



13th European Quality Assurance Forum

Broadening the scope of QA

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Call for contributions: paper submission form

Deadline 24 July 2018

Please note that all fields are obligatory. For a detailed description of the submission requirements and Frequently Asked Questions please consult the Call for Contributions.

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If there are several authors, please copy and fill in the fields for each author and indicate who is the corresponding author and who will be responsible for presenting the paper at the Forum.

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During the Forum, the full text of all papers presented at the Forum as well as the associated Powerpoint presentations will be published on the Forum website. If you do not wish your paper to be published, please indicate so here. This has no consequences on the selection of the papers. Please however note that all Powerpoint presentations will be published, regardless of whether the full paper is published.

Proposal

Title:

Changes in the German Accreditation System

A new equilibrium between universities, agencies and the German Accreditation Council

Abstract (150 words max):

Caused by the Federal Constitutional Court's rule, the German accreditation system underwent considerable changes in 2018 which assigned new roles to the German Accreditation Council (GAC), agencies and universities along with new tasks, duties and responsibilities. The GAC is now the accrediting body while agencies carry out the procedures requiring universities to deal with the GAC directly, without the agencies as arbitrators. These now have to be listed in European Quality Assurance Register for Higher Education (EQAR), integrating the German QA system closer into the European Higher Education Area (EHEA). In addition to changes in the legal basis, the role of academics in accreditation procedures and decisions has been strengthened. Expectations have thus been raised which will eventually lead to new ways of cooperation and communication. The developing relationship between GAC, universities and agencies as well as viewpoints on how a new equilibrium between them may be found will be discussed in this paper.

Has this paper previously been published/presented elsewhere? If yes, give details.



Text of paper (3000 words max):

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1. Never change a running system?

Since its beginnings in 1999, the German accreditation system relied on a two-tier-design with the German Accreditation Council (GAC) as the regulating body and a number of agencies that conducted the accreditation procedures¹. The main reason for establishing this kind of system was the structure of higher education in Germany, with the federal states (Länder) bearing the responsibility. First, the GAC accredited the agencies to ensure that they followed the specific German regulations, and, from a later date onwards, the agencies could also apply to the GAC to check their compliance with the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) for the membership in the European Association for Quality Assurance in Higher Education (ENQA) or registration in the European Quality Assurance Register for Higher Education (EQAR) at the same time. In doing so, the German accreditation system was consciously established as a competitive system to stimulate the agencies to operate efficiently on the one hand but also on a high qualitative level on the other hand; and also to give universities the free choice of what fits their purpose best. In addition to accrediting the agencies, the GAC was to continually monitor their activities and to regulate the market so that they all competed on a fair basis. The system was up and running in a fairly bureaucratic way (no surprise in Germany), with different kinds of implementation in the different federal states, and more or less grudgingly accepted by the academic community.

A spoke in the wheel of the lumbering wagon of German accreditation was that in 2008, one of the universities did not accept the non-accreditation of one of its study programmes. After the procedures of complaints and appeals had not led to an agreement, the institution decided to take the agency’s decision to court. As the agency’s decision was based on a private contract, but its outcome had consequences in the field of administrative law, the case made its way through the legal system, oscillating between private and administrative courts, right up to the Federal Constitutional Court. Finally, in 2016, the Federal Constitutional Court ruled on the issue, and its

¹ Further information: <http://archiv.akkreditierungsrat.de/index.php?id=44&L=1>



decision turned the accreditation system in Germany around. Among the elements that the court decreed to be changed from 1 January 2018 were

- the legal basis, i.e. the application of administrative and private law respectively,
- the role of academics,
- the roles of the GAC, the agencies and the universities.

2. Ring out the old, ring in the new - the legal basis

The Federal Court had called upon the Länder to take their responsibility for higher education quality and quality assurance seriously and to create a solid legal framework, valid for all of them. As a consequence, the federal states agreed on an Interstate Treaty² that describes the legal framework, the bodies and their responsibilities, and is operationalised by a Specimen Decree³. New roles for the GAC, agencies and universities were created, introducing change on all levels of the system and separating the application of private and administrative law.

