

Printed matter AR 01/2011

Statement on Further Development of the Accreditation System

Resolution adopted by the Accreditation Council on 14 January 2011

The Accreditation Council welcomes the current discussion on further development of accreditation as being of support to its endeavour to structure external quality assurance in higher education in Germany in an effective and efficient manner. Different strands of discussion continue to culminate in this debate, ranging from a general criticism on accreditation and on how it has been implemented with changing focuses since the system was introduced, to the question of its effectiveness in light of the criticism concerning the academic feasibility of Bachelor's and Master's study programmes, which was expressed by the students during their protests regarding the implementation of the Bologna reform, and finally the demands to refocus the methods applied towards a more development-oriented approach with regard to quality assurance and to create new legal grounds for accreditation.

The measures called for differ not only in their aims but also with regard to whom they are addressed as well as their time horizon. Whilst procedural rules and criteria may be corrected by the Accreditation Council at short notice, modifications concerning the entire system require the federal states and the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) to adopt respective decisions and possibly also legislative measures.

The following two principles are of fundamental importance for considerations on the further development of accreditation in Germany:

In the further development of accreditation, it must be ensured that the objectives pursued with the procedures can be achieved.

The „Standards and Guidelines for Quality Assurance in the European Higher Education Area“ (ESG) must be observed in order to ensure that German quality assurance is recognised at international level. This includes in particular the higher education institutions' key responsibility for quality in teaching and learning as well as the independence of the accreditation agencies.

The statement includes the following aspects

- suggestions concerning the legal structure of the accreditation system,
- immediate removal of prohibitive regulations in system accreditation,
- further steps of action required in order to substantially enhance the accreditation system.

2. Accreditation in Germany: Purpose and Results

2.1 Purpose

On the basis of decisions adopted by the KMK and HRK on 3 December and 6 July 1998¹, accreditation for study programmes was initially introduced with the primary aim of assuring quality, transparency and comparability with regard to the Bachelor's and Master's study programmes which had been newly introduced at that time. Last but not least, this should serve to improve student mobility and to promote the employability of graduates. To this end, the organisations involved shifted their paradigms, replacing the quality assurance carried out previously as part of the state approval procedure for study programmes and their examination regulations based on general guidelines² by non-governmental and more flexible accreditation carried out on a regular basis.

The objectives set thus range from assuring the quality of a study programme in the strict sense and particularly important elements of quality, such as professional relevance to higher education policy objectives such as promoting student mobility, which are a merely implicit expression of the quality of a study programme. The process of restructuring the quality assurance system may therefore not be understood without considering the link between the reform of the approval procedure and quality assurance.

2.2 Results

As in other countries, since its introduction external quality assurance in Germany has been subject to criticism concerning efforts and costs, efficiency and recently also its legal structure.

A closer look at three central objectives, however - wider scope for action for higher education institutions with regard to study programme design, quality assurance in teaching and learning, transparency regarding the type and quality of study programmes - reveals that programme accreditation is evidently an adequate means that contributes to the achievement of these objectives. On one hand, this is proven by the differentiation in acade-

¹ *German Rectors' Conference*, Resolution adopted on 6 July 1998: Procedures for Accreditation; *Standing Conference of the Ministers of Education and Cultural Affairs of the Länder*, Resolution adopted on 3 December 1998: Introducing a Procedure for Accreditation of Bachelor's and Master's Study Programmes.

² Cf. regulations determined in § 9, para. 2 of the Framework Act for Higher Education (HRG), in its version applicable until 1998.

mic programmes which is promoted by accreditation, but also by the fact that more than 60% of the accreditation decisions are issued under certain conditions thus causing the initiation of a process of quality enhancement. In addition, a pleasingly small number of about 80 study programmes did not obtain accreditation due to considerable deficiencies³. Finally, the impact of accreditation on enhancing transparency in teaching and learning is twofold, since it offers on the one hand additional information by publishing accreditation results and on the other hand due to the fact that one criterion to be verified in the accreditation procedures concerns the assessment of the provision of comprehensive information for students. Even if the above-mentioned aspects may be regarded as strong evidence for a certain effectiveness of accreditation, extensive reliable data that may answer this question is still lacking. Research on the impacts of accreditation remains a desideratum for German quality assurance. Both, critics and advocates of accreditation have thus often limited themselves to expressing their opinion in a rather anecdotic way.

