Excellence

Report on Excellence in Legal Research

November 2018
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1. Introduction

1.1. Establishment of the group

Associate Dean of Research Henrik Palmer Olsen, established the Working Group for the Promotion of Research Excellence at the Faculty of Law. Following consultation with the Academic Council, including the Council’s appointment of two members of the Working Group (WG), the WG met for the first time in 2017. This report is the result of the group’s work.

1.2. Composition of the group

- Professor Helle Krunke (appointed by the Academic Council)
- Professor Vibe Garf Ulfbeck (appointed by the Academic Council)
- Professor Morten Broberg (appointed by the Associate Dean). Professor Broberg subsequently left the WG in May 2017 due to other obligations
- Professor Mikael Rask Madsen (appointed by the Associate Dean)
- Secretary: Mette Aagaard Jarrum

In addition, Associate Professor Louise Victoria Johansen was included in the WG to help conduct the empirical survey of the use of notions of excellence in research evaluations for publication and funding.

1.3. Mandate

The WG was provided with a broad mandate to explore and write up recommendations with regard to the following:

1) To describe what characterises individual research excellence at different levels of an academic career, as well as in collective research environments.

2) To describe how the individual researcher can substantiate their research excellence as part of an academic assessment and when applying for external funding.

3) To investigate how other leading legal research institutions define and promote research excellence.

4) To establish a number of recommendations as to how the individual researcher can best work to achieve excellence in his/her research.

5) To make recommendations as to how the faculty's research centres can best support and promote excellence in the work of affiliated researchers.

6) To produce recommendations as to how the heads of research centres can be stimulated to work together in and across the centres to achieve excellence in research.

Since these questions are - to an extent - overlapping, the WG decided to focus on the following questions:
1. To investigate how other leading legal research institutions and relevant funding bodies define and promote research excellence
2. To describe what characterises individual research excellence at different levels of an academic career
3. To make recommendations as to how the individual researcher can best work to achieve and document excellence in his/her research (in relation to applications for academic positions or external funding)
4. To make recommendations as to how the faculties’ research centres can best work to achieve excellence in the centre’s collective research

This report reflects these four points.

2. Method

2.1. The notion of excellence in research

Although excellence is widely used to describe and evaluate research, the notion does not come with a commonly accepted or universal definition. The WG therefore started its work by exploring and collecting definitions of research excellence in the materials of funding agencies (research councils and foundations), as well as in evaluation systems for universities and publishers (journals and publishing houses).

In practice, we have faced the challenge that excellence is used both in absolute terms – as meaning the best – and in relative terms as a grading tool where excellent is a good score, but not necessarily the best. To give an example, according to the Danish Council for Research and Innovation Policy, the concept of research excellence or excellence in research is understood as a ‘general pursuit of the very best for the individual and for society’.\(^1\) The notion of research excellence is thus intended as a “term of art”, which should not be confused with excellence as a basic grading tool. Yet, the term “excellent” is also applied as the second highest grade on the Danish Council for Independent Research’s own grading scale. Excellent may, as an adjective, mean “outstanding”, yet it also comes in a weaker form as a description of something that is very good without thereby being the best or outstanding.

While the concept of excellence in research is at the core of this report, we have not been able to locate a formal or generally applicable definition of the concept of excellence in research. We therefore made two decisions at an early stage that have influenced the contents of this report.

1) We decided that it was necessary to explore the many meanings of research excellence by collecting data on the definitions and applications of the notion used by different research institutions, research funding bodies and journals/publishers through definitions on home pages and through interviews with relevant decision-makers.

2) We also decided to explore regulations pertaining to the standards for the assessment of PhD dissertations.

3) Based on the initial assessment of the above, we drew the important conclusion that the notion of excellence in research is distinct from the notion of “societal impact,” although the two are often conflated in their use by publishers, funding agencies and research institutions.

This approach also generally corresponds to bullet point one of our mandate, namely to investigate how other leading legal research institutions define and promote research excellence.

2.2. Empirical material collected for the report

Considering the problem of identifying the very notion of research excellence, the WG collected empirical material in a number of ways.

First, the group prepared an extensive list of relevant universities and institutions to consider for this assessment (appendix 1). Against the background of and exploratory research into these many institutions, we then down-selected a set of universities that a) had dealt with issues related to research excellence and b) were generally comparable to the Faculty of Law, University of Copenhagen. Most of the universities and funding agencies were Danish, Nordic, Dutch and British.

The secretary of the working group then examined the websites of the institutions in question to find all relevant material on excellence in research. Each institution was examined as a whole, i.e. we did not limit the search to legal research departments.

This initial study showed that almost all the institutions in question used the term “excellence” either as something they consider themselves to already practice, or as a goal they are striving to achieve. However, very few of these institutions had put in writing precisely how the notion should be understood and applied.

To gain further and more precise knowledge on research excellence, the WG decided to extend the investigation to also include funding agencies and, in particular their “excellence initiatives”. These include, for example, the European Research Council (ERC), the Danish Council for Independent Research’s Sapere Aude Programme and the Danish National Research Foundation and its programme for Centres of Excellence. An exhaustive list of examined funding agencies is included in appendix 1. In all cases, we explored the funding agencies’ criteria and descriptions of instruments as well as their “terms of reference” (assessment guidelines) with regard to identifying definitions and descriptions of research excellence.

The WG further studied how various national research evaluation systems use notions of research excellence. Such systems evaluate the quality of research, its impact and framework conditions (environments), and constitute, to varying degrees, a reference point for the universities in the countries in question. Our assumption was that the criteria and grading frameworks from the evaluation systems may affect many universities’ own understandings of quality and excellence in research.

The British Research Evaluation Framework (REF) and the Dutch Standard Evaluation Protocol (SEP) have also been included in the survey as the British and Dutch universities have referred their
national systems for evaluation. The inclusion of these two systems caused a strong focus on these two countries. To counter-balance any possible skewed results, the WG chose to also include a more Nordic perspective in the study. Therefore, we included research evaluation at Uppsala University (Kvalitet och Förnyelse 2011 Garden (KOF11)).

More generally, the empirical materials were for the most part found by reviewing the institutions’ (research) strategies for relevant definitions and/or descriptions of understanding/measuring/evaluating excellence in research. In addition, searches were made for the term “excellence” on the institutions’ websites in order to identify other instruments of relevance.

With one exception (an evaluation form from the Erasmus University, Rotterdam, which one of the WG members was in possession of), the WG reviewed only publicly available material published on the institutions’ websites.

This material helped us to develop a fairly comprehensive list of core criteria used for evaluating excellence in research. This has been used in the WG’s work in numerous ways. It has served as the basis for a number of discussions in the group and has informed us when drafting the recommendations in this report.

Although this general information provides a picture of the notion of excellence in research, it remains a fairly general one, and one that lacks precision with regard to how to operationalise research excellence. We therefore deemed it necessary to dig deeper and collect in-depth qualitative empirics on the use of the notion of research excellence by key decision-makers at publishers (journals and books) and funding agencies. The existing list of concepts and standards was instrumental when we devised the questionnaires and open-ended questions for the series of interviews conducted about research excellence.

2.3 Interviews

The in-depth qualitative study was conducted using open-ended interview methods which originated from the aforementioned collection of general definitions of research excellence. We opted to interview senior editors of legal journals and publishing houses as to how they understood and operationalised the concept of research excellence.

The journals and publishing houses were selected as representatives of different Nordic and European perspectives. The selected journals also represent different fields of law. It should be noted that although the domestic journals in this study are outnumbered by the international ones, it is our assumption that the views and strategies expressed are representative of a vast range of domestic/national law journals in many countries. We have, moreover, ensured that the interviews with the editors of the domestic journals are very well-represented in the empirical analysis presented below.

We also interviewed representatives of public funding agencies at the domestic and European levels. It should be noted that the study does not include agencies that only finance applied science or private funds. We opted to focus on public funding agencies because they are not only dominant with regard to the funding of legal research, but they are also the bodies whom engage most explicitly with the
notion of research excellence. As with any other study of this kind, this decision imposes some limitations on the findings, yet we are confident that the findings presented below are reflective of general trends in research; that is, we do not expect any significant variation in the findings if more stakeholders were included. Appendix 2 provides an anonymised list of the institutions, journals and publishing houses interviewed for this study.

The interviews were conducted by one member of the WG and a professional anthropologist, both of whom have extensive experience in using such methods. To ensure coherence, both interviewers used a template outlining the key questions to be addressed in all interviews. The interview template was developed by the group as a whole and is included in Appendix 3. In general, the interviews lasted between half an hour and just over an hour. Eight of the interviews were conducted by telephone. All interviews were recorded and transcribed.

As is typical of studies of this kind, we were not able to interview all the people relevant to our objectives. However, we did manage to interview a sufficient number of subjects (14 in total) to provide an analysis of general trends. All interviews were transcribed and subject to systematic analysis, seeking to identify general themes and overriding categories. Three out of thirteen respondents were female, a gender imbalance that arose partly because of our selection of senior editors and partly due to the fact that two relevant female editors declined our invitation for an interview and deferred to a male colleague instead.

We also attempted to get all interviewees to fill in a short questionnaire, but we did not receive a sufficiently high response rate to qualify the inclusion of this data in the final study. The qualitative nature of the question of research excellence posed a significant hurdle for the report, a feature which we were well aware of from our initial work. We have therefore chosen not to use responses to the questionnaire in the final report.

3. Empirical Analysis

In the following section, we provide our main findings from the different empirical investigations which were undertaken for this report. We have split the section into two parts: first, the general findings from scraping the respective homepages of the selected research institutions and funding agencies; and second, the more fine-grained results derived from interviewing key stakeholders in the promotion of research excellence and an examination of the criteria applied in assessments of PhD and doctoral theses. In a separate section, we outline the conclusions which can be drawn from the three distinct parts of our inquiry.

3.1. General notions of research excellence

3.1.1. The notion of research excellence used when evaluating research institutions

The United Kingdom has perhaps the most developed system in Europe for assessing academic performance. The Research Excellence Framework – known as the REF – is used for evaluating and comparing universities in the UK using academic performance scores on a scale of one to four stars. Four stars are awarded for “[q]uality that is world-leading in terms of originality, significance
and rigour.”² The manual for Main Panel C (social science and related subjects including law) explains how to interpret this with regard to research output (publications):

“In assessing work as being four star […] sub-panels will expect to see evidence of, or potential for, some of the following types of characteristics:

- outstandingly novel in developing concepts, techniques or outcomes
- a primary or essential point of reference in its field or sub-field
- major influence on the intellectual agenda of a research theme or field
- application of exceptionally rigorous research design and techniques of investigation and analysis, and the highest standards of intellectual precision
- instantiating an exceptionally significant, multi-user data set or research resource.³

The REF system has separate criteria for evaluating the impact of the research where four stars are awarded for “outstanding impacts in terms of their reach and significance”.⁴ The manual further states:

a. Reach will be understood in terms of the extent and diversity of the communities, environments, individuals, organisations or any other beneficiaries that have benefited or been affected.

b. Significance will be understood in terms of the degree to which the impact has enriched, influenced, informed or changed policies, opportunities, perspectives or practices of communities, individuals or organisations.⁵

The REF is interesting for several reasons, one of them being that the University of Copenhagen has chosen to use the REF scale for its own research evaluation and the application of this system has already been completed for the faculties of health and social science. These Danish evaluations do not seem to have further developed the rather general terms found in the REF.⁶

In the Netherlands, universities are being evaluated according to a different system, the Standard Evaluation Protocol (SEP), which also operates with four different levels. Of interest to this report is the definition of SEP Category 1, the highest grade, which is accorded to world leading/excellent research:⁷

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² http://www.ref.ac.uk/panels/assessmentcriteriaandleveldefinitions/
³ www.ref.ac.uk/media/ref/content/pub/panelcriteriaandworkingmethods/01_12_2C.pdf p. 67
⁴ http://www.ref.ac.uk/panels/assessmentcriteriaandleveldefinitions/
⁵ http://www.ref.ac.uk/media/ref/content/pub/panelcriteriaandworkingmethods/01_12_2C.pdf p. 74
⁶ https://intranet.ku.dk/samf/funding/forskningsevaluering/Sider/default.aspx (SAMF)
https://intranet.ku.dk/health/en/research/evaluation/Pages/default.aspx (SUND)
• “Research quality: The research unit has been shown to be one of the few most influential research groups in the world in its particular field
• Relevance to society: The research unit makes an outstanding contribution to society
• Viability: The research unit is excellently equipped for the future.”

Here too, the questions of research quality and impact are regarded as two different metrics. An evaluation manual from the faculty of law from the Erasmus University Rotterdam, elaborates on factors which may be essential when evaluating the “quality and scientific relevance of the research”:

“Originality of the ideas and the research approach, including technological aspects; Significance of the contribution to the field; Coherence of the programme; Quality of the scientific publications; Quality of other output; Scientific and technological relevance.”

In comparison to the REF, the Dutch criteria are broader and add the dimension of research viability to those of excellence and impact.

Another source for understanding the use of the notion of research excellence is found in the research evaluation conducted by Uppsala University (Kvalitet och Förnyelse 2011). Every 4-6 years, Uppsala University completes a research evaluation based on a framework that resembles those of the REF and the University of Copenhagen. It does not however, use an explicit grading scale but instead asks the evaluators to use the following terms:

• “Top-quality (outstanding work at world-leading level with great international impact)
• Internationally high standard (excellent work, next to world-leading level)
• Internationally recognized standard (very good work, attracting international interest)
• Acceptable standard (good work, attracting national interest or has great relevance)
• Insufficient (not acceptable quality, activities should be revised or discontinued).”

These terms clearly resemble the aforementioned grading scales, but they are more relational than the REF, which sets out some definitions of research excellence (we recall the terms “outstandingly novel in developing concepts, techniques or outcomes”, “a primary or essential point of reference in its field or sub-field”, or “major influence on the intellectual agenda of a research theme or field”) The SEP assessment of quality is directly linked to the perception of research audiences – that it is “world leading”, “next to world leading” or, in third place, “attracting international interest”. It also follows from this scale that research which is only of national interest is can only be deemed of an “acceptable standard”.

3.1.2. The use of the notion of research excellence by public funding agencies

Another key site for evaluating and explicating the notion of research excellence is the criteria used by funding agencies. This section contains excerpts of criteria of excellence from the evaluation

manuals of some of the largest and most relevant funding bodies for legal research in this country. It should be noted, however, that funding agencies sometimes evaluate excellence more broadly than excellence as presented in research ideas and may also consider the excellence of the principal investigator(s) (PI(s)) and their research units. In the following analysis, we include all such criteria used for assessing research excellence (project, PI(s) and units).