The GAC becomes the accrediting body and an official authority. Thus administrative law with its own rules of complaints and appeals becomes valid for accreditation decisions. In its decision making committee, the academic members are doubled in number and carry the majority of votes whenever issues of academic quality are to be decided.⁴ The accreditation decisions are based on the reports on compliance with formal criteria on the one hand and the compliance with the criteria for content/academic quality on the other hand.⁵

The agencies conduct the procedures: they check the formal criteria, they set up the peer groups and organise the site visit, they coordinate the reports. The universities conclude a private contract with the agencies to “hire their services”, they need to apply for the accreditation to the GAC, handing in their self evaluations and the reports from the agency and the peer group.⁶ Under this construction, private and administrative law are neatly separated.

Consequently, these players are confronted with new tasks, new duties and new responsibilities. They need to drop old habits and become aware not only of complete changes concerning their inherent assumptions about the others’ objectives and hidden agendas but also in unwritten rules they have played along for more than fifteen years. Additionally, the relationships between them

² Interstate Treaty on the organization of a joint accreditation system to ensure the quality of teaching and learning at German higher education institutions (Interstate study accreditation treaty) (Decision of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany of 08/12/2016). Enacted on January 1, 2018;

https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2016/2016_12_08-Studienakkreditierungsstaatsvertrag-englisch.pdf (13 July 2018)

³ Specimen Decree pursuant to Article 4, paragraphs 1 – 4 of the interstate study accreditation treaty (Resolution of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany of December 7, 2017);

https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2017/2017_12_07-Musterrechtsverordnung-englisch.pdf (13 July 2018)

⁴ Interstate Treaty, Art. 9 (2), 1.

⁵ Interstate Treaty, Art. 9 (4)

⁶ Interstate Treaty, Art. 3 (2)



shift as the system gravitates into another direction. We will try to gauge why and how the equilibrium between the actors is going to change.

3. The role of academics⁷

Two issues were at the core of the Constitutional Court's decision: the need for a legal basis, and the role of academics, or, as they put it more precisely: the role of professors as the backbone of academia, of teaching and learning, of research and intra-university self-government. In agreement with the Court's decision, the Interstate Treaty and the Specimen Decree both contain regulations on how the system needs to be governed by professors when decisions on content-related criteria of study programmes or quality management systems are to be made. The Interstate Treaty changed the composition of the GAC to match the Court's ruling (c.f. 2.), the Specimen Decree describes size and composition of the peer groups⁸ as a result of that. But there is a slight flaw in the viewpoint of the Court: it does not regard members of the rectorate or board (rectors, pro-rectors, presidents or vice-presidents) as representatives of academia but as managers only – but when these persons return to their professorships after having been part of the university leadership, they become professors in the sense of the legal regulations again. We argue that regarding the evaluation and quality assurance of quality management systems, they will become important members of peer groups who can add the broader institutional view.

4. A new book of rules – reading the small print

4.1 Universities and Agencies

The universities' responsibility for the quality in learning and teaching remains the same, standing at the forefront of all issues in quality assurance⁹. Nevertheless, within the new regime of external quality assurance their activities will need to be enlarged: recurring to the ESG, the Länder regulations stress the importance of systematic and continuous improvement of study programmes as one of the focus points in accreditation procedures. Additionally, the Länder have followed one of the recommendations of the Council for the Sciences and Humanities¹⁰, the major institution for development in higher education, whose recommendations to the education system and to politics usually have impressive impact: all the study programmes have to be linked to the university's vision and mission in learning and teaching – something that not all the HEI have come round to formalising as such, even if it is part and parcel of their overall vision and mission. On the whole, although the regulations list specific criteria for study programmes, the expectation of a systematic approach to

⁷ Students and labour market representatives/representatives of professional practice are an inherent part of the accreditation system and of the procedures; they are represented in the peer groups and the relevant bodies, in accordance with the ESG. This article focuses on the roles of the academic peers as these have been addressed by the decision of the Federal Constitutional Court.

⁸ Interstate Treaty, Art. 3 (2) and Specimen Decree §25

⁹ "Realising the European Higher Education Area", Communiqué of the Conference of Ministers responsible for Higher Education in Berlin on 19 September 2003, http://www.ehea.info/media.ehea.info/file/2003_Berlin/28/4/2003_Berlin_Communique_English_577284.pdf (13 July 2018)

¹⁰ Wissenschaftsrat: Strategien für die Hochschullehre. Positionspapier 2017, p. 16 ff., <https://www.wissenschaftsrat.de/download/archiv/6190-17.pdf> (13 July 2018)



internal quality assurance is rising. This, in turn, is supposed to lead to increasing numbers of system accreditation with universities gaining a “self-accrediting” status.

