004). Fourth, the authors of the compliance framework call for testing its relevance through new qualitative case studies involving as many countries as possible (Falkner *et al.*, 2007, p. 19) but without preference for CM- or OMC-governed EU policy areas.

Within the framework, the processes of transposing EU initiatives into member states' policies are operationalised into the patterns of translation and practical application. Application of the two analytical patterns to a particular initiative under enquiry in turn produces four country-specific styles of EU law implementation. The styles are metaphorically referred to as '*World of Law Observance*', '*World of Domestic Politics*', '*World of Transposition Neglect*' and '*World of Dead Letters*' (Falkner *et al.*, 2005; Falkner and Treib, 2008) (see Table 1).

The four implementation styles differ in their goodness-of-(mis)fit with the EU original policy goal(s), due to how the goal(s) are translated to institutional contexts and by their practical application (delivery). The goal translation and application are impacted upon by governmental changes, administrative histories, coordination capacities, veto players, political culture and politically motivated changes or interest group pressures (cf. Treib, 2014).

For our case, the positioning of Portugal and the Czech Republic in the compliance framework is of importance. While Portugal is originally positioned in the *World of Transposition Neglect*, the Czech Republic is positioned in the cluster



**Table 1** Four styles of EU law implementation

<i>Style</i>	<i>World of law observance</i>	<i>World of domestic politics</i>	<i>World of transposition neglect</i>	<i>World of dead letters</i>
Pattern of translation	+	0	–	0
Pattern of application	+	+	±	–
Relevant country	Denmark, Finland, Sweden	Austria, Belgium, Netherlands, Germany, UK	France, Greece, Luxembourg, Portugal	Italy, Slovenia, Czech Republic, Hungary, Slovakia

*Source:* Adapted from Falkner and Treib (2008)

+ respect of rule of law; 0 political pick-and-choose; – neglect.

of countries in the *World of Dead Letters* (see Table 1). The major difference between these two styles lies in the translation part of the process in which EU policy goals tend to be either disrespected due to countervailing interests and/or malfunctioning administrative routines (*Transposition Neglect*) or adapted to political ‘pick-and-choose’ convenience (*Dead Letters*). Correspondingly, both styles are characterised by a varying difficulty in policy delivery mainly due to underdeveloped and/or disorganised capacities of the institutions involved. Still, policy delivery within the *World of Transposition Neglect* may not entirely proceed without respecting legal stipulations (Falkner and Treib, 2008; Treib, 2014).

The differences between the styles of the two countries point to the complexity in EU policy implementation. To tackle this complexity, we further draw on policy instrumentation as an ‘alternative perspective on implementation research’ (Winter, 2006). A policy instrumentation perspective, comprising the use of ‘old’ policy instruments to directly affect policy delivery (e.g. legal regulation, information reporting) or ‘new’ ones to alter policy (translation) procedures (e.g. committee creation, advisory councils establishment, contracting-out, institutional reorganisation) (Howlett, 2004, 2011), will serve us for decomposition of the ESG1 translation and application into analysable segments, and for identification of contextual variables bearing on the ESG1 goodness-of-fit. The contextual variables deemed especially relevant for transposition neglect are inefficiency, coordination, overload of administrative tasks along with unwillingness of administrative actors. On the other hand, the patterns of political pick-and-choose, characteristic of the ‘*World of Dead Letters*’, seem to be induced particularly by veto players, (party) political preferences, shifting (government) policy priorities or interest group demands (Falkner *et al.*, 2007). Furthermore, in our case, such contextual variables may be supplemented by some others being (political) agendas of the national regulatory bodies (ministries of education, quality assurance agencies), autonomy of university managers or discretion of front-line academic staff. These variables



influence ‘mixed performance of policy implementation’ that is to likely be standardly expected (Cerych and Sabatier, 1986; Gornitzka *et al.*, 2005).

## The ESG and Methodology of Enquiry

The ESG were adopted in a meeting of ministers responsible for higher education in the Bologna process signatory countries in 2005. As a pan-European policy initiative whose creation was supported by the European Commission, the European Parliament and the European Council (European Parliament and Council, 2006), the ESG present the set of standards for three domains of higher education quality assurance which are: internal quality assurance within higher education institutions (ESG1), external quality assurance and external quality assurance of agencies (ENQA, 2005).<sup>1</sup> As suggested, the ESG operate on the principle of the Open Method of Coordination, which means they are not meant to be prescriptive and their implementation is not legally enforceable. As our enquiry centres on higher education institutions, only Part 1: European standards and guidelines for internal quality assurance (ESG1) is covered for analysis in this paper.

Against this backdrop, we explore and analyse the ESG1 translation in Portugal and the Czech Republic, relying on institutional data collected under the IBAR project which focused on which ‘good practices’ and ‘barriers’ could be identified at different levels when it comes to the implementation of ESG1. The enquiry is framed by three research questions:

- (a) What are institutional practices of and responses to ESG1?
- (b) What are the major patterns affecting ESG1 translation and practical application?
- (c) To what extent does the institutional take-up of the ESG1 reflect the positioning of Portugal and the Czech Republic in the four styles of EU law implementation?

In each country, four HEIs were chosen, observing the criteria of institutional size and type. Under the latter criterion, we chose a balanced sample of institutions offering a range of programmes in several disciplinary areas (comprehensive universities) and those with narrower, more specific vocational orientation (specialised institutions). For the Czech Republic, this approach yielded two comprehensive universities (big HEI A, small HEI B) and two specialised institutions (big HEI C, small HEI D) of different sizes. The same division applies to Portugal with two comprehensive universities (big HEI E, small HEI F) along with two differently sized, specialised institutions (big HEI G, small HEI H).