3. Further development

3.1 Ensuring legal grounds

The political and legal framework for accreditation is constituted by

- agreements concluded at European level;
- KMK resolutions and nationwide agreements as well as establishments such as the "Foundation for the Accreditation of Study Programmes in Germany";
- the laws regulating Higher Education in the German federal states.

They provide the higher education institutions with a reliable framework for facing the challenges of the Bologna Process. Continuity should therefore be ensured in this respect. By doing so, the federal states also fulfil their responsibility for structural homogeneity and quality in their educational system, which are necessary for ensuring equivalence of degrees and the students' possibility to transfer between higher education institutions. This is a role that needs to be fulfilled by the federal states also in the future. In order to enable the accreditation system to accomplish this purpose, a reliable legal foundation needs to be provided, separating more clearly governmental approval decisions (according to the specific regulations of the respective federal states) from quality assessments (accreditation), in order to prevent the procedures from being affected by the restrictions imposed by administrative law. Only in this way can the non-governmental orientation of accreditation required by the European agreements be ensured.

³ About 10 study programmes of those mentioned above obtained accreditation after extensive revisions carried out in a subsequent procedure.

In the current debate on the legal nature of accreditation it is widely considered that accreditation constitutes an administrative act and that accreditation agencies thus act as agents performing a public function.⁴ In contrast, the Accreditation Council has always assumed that accreditation agencies act as private-law bodies and that the agencies have never actually been legally entrusted with public functions.

The legal nature of accreditation may only be identified by analysing the normative structures of the accreditation system: At least before 2005 the private-law nature of the activities prevailed due to the fact that at that time it was not possible to assign the accreditation agencies and their decisions to a public authority with legal capacity.⁵ Even the entry into force of the German Law on the Establishment of a Foundation "Foundation for the Accreditation of Study Programmes in Germany" adopted on 15 February 2005 and amended on 1 April 2008 (ASG) has left the situation unchanged. From a general point of view, this law has indeed contributed to the legal consolidation of the whole system, but in this specific case no change has been brought about. The wording of § 2, para. 1, no. 1 ASG may not be unambiguous, but does not state that the Foundation entrusts the accreditation agencies with any "powers of a public authority". Instead, the explanatory memorandum for the law explicitly describes accreditation agencies as being bodies organised "and acting" under private law.⁶ From the above illustrated elements it cannot be presumed that the entrustment of the accreditation agency with public functions has ever been intended. In particular in view of the indisputably private-law nature of the agencies' activities before 2005, the change towards a henceforth presumably intended entrustment with public functions should have found a much clearer expression in the wording of the ASG itself.

Hence - and as a consequence of the fact that entrustment is given neither formally nor substantively - accreditation agencies do not need to be empowered to perform their tasks in a clearer and more detailed way than previously. The legal foundations currently determined in the ASG are in fact exhaustively sufficient for the given purpose.

The Accreditation Council asks the Federal States to provide uniform legal foundations for accreditation. Rules that differ from state to state result in different formal designs for accreditation procedures, depending on whether accreditation is regulated by administrative or private law.

3.2 Further Development of System Accreditation

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK) has charged the Accreditation Council with the task of carrying out an evaluation of

⁴ Administrative Court of Arnsberg, Resolution of 16 April 2010, 12 K 2689/08, para. 119 ff

⁵ See also *Heitsch* (Annotation 22), p. 138, *Pautsch*, Rechtsfragen der Akkreditierung, in: *WissR* 2005, p. 200 (209).