A major funder of basic research in Europe is the European Research Council (ERC). Due to its central position, it also undoubtedly has some definitional power. The ERC Work Programme of 2017 notes: “For all ERC frontier research grants, scientific excellence is the sole criterion of evaluation. It will be applied in conjunction to the evaluation of both: the ground-breaking nature, ambition and feasibility of the research project; and the intellectual capacity, creativity and commitment of the Principal Investigator”.9

The more specific criteria used to assess these broad notions of excellence are that the project:

- “addresses important challenges
- [is] ambitious and beyond the state of the art
- [is driven by] high risk/high gain”

To succeed, it is insufficient to propose a project that merely live up to these criteria. In addition, the PI is evaluated according to the following criteria:

- “ability to propose and conduct ground-breaking research
- creative, independent thinking
- achievements ... beyond the state of the art.”10

ERC grants are individual grants and, as noted, highly PI-centred. In other cases, research excellence is funded as part of larger research endeavours which seek to establish centres or larger research units.

An example of the latter is the German Excellence Initiative which was started in 2005. It was a broader funding initiative with three instruments, which aimed to further the excellence of German universities. A total of 2.7 billion euros was allocated for the creation of “Clusters of Excellence” during the period 2005-17.11 As a follow up to the Excellence Initiative, the “Excellence Strategy” was created. It continues the key instrument of “Clusters of Excellence”.12

The instrument of “Clusters of Excellence” use the following criteria for identifying worthy research:

- “Quality and originality of the research programme in an international comparison and openness to risk
- Coherence of the research programme and academic productivity of the collaboration

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12 http://www.dfg.de/en/research_funding/excellence_strategy/
- *Quality of previous contributions to the field of research*
- *Positive impacts on the future development of the field of research or the stimulation of new research areas*
- *International competitiveness.* \(^{13}\)

The German “cluster of excellence” instrument does not provide a definition of excellence itself but rather a set of sub-categories that should influence the assessment of whether a project may be worthy of the creation of a “cluster of excellence”. The criteria used in the different bullet points generally reflect standards of worth also found in the ERC guidelines, yet they seem less explicit.

A key domestic funder of large-scale excellent research projects is the instrument of Centres of Excellence of the **Danish National Research Foundation** (DNRF). Applications for establishing a Centre of Excellence are evaluated against four parameters: the research idea, the centre director (PI), the team and the infrastructure of the endeavour. The first two parameters are particularly central. They are evaluated on the basis of the following criteria:

- “The research idea is ambitious and original and has the potential for real scientific breakthroughs in the relevant scientific field(s).
- The proposed center leader has a high standing in the international research community as well as managerial skills.”

The project description must also include:

- “A description of its dimension of novelty and potential for groundbreaking results and an argument for its scientific or investigative relevance and expected impact”.

The Terms of Reference state how the research project and proposed centre director should be assessed:

- “Is the research idea ambitious and original? Does it possess scientific or investigative relevance? Does it have the potential for reaching real scientific breakthroughs and making an impact? Please indicate the level of risk associated with this proposal.
- Does the proposed centre leader have a high standing in the international research community? Is the track record of the centre leader characterized by ground-breaking research and has his/her achievements typically gone beyond the state of the art? If not, would you expect the centre leader to obtain that status within the proposed 6 year period? Has the centre leader demonstrated sound leadership in the training and advancement of young researchers? Is he/she well qualified for leading an initiative of this size?” \(^{14}\)

\(^{13}\) [http://www.dfg.de/formulare/exstra110/exstra110_en.pdf](http://www.dfg.de/formulare/exstra110/exstra110_en.pdf)

\(^{14}\) [http://dg.dk/filer/CoE/Ansoegningsrunder/Terms%20of%20reference.pdf](http://dg.dk/filer/CoE/Ansoegningsrunder/Terms%20of%20reference.pdf)
The criteria used by the DNRF in many ways resemble those of the ERC - an instrument which the former precedes. The novelty of the DNRF approach when it was first developed was the explicit linking of the research idea and the chief researcher (the PI) as key to success. In other words, the PI (and the broader unit he/she proposes) is an enabling factor if he/she possesses certain skills in terms of research management and having the risk-willingness and vision necessary for breakthroughs and pushing the state-of-the-art.

The **Norwegian Research Council** runs another excellence programme which also funds centres of excellence ("Sentre for Fremragende Forskning (SFF)"). The evaluation criteria echo those used by the DNRF. The research ideas have to be:

- “ambitious, with the potential to achieve ground-breaking results
- address important research challenges that will have a high impact on international research themes and research methods
- [go] beyond the state of the art (e.g. novel concepts and approaches, development of novel methodology or development across disciplines).”

The **Danish Research Council** ("Det Frie Forskningsråd (DFF)") also has an instrument for research excellence which offers grants comparable in size to the ERC starter and intermediate grants. The instrument, known as the "Sapere Aude: DFF-Research Leader," is granted to excellent young researchers. There are no specific requirements listed in the postings, but the Panel review Guidelines (2017) contain a list of criteria and a grading scale from 1-7. The highest grade, 7 (Exceptional), is described as:

- “The proposal is internationally outstanding and stands out with exceptional novelty, quality and innovativeness. It fully meets all scientific standards and excels many or all of these.”

It is worth noting that the grade “Excellent” is used to describe the second best grade (6).

In general, the evaluators must grade the “Scientific Quality” of applications according to the following criteria:

- “potential for scientific progress, innovation and originality (theoretically, methodologically and empirically)
- innovative research rather than just […] an expansion of current research
- the project contributes to the internationalisation of Danish research.”

Moreover, the applicant – the potential PI – is also evaluated based on:

15 [Assessment criteria for SFF-IV](http://www.forskningsradet.no/no/Utlysning/SFF/1254014735497/p1254006410224?progId=1108644073548&visAktive=false)
• “scientific qualifications
• level of scientific production
• sufficient research management qualifications.”

The excellence instruments mentioned above can all be said to be built on two common pillars:

• The need for originality and risk-willingness (and the associated potential for breakthroughs)
• The need for a highly capable PI (and unit) for realising the ambition of the project

In general the PI (and sometimes other co-PIs) are needed to either have a proven track-record with regard to managing research in an innovative way, as well as a proven ability to push the boundaries of research to create original results or to show significant potential for being able to do so. Hence, these instruments are open to a smaller group of researchers, and young researchers seeking to obtain such grants are well-advised to consider the criteria listed and the kind of legal research that they exclude (notably descriptive research and research that aims mainly at assembling doctrinal points in a more systematic presentation). We return to recommendations in the final part of this report.

3.1.3. International declarations and reports on research excellence

Moving beyond the funding agencies, we find international declarations seeking to identify what constitutes excellence in research. In 2012, during the Danish Presidency of the EU, Aarhus University held a conference on European research which resulted in the so-called Aarhus Declaration. Excerpts from the section “What is excellence in research?” suggest the following criteria:

• “new knowledge which changes paradigms
• invents new fields
• opens opportunities with broad societal consequences
• challenges accepted views and knowledge.” 17

Shortly after, in 2014, the OECD published a report entitled “Promoting Research Excellence: New Approaches to Funding” which is focused on “research excellence initiatives”(REI). It argues for the need to establish REIs based on the following criteria:

• “To create an environment for improved quality in research
• To improve national scientific competitiveness
• To increase the international visibility of national research
• To recruit outstanding personnel.” 18

17 Aarhus Declaration 2012 (http://www.excellence2012.dk/)
18 http://www.oecd.org/science/promoting-research-excellence.htm (p. 48, figur 2.3)
Listed amongst the criteria for allocating funding to REIs are:

- “[Excellent] research
- Reliable internal governance
- Ability to acquire additional funds
- Structural inclusion in host institutions.”

As is apparent, the OECD report does not contain any explicit definition of the concept of “excellence”.

For the purpose of this report, we consulted a number of further funding agencies but did not find significant deviation from the definitions and criteria already listed. We have therefore opted not to include this repetitive material.

3.1.4. Interim conclusion

Overall, it is difficult to draw firm conclusions on the basis of the definitions described. It is worth noting that many attempts to define the term “excellence” are done by replacing one adjective with another: excellence is explained with reference to the “quality of the scientific publication” or, for example, as being of “top quality”. That said, we can identify some general factors that appear in many instruments.

It is clear that the Uppsala evaluation, the SEP and the REF all underline the importance of what might be termed “international research impact”. The Uppsala scale refers to the term “worldleading”. The SEP categories use the international research impact term “most influential” as a key factor for assessing “research quality”. The REF provides more detailed categories – in particular the terms “outstandingly novel in developing concepts, techniques or outcomes”, “a primary or essential point of reference in its field or sub-field” and “major influence on the intellectual agenda of a research theme or field”. Similar terms are found in the definitions used by public funding agencies. Funding agencies also clearly place significant emphasis on the elements of “novelty” and “originality”.

The findings must be understood with the reservation that the evaluation systems are formulated with a view to having broad applicability across the social sciences and, in many cases, all scientific fields. The key question for legal researchers therefore is how to transfer these more general terms of excellence to legal research projects.

3.2. Qualitative assessment of the operationalisation of the notion of “research excellence”: An interview survey

In the following section, we present the results of our interview survey of central players with regard to defining of research excellence in practice. The interviewees were senior editors of national, Nordic and European journals, senior editors of leading publishing houses and directors of domestic and

19 http://www.oecd.org/science/promoting-research-excellence.htm (p. 57)
European funding agencies. We explore how this set of decision-makers view research excellence divided on the basis of five dimensions:

1) With regard to the general evolution of legal research
2) With regard to the relevance of audiences, markets and competition on the selection of worthy research
3) With regard to the importance of the notion of research excellence when evaluating research
4) With regard to identifying who determines research excellence
5) With regard to how research excellence compares to other forms of excellence (practical applicability, teaching, etc.)

As noted above, the interviews conducted for this project each had a duration of between half an hour and an hour, which in each case produced 4-6 pages of written text when transcribing the interviews. Some of this text is made up of our own questions and clarifications. Following normal procedure in this regard, in the analysis we only provide excerpts from the interviews which most directly respond to the key issues being explored. To facilitate the reading and analysis of this very rich empirical material, we comment on the observations in between the quotes. At the end of each section, we also draw up some main points.

3.2.1. The evolution of legal research: Trends and directions

To contextualise the question of research excellence in law, we first asked all respondents about their views on more general evolutions in legal research and how these changes may influence notions of excellence in research.

One editor of a generalist domestic legal journal observed a general trend from publishing more specialised articles to now publishing more on general subjects: “From where I sit, I can't see any difference in the articles coming through the door. But if I look at the articles we send out [that is, publish], I can easily see that there are far more general articles than there were thirty years ago.”[DJ 1]

Another feature highlighted by most respondents is how globalisation is impacting on what is deemed publishable in some legal journals. Globalisation, however, implies two developments in this regard: 1) that objects of inquiry are more global and 2) that journals themselves are becoming increasingly internationalised.

The latter has been observed by a number of editors in the sense that they now have a broader pool of articles to consider for publications, and that many journals which had been predominantly domestic or regional in the past have now become more European – and possibly international/global. An editor of a now pan-European journal notes: “It is probably fair to say that in the early years[name of journal removed] was more doctrinal in its approach. But it has steadily expanded to be much more open to all kinds of research. At the same time, we have become much more international in the sense that I don’t think you can call us an [name of country removed] journal by any means anymore.

20 The excerpts have been chosen by one of the interviewers
None of the editors are native [name of country removed]; and when we look at both the subscription numbers and where the articles come from, it is very clear that [name of country removed] doesn’t predominate either the people who read our journal or the people who approach us. [EJ 3]

While globalisation is a general trend which influences all fields of science, another general impact factor on legal research is the place of legal science within science more generally. What can be observed is that legal research seems to be on the receiving end of general developments in science at large. One editor of a domestic Nordic journal notes: "In relation to research funding, at least in [name of country removed], law is chasing other academic fields in the definition of research projects. In [name of country removed] life sciences, typically medicine, are defining the research. And law tries to define itself in the life sciences. For example, environment, climate, etc. This is because there is no proper legal science research programme and an interdisciplinary approach is almost a requirement to get research projects accepted in [name of country removed].” [NJ 2]

The idea that law is ‘chasing’ other academic fields in order to obtain funding may in part explain a third general trend, namely increased interfaces between more traditional doctrinal legal research and empirical studies of law, the latter drawing on social science methodologies. We find some evidence of this in interviews with both editors and funding agencies. An editor of a Nordic journal observed: "Globalisation has a great effect [...] And then different combinations of fields or disciplines. I also believe that the interdisciplinary will become more widespread than the multidisciplinary. I think people have started to understand what it is. That people have begun to understand that they have to broaden the boundaries to go further and not just look at their own professionalism." [NJ 1]

The distinction put forward between inter-disciplinarity and multi-disciplinarity seems important as similar phenomena were observed by a number of other interviewees. A senior decision-maker at a large domestic research funding agency made the same point: “I have myself rejected many projects because they set out to do something in, for instance, computer science, but then they think they need to do something on organisations. Then they get hold of a half-baked theorist of organisations, who is not very good, and the whole thing is rejected on those grounds” [FA 1]

The trend seems to be one of inter-disciplinarity – not multidisciplinarity. For law, this means that legal scholars should not simply provide a law component to other projects or add a component of another discipline, say computer science, to law projects. The demand is to truly integrate law into other disciplines, or to truly integrate other perspectives into law so that the integration creates an added value and a basis for developing the kind of novelty and originality discussed above.