In line with its exploratory focus, our enquiry into ESG1 implementation was led by a qualitative methodology. In our case, each of the seven ESG1 standards



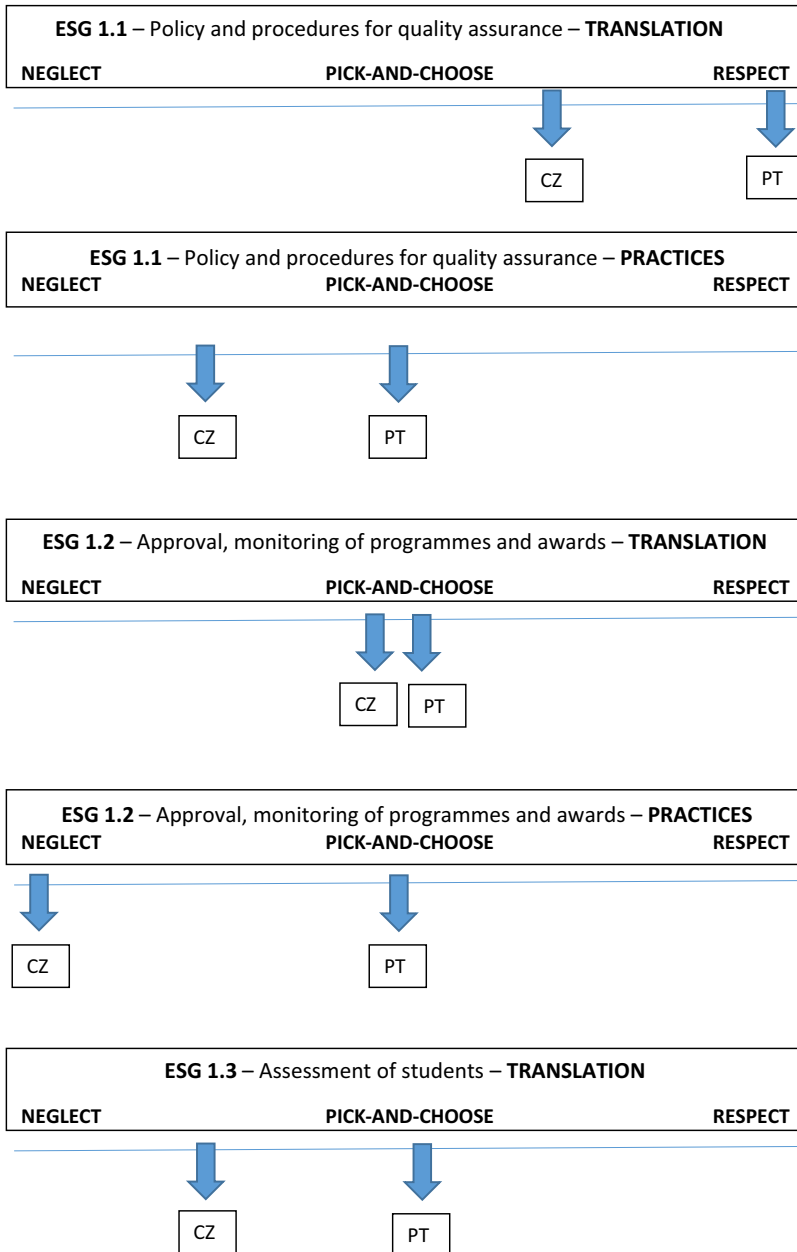
was structured by a set of research questions. The questions were derived from ESG1 content and utilised as frames for re-constructing social reality concerning the ESG1 translation into institutional settings (cf. Berger and Luckmann, 1966). The actual re-construction of the ESG Part 1 translations was done by analysis of relevant documents, including (by-)laws, statutes, strategy documents, internal regulations, codes of practice and annual reports, and by utilisation of semi-structured interviews. The interviews were led by the pre-formulated questions and conducted with academics, students and quality managers. The effort was made to keep a proportional representation of these respondent groups among the institutions in the two countries. Altogether, 193 interviews (70 academics, 72 students, 51 managers) were conducted in Portugal and 189 interviews (67 academics, 74 students, 48 managers) in the Czech Republic.