The status of being system-accredited leads to a higher level of autonomy for the universities, as “self accrediting” can have a range of meanings: the universities can go along with the system by creating a system of programme accreditation that they organise on their own. They can also introduce other kinds of quality management systems, e.g. bench marking against the official standards plus their own quality standards as defined on their university profile or collaborating with international agencies to introduce new ideas into the internal QA system. Nevertheless, hand in hand with the growth of autonomy goes the growth of responsibility, diverging quality management systems or not. And in the end, after eight years, universities have to undergo system accreditation again, proving their ability to organise an external evaluation of their programmes’ quality on a regular basis and proving that they fulfil the criteria relevant for the quality of their provision.

Furthermore, the universities now are playing on a larger pitch – the Treaty has added a new kind of accreditation, the “alternative accreditation” as a third way, to the choice they hitherto had between programme or system accreditation.¹¹ By taking the “alternative accreditation” seriously, the universities are enabled to leave the well-trodden paths and try out different and innovative ways of external quality assurance. The universities can give their ideas free reign (as long as there are no clashes between them and the ESG, the Treaty and the criteria in the Specimen Decree) and experiment with formats in external QA that they see in use in other countries within the EHEA or beyond Europe. The try-out for the alternative accreditation introduced by the GAC as the “trial clause” in 2014, showcases some of the opportunities that open up: accreditation by international subject specific agencies, collegial quality audits in cooperation with universities in Germany or in neighbouring countries, networks of universities cooperating with agencies from other countries of the EHEA.¹²

After more than fifteen years in an accreditation system that many institutions felt to be more a straightjacket than a support, it may take some time for the universities, to open up the box they have been thinking in. Maybe some of them will put the “Institutional Quality Audit” in practice, a procedure based on the ESG, that has been proposed by the German Rectors’ Conference as early as 2012. But in this context it should also be mentioned, that only seven universities took part in the “trial clause” in 2104 and only four projects were selected to be realised. It remains to be seen if universities will choose the “third way” or if they will prefer to stay on the well-known path they had been on before.

Whatever type of accreditation they choose, in future universities will have to approach two partners: first of all, the agencies to conduct the procedures, secondly, the GAC to apply for accreditation.

Supposedly this will change the relationship between universities and agencies: agencies need to find the right balance between checking the formal criteria on the one hand and supporting the universities on the other hand, so that they can hand in documents to the GAC that are ready for the decision process. The political expectation is that the agencies attend the assessment process as long

¹¹ Interstate Treaty, Art. 3 (1), 23

¹² further information: <http://archiv.akkreditierungsrat.de/index.php?id=274&L=1> (13 July 2018)



as deficiencies of the study programmes are removed, so that conditions (spoken out by GAC) only come into question in exceptional cases.¹³ This point of view is supported by the fact that neither the Interstate Treaty nor the Specimen Decree provide a regulation for that. In fact the monitoring of the internal problem solving processes of the universities is a voluntary service of the agencies. If the universities will accept these agencies' offer will significantly depend on the practice GAC establishes for taking accreditation decisions.

This means a change in expectations of these partners: some authors have argued¹⁴ that competition between the agencies in Germany has led to a spiralling downward when it came to the cost/quality ratio. Now is the time for the agencies to prove that this assumption has not been accurate and will not be accurate in the future: The request of the Constitutional Court for a majority of academic votes in the peer groups as well as in their internal decision making bodies was fulfilled by the agencies from the very first and should be proof of the content-related, academically driven aspects in external quality assurance. It may be important to keep in mind that universities can choose if they want to employ an agency when undergoing "alternative accreditation" which adds yet another incentive for the agencies to recommend themselves to their clients by the quality of their activities. But quality has its price: Due to the regulations of public contracts in Germany the universities have to follow principles of economic feasibility while according contracts to the agencies. As long as the German accreditation system will be a competitive system, the point of cost will be more important than the point of quality.