Another editor noted a clear challenge to European legal research in this regard, as European researchers have generally been slow in adopting more interdisciplinary and contextualised approaches: "Looking at where American research has gone, they are years ahead of us in terms of law in context kind of research. They got into that game much earlier than we did, also because of the educational system, where before you can become a lawyer you need to get another degree, so people have broader perspectives than many Europeans who have been trained in law from the beginning. And given that a lot of interesting research in America has come from that kind of interdisciplinary perspectives, I imagine there is scope for it in Europe as well.” [EJ 3]
In Europe, some would argue that there are indications that such a transformation is taking place. Others however, do not observe this as a trend. One editor of a European Law Journal replied the following when asked whether any trend is observable with regard to monodisciplinary v. interdisciplinary work: “We haven’t received a lot of multidisciplinary or cross disciplinary work, except, as far as you include economic analysis of law in that... I’m struggling to think of anything else that would count as crossdisciplinary beyond that”. [EJ 5]

To the extent that there is an increased interest in interdisciplinary work, the roots are also contested; that is, whether driven by pressure from funding agencies or from innate innovations in law. An editor of a European international law journal explained: For the [name of country removed]and [name of country removed], by initiatives at the national level, the Ministry for Science pushes us strongly to work across disciplinary boundaries, which then oftentimes suggests that also lawyers themselves not only do the legal bits but familiarize themselves with other methods.” [EJ 1]

A development towards inter-disciplinary approaches might - in part - be explained by the so-called data revolution, which has facilitated new forms of empirical inquiry, in law as well as in other fields. A senior editor at a leading global publishing house noted: ”In the areas where we do the most, constitutional law and in public international law, I’d say in constitutional law, it’s more comparative; in international law, its studying history, more theoretical studies, and in almost every discipline empirical studies are coming in. People are trying to explore the possibilities of data.” [PH 1]

The senior editor of another competing global publisher had similar observations: “The interesting research I see is very often coming from political scientists and economists and lawyers looking at global trade, governance, comparative constitutionalism, and they go back to the provenance. I see a little rise in empirical work. This innovation is probably coming from the individual scholar and I don’t think it is necessarily driven by the law schools’ teaching. People have to do social sciences methodology [...] Seeing people speak across the disciplines about the same problems but with different languages is very fruitful, and that is also publishing which sells. [...] Law is fragmenting; intellectual property is a good subject where you can see that it is just bleeding into so many other areas. Excellence in research comes from risking something which is challenging the existing status quo. Transnational, and I definitely think ‘law and...’ is where a lot of the hot projects are.” [PH 2]

In addition to empirical studies, it is important to note the other trends suggested in the two quotes above, namely trends towards more comparative work, work that historicises legal analysis and more theoretical work on law. These are trends that sometimes work in tandem with greater emphasis on empirical methods but not exclusively so. Therefore, the respondents who evoke increased interdisciplinarity, do not refer solely to more empirical work, but also to more comparative, historical and theoretical work on law.

A key decision-maker at a large national funding agency added that he observes increased competition for funding of legal research projects, a fact that has helped to increase the overall quality of proposals: “I see different traits. One feature is a very clear increase in quality. We emphasise internationalisation, state of the art; you have to be at a level where international research is: We can’t really be bothered to finance slightly low-key, national projects without ambition beyond that.
We get a great deal of interdisciplinary projects, especially if we are messing with the hard sciences. Old disciplines are flowing together, it is not the medical doctors who get the money; it is the MSc.s, microbiology etc. [...] A lot of what we get nowadays is interdisciplinary. There is not so much classic monodisciplinary research coming; perhaps with the exception of some classic law projects. But a lot of the exciting law projects also span across [disciplines].” [FA 1]

With regard to law, he identified some specific challenges: “One of the developments has been that we actually started getting applications from law. Things have started to come. Sometimes it was also very challenging to read the applications from law. In the social sciences, we attach great importance to method. There are three things that get you a refusal: If your research question is not up to date; you lack theory, and then the method. What is legal methodology? The lawyers did not know. So they just wrote that they used the common, legal doctrinal method. And so what? We need to know: What will you do? Methodology was difficult [for lawyers]. I also remember that the theoretical [part] was sometimes difficult for lawyers.” [FA 1].

From these interview excerpts, we can observe some general themes and trends: some see an increased interface between doctrinal law and empirical social sciences and/or approaches that highlight the methodological dimensions of legal research such as comparative law, history of law, and more theoretical approaches to law. While it is particularly international publishers, journal editors and funding agencies that highlight these dimensions, editors of domestic journals point instead to an increased demand for research that addresses more general research themes. This division is hardly surprising considering that different journals have different audiences (see the following section). For obvious reasons, the common themes identified here do not imply that any research that is, for instance, “global”, “interdisciplinary” or “empirical” is by definition excellent. However, irrespective of being doctrinal or interdisciplinary, very descriptive studies or studies that lack theoretical and methodological reflection will not meet the threshold of excellence.

3.2.2. The relevance of audiences, markets and competition on the selection of research worthy of publication

In the following section, we zoom in on the central question of the relationship between what is deemed worthy of publication or funding and how publishers or funding agencies perceive their own role in the broader field of research and legal practice. In other words, we are interested in the relative interdependence of the perceived goal of a journal, publishing house or funding agency and their criteria for assessing the quality of research. What is inferrable from the quotes is a clear indication of a growth in research competition and a clear consideration for the relevance of the audiences of the institution in question. We introduce the quotes and explanations first, at the domestic level and then move to the Nordic level and, finally, the European level.

Given the traditional function of law faculties in the operation of legal systems, we find a relative schism between domestic legal professional markets and more basic, research-driven international markets. Editors of domestic legal journals emphasise the importance of national language and the specific domestic audiences to which they cater. Both editors quoted below represent generalist domestic legal journals, and, as is apparent from the cited statements, intend for their publications to
remain generalist journals in a market that has an increasing number of specialised legal journals, even at the national level.

A senior editor of one domestic legal journal noted: “I perceive [name of journal] as a classic [name of country] legal journal. After all, we only publish in [name of language]. This itself places it as a journal oriented towards national, [language removed] law. So we are a broad, general journal. There is no kind of specialisation. There may have been, in the past, a tendency to divide, the [name of competing generalist legal journal] as being oriented towards private law and [this journal] as more oriented towards public law. But that does not really reflect reality anymore. We are perhaps a little bit more theoretical than [name of competing generalist legal journal]. There are perhaps more practically oriented articles in the [name of competing generalist legal journal]. I see much in relation to [name of competing generalist legal journal] on the one hand, and also in relation to the specialised journals on the other hand. [Name of this journal] profile is that we bring something that has a rather more general character. Not something that is very nerdy, especially in the area of tax law, where there are so many specialised journals.” [DJ 2]

This position is echoed by the senior editor of another generalist domestic legal journal: ” "It's a journal that only publishes articles in [name of national language removed]. We do not publish articles in English, nor do we publish articles about legal issues that do not have some relation to [name of country]. This means that we can, of course, accept articles on international law and accept articles on legal theory, legal philosophy, etc, even the sociology of law, if they can be said to be of interest to a [name of language] legal audience. That is the target group: a [name of language] legal audience.” [DJ 1]

What both these interviewees expressed is that the editors see it as their task to deliver insights to a domestic legal audience and to avoid becoming a specialised journal in an already congested market.

When we move to the realm of big public domestic funding agencies, the need to cater to local markets is of seemingly little or no relevance. Institutions of this kind pursue a different agenda. According to the director of a large domestic funding agency: “We have some core values that are very clear and the selection is very clear. [Name of agency] also serves as a form of dream machine that makes people say, what is the very best project I can think of, what is the very best team I can put together.” [FA 3]

But this orientation towards the “best” projects and ideas is also influenced by competition in the market. The interviewee noted the growing power of a host of private foundations which tend to steer research in specific and, in his view, not always healthy directions: “[...] in some disciplines, a great many private foundations have appeared, which in some way may pull development in some specific directions. And it's not always a good thing. [...] Many pull in different directions. [Name of funding agency] doesn’t pull in any direction. Here everyone has equal opportunities, and medieval literature is studied, astrophysics are studied, and they all have equal chances of success.” [FA 3]

A similar argument was made by the director of another large public funding agency: “We talk a lot about talent, about excellence, about ensuring growth, the new growth opportunities in research that are young people and also the many ideas that come from something that is not one of the big centres.”
He went on to criticise the growing power of private foundations and their ability to steer the direction of research towards a few extremely well-funded areas of life science. He even questioned the value for money of such mega investments in a few, select research areas in the life sciences. As a consequence, he argued that the agency needed to identify a different layer of research: "So we also try to be a place that can include the new. [...] We must also be where the top will be in a few years time, and therefore able to spot new ideas" [FA 1]

Whereas the domestic journals and funding agencies interviewed shared the same common goal of supporting and strengthening legal research of more general interest (as opposed to highly specialised research areas), there is also an interesting discrepancy between the domestic journals and domestic funding agencies in their self-perceptions of objectives and markets. Whereas the domestic journals focus on the domestic market and work of particular interest to practitioners, the domestic funding agencies have broader, international markets as a point of reference.

There seems to be little doubt that such role perceptions and market forces are influencing – in very different ways – notions of what is deemed excellent research. However, when we move to the Nordic level, and even more strikingly at the European level, certain differences in perceptions of research quality between editors and funding agencies tend to become less prominent.

An editor of a Nordic legal journal observed: "I was part of the editorial committee already as a PhD student in the 1990s. There was no peer review – you simply let a colleague read it. Criticism was a very light and straightforward concept. But, then, the journal also had another platform, that it should be radical. [...] Some of the publications were pamphlets, but there has been a change and now it is academic articles. They must formulate a research question and have a method, which is explained. So the academic contents are now completely different. The last ten years [...], the [name of editor] worked very purposefully towards raising the academic level... and the boundaries were moved." [NJ 1]

A broadening in understandings of what constitutes legal science seems to be occurring in some more traditional Nordic legal journals, both regarding methods and contents. The same editor also underlined the persistent importance of speaking to the journal’s Nordic audience: "[Name of Journal] was set up to be a mouthpiece for Nordic legal science, and to provide a forum for younger researchers. Today, too, we prefer that articles have a Nordic perspective in the sense that they should be interesting for readers from Denmark, Sweden, Finland, Iceland and Norway. Most often, the legal scientific value we look for is in terms of doctrinal analysis, but we also like to publish interdisciplinary contributions, and last year we published articles from the sociology of law and witness psychology, empirical studies." [NJ 2]

With regard to the editors of European journals, publishing on matters related to European law or international law, we observe similar trends. One editor of a European public law journal noted that his journal publishes on all European and comparative aspects of public law, and that the journal seeks to distance itself from the merely doctrinal European law journals [EJ 3]. Similarly, an editor of a European international law journal underlined that his journal covers a broad spectrum of material from practice to theoretical and empirical studies of international law – and that the journal is doing very well seeking such a broad profile [EJ 1]. A third editor, also of a European law journal,
emphasised that his journal explicitly aims for a “research driven” profile, rather than providing “service to judges”. [EJ 3]

He noted: “We kind of see ourselves as a broad church. And this is my personal reflection, but I see [name of leading and competing EU-law journal] as a kind of fairly doctrinal journal. At least it has been its classical position. It is something a judge might want to consult, because they are likely to find a practical helpful answer there. On the other hand, I think [name of his journal] is much more a law in context journal [...] if you are a PhD student looking for new theoretical frameworks then [name of his journal] would perhaps be your first point of call. In [name of his journal], we try not to pigeonhole ourselves in either of these camps, but rather our aim is to be broadranging and to cater to all kinds of approaches, both doctrinal and more theoretical.” [EJ 3]

In conclusion, some of the trends observed earlier on in this survey, namely globalisation and the broadening of legal science as a field of research, seem to be influencing the evaluation of research, both at the level of international publications and that of general public funding agencies. Domestic journals, to some extent, seem to counter these trends mainly because they seek a different audience with different preferences. It is noteworthy that domestic funding agencies and domestic legal journals have different objectives and perceptions of competition and markets. This means that legal researchers will have to master different “scientific languages” even when they operate only domestically: domestic funding agencies and domestic legal journals suggest quite different interests and markets. That said, there are trends in some domestic journals that increasingly allow for an alignment between the different kinds of research. At the Nordic and European levels, these trends of convergence are significantly stronger.

3.2.3. The importance of the notion of research excellence when evaluating research

In the following section we examine what excellent research is perceived to be according to the representatives of the institutions, journals and publishers whom we interviewed. Since our general survey of usages of notions of research excellence showed that the positive definition of research excellence is generally hard to pin-point, we also explored the negative definition of research excellence, i.e., what is not to be deemed excellent research. Moreover, we asked questions as to the difference between excellence as an absolute concept (being the best) and as a relative one (being better). In order to further study the differences and convergences between domestic and regional levels observed in the previous sections, below we present the results from domestic journals and funding agencies before turning to the Nordic and European levels.

An editor of a generalist domestic legal journal emphasised the divergent notions of what it takes to be excellent in different environments and/or for specific audiences, notably between practitioners on the one hand, where practical relevance is important as an indicator of excellence, and research environments on the other, where the ability to move the state-of-the-art is crucial. He noted: I believe, for example, that the research environment itself has one view of what is excellent, and even there, you find very divergent views – we are from different schools; But then you can ask the outside world, what is excellent legal research, and then the answer you will get, will probably surprise. So it depends very much on, who you ask, and what is the starting point? That would be the first thing I would identify if I, as dean, were to answer that [what is excellence in legal research] – in what
context are we talking about excellence? Because it is clear that if it is a research environment approach, then “excellent” is what can help to bring research forward. It is perhaps also easier to characterize something as excellent if it has a greater, broader meaning than something narrow. And if you can spread the perspective beyond the world of research. I think, however, that being an excellent researcher is also, after all, being able to contribute to what is going on in the practical legal life, in the wider world. This is also the case in other areas, e.g. medicine. It is after all not only to please the research environment, it is because we are really moving on with regard to therapies, etc." [DJ 2].

Another editor of a generalist domestic legal journal noted that since their journal is ranked as a high-level publication in the domestic ranking system, they need to exercise discretion in publication selection in such a way that it guarantees that the journal lives up to expectations and presents the best available scholarship in the national language [DJ 1]. He explained that the criterion for excellence in legal scholarship is not merely to provide evidence but to convince readers: "With the law it is such that it is not only necessary to prove, but also to convince, and in this process there is a necessary element of linguistic performance which constitutes a strong quality parameter. And, therefore, I would say that if you are up there where an article is good methodically, and unpredictable, then comes the last element, namely how is it written? "[DJ 2]

Moving to the domestic funding agencies, several different criteria are emphasised, one of which is the ability to write convincingly:

"You can see in the setup, where it is Huey, Dewey and Louie, sitting next to each other along a corridor, where everyone can do the same thing, it just doesn’t work – It’s just not excellent. Or the CV is not impressive. There may be an organisational reason why we say it’s just not the level we’re looking for. [...] Typically, it’s something like these three people sit together, but we cannot see why? And it’s all over the place, but there just isn’t any [project]. They are all good people with good CVs, but why do it? Then there are just some people who write lazily and sloppily. Where the quality of the application is not good enough."[FA 3]

Another domestic funding agency similarly emphasised the notion that a project must convince, but added some specificity to the idea: "I look at the research question first. Is this an interesting question? Is this something I would really like to know? And there are countless reasons why a question has not been examined. At least two: Maybe it’s deadly boring. Why would anyone care about this? And the second may be that it is actually something that nobody has thought about investigating. And if you cannot justify why this research question is interesting from an international perspective, then you’re off to a bad start. Then you can create the design you want, or write the theories you like. Then comes the theory: The social sciences are built in such way that we need a specific perspective to know what we are looking for. And, then we should be able to create a research design. It's no use, having a good research question and good theory, if you don't have an empirical design, and the vast majority of our projects are empirical." [FA 1]

With regard to law, the same interviewee specifically noted: "Jurists can have a tendency to lock onto something that is very specialized and geeky. And I would like them to be able to come out and say
what this can contribute in a broader perspective. I also think that it is an assessment parameter that we can rise above the narrow." [FA 1]

These last quotes from the interviewee generally reflect the notions of research excellence identified in our initial survey of funding agencies with regard to the profiles of the core researchers in a proposal and their ability to convince and explain why a project is relevant. Furthermore, the statements highlight the importance of a researcher’s ability to explain the general importance of even a narrow project.