## Findings

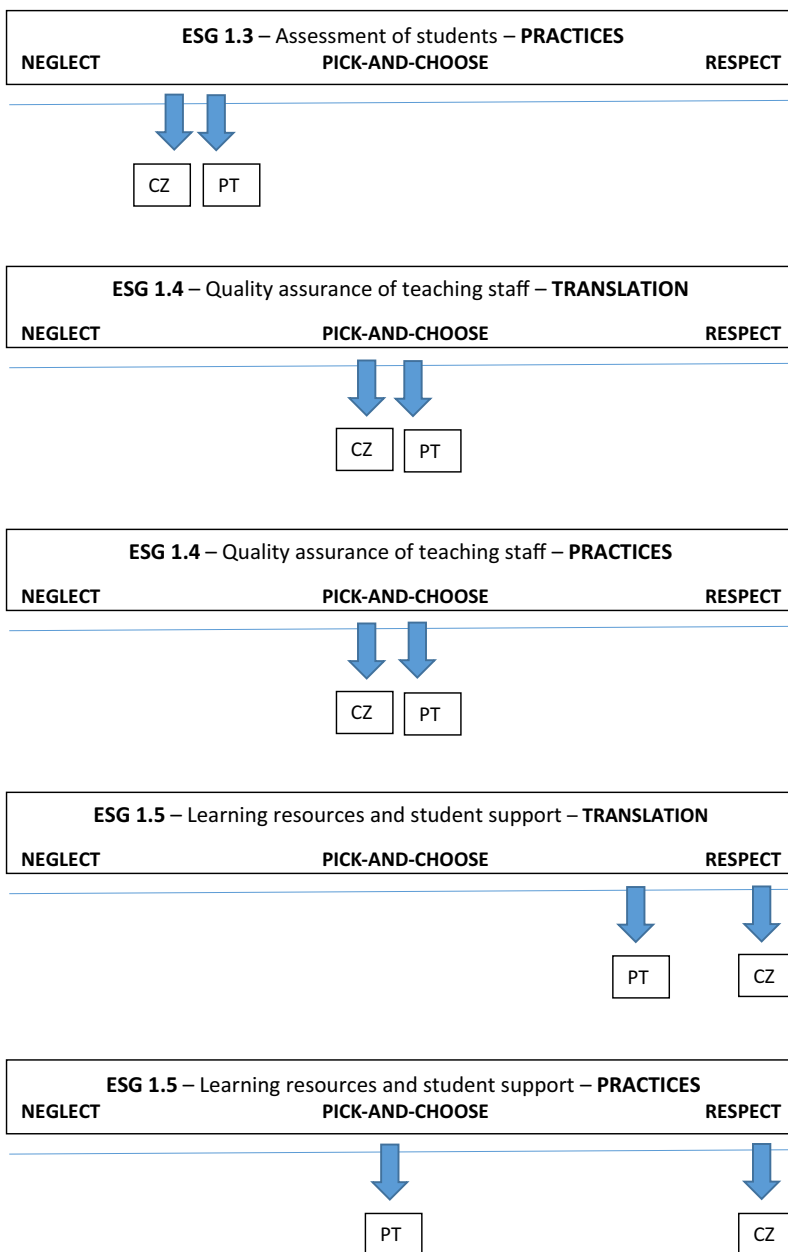
The data collected were analysed in order to uncover how ESG Part 1 is being translated and applied in both Portuguese and Czech HEIs. Findings are presented in the following sections for each one of the standards included in ESG1. For greater clarity, the presentation for each standard's translation and practices is also done graphically on a continuum marked by the 'respect' and 'neglect' patterns on the opposing ends, with a political 'pick-and-choose' mark, balancing the effects of the two opposites in a mid-position, but possibly shifting to favour respect- or neglect-related concerns in a particular issue area<sup>2</sup> (see Figure 1).

### Policy and procedures for quality assurance (ESG 1.1)

In the Czech Republic, the national rules on quality address the need to develop internal quality assurance mechanisms. Institutions should have a policy and associated procedures for the assurance of quality, but that policy substance and procedural designs are left to institutions. Quality assurance policies in the four HEIs are, nonetheless, top-down oriented due to the prominent role of top management (rectorate). The institutional commitment on quality assurance unfolds reflecting procedural policy instruments regarding institutional reorganisation. In HEIs B, C and D, the commitment and responsibilities are visible also at mid-level, and in HEI C, there is a newly created, rectorate-affiliated special department of quality assurance. Additionally, though rather formally, quality assurance policies in Czech HEIs take account of student involvement. The translation of ESG 1.1 within the Czech context shifts between patterns of political pick-and-choose and respect. The positioning of the marker closer to political pick-and-choose is associated with the existence of no officially documented relationship between teaching and research and the consequent lack of a take-up of research in institutional quality assurance policies.