Given the fact that all agencies may now conduct procedures in Germany if they are listed in EQAR, formally licensed by GAC and can deliver the accreditation reports in German (cf. 4.2), competition seems to have grown in the field. It remains to be seen (and to be evaluated as foreseen by the German states after five years within the new system) if this leads to German universities looking farther afield for an agency or if they prefer to contract agencies they have already experienced to be competent and reliable. Maybe there will be the trend to a stronger connection to the EHEA by working transnationally in quality assurance.

4.2 Agencies and Accreditation Council

Until the beginning of 2018, the GAC was responsible for the evaluation and authorisation of the agencies, for their monitoring and for regular checks on their decisions. Now GAC may say goodbye to the role of watchdog (as far as the evaluation of the agencies is concerned), as well as to the discussions on how each and every single agency interpreted the rules GAC had set.

Therefore, the agencies are on a longer leash, being able to act more independently. Being listed in EQAR is seen as prima facie proof of their compliance with the ESG; for activities in Germany they need to provide proof of their ability to conduct procedures there.¹⁵

We argue that the opening of the system to all EQAR-listed agencies may give the overall impression of creating a system that is an integral part of the EHEA, but that there is just a small chance of many international agencies becoming attractive partners for German universities. The major drawback is

¹³ Substantiation of the Specimen Decree, concerning Art. 24 (3/4)

¹⁴ Pietzonka, M. (2014): Gestaltung von Studiengängen im Zeichen von Bologna : die Umsetzung der Studienreform und die Wirksamkeit der Akkreditierung. Wiesbaden (Springer VS)

¹⁵ Interstate Treaty, Art. 3 (2)



the language: as accreditation is now a procedure for which all rules of administrative law apply, all the relevant documents have to be in German – either produced by a person within the agency with an excellent knowledge of the language or by a professional translator, adding to the cost.

As a positive effect, the integration of the German system of external quality assurance into the EHEA may become closer: until the end of 2017, the agencies active in Germany could combine the GAC-accreditation with the ENQA membership review or the EQAR assessment respectively. From 2018 on, they need to be listed in EQAR, conferring more importance on European structures. Focusing on the ESG when reflecting on their own activities may be a different kind of introspection; which might open up some insights that the detailed rules of GAC did not necessarily offer and that may lead to the enhancement of their practices.

4.3 Universities and the Accreditation Council

From now on, all universities will need to deal directly with the GAC, without the agencies as arbitrators – the “self-accrediting” institutions as well as the ones doing programme accreditation, contracting with the agencies. Beyond that, the option of “alternative accreditation” opens up innovative ways of accreditation without the support of an agency.

The universities each apply to the GAC to accredit their programmes or quality management systems, hand in the documents, and they are the ones to justifiably claim the scientific character of the GAC’s procedures. The Constitutional Court has made it abundantly clear that the accreditation system has to be based on the self-ruling aspects of science and academia.

Therefore the GAC needs to intensify the contact with universities. Until now, it met the “self-accrediting” universities at irregular intervals; but in future, these institutions will take decisions internally that otherwise (i.e. for programme accreditation) are the GAC’s responsibility. It is important to make sure that the internal accreditation decisions of the universities are comparable to the decisions taken by the GAC itself, because in both cases the study programme will receive the accreditation council’s seal.

We argue that new strategies and structures of communication need to be established to underpin the universities’ new role in the overall system. Exchange on a regular basis will be necessary, as the universities are about to be “co-financers” of the GAC (in addition to the Länder) by paying fees for accreditation decisions. This is in accordance with the Interstate Treaty¹⁶, and will encourage universities to be very clear about the quality of the administrative service they expect as “value for money” – although they will not and cannot expect positive accreditation decisions in exchange for a fee.

On the other hand, the GAC’s decision committee has moved closer to higher education itself: the number of higher education representatives (i.e. professors) has been doubled, plus an extra seat for the German Rectors’ Conference¹⁷. The professors will always hold the majority of votes in content-related decisions. Maybe academia will feel better represented with the body as it stands now, and the unwillingness to take part in accreditation procedures that still prevails in parts of the professorship will develop into a more accepting and even participatory attitude. Furthermore, it will

¹⁶ Interstate Treaty, Art. 3 (8)

¹⁷ Interstate Treaty, Art. 9 (2)



be interesting to watch how the different stakeholders will or will not form (temporary) alliances, depending on the issues to be discussed and to be decided. One of the topics which is of special interest to the students and the labour market representatives is the graduates' "competence for qualified employment"¹⁸ which may be seen from diverging points of view, with the professors being more inclined to refer to the "Qualifications Framework for German Higher Education Qualifications"¹⁹ than to the idea of "employability".