An editor at a pan-European journal echoed the importance of universalising research insights. He noted, when asked specifically what is not excellent: “[…]often people write based on very national traditions, it’s kind of: Danish [emphasis by interviewee] European law, Danish [emphasis by interviewee] human rights law, when they are writing about the European Convention. And it is a tough job for many academics, and that goes for young and old as well. They sit there with their domestic concepts and methods and don’t really move beyond that. And that’s bad scholarship: If you just transpose what you know from your own tradition up to the European or international comparative level. […] When you do excellence assessment, then it should really be something that moves beyond, or even if you dealt with national material, you must make it interesting outside your own jurisdiction. Even if it is an area where some claim that it is very, very national, there is no area of law which does not allow you to contribute at an European or international level. To me there is not one subject that cannot be made relevant at a European or international level. You always need to move beyond the national.” [EJ 4]

While it is perhaps less surprising that a journal with a pan-European profile focuses on the extent to which a publication goes beyond national law, it is an interesting observation that all subjects can be made relevant at a European or international level and that there is a link between universalising research insights and publishing at European or international level.

But assessing excellence involves more than looking for convincing and generalisable insights. A different aspect was brought up by an editor of a Nordic journal who insisted upon the importance of being critical. She argued: "What happens when we receive a traditional doctrinal article is that we say that it does not fit in the [name of journal]. We get a lot of [papers from]traditional [name of country] jurists who think they should write something other than doctrinal work. And they are not accustomed to it. And then they think it's enough to be a little critical, or state that 'Teubner says', but there is no anchoring in the article. And this is where the work of the editors come into play. We try to say that it is not what we mean by critical law, [that] we have other requirements, and you must link it more to a theoretical perspective, and you have to use the theory to explain the concept." [NJ 1]

While this statement echoes the profile of the particular journal, is the editor has a more general take on what excellence in research is. She noted: “Excellence is an absolute relative concept! [...] There is nothing which you can say makes the article the best! There are criteria that need to be met, but they are not absolute. Is the subject interesting? It must contain something new. It cannot just confirm us all the time." [NJ 1]
Another Nordic editor suggested: "There are several things at play: New knowledge, high legal scientific quality and a Nordic perspective. These are the three main criteria. And then the question is often how do you define 'high legal scientific quality'? We think that the article should have a clearly formulated research idea, which must be followed up on, and the article must have a methodical strength, of course, to answer the research question that has been asked. Good legal science is about adding something, a value, insight, reflection, knowledge, beyond just a representation of applicable law." [NJ 2]

The editor of a European law journal generally concurred with this idea of the importance of contributing something new or advancing the state of the art conceptually, methodologically or in terms of insights. But this must be done in a precise and rigorous way: “[...]it is the usual thing about accuracy and precision, using all the available sources in the best possible way. But of course it is very [emphasis by interviewee]important to have something new to say... in the method the person uses, or in the conclusions, or conceptualization ... that gives it value.” [EJ 3]

Another European editor also underlined these dimensions: “To me, the two key aspects of excellence for our journal are originality and rigor. And thirdly you can also say significance in the sense that you could have an original point that is also backed up rigorously but that is so insignificant, so minor a point about some obscure directives, interpretation. That would then be an issue. […] I think excellence is absolute, probably. I have never thought about that. But there needs to be a certain level below which you can’t go. If you don’t make that original point, or if your work is not rigorous enough, then it just doesn’t count as excellent. So I think there is a certain threshold of excellence. Of course, there are better pieces and less good pieces. So it has the comparative aspect, relational aspect in that sense that there are pieces that are excellent but piece A is still better than piece B. But I do think there is an absolute notion as well.” [EJ 3]

Yet another editor echoed the same position: “Actually we would say ‘interesting’ – in a non-British pejorative way [laughs]. It has to be, in a positive way, interesting. And that is usually connected to originality, either because it is a new phenomenon or because it is an old phenomenon seen in a new light.” [EJ 1]

Senior editors at leading publishing houses generally agreed with these observations. Asked about the notion of research excellence, one senior editors responded: “I think it would be adding to the literature. It is the same thing as what qualifies an excellent PhD, isn’t it? That you add to the literature, that you move, that you challenge the status quo, you move the field a bit on, [making it] exciting. Maybe sometimes it is challenging the perceived wisdom of something or solutions.” [PH 2]

Although there are different opinions as to whether the concept of excellence should be perceived as “absolute” or “relative” or in fact as both, most interviewees circled around the same notion of “novelty” in their responses. Importantly, novelty applies not simply to findings and analysis, but also to methodology and theory.

Another senior editor of a large publishing house points to some other markers of excellence, namely the authority of the author. : “One of the main things we look at is authority. Authority is a very significant concept when you look for excellence. Who speaks with authority. So you look if someone
has already been accepted by a top journal, you look for people like judges who have authority, professors who are well known have authority. And you really are looking for anything that suggests that the person has looked at everything, assessed everything, and has made firm assessments about it. I can only look at those markers. Otherwise, I look to peer reviews. It is really difficult these days because there is so much being published. There was a time when the most important was: had they looked at everything? And now, you just don’t expect anyone to have looked at everything, because how could you? So authority becomes more important than exhaustiveness.” [PH 1]

It is worth underlining these statements about authority as they suggest that high-profile judges or professors are very welcome customers at the large publishing houses, presumably because the editors assume that such scholars produce high quality work and, equally as important, they expect such books will sell well. We know from other interviews (for instance [DJ 1]) that many journal editors face similar challenges when receiving articles submitted by well-known judges and scholars. Although never directly stated, there seems to be some kind of preferential treatment for a senior judge or very well-known professor who submit their work.

The value of authority in the symbolic economy of scholarly reputation undoubtedly plays a role with regard to journals and publishing houses which are, to some extent, driven by market forces and audiences’ preferences. They have to strike a balance between market factors and excellence. The notion of excellence which journals and publishing houses work with should be understood with this in mind. This approach undoubtedly favours established scholars and is of little help to emerging stars of an academic field. Within funding agencies, the issue of “authority” is dealt with differently. We note that the most competitive excellence instruments outlined in previous sections all have a consideration for the quality of the PIs. In all cases, that consideration is not explicitly about reputational capital but is an assessment of whether those applicants have a track-record of delivering “ground-breaking” research or are able to show convincing potential of their capability to do so.

To get funding from excellence instruments – and for younger scholars to break into top journals – the decision would predominantly seem to be based on their ability to deliver “ground-breaking” research –research that actually moves the status quo. But, according to one director of a European research agency, identifying ground-breaking research is to some extent made difficult by the inherent conservatism of peer review: “What we are fighting is the fact that the entire peer review evaluation system is extremely conservative. And that is why we say all these things [on excellence, ground-breaking, high risk, impact] because we know that this is what we should be focusing on, but it is very difficult.” [FA 2]

He therefore advocates for interviewing candidates, when assessing research proposals, in order to test whether there is a real will to conduct ground-breaking research: "Because when you see people, you can quickly discover whether it is something they have learnt from others, or if it is something they are passionate about themselves. So therefore I think the interviews are amazing.” [FA 2]. Introducing interviews is, in other words, suggested as a way of ensuring that capable individuals get a real chance. We are only aware of one academic journal, the French journal Critique Internationale, that engages authors in an oral discussion of submitted work.
It appears from the interviews that research excellence is important and that it is predominately understood as adding something new: a new perspective, a new conceptual development, a new set of methods or simply new insights. Many have observed that excellent research avoids “playing inside baseball” in that it is able to generalise its findings beyond its immediate subject-area or national context. Excellent research moreover, must be rigorous and significant. Finally - and the interviewees are less in accordance - the research should have practical relevance. As expressed by the editors of the domestic legal journals in particular, excellent legal research speaks to a certain practical application. It is not meant necessarily as an immediate applicability, but also a broader applicability in terms of advancing new perspectives and conceptual insights. Funding agencies however, note that there is not an inherent contradiction between research excellence and practical application. We return to the question of different forms of excellence further below.

3.2.4. Who determines research excellence?

In the above, some respondents expressed concern about the inherent conservatism of peer review. In legal research, as this section documents, there is a great deal of variation with regard to how to assess the quality of research and its potential excellence. Generally, we have found that many generalist domestic legal journals are only now moving towards being peer reviewed by external reviewers and have historically mainly used review by editors and members of editorial boards. Furthermore, review is sometimes performed by practitioners and not legal scholars. Moreover, they have relied predominantly on reviewers from their national legal environments. The Nordic journals have started a transition towards a new model which combines editorial selection with external, double-blind review. Moreover, they consider the nationality, gender and specialisation of the reviewers. At the European level, double-blind review is clearly the norm, and these journals rely on large and diverse groups of reviewers picked in each and every case. They do not, in other words, rely on pre-existing bodies of reviewers. Within funding agencies, we find a combination of review by boards and external double-blind review. However, none of them rely only on the review of external peers. In what follows we quote the explanations given for using the different models of review, starting at the domestic level and then exploring the Nordic and European levels.

Generalist domestic legal journals have not yet moved fully into double-blind peer review by external scholars, which is increasingly becoming the standard elsewhere. An editor of a domestic legal journal noted: "[Name of journal] has a relatively good editorial committee, and we can have a fairly qualified opinion on many of the things that are submitted to us. Where there is a problem, is if someone on the committee does not have high-level knowledge on the subject. At least the equivalent of associate professor level. Then you have to call in assistance from elsewhere. It is more ad hoc. [...] Sometimes I send it to two other members of the committee, and then I read it myself. The bulk

21 In the case of one of the domestic journals assessed in this report, they changed practice with regard to external review during the period in which this report was conducted and after we interviewed them. We have chosen, however, to include the quotes from the interview which refer to the original practice. We however indicate where these practices are now changing.

22 After the interview, one of the assessed domestic journals has changed practice and is now requiring reviewers to have research qualifications at a PhD level. It is unclear whether a PhD degree is actually required.
of what we publish is something that I and one other member of the committee has looked at. And we are all completely independent of the publisher, the publisher does not interfere." [DJ 2].

A variation of the same model, although relying more heavily on the editor in chief, is practiced in another domestic legal journal. The editor in chief explained: "I use peer review if I can't assess the article myself. I can understand the majority of the articles, but in areas I cannot assess, for example, human rights case-law – I always send it to someone else. And the same applies to difficult company law issues. And then I draw on a huge field of external reviewers. We do not double-blind review, unless peer reviewers ask for it. So our peer review practice is reasonably pragmatic, I would say. We only use [domestic nationality] peer reviewers." [DJ 1]23

The practices of domestic legal journals differ from those of domestic funding agencies, with the latter tending to follow standard international science practices in these regards. One senior decision-maker at a large domestic funding agency explained that all applications are first reviewed by the board members, but in areas where they lack expertise the applications are hardly ever rejected immediately and are put aside to await external peer review. Their review format is, however, more elaborate than the usual double-blind review process and allows for indirect interaction between applicant, board and reviewers. He noted: "We get the applicant to approve all the reviewers, and they also help to designate one. The reviews are also sent to the applicants and they can comment on them. The final assessment is based on what the board of directors thinks about the application, the reviews, the comments received from the applicants, and the interview with the applicant. The board members score individually A, B and C, and then there is a P score, namely if something is potentially interesting, but perhaps not totally validated, to avoid everything going to someone my age with a very long CV. We aim for excellence, but, on the other hand, there is also something that is potentially incredibly interesting. And they get a P score, which counts quite a lot. Where you say there is breakthrough potential." [FA 3]

At another domestic funding agency, a combination of external review and review by the board is also common practice. Large elite research applications are evaluated by external reviewers and then assessed by different panels. Smaller projects are only reviewed by panels, which consist of experts from different fields. [FA 1]

At the Nordic level, the tendency leans clearly towards more external and blind review at law journals. One editor explained their approach: Articles that we receive are first discussed by the entire editorial committee, and we find suggestions for reviewers. There must be a national and a non-national, as our first choice. We also try to have a woman and a man, and it can happen that we cannot achieve our objective, that there isn’t a woman, or someone from abroad, but we always try and usually succeed. [...] We also try to find different perspectives on an article." [NJ 1]

An editor of another Nordic journal explained a somewhat similar procedure: "First we make an assessment in the editorial committee, and then we ask referees. If it is a Danish article, we find a Norwegian and a Swede; And it may be that the editors remove some comments from the feedback,

23 This journal is now using a more systematic external peer review process than what was the case when being interviewed.
and maybe add some. Maybe we ask the author to prioritise some of the comments. So we do not have a standard solution apart from the principle that we have two referees." [NJ 2]

At the European level, this preference for external assessment of the scholarly value is also very clear. An editor of a pan-European law journal noted: “Two referees, generally, [and] they wouldn’t know the author. Sometimes the editors would take the article out of that process and the editor and one of the other would act as referees.” [EJ 4]. This procedure is, however, only used in exceptional cases: “Because it is exceptionally good. So we say: ‘It’s just so good, so we don’t need to.’” [EJ 4] He also commented on the qualities of reviewers: “You don’t want reviewers who don’t publish […] some journals are not very strong on that. They just want to have leaders in the field, and they define them as people who make decisions. And some journals have non-publishing editors, you know. We don’t do that. We want people who are cutting edge of scholarship.” [EJ 4]

Another European law journal also combines editorial screening with external review: “The process is that the piece first gets evaluated in house, where we do the sort of preliminary work: okay, is this sort of publishable? Is this something we could think of possibly appearing on the pages of the journal in a modified format? Then we think, who might be referees for this piece? And some pieces get rejected there, typically either because they are so badly written that we can’t really… understand the piece, I can’t send it to a referee! Or it’s about descriptiveness, where it doesn’t look like there is any original contribution being made; And then, it’s the double blind peer review stage where ultimately then the fate of the piece is decided. In practice, if the referee says no, we are not going to publish it. […] I want to use lots of different people. But you also need to have confidence in the use of a referee, and that can be challenging. It often does take me a fair amount of time to think about who would be a good referee. It’s about knowing the networks and staying as up to date with the literature as I can be.” [EJ 3]

Asked whether the reviewers themselves are excellent, he responded: “Oh yeah absolutely! I need the world’s leading authors as much as possible, which doesn’t mean that they have to be a professor by any means. You can have very strong junior faculty who can act as referees, but they really need to know their stuff. […] sometimes we might have somebody who works for the government in a particular role that would allow them to act as a referee, but even there, they would have to be somebody who is actively engaged in legal research themselves. I wouldn’t approach somebody who works for the government and never publishes.” [EJ 3]