**Figure 1.** ESG 1 taken up by Czech and Portuguese higher education institutions.



**Figure 1.** continued

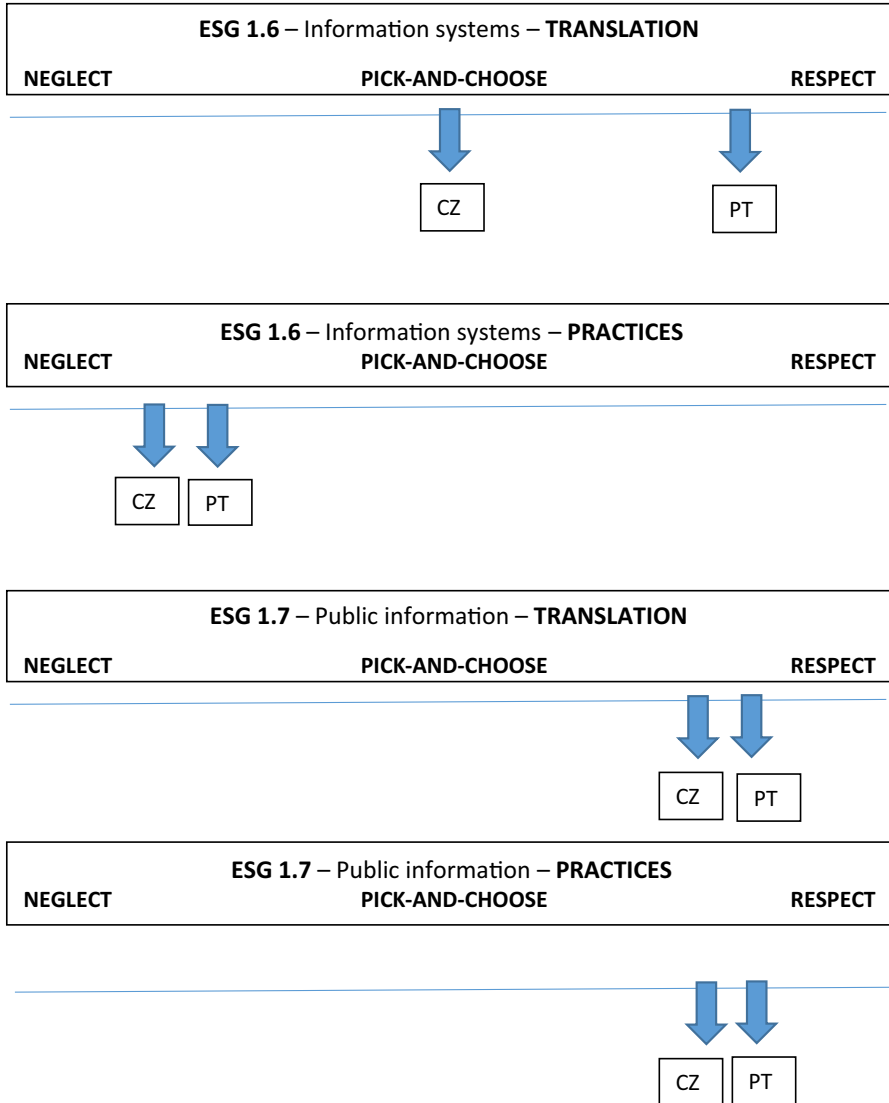


Figure 1. continued

Within Portuguese HEIs, translation of ESG 1.1 appears to be associated with the pattern of respect. While the legal framework promotes HEIs' commitment to the development of a culture and institutional attitude which recognises the importance of quality and quality assurance, the national agency (A3ES) has made



a concrete proposal about the standards for the certification of internal quality assurance systems. Additionally, as the A3ES standards align with the ESG, their embeddedness is favoured, whereas not always with an explicit reference at the institutional level. From this perspective, we may argue that changes of the legal framework and A3ES activities are promoting and facilitating the awareness about and implementation of policy procedures for quality assurance in HEIs. The external environment is thus of importance for the adoption of ESG 1.1, and authority is the policy instrument used to promote institutional commitment. HEIs E–H have quality concerns and refer continuously to quality improvement, as well as, contrary to the Czech HEIs, to the need to reinforce and consolidate an institutional quality culture encompassing both teaching and research.

Practical applications of ESG 1.1 are focusing on the development of a strategy for the continuous enhancement of quality. In the Czech Republic, the underlying organisational principle of HEIs ascribes an important role to internal evaluation. Internal evaluation is complex and may possibly involve checks on the fit of programme curricula with the national requirements, utilising instruments such as questionnaires and databases along with self-evaluation reports. As a consequence, the (re-)accreditation rules are appearing to have some importance in ESG 1.1 practical application. To give an example, HEI B explicitly declares in its internal quality assurance policy the rules of programme (re-)accreditation set by the national accreditation commission. Nonetheless, the evidence from HEIs A, B and C points to only a limited impact of the (re-)accreditation rules on internal evaluations. In this respect, the HEIs surveyed appear to reveal a pick-and-choose pattern moderated by some elements of neglect, as evident from the interviewees' frequent unawareness about the ESG, as well as tenuous links between quality assurance of research and teaching.

In Portugal, the external evaluation processes are impinging on institutional reorganisation and on the establishment of internal quality assurance systems. However, the development of institutional practices aligning with ESG 1.1 appears to follow the pattern of pick-and-choose, as none of the HEIs surveyed has a formal statement for their quality assurance policy. However, the policy facets are embedded in a more general process of strategic thinking as the quality assurance policy is intermeshed with strategic management. The information and communication systems strengthen the quality assurance of study programmes and emerge as an armed wing of the strategy for the continuous enhancement of quality. For instance, in HEIs E and F the quality programme is included in the institutions' information system. To deal with A3ES requests on a daily basis, in all institutions there are specific programmes and/or units to deal with quality assurance issues.

At HEI F, it was mentioned that monitoring and coordination mechanisms have been designed centrally, but are flexible so that schools can adapt them to their own realities, such as pedagogic questionnaires or course evaluation reports and their timings. According to perceptions of managers, these mechanisms, aimed at



monitoring and improving quality, are helpful as they allow inter-school comparability. They are supported by the university information system. At HEI A, the perception is that mechanisms for quality and quality improvement should be part of the wider management/governance mechanisms, since managing quality should be no different from managing other aspects. Additionally, while quality assurance is participated in by different actors and organisational units, at HEIs E–H it is hard to find more than a weak and informal participation of external stakeholders in real terms, namely regarding their effective participation in setting up a policy and procedures for quality assurance.

### **Approval, monitoring and periodic review of programmes and awards (ESG 1.2)**

In the Czech Republic, the institutional commitment for the approval, monitoring and periodic review of programmes and awards is influenced by the State. Its power is exercised through the board of trustees and through the Accreditation Commission. However, in HEIs A, C and D the rector and deans further create their own advisory boards that have an important consultative role. These boards are not mentioned in the national legislation and are composed only of internal stakeholders; therefore, the responsibility for programme quality assurance and approval is primarily vested in a limited group of stakeholders (representatives of academic staff; students as academic senators; and senior academics sitting on scientific boards). Notwithstanding, there have been some politically motivated but unsuccessful attempts to modify the composition of decision-making bodies of HEIs. The pattern of political pick-and-choose featuring the translation of ESG 1.2 appears to equate with major interest of academics and students.