As a matter of course, eight professors – although chosen in the expectation that their academic backgrounds will allow them to cover most of the academic fields – will have to form an opinion on all of the accreditation decisions that GAC will have to make. Just estimating an average of 600 programme accreditations per year (plus system and alternative accreditations), this means a heavy workload for them, especially for those who are expected to have a closer look on the reports of programmes within their area of expertise. The validity and reliability of their judgement is at the core of the new accreditation system, and their position needs to become strong enough to create trust for the overall arrangements. We argue that having members of the universities to take crucial decisions on the quality of higher education provisions can become a means of strengthening the quality assurance system if they succeed in ensuring its credibility.

5. Conclusion

Is everything going to change? Will accreditation in Germany become entirely different from what it was before? At least the legal regulations now provide a framework that allows leeway which the partners within the system should make good use of. A re-start of accreditation can be a wake-up call or starting point to break out of the usual routine. One of the first steps for everybody should be a careful re-reading of the legal framework: the decision of the Federal Constitutional Court, the Interstate Treaty and the Specimen Decree all include fine nuances of "legalese", when it comes to "must", "should", "can" and "may". This can throw a new light on some of the passages.

We argue that the GAC is the actor within the new system that is least agile and flexible: as an administrative body, it needs to take a large number of decisions that are in due form. The steps leading up to these decisions are the contract between university and agency, the review, including a site visit and report by the peers and the agency, the application for accreditation at the GAC, made by the university. During the transition a new equilibrium between those three players– university, agency, GAC – needs to be found that leads to a gain in autonomy for the universities, an autonomy that is the basis for their own decisions on quality development.

¹⁸ Interstate Treaty, Art 2 (3) 1.

¹⁹ Qualifikationsrahmen für deutsche Hochschulabschlüsse (Im Zusammenwirken von Hochschulrektorenkonferenz und Kultusministerkonferenz und in Abstimmung mit Bundesministerium für Bildung und Forschung erarbeitet und von der Kultusministerkonferenz am 16.02.2017 beschlossen), German version only, https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2017/2017_02_16-Qualifikationsrahmen.pdf (13 July 2018)



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https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2016/2016_12_08-Studienakkreditierungsstaatsvertrag-englisch.pdf (13 July 2018)

Pietzonka, M. (2014): Gestaltung von Studiengängen im Zeichen von Bologna : die Umsetzung der Studienreform und die Wirksamkeit der Akkreditierung. Wiesbaden (Springer VS)

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“Realising the European Higher Education Area”, Communiqué of the Conference of Ministers responsible for Higher Education in Berlin on 19 September 2003, http://www.ehea.info/media.ehea.info/file/2003_Berlin/28/4/2003_Berlin_Communique_English_577284.pdf (13 July 2018)

Specimen Decree pursuant to Article 4, paragraphs 1 – 4 of the interstate study accreditation treaty (Resolution of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany of December 7, 2017);

https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2017/2017_12_07-Musterrechtsverordnung-englisch.pdf (13 July 2018)

Wissenschaftsrat: Strategien für die Hochschullehre. Positionspapier 2017, p. 16 ff., <https://www.wissenschaftsrat.de/download/archiv/6190-17.pdf> (13 July 2018)

Questions for discussion:

1. How can universities be encouraged to gain more autonomy and more scope for their own quality development under the new regime?
2. How will the new regulations impact changes of the internal quality management systems of universities? What can be the role of the agencies (based in Germany or in the EHEA) in this process?
3. Can options for change be enhanced by peer learning activities between similar systems of external quality assurance in the EHEA?

Please submit your proposal by sending this form, in Word format, by 24 July 2018 to QAForum@eua.eu. The file should be named using the last names of the authors, e.g. Smith_Jones.doc. Please do not send a hard copy or a PDF file.