At a third European journal, similar procedures apply: “We have a managing editor who is the first kind of contact for all submissions. She then has a first quick screening process, where she applies a relatively low standard of rejections, and otherwise assigns the piece to one of the members of the board who would then be the lead editor for that piece, and he or she would then read it and decide if it’s good enough to be pursued [and], to be sent to review. Then if there is a reasonable expectation that it could be published, then we send it out to blind peer review, to two colleagues, and on that basis make a decision. If it’s revise and resubmit, rejection, or flat acceptance.” [EJ 1]

At large publishing houses, it is also clear, perhaps even clearer, that review has both internal and external dimensions. The editorial dimension plays a significant role, as explained by a senior editor: “We make a lot more decisions about what [emphasis by interviewee] we are going to review than
journals do. We pay reviewers, so we can’t afford to get that much reviewed. Journals don’t have to pay peer reviews. So we have a very big triage process – our first question: is it worth publishing? And there, excellence would come in as a question of: it doesn’t make a significant contribution, what do we consider significant, how important does this work have to be for us to feel its worth, that it’s not a repetitious book. I mean, the classic one would be: ‘Subsidiarity or complementarity in international criminal law’. How many PhD’s have I seen on complementarity, or drones, or targeted killings? I don’t need another book on that unless it really says something different from the others. We tend to require a minimum of two positive peer reviews in order to take it further forward, positive is obviously again a subjective measure, you have to look through an awful lot of peer reviews to work out what’s going on.” [PH 1]

But using external peer review requires an ability to read between the lines and is also about selection, according to same senior editor: “You get to know the peer reviewers themselves. Often they are grumpy, and everything they say is negative. So if they are a little bit nice about something then it must be really good. People who love everything, you don’t ask them because they don’t really give you much detail. There are some people who write 15 pages, and you don’t want to exhaust them so you only ask them once a year to do something. Then there is a question of how precise an expert you are looking for? Sometimes we deliberately ask people who we know are not fond of something, because we are a little bit in doubt ourselves, and we are thinking, we don’t want to overindulge in something we are not really that sure of.” [PH 2]

In conclusion, we can generally observe that all research is evaluated by peers – by editors, boards of editors or assessors, or external peers. But, there is a great deal of variation in the precise formula of review used by different institutions. Overall, the outliers seem to be those domestic legal journals which rely more heavily on their own internal assessments. Another key insight is that reviewing excellence in research requires excellent reviewers. Nevertheless, there is no clear template for who is an excellent reviewer. Reviewers range from “grumpy” men and women towards practitioners and leading experts, although it is assumed that the “grumpies” are also scholarly authorities. Generally, we find that review is a process that involves both internal and external aspects and different institutions have developed a variety of models to conduct that process. What they all have in common however, is a combination of boards/editors and externals. While the boards always have the final call, they do not feel entitled to publish or fund research that has been rejected by all external reviewers. In most cases, those externals are scholars with a research background, but in some cases practitioners of law are called upon.

3.2.5. Research excellence and other forms of academic excellence

Research excellence is perhaps most controversial when seen as a competitor to other relevant forms of academic excellence, for instance in teaching or in providing practical solutions for society or the legal profession. Legal academia has traditionally performed a function in the development of the law, namely that of digesting and systematising legal materials into coherent doctrines. For practitioners, this is generally considered valuable. Current trends in research, notably the megatrends identified above in conjunction with the spread of other notions of research excellence, seem to create frictions between, on the one hand, traditional ideas of the excellent law professor providing guidance in the understanding of legal systems, and on the other, basic science-influenced notions of
research excellence characterising some new legal research. As we noted earlier, as well as reflected in the interviews, the perceived markets of legal research influence positioning on this issue. In short: who is being asked to evaluate what is deemed to be excellent? Practitioners or academic peers? It is apparent from the responses below that the traditional output of legal academia (e.g. textbooks and similar publications) has become a particularly controversial topic in this debate. Editors of domestic law journals are generally more defensive of such research outcomes than editors of European journals and funding agencies are, who operate with a basic but fundamental distinction between textbooks and research publications.

The editors of domestic legal journals whom we interviewed argued strongly for the relevance – and potential excellence – of textbooks as part of a broader debate about the importance of the practical relevance of legal research. One such editors noted: "We also educate people for the real life and it is not as in medicine where half of them go into a research position. And there is actually a lot of interest among practitioners in what we do. I would go with a slightly broad and nuanced strategy. It is not just about beating everything back. But, it has run off the rails a bit [...] I appreciate that a regular update of a 5th edition of a textbook is not research. However, I find it very difficult to understand that the original book or a monograph is not research. It is completely awry if we look at the tradition throughout Europe. It seems shrill and it doesn’t speak to the legal research environment." [DJ 2]

Another editor of a domestic legal journal argued along similar lines:

In connection with the [National] rating model they have tried to make a distinction between the very practical, underlined by the status of textbooks, and the scientific, which seems to suggest that the less practical a problem is, the more scientific it is. That is how some think reality looks, but we in the [name of journal] do not think that reality looks this way. On the contrary, I believe that it is the view of the current and previous editors that the very fact that a legal issue poses practical problems is a sign that it is interesting. Because practical problems are not just about looking things up in a piece of legislation and finding a given answer; they are also about identifying issues that give rise to doubts in the real world. We consider all these questions to be practical in the sense that they pose questions to lawyers in their practical work and they have no given answer. [DJ 1]

The editor further argued that such practical research helps to identify real life problems which research foundation’s lack sensibility and understanding towards causing a “[…] skewing towards the sexy and away from what we teach! After all, we teach future lawyers to be able to deal with the actual cases that will come up in the real world." [DJ 1]

Asking the same questions about the scientific status of textbooks to domestic funding agencies prompts very different responses. One director of a large research foundation bluntly observed: "No, it could be excellent teaching – it would be called that elsewhere." [FA 3]. Another key decision-maker of a domestic research foundation answered similarly, when asked whether textbooks are research:

“No! ...it's not. In this respect, I have a very clear criterion: If you have written for your peers, then it can be research. If you have written for the students, it is not research. Then you [the law faculty] have had a slightly different tradition, but you must do something about it. After all, it is not research
to continue to publish the same book, where there have been added a few new judgments, or a single new consideration. It is not research. I have written many textbooks myself. And I think it's important that someone writes good textbooks so it's not because I don't think it should be rewarded." [FA 1]

The editors of domestic journals generally justify textbooks and similar outcomes because they are very applicable and practical and, thus, important to legal practice. Confronted with this argument the same director quoted in the paragraph above responded: "When it comes to the applicability, I don’t think it collides with the notion of excellence. So, it may be that some of the most low flying projects – projects where you can almost see the researchers heave some old data out of the bag, and say, ' couldn't we make some sort of project that [name of funding agency] would support '? – and they can't get money. But research can certainly be useful." [FA 1]

The director of a European funding agency gave a very similar response:

"This discussion is one that many disciplines have, [but] in my opinion, when it comes to research, then it is about international excellence. If you are going to educate for the legal profession, then that is another task. For a university it is about educating the best –it is too narrow to only educate for the legal profession. There should be a greater vision. There are some, I can imagine, who after having been out, can come home and become really good judges. It doesn’t hurt that they have been out and seen something else. It is the university’s task - so you can always do the other [professional training] afterwards." [FA 2]

There is no doubt that a discrepancy exists between the stances of the editors of domestic legal journals and those of decision-makers at domestic and European funding agencies. For the former, excellence relates to research and applicability, whether in teaching or in legal practice. For the latter, excellence is a very different notion to which scientific breakthroughs and novelty are crucial.

Moving to the editors of European journals and large publishing houses, their positions are closer to those of the funding agencies than those of the domestic journals. An editor of a pan-European law journal reacted strongly to these questions: "This is international law – you have to put more effort in. And for many people, also young scholars, to get that one article into a journal, you [will] have to spend the same [amount of] work as you would have writing a book of 250 pages in your own language and tradition. And that may seem extraordinary but that is necessary because, if not, they are forever limited to national journals of publication.[...] And most colleagues in [mentions two Scandinavian capitals]never do it. And they spend a lot of time on rationalizing that. One part of that rationalization process is very destructive because you clone PhD fellows in your own image. Because you haven’t managed, because you think it is too difficult and therefore you haven’t tried, you give them the same attitudes, which means that they will remain parochial, local, low-level one-jurisdiction scholars [emphasis by interviewee]. And no matter how ingenious they are, it is going to be extremely limited. Some of the supervisors are very destructive. There’s always different schools, and some of these very prejudiced legal nationalists will find ways of punishing those who have gone outside.” [EJ 4]

An editor of a different European law journal suggested the possibility of some kind of balance between the two extremes: “I personally think that law should be a broad church. In that, we do need,
and this comes obviously from somebody in the [name of country] academia, people writing about [name of country] land law, and we need people writing about [name of country] criminal law. And if people from [name of country] don’t write about it, nobody else will. So I do think that this national approach has to be maintained, but at the same time I think that where the really interesting questions often are, are in the sort of opening of the legal orders, in the legal orders that were previously very insular, self-referential. It is probably in the interaction between those different legal orders that many of the really interesting research questions lie.” [EJ 3]

On the same subject, a senior editor of a large publishing house observed: “Of course you can only write a textbook if you have been researching in the subjects that you are teaching. But the reach of it is different than the legal research publications. There’s a higher level. Also, in legal research. You are trying to add something to the discipline, state something new, take on another authority, push the field. That’s a completely different level in the sky than the textbook which is really on the ground.” [PH 2]

The distinction made in this last quote between the ground-level practical research and the research aiming for ‘higher sky’ scientific objectives clearly illustrates the frictions observed regarding research excellence. In fact, the advocates of the more practical dimension of legal research would probably not entirely object to this description as they maintain that “grounded” research which speaks to the practitioners is precisely what is valued by outside communities. Although this appears to be a minority position in the sample of actors interviewed here, the position nevertheless echoes the opinions of large parts of the legal community, which is largely made up by practitioners. It is a particularity of the legal field not found in other fields of science that practitioners are included to this extent. We also presume that the positions taken by the domestic journals interviewed for this study will reiterate what we find in many other European countries. That being said, it is striking that all other quoted interviewees underline that it takes significantly more to produce excellent research. For publishing houses, producing textbooks and research monographs are two entirely different things—two different products with very different criteria for evaluation. While pedagogics and accessibility are key to the success of a textbook, excellent research monographs push the state of the art of knowledge and science. Its core ambition is to achieve novelty, as identified above.

3.2.6. Interim conclusion
In this section, we summarise and evaluate the findings of the interview survey.

Overall, we note a relative cleavage in attitudes between domestic legal journals and most of the other institutions surveyed with regard to many of the questions posed. While the domestic legal journals are uniquely situated to cater to their national academic and professional audiences and tend to highlight the importance of the practical applicability of research to practitioners, virtually all the other interviewees highlighted other criteria that did not necessarily relate to practical applicability. In this sense, we observe a relative tension between domestic journals and the other institutions surveyed.. This tension is very clearly exacerbated by the ways in which the different institutions surveyed view their respective roles and audiences.

In our view there is also a good argument to be made for pluralism in legal research; that is, although different institutions emphasise the importance of different criteria, there is no inherent need to
juxtapose these different objectives and assume that one size fits all. What is important, notably for emerging scholars, is to understand the differentiations in the landscape of legal research and their impact on institutions’ publication and funding choices. However, it is equally, if not more, important to note where areas of convergence exist.

We find a number of common trends in key areas which actually suggest a degree of agreement on the notion of research excellence. The first is a general consensus amongst interviewees that, in order to be excellent, research must add something **new**: conceptually, theoretically, methodologically or simply by providing new practical insights. Albeit in different ways, all the interviewees emphasised the importance of original and novel research. This also means that purely descriptive legal studies, which do not bring about new knowledge, do not come within the category of excellent research, to which all institutions interviewed agreed.

Another key finding is that most of the actors interviewed emphasised that excellent research is able to **generalise** its findings beyond its immediate subject-area or national context. Many of the respondents emphasised that excellent research moves beyond the ground-level and seeks broader and bigger objectives. At first glance, this might seem to be in contradiction to domestic legal journals’ call for practical applicability of legal research, yet even among the domestic journals we also observed an increased demand for more general and – to some extent – comparative and international perspectives. Thus, rather than juxtaposing domestic journals with the other institutions of the field, it is perhaps more interesting to note these convergences.

We find the same level of consensus for considerations relating to the importance of solid **theoretical and methodological reflections** in legal research projects and publications. All interviewed institutions emphasised the importance of being **rigorous and convincing** - a requirement for speaking with authority.

A final general conclusion concerns who determines what is deemed excellent legal research. Generally, we can observe that all research is evaluated by peers – by editors, boards of editors or assessors, or by external peers. That being said, there is significant variation in the ways in which internal and external evaluations take place, in all cases the editors or boards have the last say. Where there seems to be most discrepancy is with regard to whether or not editors or boards alone can evaluate a piece of research. European and international journals apply the general standard that peer review cannot only be done in-house and must involve externals. Overall, there is a trend towards greater involvement of external reviewers in all of the surveyed institutions. We note, however, that this turn towards more external review is not univocally endorsed by all decision-makers. For instance, some funding bodies and publishers find external peer review conservative in nature and feel that the process should be counter-balanced by other measures, for example interviews.

Where the different interviewees disagree most strongly is with regard to the status of so-called legal text books. Many interviewees underlined that it takes significantly more to produce what they perceive of as excellent research than what is found in descriptive textbooks. For instance, international publishing houses view the production of textbooks and research monographs as two very different products, which are assessed against very different criteria. Textbooks are good for other reasons than excellent research monographs or articles. While the former emphasises
pedagogics and accessibility, the latter seek predominantly to produce novel insights and to push state of the art knowledge forward. Excellent research of this kind might inform textbooks in the long-run and thus help to produce excellent text books.

However, the debate on textbooks seems to be particularly salient in the Danish context as textbooks were historically the key outlets for new research. Textbooks in Denmark, at least historically, were not only written as teaching material and steered by pedagogical objectives, but also, and in many cases predominantly, as systematic research of specific fields of law. While textbooks undoubtedly have a role to play both in legal education and legal practice, the very format is currently challenged by the importance attached to the identified values of scientific excellence (originality, novelty, theoretical and methodological reflection, etc.). As long as the distinction between text books and research monographs and articles is blurred – as is the case in the Danish context – we expect that this will remain an object of contention.

The question of textbooks in legal research is further complicated by a set of trends that are most noticeable when we look at research published in non-domestic legal journals or granted funding from research foundations. Here, we find evidence of forms of legal research that challenge more narrow domestic doctrinal approaches such as comparative, contextual, historical and empirical research. In addition, we see that there is a demand for perspectives that go beyond specific jurisdictions – be they Nordic, European or international. The latter seems to be influenced by general globalisation trends. It is important to note that although this suggests a greater methodological and theoretical pluralism, these broader forms of legal research are not replacing doctrinal law, as such, and do not detract from the importance of legal scholars’ engagement with legal professionals.