In Portugal, the translation of ESG 1.2 might be presenting some signs of a more relevant role of external stakeholders, even if the internal ones still hold the upper hand regarding most of the specific decisions relating to programmes. As a matter of fact, internal stakeholders are more frequently seeking the advice and blessing of external stakeholders. Nevertheless, the fact that external stakeholders are mostly present at the top level (legislation mandates their presence), while the decisions regarding teaching and learning are mostly taken at lower levels (typically departments), makes their real impact over teaching and learning still relatively weak. Still, some examples could be found concerning the external stakeholders' role; at HEI H, there is a set of mechanisms which are used to adapt the contents of the study programmes to the professional reality. At HEI E, managers perceived periodic reviews of programmes to be the most developed aspect of the quality system of the institution. Anyhow, the institutional commitment towards ESG 1.2 appears to be dependent on countervailing interests of internal and external members determining implementation processes, thus matching the pattern of pick-and-choose.



The development of Czech institutions' practices related to ESG 1.2 underlies the perspective of external stakeholders (namely employers). HEIs A-D, however, show that their impact is mostly indirect and often mediated, coming through industrial R&D partnerships, student internships, thesis co-supervision, alumni contacts or even promotional activities targeted at secondary schools. Despite the few cases of more direct involvement, the overall evidence points to underdeveloped institutional practices of monitoring the teaching/learning processes, adhering to a pattern of neglect associated with the '*World of Dead Letters*'.

In Portugal, the participation of external stakeholders in degree-programme committees and their involvement in teaching and research activities, along with the engagement of students with external partnerships and work experiences (study visits, internships) and the application of surveys to employers and alumni, signals institutional awareness about their developing institutional practices aligned with ESG 1.2. Furthermore, it was made visible that external stakeholders should be more involved in teaching and research review committees at the faculty/school level. As perceived by managers at HEI E, external stakeholders' intervention in university life is less than it should be, while addressing the issue that when choosing the external members, it is important that the institutions choose not only people from different social and business backgrounds, but also people who effectively know how a HEI works. Interestingly, at HEI F external stakeholders do not play a role in the areas of defining graduate profiles, study cycles' curricula, graduate competences or even in terms of internal quality assurance processes. The pertaining ESG 1.2 patterns thus appear to rely on pick-and-choose, as much as further developments could raise the awareness about the topic. From the instrumentation perspective, institutional practices developed for ESG 1.2 implementation appear to primarily rely on information and learning tools to facilitate communication between internal and external stakeholders. In the perspective of academics interviewed at HEI E, the changing and updating of information are very useful and definitely increase quality. By the same token, at HEI H external stakeholders bring to the institution information about what is happening in the region and undertake some projects that help in discussing local or regional problems.

### **Student assessment (ESG 1.3)**

The translation of ESG 1.3, which focuses on how students should be assessed using published criteria, regulations and procedures, is applied consistently within the selected Czech HEIs, revealing the importance of national laws. The Czech Higher Education Act establishes a set of framework rules regarding students' assessment procedures, including basic marking criteria, identification materials (student card), assessment proofs (student record) and student rights (for resit). However, the Act remains silent on some other ESG 1.3 aspects, namely the



assessment of learning outcomes. Although HEIs A–D observe the corresponding legal stipulations in their study and examination rules – with some exception regarding administration of verification checks – they make little effort to progress with assessment designs fully adhering to ESG 1.3. In translating ESG 1.3, the pattern of pick-and-choose closer to neglect thus seems to prevail.

The situation is somewhat similar in Portugal. HEIs there are obliged to fulfil pivotal assessment principles (e.g. scale definition, pass mark of 10, specification of qualitative references for marks) and publish the grades accordingly. Nevertheless, the law gives full pedagogic autonomy to each HEI for deciding its student assessment policy, procedures and methods. Despite this, there are similar patterns and tendencies among HEIs E–H with regard to student assessment, including acknowledgement of special regime students (mainly students in employment) and increasing formalisation of course evaluation (reports, staff meetings, student surveys). Importantly, institutional policies and regulations make reference to the concept of learning outcomes as a high profile agenda of national pedagogic reform. Institutional representatives at the top and mid-level demonstrate understanding of the concept, but lay academics do not. Coupled with the lack of a consistent terminology, there is a dichotomy between the official measures on learning outcomes and their translation. Hence, the translation pattern of ESG 1.3 appears to be of pick-and-choose, as student assessment procedures are within the legal frame of reference, but not yet appropriate to measure the intended learning outcomes.

In the Czech Republic, the development of institutional practices regarding ESG 1.3 tends towards neglect. Assessment practices of HEIs A–D reflect and elaborate on the corresponding national stipulations that, to some extent, account for ESG 1.3 standards, including general principles of course credit valuation and credit points' allocation. Furthermore, in this respect, institutional practices state that assessment rules are defined and followed intra-institutionally (HEI B, C and D) or by each faculty (HEI A). The application of assessment practices does not conflict with rules of examinations, methods of classification (ECTS scale), marking systems (including for theses and dissertations), and conditions of study abroad and termination of study. The practices also account for the relevant information about student assessment to be passed to students both in electronic and paper format. On the other hand, evidence of ESG 1.3 application neglect is present across the four HEIs, attested to by missing practices of double marking, formative assessment and alignment of assessment content with learning outcomes. As suggested, this makes the application pattern closer to neglect with the elements of pick-and-choose not entirely absent.

In Portugal, the development of practices reflecting ESG 1.3 is grounded on high levels of academic autonomy in designing assessment methods. Institutional policies provide only a broad framework but do not go into detail regarding assessment approaches and methodologies. The principle of pedagogic autonomy



applies and there is the feeling that regulations are flexible enough to accommodate disciplinary and programme specificities. Additionally, interviewees confirm awareness among different actors (including academic staff and students) of institutional regulations and their fulfilment. This, however, does not entail the prioritised application of assessment oriented to learning outcomes. Reflecting on the importance of the learning outcomes agenda, the overall pattern is closer to neglect, as institutional efforts to introduce a learning outcome-based assessment approach have not yet been properly understood and implemented, and therefore not yet triggered changes in pedagogic methods. For instance, in the perception of academics at HEI E, teaching staff seem to have difficulty in understanding questions around learning outcomes and generally fail to answer them. Few seem aware of the fact that learning outcomes refer to the competences students are expected to acquire. At HEI F, it was recognised by managers that the institution has put a lot of effort centrally and at the faculty level to promote the assessment of learning outcomes. Assuming a clear neglecting pattern, there is HEI H as learning outcomes are not informing assessment since there is no mention in the regulations.

#### **Quality assurance of teaching staff (ESG 1.4)**

The institutional commitment to ESG 1.4 in both countries is again based on the adoption of national rules and procedures of staff employment. In Portugal, the national legislation is perceived as a transparency tool and a guarantee of the quality of teachers. The strategic planning in the Czech universities includes staff quality assurance, and two Portuguese HEIs (HEIs E and F) include the promotion of quality of teacher's performance through specific initiatives. At HEIs E and F, teaching performance is mainly associated with research and it is considered that the teacher is good if he/she is good scientifically. However, at HEI E there is the perception that teaching has been neglected and therefore it needs more effective monitoring, while at HEI F the major role in supporting teaching performance is played by the study cycle director. While performance management rationales influence the translation of ESG 1.4, in the Czech Republic the pattern of political pick-and-choose is determined by the prevalence of institutional concerns on the matter; the same pattern is present in Portugal.

The development of practices towards ESG 1.4 should reveal that institutions have ways of satisfying themselves that the staff involved with the teaching of students is qualified and competent to do so. In the Czech Republic, HEIs A–D provide pedagogical training courses and in the Czech Republic and Portugal the quality of teaching performance is internally assessed through student evaluation. However, student participation in such evaluation is quite low and needs to be enhanced. At HEI E, it was mentioned that one of the reasons behind this low participation in evaluating teaching performance is that students do not have any perception of or information on the institutional mechanisms supporting teaching



performance. In the Czech HEIs surveyed, there are pilot projects for systems to develop teaching performance. In HEIs A and C, staff are recommended to follow pedagogical training, and in HEI C, there is a system of teacher peer evaluation which takes the form of in-class observation (albeit hampered by low participation). In both countries, there are funding initiatives in place to develop academics' performance. The modernisation of facilities also emerges as an issue associated with academics' performance. In Portugal, HEI F has set up a 'teaching/learning lab', which was identified by interviewees as the existing mechanism supporting teaching performance quality. The overall picture thus appears to be of Czech and Portuguese HEIs picking-and-choosing those practical arrangements, assuring the quality of their teaching staff in a manner that fits the national frameworks, but not the ESG 1.4 in its entirety. There are no mandatory requirements for teaching staff qualifications (certified).

### **Learning resources and student support (ESG 1.5)**

ESG 1.5 addresses the obligation to ensure that the resources available for the support of student learning are adequate and appropriate for each programme offered. In all four Czech HEIs, the development of learning resources and student support is reflected in policy documents and institutional priorities. The electronic forms of learning resources are gaining importance, and instruments such as record-keeping are influencing student support processes. The Czech context points to the interaction between commitment on learning resources, the information system and the quality of teaching staff. The pattern shows respect for ESG 1.5, which is not a feature of the '*World of Dead Letters*'. The same applies to practical utilisation of resources supporting student learning at Czech HEIs A–D, which fully respects and adheres to ESG 1.5, including counselling services and user feedback.

Mechanisms in place in Portuguese HEIs reflect institutional practices aligned with ESG 1.5, as far as they demonstrate an institutional preoccupation with assuring adequate resources for student support. For example, there are e-learning platforms, periodic reviews and innovations of study plans, innovative evaluation methodologies and vast study-related information. However, adequacy and appropriateness of student learning resources have been impacted in recent years by the financial crisis and budgetary cuts affecting the country. This shifts the overall translation pattern away from full adherence to ESG 1.5, albeit not fully imputable to HEIs.

HEIs E–H also have the practice of fostering reflection and discussion around pedagogic practices and carrying out student surveys. Such initiatives show an increased attention to the quality of student learning and assessment and a trend of on-going improvement of pedagogic practices. The questionnaires designed to collect student opinions about the available resources are indeed a mechanism very often used by Portuguese HEIs. Unfortunately, the low response rates may hinder



their usefulness as effective quality improvement instruments. Overall, the pattern of pick-and-choose seems to be in place, much because financial restrictions do not seem to allow for a respect pattern in the case of ESG 1.5 implementation.

### **Information systems (ESG 1.6)**

The institutional commitment to ESG 1.6 addresses the obligation that HEIs collect, analyse and use relevant information for the effective management of their programmes and other activities. In the Czech Republic, the non-existence of formal (written) information policies on the issue is relevant, while in Portugal national legal texts are quite comprehensive and even redundantly determine and stimulate the collection, analysis and use of diverse information.