3.3. Excellence in PhD dissertations and other academic dissertations

3.3.1. Introduction

Another way to explore and understand excellence in legal research is by studying how it is defined in relation to academic research degrees such as PhD and doctoral degrees. We have therefore examined the regulation pertaining to the PhD degree in Denmark. Since the Danish PhD standards are in accordance with the Bologna process, we have not found it necessary to look at the regulations in other European countries as these will by and large be similar. Furthermore, we have studied the assessments of PhD theses to see how they are put into practice with regard to excellence in research.

3.3.2. Regulation on awarding the PhD degree

The Danish PhD regulation does not mention or define excellence regarding the quality of PhD theses. However, it does mention some criteria with regard to the awarding of the PhD degree:

‘Article 11. The PhD thesis must show the PhD student’s or author’s ability to apply the scientific methods within the field and to provide a research effort equivalent to the international standards for PhD degrees within the field.’

is part of the Bologna process. Denmark has adopted The Danish Qualifications Framework for Higher Education in accordance with the European framework.24

According to the Qualifications Framework for the European Higher Education Area (2005), qualifications that signify completion of the third cycle are awarded to students who:

- have demonstrated a systematic understanding of a field of study and mastery of the skills and methods of research associated with that field;
- have demonstrated the ability to conceive, design, implement and adapt a substantial process of research with scholarly integrity;
- have made a contribution through original research that extends the frontier of knowledge by developing a substantial body of work, some of which merits national or international refereed publication;
- are capable of critical analysis, evaluation and synthesis of new and complex ideas;
- can communicate with their peers, the larger scholarly community and with society in general about their areas of expertise;
- can be expected to be able to promote, within academic and professional contexts, technological, social or cultural advancement in a knowledge based society.

The Danish framework – which as mentioned is in accordance with the European framework – states the following about the requirements for persons obtaining the PhD degree25:

Knowledge and understanding:
- Must possess knowledge at the highest international level within the research field.
- Must have made a significant contribution to the development of new knowledge and understanding within the research field based on scientific studies.

Skills:
- Must master the scientific methodologies and tools as well as master other skills related to research and development tasks within the field.
- Must be able to analyse, evaluate and develop new ideas, including design and develop new techniques and skills within the subject area.
- Must be able to participate in international discussions within the subject area and disseminate scientific findings and progress to a wide audience.

Competences:

24 Both frameworks can be found at: https://ufm.dk/en/education/recognition-and-transparency/transparency-tools/qualifications-frameworks/other-qualifications-frameworks/qf-for-the-european-higher-education-area
25 The Danish framework also provides a description of the PhD degree. The requirements outlined are equivalent to the description of the requirements for the persons obtaining the PhD degree.
• Must be able to plan and carry out research and development tasks in complex and unpredictable contexts.
• Must be able to independently initiate and participate in national and international collaboration on research and development with scientific integrity.
• Must be able to independently initiate research and development projects and, through these, generate new knowledge and new skills which develop the research field.

The European and Danish frameworks focus on the knowledge/understandings, skills and competences, which a student who is awarded the PhD degree must demonstrate. The frameworks thus also provide input as to how a PhD programme should be designed. The frameworks also delineates the knowledge, understandings, skills and competences which should be reflected in the PhD research and in this way provide some indicators of what characterizes research of good quality. While the framework might be said to provide minimum standards for the quality of PhD theses, it also provides some parameters for measuring the quality of PhD research. In other words, the better the PhD student performs on these parameters, the better the PhD thesis. It does not, however, provide an absolute measure of precisely when research attains ‘excellence.’

Even though the parameters we have mentioned apply to PhD research, they also seem to highlight important general characteristics of good research, which are relevant to research in general. Together the two frameworks provide some important criteria which can be used to measure the quality of research more generally. In particular, we note that both the European and Danish regulations call for significant contributions to develop new knowledge and understanding within the research field based on scientific studies. This requirement, although scalable, does seem to reflect largely what we observed in the interview survey.

3.3.3. Assessments of PhD theses

Collection of empirics
In addition to the regulations of PhD studies, the committee has studied assessment reports from assessment committees within approximately the last two years at the Faculty of Law, University of Copenhagen, with the aim of determining what is considered excellent research.26 The advantage of including assessments, in addition to the PhD regulation and the two outlined frameworks, is that it helps identify how good – even excellent – doctoral research is characterised by assessment committees. The Committee is aware that more empirics (a longer time period, assessment reports from other universities etc.) would naturally have strengthened the analysis. However, due to inter alia the difficulties in obtaining assessment reports (which are not public) from other universities, we

26 A similar study has been carried out by Sten Schaumburg-Müller for doctorate theses and PhD theses in the period 2000-2006, focusing on problems with regard to the quality of research, see Sten Schaumburg Müller, Retsvidenskabelige problemer ifølge bedømmelsespraksis, U 2009B.192 (the Schaumburg Müller study). Also the report “Forskellige spørgsmål om retsvidenskabelige afhandlinger” produced by a working group at the Law Faculty, at the University of Copenhagen, 2005, (the 2005 – report) contains contributions to the understanding of the concept of quality in legal research.
have chosen to focus on the period between 28. Nov 2016 and 23 March 2018 at the Faculty of Law in Copenhagen.

Altogether, 32 assessments across different legal fields have been included in the analysis. With few exceptions, professors from universities abroad, in most cases from other European countries and the US, participate in assessment committees. This ensures that the PhD theses from the Faculty of Law in Copenhagen are assessed against international standards. The Bologna criteria also contribute to this. The observations provided below are derived from the conclusions of the assessments, which are made public at PhD defences, and reflect the full assessments of the PhD theses. All the material has been anonymised to protect the identify of the PhD students. It should be emphasised that all assessments end by concluding whether the thesis fulfils the two main criteria mentioned in Article 11 of the Danish PhD regulation: (1) the PhD thesis must show the PhD student’s or author’s ability to apply the scientific methods within the field and (2) provide a research effort equivalent to the international standards for PhD degrees within the field.

Methodologically, we approached these excerpts from the assessments with the goal of finding descriptions of the very best quality research (not the average or just passable research) and the quotes included below reflect that. In this way our data provide detailed information for understanding what is deemed to be the highest quality in (PhD) research. By organising the data according to a number of different elements of PhD theses (topic, originality, methodology, concept/terminology, delimitation, structure, presentation, treatment of sources, analysis and general comments a.o. on the outcome of the thesis), our analysis seeks to identify how research is evaluated, broadly speaking.

In practice, when analysing the assessments, we have sought to identify particularly positive comments in the individual assessments as they are indicators of high research quality. There may be critique of other elements of the thesis in the same assessment, but these are more relevant to find the lower level of acceptable research and not research excellence. In some cases, elements, which the assessment committees consider especially positive, have been extracted from their critique of a thesis. The analysis of the assessments clearly shows a pattern in the expressions used to determine research quality by the assessments committees. This means that the terms mentioned below are the ones most often mentioned in assessments, although they might have slight linguistic variations. The observations from our study have been divided into broad categories relevant to different dimensions of doctoral research. Under each header, we list quotes or paraphrases of assessments which, in the context, suggest high levels of research quality or even excellence.

**Empirical Analysis of Assessments**

**Topic**
- Timely and ambitious research questions
- Highly complicated issue that involves complex details, material etc.
- Complex topic
- Interesting topic
• Theoretical as well as practical relevance
• Ability to ask the relevant questions in order to formulate the best possible research question.  
• Ability to identify relevant legal problems

Originality
• Originality/novelty as regards research object
• Originality as regards the applied methods
• Adds to existing research/literature

Methodology
• Critical reflections on applied methods
• Complex interdisciplinary approach
• Engagement with interdisciplinary literature
• Use of comparative method and legal history if relevant
• ‘The topic is excellent for a PhD thesis and it is also ambitious and innovative in its combination of interdisciplinary theoretical and methodological approaches.
• ‘An impressive command of methodology and theory’
• ‘The thesis is extraordinarily clearly structured and well written, following the state-of-the-art methodology (in the field)’
• ‘The investigations are based on a clear methodology, which is followed systematically throughout the thesis’
• ‘The thesis is based on an extensive and impressive literature review and reflects the author’s highly advanced command of literature (in the field) and methodologies’ (see also below)

Concepts/terminology
• Well defined concepts and terminology
• Consistency in use of concepts and terminology

Delimitation
• The relevance and quality of the delimitation of the topic
• Does the thesis open up new legal landscapes?

Structure
• Well-structured thesis
• Clear structure

27 In line with his, it is highlighted in the Schaumburg Müller report that an often occurring problem in dissertations that are of a less good quality is that they suffer from “identity problems”, i.e. it is not possible for the reader to see what is the read thread, or what is even the more precise topic of the dissertation. Also the 2005 report emphasizes the importance of having clear research question.

28 Also the 2005 report emphasizes the element of novelty
Presentation
- Presented in clear language
- Well-written

Treatment of sources
- Introduction and discussion of diverse literature
- Deep understanding of literature
- Critical approach to existing literature, theories etc.
- Solid knowledge of the relevant fields and related aspects of legal theory
- An excellent understanding of the relevant fields
- Impressively good understanding of international and comparative law framework
- Use of primary sources
- Inclusion of relevant legal sources and theories
- Comprehensive case-law, practice etc.
- The selection of sources and the value of these sources must be discussed
- ‘The thesis gains by including case-law from both the European Courts of Human Rights, the European Court of Justice and national courts’
- ‘The thesis is based on an extensive and impressive literature review and reflects the author’s highly advanced command of literature …(in the field)… and methodologies’
- ‘X’s work is well researched and indicates that the candidate [is] well-immersed in the jurisprudence of …(the field)… as well as legal and historical literature’
- ‘The Committee is impressed by the level of doctrinal detail and sophistication in the analysis of numerous primary resources such as … as well as secondary resources such as scholarly work’

Analysis:
- Precise framing and contextualisation of analytical aims
- Academic ambition
- Analytical competences
- Thorough analyses
- Thought provoking analyses
- Mature analyses
- Comprehensive analysis
- Use of a consistent analytical framework
- Woven together in a coherent argument
- The thesis reveals a sharp analytical mind
- Inclusion of different perspectives, different considerations and different groups affected
• ‘The typology for the analysis of …(the research object)… is one of the most helpful additions to the existing literature’
• ‘The analysed field is a complex and multifaceted legal and social context’
• ‘X demonstrates very good analytical skills of a complicated and complex legal area’
• ‘The thesis is the result of original, creative and novel work, which has been undertaken in a systematic way following state-of-the-art legal and political-science methodologies’
• ‘The legal arguments put forward appear logical, balanced and convincing’

General comments a.o. on the outcome of the thesis
• The PhD thesis shows courage/courageous scholarship
• The dissertation testifies that the candidate has impressive research capacity.
• ‘Manages to identity some prominent trends in…(the field)’
• The dissertation is ambitious
• ‘The thesis is based on very thorough research and contains a richness of observations and valid reflections, and its author demonstrates a brilliant understanding of the complex issues at stake in the area’
• ‘The author has a fresh and independent approach to an urgent social and legal issue’

3.3.4. Analysis and interim conclusion
In general, the excerpts from the assessments listed above reflect the Bologna criteria and the criteria in the Danish framework, yet they also refine these broad criteria in numerous ways. Interestingly, the word ‘excellence’ is only used once in the data listed above. Once again, it seems that we need to focus more on the criteria leading in the direction of the very best research with no absolutes. The research sky is boundless – and doctoral students can only strive towards producing the very best possible research, assuming that this will lead towards excellence. Finding the criteria that lead the way to high quality research is therefore critical.

Analysing the assessments, we note that the following criteria seem to generally characterise very good quality research: originality/novelty as regards the research object and methods, ambitious research questions, critical reflections on applied methods, command of method, theory and state-of-the-art, clear structure, well defined concepts and terminology, discussion of the selection of empirics and sources and their value, inclusion of relevant European, international and comparative law and case-law, inclusion of broader perspectives if relevant (eg. history and interdisciplinarity), strong analytic approach, consistency regarding applied methods and analytical framework, legal arguments put forward appear logical, balanced and convincing and finally the thesis must be well-written.

We note that one group of assessments vary slightly from the list as a whole. The practical relevance of the topic and the research carried out seem to be slightly more important as an independent sign of quality in theses written within the field of private law and in the Danish language. In other fields and theses written in English, practical relevance is more often emphasised in conjunction with theoretical contribution of the work (ex. ‘theoretical as well as practically relevant’ and ‘in addition, the topic is
of great practical importance’). In many theses within public law, EU law and international law, we note that assessors highlight that the question under scrutiny should be timely or topical, which also reflects and element of ‘practical relevance’. Yet another interesting observation is that a number of assessments of theses concerning private law and are written in Danish, are critical of the lack of inclusion of EU law and case law from the European Court of Justice, the ECHR and case law from the European Court of Human Rights and/or foreign law and case law from other national courts, which would have been relevant/necessary, when analysing that particular field. Finally, a number of assessment committees criticise PhD theses for not reflecting sufficiently on what legal doctrinal method implies, including reflections on its weaknesses.

Interestingly, many of the criteria highlighted in the assessment guidelines, including the critical remarks just listed, widely reflect the ideas we identified in the interview survey and in the survey of foundations and assessment systems. Good, and possibly excellent, research has to meet a set of basic thresholds in terms of rigorousness in the engagement with theory and methods, addressing interesting and new questions, including the relevant empirical material from domestic and international sources, etc.

4. Discussion and conclusion

This section discusses our findings and concludes the report. It opens with a general analysis of how excellence relates to legal science in general and to different types of legal research. We finish by identifying a general definition of research excellence which is then used as a basis for section 5, where we outline recommendations as to how to achieve and document research excellence.

4.2. Trends in legal research and their relationship with research excellence

4.2.1. National and international research

Across our surveys, there seems to be a distinction between what are referred to respectively as ‘national’ and ‘international’ legal research. However, this distinction may not be quite as clear-cut as it initially appears. When it comes to content, research very often contains a mixture of national and international legal elements. For instance, research concerning the law in a national jurisdiction may also cover EU law or refer to international sources of law or comparative aspects involving other national systems. Likewise, publications with a focus on international law may concern other areas of the law than international law or EU law, such as comparative studies of national legal systems and broader conceptual or theoretical issues informed by both national and international sources. In the figure below, we use a matrix to visualise this broader spectrum of legal research:

Figure 1
In principle, any legal research project can combine two (or more) of the focus-areas listed on the two axes. For instance, a research project can have local-European or European-global dimensions. This suggests that when it comes to the substance of legal research, the distinction between what is national and international research is much too simple and not at all reflective of the reality of legal research in its many combinations.