In the case of the Czech Republic, obtaining the ECTS Label Award is evidenced by the selected HEIs as a guarantee that a given HEI has reasonably developed its mechanisms of information provision in line with the ESG 1.6 requirements. The ECTS Label Award as an information instrument is thus ‘picked-and-chosen’ as pivotal for translating the ESG 1.6 content into institutional settings. In Portugal, a further factor facilitating the pattern closer to respecting the ESG 1.6 is the institutionalisation of the accreditation processes which accelerated the linkage between information provision and external evaluation processes.

In the Czech Republic, the development of practices associated with ESG 1.6 is showing that the four HEIs have developed and implemented practical measures for handling different aspects of information agendas (collection, use, publication). The range of information provided by the four HEIs fits the ESG 1.6 but with two major reservations. First, graduates’ employability data are utilised mainly from the databases of public employment agencies with limited internal collection, storage and utilisation within the institutions (HEIs B and D) and, second, the learning outcomes-informed curricula have not been put into practice at any of the four Czech HEIs. This evidence overall attests to some neglect in practising the ESG 1.6.

In the Portuguese case, the information collected regarding employability is the least developed issue. The employability concept must be explicitly defined within HEIs to make the use of this information more reliable. HEIs’ managers should promote the use of information, avoid multiplication of data collection exercises, give feedback to students about the pedagogic survey results, and formalise and systematise processes regarding information collection. Moreover, there is also some inefficiency on data generated by student feedback due to largely missing follow-ups, which reduces overall response rates. All HEIs E–H do collect data on, among other things, access, progression, graduation and employability, but essentially this is mainly due to the need to prepare for external reviews. This corroborates the idea that external pressures accelerate the development of practices towards ESG 1.6., thereby moderating the elements of neglect present.



## **Public information (ESG 1.7)**

Regarding the need for institutions to regularly publish up to date, impartial and objective information, in the Czech case the publication serves mainly two purposes. These are informing public authorities and voluntarily providing information on a range of institutional activities for self-promotion. National-level policy mandates HEIs to make public information on the annual report of activities, management, the long-term plan and the results of their internal quality assurance activities, which they actually do. Furthermore, Czech HEIs also have to provide information on the nature of their admission procedures and on the status of qualification theses. The only notable area in which HEIs A–D do not comply with ESG 1.7 concerns development of tools for information verification, which makes the overall translation pattern closer but not entirely identifiable with respect.

In terms of institutional practices, it is possible to find a set of pertinent information on the Czech universities' web pages, even if only in the Czech language, that mostly respects the content of ESG 1.7. Obviously, at the four HEIs surveyed, not all information managed internally is publicly available, not least due to the protection of personal data by legislation. In fact, the information publicly available is presented in an aggregated form, not including any personal data. This approach towards anonymisation also applies to the information regarding alumni.

In Portugal, national legislation establishes quite comprehensive rules that govern HEIs' collection, analysis, use and publication of information related to quality assurance processes. Analysed HEIs follow these rules, including the obligation to collect and disseminate information on the employment of their graduates, as well as on their professional paths, to publish an annual report of the institution's activities, and the self-assessment and external review reports of the institution, its organisational units and their study cycles. The law also mandates HEIs to use the Internet to make this information available and ensure transparency. Finally, the publication of the special ECTS Label on the institutions' websites, attesting to the quality of information on the study programmes, is also seen as a good practice towards the implementation of ESG 1.7. Adherence to the comprehensive nation-wide rules and to the principles of the ECTS Label reveals HEIs respect towards ESG 1.7. Furthermore, in the case of HEI F the publication of information is connected to strategic action towards systematic planning for regional media. The institution publishes an annual report which includes aspects related to accountability and activities that took place throughout the year. In the perception of the interviewees, this report has acquired a greater scope and visibility, because, in fact, it gives an annual idea of the institution.

In practical terms, Portuguese HEIs seem to have an area on their websites targeted for future candidates with easy access to different kinds of information that overall matches what is suggested under ESG 1.7 (except for the lack of views of past students). The information that seems to be less available is about graduates'



employability. One important aspect is that sometimes there is the feeling that the information is there but only if one looks hard for it, which signals issues of information visibility and disclosure.

## Overall Outlook

Figure 1 summarises the analysis done for the two countries, presenting the patterns of translation and practical application for all seven ESG1 standards. The analysis shows that the fitting of the Czech Republic-attributed ‘*World of Dead Letters*’ promoted by the political pick-and-choose (translation) followed by neglect in practical application is visible in ESG 1.2 and 1.6. Additionally, the analysis reveals no exact correspondence between Portuguese HEIs’ take-up on the ESG 1.1–1.7 and the style of transposition neglect attributed to Portugal following implementation of other EU policies.

Such a substantial misfit between the country-specific implementation styles (*dead letters, transposition neglect*) and actual ESG1 implementation may be due to two reasons. First, implementation of ESG1 in university settings is governed by the OMC, providing target HEIs with enough discretionary options to pick up on (those parts of) the ESG1 standards they see to fit with their policy preferences and developments. Such discretionary options reify the importance of political pick-and-choose from the policy options available (witness Lowi’s famous 1972 statement ‘policies determine politics’). Indeed in our case, the pattern of political pick-and-choose appears to be pivotal for both countries in influencing the institutional commitment towards the ESG through the approval, monitoring and periodic review of programmes (ESG 1.2) and quality assurance of teaching staff (ESG 1.4). This also applies to institutional quality assurance policies (ESG 1.1) and assessment of students (ESG 1.3), whose implementation, in comparison, seems somewhat compromised due to the more pressing need to politically account for other intervening factors, most notably the national legislation and agendas of the national quality assurance agency (A3ES, Accreditation Commission) that may not always be supportive of ESG1.