The distinction between national and international research can, however, be made concerning publication channels and the language of publication. On one side, we can observe research that is predominantly aimed at a specific national audience and is published in national law journals or by national publishers in the national language; on the other side, there is the research that is predominantly published in English (or another major language) in international law journals, typically by international publishing houses.

In our view, and backed up by our surveys, the distinction between the national and international is relevant only in the way just described; that is, for describing publication channels and audiences. It is not a relevant distinction with regard to assessing whether research is excellent or not. Both so-called “national” and “international” research can live up to the criteria of excellence in legal research. In the following sections we use the term “national publications” and “international publications” as an indication of publication channel.
In more practical terms, and due to the different audiences and respective outlets of international and national publications, in some instances we find that national and international publications ‘speak different scientific languages’. In national publications, precision in detail and practical applicability seem to play a particular role. Whereas in international publications, excellence may be achieved with regard to a level of abstraction that there may not always be a basis for in national publications.

4.2.2. Broadening legal science (monodisciplinarity, interdisciplinarity, law in context, etc.)

In our empirical surveys, we find evidence of forms of legal research that complement more traditional national doctrinal approaches to law in various ways. What is highlighted in the survey is an increased focus on comparative, contextual, historical and empirical research. Importantly, however, this does not necessarily imply that these forms of scholarship eliminate legal doctrinal studies. Although the survey may give the impression that there is more of this kind of legal research, the dominant form of legal research remains doctrinal analysis of legal norms and legal practice. We will also find a host of hybrid forms of legal research that, for instance, combine doctrinal approaches with other perspectives.

Several of the interviewees observed a growing interest for interdisciplinary work over the past decade or so and some argued that this is a reflection of the policies of funding agencies. Other arguments for these alleged changes are that supporting interdisciplinary research is a way of supporting the wider research environment because it does not prioritise one area over another. Pragmatically, interdisciplinary research may appeal to a larger number of reviewers and decision makers with different scientific backgrounds, including the decision makers at the boards of funding agencies. Yet another reason may be that funding agencies and publishers believe that interdisciplinary work may be a pathway to excellent research. While there are studies of innovation indicating that new ideas may occur at the intersections of different forms of knowledge and experience, there are also plenty of examples of monodisciplinary work that has led to decisive breakthroughs.

With regard to legal research, there is sometimes concern that interdisciplinary legal research projects fail to engage in the more detailed legal issues that are characteristic of legal doctrinal work. The concern is that the scientific edge of doctrinal work is lost in its encounter with other disciplines. This links directly to the debate on interdisciplinary and multidisciplinary research approaches. A multidisciplinary project is characterised by bringing together a number of different disciplines under the same umbrella to work in parallel towards a common goal. The different approaches thus produce insights used for the broader objective, but integration mainly takes place at the end of the project. In contrast, an interdisciplinary project is characterised by creating genuine interaction and integration between different disciplines so that knowledge from one discipline is utilised in another.

In (genuinely) interdisciplinary projects, the benefit from working across disciplines may compensate for the potential loss of distinctiveness of each of the involved disciplines. Moreover, in some interdisciplinary projects, the distinctiveness of each discipline may even be supported by studies in
other fields so that a more precise analyses can be carried out in each field based on the knowledge added by the other discipline(s). In multi-disciplinary projects, the distinctiveness of the separate approaches is maintained while working towards a broader agenda, but they run the risk of providing no real added-value. For this reason, it is hardly surprising that our surveys suggest that interdisciplinarity is favoured over multidisciplinarity by most decision-makers, at journals, publishers and funding agencies.

4.3.2. Documenting excellence
Considering the different ways in which excellence in legal research can be achieved, how a researcher can then ‘document’ excellence is a fundamental question. In our recommendations in section 5, we specifically – as stipulated in our mandate – address this question. First, we discuss some of the problems identified with the process of documentation.

Amongst international publications, certain journals and publishers are very well regarded. As a general rule, these outlets are subject to peer review. Thus, it could be argued that publishing via these channels can, in most cases be regarded as an indicator of excellence. However, as the surveys demonstrated, editors do not only look for excellence but also have commercial interests to consider. In this regard, a criterion such as ‘authority’ may also come into play and the profile of the publisher or the journal matters. For example, some journals are particularly interested in publishing “critical” research while others focus on practical relevance.

Despite these reservations, many international publishers secure a certain level of quality through the peer review system, especially those viewed as being leading outlets for research. That being said, the peer review system cannot be regarded as ‘bullet proof’. For example, some interviewees in the survey criticised peer reviewers for being too “conservative” in their evaluations and thus hindering the publication in getting novel research published. Nevertheless, the peer review system does ensure that the work has been scrutinised by several specialists (typically two in addition to the review that may be carried out by an editor or editorial board) before it is accepted for publication. Moreover, international peer reviewers are drawn from a large pool of international scholars and submitting a work for publication at the international level, in principle, exposes the work to competition from a large number of scholars. In this sense, with the reservations expressed above, publishing internationally can be seen as one way of signalling excellence.

Many of the same elements are present (competition, peer review, etc.) when applying for funding from general funding agencies. An application for funding in itself typically requires a considerable amount of research in order to present a convincing research puzzle and suggests ways to push towards new insights. Applications for external funding are also subject to peer review completed by reviewers drawn from a large pool of scholars. It appears from the surveys, that purely doctrinal legal projects face some problems with regard to funding agencies as there are indications for a slight

29 For instance, in order to carry out a legal analysis of the implications of digitalization it is to some extent necessary to have knowledge about the relevant technology.
preference for interdisciplinary research. Moreover, doctrinal law is criticised for not being explicit enough on theory, methodology and the project’s potential for novelty. Thus, difficulties in explaining the legal doctrinal method have often made it harder – but not impossible – for doctrinal legal projects to document excellence in their recourse to funding agencies. However, there are no reasons to believe that doctrinal legal research cannot be externally funded, as long as it is capable of explaining its theoretical and methodological underpinnings. Overall, there is little doubt that being awarded prestigious grants is often seen as a way of documenting excellence.

When it comes to national legal research, excellence must, in principle, be documented in the same way as it is in international research. However, in practice, it is more difficult. The market is smaller and consequently, competition is less intense. In addition, not all national legal journals carry out peer-review, and in some cases when they do, the peers are practitioners not legal scientists. It follows that, a record consisting of purely national publications is not likely to be conducive for obtaining external funding from the larger funding agencies. Therefore, it may be harder to document excellence on the basis of national publications alone. In contrast, it may be easier to document (quick) societal impact of national research, for instance via citations of scholarly work in case law. The theme of “societal impact”, however, falls outside the scope of this report.

4.4 Final conclusion
Based on our three surveys we conclude that excellence in research can be defined in the following way.

The single most important criterion is novelty in the sense of pushing the state of the art of research with regard to one or more of the following: conceptual development, theoretical development, methodological development, generation of significant new insights with regard to the subject-matter or production of research results that can be generalised beyond the immediate subject studied. In all of these instances, the necessary conditions for excellence in research are that the study includes theoretical and methodological reflection and is conducted in a rigorous manner. This can be seen as a universal definition of excellence, which applies to all fields of law and across all professional categories of researchers.

It also follows from this that research excellence is not an absolute term. By striving for the best possible performance with regard to the elements described above, individual researchers and research centres may achieve excellence. It should be emphasised that research excellence expresses quality, not quantity.

Excellence can be achieved by publishing both nationally and internationally and across the many substantive areas of law – from the local to the global and combinations thereof (illustrated in Figure 1) – insofar as it lives up to the criteria which have been described.

The horizontal axis in Figure 2 (below) outlines the spectrum of publication audiences from the purely national to the more regional and entirely global. The vertical axis in Figure 2 outlines different kinds of research with regard to the level of abstraction. We define the axis from the very concrete, which
in practice implies applied science with an explicit orientation towards societal applicability, to the more abstract, which in practice implies basic science with a more explicit orientation towards academia. In principle, excellent research can occur anywhere along this axis, but is perhaps less likely to occur towards the very bottom, where the objectives are typically very different. Policy papers are examples of such work. Figure 2 is further explained below.

Figure 2.

Cross-fertilisation between the two lower quadrants and the two higher quadrants in the diagram is important in order to ground research empirically in the top quadrant and to create theoretically-based research tools in the lower quadrants. The same research can be disseminated in different versions to different audiences and can thereby fall into different quadrants. It may also be the case that some research begins in the two lower quadrants and then develops along more theoretical lines and moves from the lower quadrants to the upper quadrants. In legal research areas marked by specific national features (such as private law, administrative law, constitutional law, etc.) it may be necessary to move the research focus to a higher level of abstraction in order to be able to publish internationally. A research project which started out as purely national may move into the more international quadrant over time. This way the four quadrants are not isolated from each other and interact over time.

In this report we have not focused on societal impact. However, both the top quadrants and the lower quadrants can create research outputs with societal impact (nationally and globally). In the lower quadrant the societal impact will often be realised within a shorter timeframe than the societal impact of research in the upper quadrants.

As a final note, achieving research excellence will almost always presuppose the support (financial, time-wise, administrative, trust-wise etc.) of the Faculty of Law. In this regard, we would like to emphasise that due to the high qualitative requirements for research excellence, it is unlikely that researchers will deliver more than 1-2 excellent publications per year. A faculty standard which focuses too much on quantity may be counter-productive with regard to the aim of achieving excellence. Moreover, the Faculty must be willing to take risks and believe in individual researchers and research environments (in the same way that high-risk research is mentioned as a criteria for excellence). This also requires a certain openness towards diversity and acknowledgment of the pluralism of the research taking place at the Faculty. Excellence can only be obtained through genuine collaboration between research centres and individual researchers building on important values such as academic freedom, freedom of research methodologies, research ethics, co-operation within the faculty, gender equality, diversity, respect for scholars of all ages, mutual respect, etc.
5. Recommendations

5.1. For individual researchers

5.1.1. General

In the final section, we present our recommendations with regard to furthering research excellence at the faculty. More precisely, we address the following questions in our mandate: What characterises individual research excellence at different levels of an academic career and how can the individual researcher best work to achieve and document excellence in his/her research.

With regard to achieving excellence in legal research, we have the following general observations. Based on our three empirical surveys and as previously addressed, it is our conclusion that excellence in legal research is not the reserve of specific fields of law and is not limited to basic or abstract scientific explorations into law. Furthermore, excellence in legal research is not the reserve of senior researchers, but rather is open to all levels of researchers from individual PhD students and professors to collective research units such as research centres (see 5.2 below about research units). That being said, operationalising our findings with regard to research excellence necessitates devising different strategies with regard to career levels and the sizes of research units. We have therefore structured the following according to different job categories (PhD, Assistant Professor/Post Doc, Associate Professor, and Full Professor). In section 5.2, we address research excellence in research centres.

Considering that our definition of excellence is universal, our recommendations for achieving research excellence are, in principle, the same across all job categories. In other words, across the spectrum of academic positions, the single most important criterion is novelty in the sense of pushing the state of the art of research (as per section 4.4). This includes: conceptual development, theoretical development, methodological development, producing significant insights with regard to the subject-matter or producing research results that can be generalised beyond the immediate subject studied.

Meeting these requirements is both demanding and time consuming. Consequently, it is a general recommendation for all researchers striving for excellence to prioritise carefully which research projects to embark on and to accept that delivering quality necessarily implies less quantity.

With regard to documenting research excellence, we have the following general observations. In the following we rely on what we believe are the generally accepted indicators of research excellence – for example, research prizes, particular publication outlets, external funding, and positive assessments of (for example) PhD theses, habilitation work (dr. jur), job applications for academic positions, etc. Due to the controversial nature of citation indexes in legal research, we have chosen not to include these as a measure. It is nevertheless evident that for research to actually push the state of the art, it must be integrated one way or another into broader research communities.

As explained in section 4.3.2., we are acutely aware that our indicators are not always going to be reliable measurements for research excellence in every case. It is with these reservations in mind that
we will in part rely on formal and generally recognised indicators of excellence when suggesting ways for documenting research excellence.

One general observation drawn from our surveys is that in some areas of legal research it appears to be more difficult to document research excellence than it is in others (see above). Comparatively, research into national law naturally has fewer publication outlets and cannot, like internationally oriented research, be published in journals that are branded as publishing only the very best scholarship based on highly competitive reviews. This is one particular challenge posed to nationally oriented research.

Considering the problem of documenting research excellence for nationally oriented research, we advise that young scholars in particular avoid building up research profiles that are strictly national. Instead, young scholars should aim to cultivate mixed research profiles by publishing both nationally and internationally. In this way, the researcher can demonstrate their ability to speak more than one scientific language by, for instance, generalising findings (itself a sub-criterion in research excellence), including comparative or similar methodologies to connect domestic findings with other legal systems and, more generally, ensuring that findings are being scrutinised by a much broader scholarly community.

Interestingly, considering how law and legal research has clear domestic applications, it is also advisable for researchers who mainly pursue international outlets and agendas to consider how they can also address domestic communities, including the world of legal practice. We would thus advice researchers who primarily publish internationally to also disseminate their findings to national outlets. It is part of their claim to excellence that they can move agendas on both levels.

This latter observation underlines the importance of not perceiving a clear and absolute distinction between international and national legal research. Ideally, legal researchers in today’s globalised world can have either a primarily (but not exclusively) national research profile, a mixed research profile, or a research profile that is primarily (but not exclusively) international.

These general observations with regard to achieving and documenting research excellence inform the remainder of this report and our recommendations at the individual levels.

5.1.2. PhD level
Above we analysed the relevant regulations regarding good quality research and the academic competences that PhD students must obtain and document during their PhD studies. We also conducted an empirical analysis of a large number of assessments of PhD theses in order to identify how assessment committees define good quality research. These analyses provided valuable and detailed insights into what good quality research is and the criteria against which such research is evaluated. Below we provide a more detailed supplement to the general criteria for excellence as described above.
The key objective for a PhD student is to produce a thesis at the highest level of quality in order to receive an excellent assessment. For PhD students, the assessment of a PhD thesis is the most important way of documenting excellence at the PhD-level. However, there are additional ways in which excellence can be documented and achieved. The following provides a list of recommendations to enhance the chances of producing novel research:

- Choose a research stay (abroad) at a university that has a very good research environment in your field and present your research to the academic staff to test your ideas, receive feedback and identify the state of the art of your research field.
- Attend (international) conferences with paper presentations to test ideas before broader audiences and to identify the state of the art.
- Consider seeking a co-supervisor (could be at a foreign university) who can complement the main supervisor.
- Consider how to build academic and/or professional networks that can help provide up-to-date information, feedback and empirical insights.
- Start building an international research profile by, for instance, publishing internationally alongside working on the PhD project (whether this is written in Danish or English). Consider gaining funding experience by, for instance, applying for funding for a research stay abroad or prizes or scholarships, for instance, the Danish Elite Forsk travel scholarship. This will help to document an ability to win competitive grants based on research ideas.