The relevance of the pattern of pick-and-choose for institutional practices regarding the ESG implementation underlines the importance of pressing issues and their linkages with the ESG’s themes as a factor facilitating (or hindering) further compliance. For instance, the high profile of particular cases such as the appraisal of teaching staff, in interaction with the standard about quality assurance of teaching staff, or the emphasis on performance management associated with policy and procedures for quality assurance, assumes relevance in contextualising the embeddedness of the ESG in institutions. The primacy of the pick-and-choose pattern in the implementation of ESG1, however, still leaves some room for adherence (respect) to the ESG, as shown in HEIs’ approaches to student learning



resources (ESG 1.5) and public information provision (ESG 1.7), or the cases of neglect associated in both countries with the lack of attention to learning outcomes and information systems (ESG 1.6).

The second reason for the limited goodness-of-fit in the implementation of ESG1 could be the loosely coupled organisational characteristics of universities, central to which is devolved autonomy, discretion and responsibilities of front-line academic staff. Though likely to be eroding recently (Amaral and Rosa, 2010), this characteristic still seems to generate mixed performance, to an extent defying the expected (new) governance patterns. Regarding the take-up of ESG1, the styles adopted by Portuguese and Czech HEIs show much higher inter-institutional convergence on the ‘political pick-and-choose’ pattern, instead of the international divergence expected by the translation and application constructs of the ‘*World of Transposition Neglect*’ and ‘*World of Dead Letters*’, respectively. This finding lends credence to the OMC fundamentals as a distinctly different EU coordination approach, though with a moot point whether inducing the ESG convergence through the political ‘pick-and-choose’ action, carried out without further coordination of implementation trajectories and best practices, should be the proper way of the OMC application in notably professional fields such as higher education.

That said, the ESG1 implementation is underlain by application of policy instruments, casting light on (contextual) factors bearing on the ESG1 take-up. It goes beyond the scope of this text to give full account of instruments in use; instead, we wish to underscore their variety, ranging from an application of typically ‘old’ substantive means, including legal regulation (e.g. ESG 1.1, 1.3, 1.4), funding subsidies (e.g. ESG 1.5) and information reporting (e.g. ESG 1.6), to more recent procedural learning, counselling or re-organisations (e.g. ESG 1.1, 1.2). Such brief evidence of instrument application may be enough to filter through ESG1.

## Conclusion

Our study on the implementation of ESG1 revealed that institutional translations and practices towards ESG1 predominantly assume a political pattern of pick-and-choose. This pattern applies to selected universities both in Portugal and the Czech Republic, thus defying the application of the ‘*World of Transposition Neglect*’ and ‘*World of Dead Letters*’ to the case of taking up ESG1. We further found that ESG1 take-up at the institutional level was underlain by application of an array of both substantive (‘old’) and procedural (‘new’) tools pointing to the contextual importance of, above all, national legal frameworks. The national regulatory frameworks thus do play a role in transposing the ESG as the EU soft law policy initiative; however, their effects seem to be less pronounced than synergies of the



OMC and university organisational characteristics generating ‘high-discretion-low obligation’ variants of policy implementation that are not accounted for in EU directives transposition. However, these high discretionary, low obligatory policy implementations do not, as our case suggests, guarantee all-out respectful transpositions but are conducive to invoking a variety of institutional responses reflecting political or policy choices on the ESG initiative in question. All of this evidence points to distinctiveness of the OMC in EU governance research. For this reason, it might be worthwhile to engage in creating policy-centred governance frameworks for specifically analysing EU soft law translation, with the frameworks also capable of parsimonious explanations of what sort of political choices are made, by whom and how they are impacted upon by contextual factors.

Given the centrality of EU directives’ compliance research (Angelova *et al.*, 2012), our enquiry into ESG1 ‘soft law’ implementation should be seen as the initial attempt at exploring this line of research. The enquiry shows that due to non-enforceability of the ESG by EU directives, the ESG1 take-up in institutional realities does not lend easily to the analytical categories of a process unfolded by two major phases of EU directives implementation (translation and application) as delineated by the ‘worlds’ typology. As a consequence, we concur that the usefulness of the proposed typology for EU implementation research is primarily of a heuristic nature to ‘serve as a filter deciding which theoretical factors explain implementation processes in which country settings’ (Falkner and Treib, 2007, p. 15). In the ESG1 case, the most significant factors affecting their translation are: national legal frameworks including regulations by national quality assurance agencies, familiarity with the ESG principles, administrative capacities and (quality) policy designs. Correspondingly, the evidenced institutional responses to ESG1 go also beyond a ‘one-size-fits-all response’, entailing the examples of conversion (quality assurance of study programmes as an ‘armed wing’ for continuous enhancement), layering (new quality assurance department, rectors’/deans’ advisory boards), displacement (staff pedagogical training) or failed drift (learning outcomes, graduate tracking), as outcomes of choices in the process of taking up ESG1. As suggested, further research into transpositions of EU initiatives falling outside legal enforceability might build upon our case to produce more theoretically and empirically robust conceptualisations of EU soft-law governance.

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## Notes

- 1 Our enquiry was based on the version of the ‘Standards and Guidelines for Quality Assurance in the European Higher Education Area’ approved in 2005.
- 2 Only the pattern that is in evidence for each of the ESG1 standards’ translation or application is marked on the respective continuum.

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