5.1.3. Assistant professor/post-doc level

At the assistant professor/post-doc level, it is important that the researcher produces new research that is distinct from the research done at the PhD level and thus demonstrates a development and broadening of their research. In other words, it is not advisable to continue publishing within the narrow confines of the subject matter of the PhD thesis. Rather, broadening of perspective and/or taking up new research questions will help the researcher to fulfil the requirement of “novelty,” the key to research excellence according to this report. This can also help generalise findings and to expand the number of possible publication outlets.

At this level, it is also important to consider whether to publish for national or international audiences. If the PhD thesis was focused on national law, it may be advisable to use this period to publish internationally. Furthermore, if the PhD dissertation has been published internationally, it may be advisable to demonstrate that the researcher is also capable of contributing to national research during the subsequent period. In both cases, it will help the researcher access a broader audience promote their ability to speak different scientific languages and potentially develop different forms of research excellence.

The researcher should also consider whether to use this period for publishing articles or a monograph. Both types of publications can lead to and demonstrate research excellence. Publishing a monograph will have the advantage of allowing the researcher to carry out in depth research over a longer period. Publishing articles will have the advantage of accelerating the researcher’s visibility and potentially demonstrate excellence at an earlier stage.

If a post-doc project is part of a larger, collective research project, it is important that the researcher ensures that their contribution has the qualities of excellent research on its own. However, being part of a larger project has number of potential advantages, including that such projects allow the Post-
doc to reflect at a higher level of generality if they successfully place themselves in the context of the overall project and its collective pool of knowledge.

At this level, excellence can generally be documented in many of the same ways as described with regard to the PhD level. However, here, there are a number of additional funding opportunities. For instance, specific excellence programmes exist for researchers at this career level such as Marie Curie scholarships, Sapere Aude, or ERC starting grants. It should be noted however, with regard to the larger project applications, these generally require that the applicant is a senior researcher. As previously mentioned, publishing internationally generally makes it easier to document research excellence. In addition, there is little doubt that with regard to applications for external funding, funding agencies value international publications highly.

5.1.4. Associate professor level

At this point of a research career, a scholar is typically consolidating an area of expertise. Scholars pursuing research excellence may want to reach new levels of generality by broadening his/her profile. This could be accomplished for example by entering into somewhat new fields, applying new methods, including interdisciplinary, historical or comparative perspectives. This could be pursued whether the researcher’s profile is predominantly national, international or a mixture of both. The central point is that if they are to achieve excellence, it is very important that senior scholars seek novelty and innovate their approaches to conducting research.

Becoming a research leader may be an option for some scholars who seek out research excellence. Senior scholars have particular opportunities for launching broader projects spearheaded by themselves as PIs. At this stage it is important to consider the option of recruiting PhDs and postdocs to a research group. Forming a research group may be a way of developing cutting-edge research of a more generalisable character. The fact that PhD students or postdocs seek the supervision of the associate professor can also be seen as an indicator of the researcher’s standing in the field.

Starting researching groups can also build the infrastructure for launching even bigger projects, typically externally funded projects. Obtaining such funding can be a way of both developing and documenting research excellence. At this career level, there are a number of grants supporting excellent research, such as ERC consolidator grants, Sapere Aude Research Leader grants, the Carlsberg Foundation senior grants and others.

5.1.5. Full professor level

At the professor level, researchers are typically more established, more well-known and more connected. Striving for excellence at this level will include upholding and improving a high quality of research, developing new theories, methods and generally pursuing novelty. This applies to all researchers whether oriented towards national or international legal research. In addition, what is mentioned above in reference to associate professors building up research groups also applies to full professors, although the expectations are higher in terms of building larger groups and projects as a means of documenting excellence.

Again, working internationally will make it easier overall to document excellence. At this level, there are numerous ways of documenting how the research is deemed to be excellent by peers. In addition to top quality publications, there are several funding opportunities specifically calling for research excellence such as ERC advanced and synergy grants. Also receiving research prizes (for example EliteForsk Prize or the Carlsberg Foundation Prize) or being selected for the Academy of Science...
may be used as means for documenting excellence. Other documentable indicators of research excellence include: invited presentations, (e.g. keynote speeches, at universities with expertise in the relevant field of law), invitations to be part of assessment committees (both for senior positions or general assessments of institutions), membership of steering committees of relevant international academic organisations, editorial boards for journals or book series and referee tasks for respected journals and publishers.

5.2. For research centres

In the following, we make recommendations with regard to research centres, currently the dominant form of research organisation at this Faculty. We focus only on how centres as research units can achieve and document research excellence. Thus, our focus is on how collective research can produce added value. With regard to the research excellence of individual researchers, and how they can achieve and document research excellence, we refer to the previous sections.

The Faculty of Law’s guidelines for research centres stipulate that all centres must contribute to “expanding the Faculty's international research profile”.30 Although the guidelines stipulate ambitious criteria for the research conducted at the Faculty’s research centres, they do not explicitly mention research excellence. In what follows, we consider and make recommendation as to how research centres can achieve and document research excellence.

We recommend that research centres seeking research excellence in particular aim at:

- A continuous output of high-quality publications within the research focus of the centre that produce novel results and collectively help set a research agenda.

To achieve this goal and to document that a research centre is performing at the level of excellence, we recommend that the centre develops strategies aimed towards some of the following objectives:

- Focusing on project organisation, common output and ambitious research plans
- Developing researchers at all levels
- Maintaining a common aim while striving for inclusion of new perspectives and novelty
- Promoting cooperation across research centres and being open towards the inclusion of outside ideas and people when relevant
- Developing ambitious (common) applications for external funding at all level.
- Hosting international events/conferences with the aim of setting research agendas
- Building genuine collaboration with other leading research centres within the relevant field with the goal of furthering and refining the research agenda
- Building a good and creative work environment
- Providing PhD training at a high (international) level, the success of which can be documented in the assessments and publication outlets of PhD work, ability of PhD students to win prizes and scholarships, and the academic placement of the centre’s PhD students

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30 Art 1 in Guidelines for the establishment, extension and closing of research centres and research groups at the Faculty of Law, University of Copenhagen. See https://jura.ku.dk/pdf/forskning/guidelines-research-centres-groups.pdf
Appendix 1

Preliminary list of universities and funding agencies to be considered for this assessment.

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Appendix 2

Anonymised list and numbering of journals, publishing houses and funding agencies interviewed for this study

Journals
1. Domestic Journal #1 = DJ 1
2. Domestic Journal #2 = DJ 2
3. Nordic Journal #1 = NJ 1
4. Nordic Journal #2 = NJ 2
5. European Journal #1 = EJ 1
6. European Journal #2 = EJ 2
7. European Journal #3 = EJ 3
8. European Journal #4 = EJ 4
9. European Journal #5 = EJ 5

Internationally publishing houses
10. Publishing House #1 = PH 1
11. Publishing House #2 = PH 2

Funding agencies
12. Funding Agency #1 = FA 1
13. Funding Agency #2 = FA 2
14. Funding Agency #3 = FA 3
Appendix 3

Generic Interview Guide – Excellence in research

Background

We have been asked by the Dean of the Faculty of Law, University of Copenhagen, to write a report on excellence in legal research.

The background to this work is both an attempt at advancing research at the Faculty and to position the Faculty in an increasingly more competitive landscape of research funding.

We are however conducting this study independently of the Dean's office and our findings and recommendations will solely be based on our analysis.

The main outcome of this work is a report which will be presented to the Dean and then circulated among researchers at the Faculty of Law, University of Copenhagen. It is however likely that this report will reach audiences beyond the Faculty. Depending on our findings, we also contemplate producing a research article that presents our findings to a broader audience of legal researchers in Europe.

We expect this interview to take no longer than 30 minutes.

Research Ethics

We are going to ask you a set of question related to your journal/institution, etc. and how it uses notions of excellence or similar notions in its work of assessing research.

We would like record this interview in order to be sure that all citations of your statements are entirely correct.

We will not cite you by name, but by reference to your position at institution, journal, etc. For example we will cite “editor of national law journal states that”.

We are aware that the field we study is rather small and insiders are possibly able to identify you based on this information. We aim at anonymity but we cannot guarantee anonymity.

The recordings and notes from this interview and the study in general will be kept entirely confidential and only be made available to the research team consisting of professors at the University of Copenhagen Morten Broberg, Helle Krunke, Mikael Rask Madsen and Vibe Ulfbeck. In addition the administrator of the project, Mette Jarrum, will have access. The data will be stored at a secured location and retained indefinitely.

If you so wish, we can send you citations for your approval before finalizing the report.

We will of course also send you the result of this study.

Can you consent to this?
Background questions

Can you please generally describe the position of your journal, institution, etc in the field of legal research?

- [Qualifiers to help informant specify]
  - Nationally or internationally leading
  - Specialist or generalist research
  - Basic science or applied science
  - Normative or empirical

- What is the goal of your journal, institution, etc with regard to the broader research space of law?
  - What is the impact on new tendencies in research funding on the goal of your journal, institution, etc?
  - Have you changed the format/strategy in recent years to address new focus points in research?

- Can you briefly outline the evolution of your journal, institution, etc in the research landscape over the past decades.
  - Where did it come from?
  - Where is it now?
  - Where do you see it going?

- You hold a position that can influence research
  - What makes you qualified for that role?
  - What does it take to evaluate research?
  - What is your experience with having your own research evaluated by journals and funding bodies?
    - [tease out their biases with this question]

- As seen from your position as XXX in journal, institution, etc? what are the key dynamics and drivers of the development of legal research right now?
  - Nationally or internationally oriented research
  - Specialist or generalist research
  - Basic science or applied science
  - Normative or empirical legal research
  - Funding schemes?
  - Government intervention?

- What are respectively the barriers and carriers of current legal research?
  - [use same qualifiers as above]

Qualitative questions on research excellence

- What is the key criteria you employ with regard to qualifying research as excellent.
  - What criteria do you use to find a research passable?
  - What makes research not excellent?
  - What makes it not passable?

- Do you rank research according to some formal or informal scale?
What are the ranks you employ – formal or informal?
- excellence, very good, good, etc?

Is excellence a notion you use in your work?
- What criteria do you use to qualify something as excellent?

What other criteria are relevant for qualifying research than excellence?
- Practical importance or relevance?
- Gap in knowledge?
- Commitment to promoting young or new research/researchers?
- The standing of the researcher in question in terms of track record of high level research output in the area?
- Citation index of researcher in question?
- Author is holder of prestigious research grants?
- Personal knowledge of the researcher in question?
- Political considerations of being representative of a larger field of research?
- Willingness to take risk in research
- Novelty
- Rigor in the research
- Others

[Depending on responses to the above, ask further questions to those aspects identified as relevant]

[Depending on responses to the above, ask further questions to those aspects that (s)he does not find relevant]

Give an example of a piece of research you have found excellent in your work?
- Specify why this is particularly excellent.

When discussing excellence in research, it is often linked to individual researchers. But how do you see that? Is excellence carried out:
- Individually
- At Group level, ex research centre
- Or at institutional level, ex Faculty level?

Does it change the notion of excellence if we move from for ex individual to group level?
- Does it then involve more organizational matters, ex research management, training of young researchers.
- Does the standing of individual researchers – independent of the research – play a role?

When we discuss excellence is that a relative or absolute quality?
- Relative: it is better than most other?
- Absolute: it is simply the best?
- Or both?
  - Please specify and comment.

Quantifying questions
Official definitions of excellence tend to be compound definitions bringing together a set of criteria which in sum defines something as excellent.

On a scale from 0 to 4, where 0 is the lowest and 4 the highest, how well do you think the following definition of excellence captures what you would consider research excellence.

Excellence brings
  - new knowledge which changes paradigms
  - invents new fields
  - open opportunities with broad societal consequences
  - challenge accepted views and knowledge

Please comment on this definition and suggest positive and negative aspects of such a definition.

In one European country [UK REI], the highest score for research is given for research has the following definition

- **Quality that is world-leading in terms of originality, significance and rigour**

Please comment on this definition and suggest positive and negative aspects of such a definition.

Reviewers are in practice asked to identify evidence or potential for some of the following characteristics

- outstandingly novel in developing concepts, techniques or outcomes
- a primary or essential point of reference in its field or sub-field
- major influence on the intellectual agenda of a research theme or field
- application of exceptionally rigorous research design and techniques of investigation and analysis, and the highest standards of intellectual precision
- instantiating an exceptionally significant, multi-user data set or research resource.

On a scale from 0 to 4, where 0 is the lowest and 4 the highest, how well do you think such a definition captures what you would consider research excellence.

In another European country [DK], leading funding bodies use their own compound definitions of excellence.

On a scale from 0 to 4, where 0 is the lowest and 4 the highest, how well do you think such a definition captures what you would consider research excellence.

The research idea is ambitious and original and has the potential for real scientific breakthroughs in the relevant scientific field(s).

Reviewers are asked to use the following criteria when using the definition.
Is the research idea ambitious and original? Does it possess scientific or investigative relevance? Does it have the potential for reaching real scientific breakthroughs and making an impact? Please indicate the level of risk associated with this proposal.

In the same country [DK], another funding body uses another definition
On a scale from 0 to 4, where 0 is the lowest and 4 the highest, how well do think such a definition an approach to identifying excellence captures what you would consider research excellence.
  - The proposal is internationally outstanding and stands out with exceptional novelty, quality and innovativeness. It fully meets all scientific standards and excels many or all of these.

We would like to ask you about a final definition derived from assessing excellent research in Europe [ERC]
On a scale from 0 to 4, where 0 is the lowest and 4 the highest, how well do think such a definition an approach to identifying excellence captures what you would consider research excellence.
  - address important challenges
  - ambitious and beyond the state of the art
  - high risk/high gain
What is positive about this definition – what is missing?

Concluding questions
Quantifying or qualifying what is good or even excellent is a major point of discussion in contemporary science – and society more generally.

If you were to give advice to a young scholar to make it academia by the way of producing excellent research, what would be your advice?

If you were to give advice to a Dean about what is excellence in research, what would be your advice?
Any final comments you would like to make before we finish?

Thank you for taking time answering these questions and participating in this study.
END.
Sources

http://dg.dk/filer/CoE/Ansoegningsrunder/Terms%20of%20reference.pdf
http://www.ref.ac.uk/media/ref/content/pub/panelcriteriaandworkingmethods/01_12_2C.pdf
http://dg.dk/filer/CoE/Ansoegningsrunder/Terms%20of%20reference.pdf
https://www.youtube.com/watch?v=VqaGnryxHn0&index=9&list=PLvhR0FbIMLFCjZFrCuHZDZDzh131NowJ5j