⁶ LT-Drucks. 13/6182, p. 12.

the system accreditation procedure after a five-year period. When system accreditation was introduced, the Accreditation Council furthermore decided to monitor the first two procedures carried out by each agency, performing additionally an assessment of the first six procedures in order to be able to identify and correct possible errors at an early stage.

At present, two procedures are at the programme random sampling stage and the relative decisions are thus expected for the first quarter of 2011. Other procedures are still at their initial stage. Therefore, no adequate information is at present available to serve as a basis for recommendations regarding the further development of system accreditation towards more effectiveness and efficiency.

3.2.1 Abolishment of Prohibitive Regulations

Nevertheless, immediate action is required, since - according to the higher education institutions - the slow implementation of system accreditation is substantially due to two reasons related to the way in which system accreditation is regulated.

In response to the current state of development of internal quality assurance systems, a certain number of higher education institutions have decided to postpone their applications. System accreditation requires the higher education institutions to meet high standards expecting them to provide evidence for an already implemented and operative internal management and quality assurance system for teaching and learning. This effect is amplified by the fact that awarding system accreditation under certain conditions is at present not admitted.

The Accreditation Council has hence decided to introduce the instrument of accreditation under certain conditions also for system accreditation.

The scope of the programme random sample and of the half-time random sample has proved to have a prohibitive effect. With regard to the significant effort required by system accreditation, many higher education institutions comment that the high number of study programmes to be assessed has a strong adverse effect on the attractiveness of system accreditation, which is in addition amplified by the substantial costs involved for carrying out the random samples. As a result, higher education institutions who are meanwhile experienced in carrying out procedures for programme accreditation prefer to adopt these due to the fact that less additional effort and expenses are required. The first reports on the experiences made by accreditation agencies and the higher education institutions involved also suggest that the value of the insights gained from programme random sample procedures does not depend on the number of samples assessed.

The Accreditation Council has hence decided to limit the scope of the programme random sample to three study programmes as a rule.

With regard to the conditions for access, accreditation agencies report unanimously that only those higher education institutions having many years of experience acquired in programme accreditation initiate procedures for system accreditation, regardless how many study programmes have obtained accreditation. Furthermore, due to the detailed regulations the impression may arise that the higher education institutions are not themselves responsible for assessing their own prospects for a successful system accreditation.

In this respect, the quantitative conditions for access to system accreditation set by Clause 5.2 of the resolution "Rules of the Accreditation Council for the Accreditation of Study Programmes and for System Accreditation" of 8 December 2009 do not take any effect.

The Accreditation Council has hence decided to cancel evidence for accredited study programmes as a condition for access to system accreditation.

3.2.2 Evaluation of system accreditation

The Accreditation Council expects an increase in system accreditation procedures after the abolition of the above-mentioned prohibitive regulations, which will allow an initial evaluation of the experience acquired in these procedures to be made as quickly as possible and to adjust the rules, if necessary. The objective is to ensure the comprehensibility and applicability of procedural rules and criteria for decisions and, where required, to enhance their suitability for the purpose of achieving stronger self-responsibility of higher education institutions for quality development and ensuring compliance with the given standards. As a first step, the Accreditation Council monitors the first procedures carried out in system accreditation in order to be able to gain first insights from an evaluation performed concomitantly.

From a present-day perspective, this evaluation will focus on:

- the effectiveness of the feature random sample
- the concrete structure of the procedures adopted by the accreditation agencies and
- the quality / preparation of the experts.

Furthermore, the Accreditation Council plans to revise the half-time random sample so that an assessment of internal quality development in higher education institutions can be performed with less effort.

3.3. Further Development of Programme Accreditation

The initial experience gained in re-accreditation procedures shows that only such procedures make it possible to investigate quality-related aspects such as the academic feasibility, the actual work load for students, the professional relevance of qualification objectives and the professional success effectively achieved by graduates. In comparison, first-time accreditation procedures are too laborious.

By summer 2011, the Accreditation Council - in co-operation with the accreditation agencies - will thus substantially revise the rules of procedure for first-time accreditation of a study programme in order to minimise the documentation required and to streamline the process of assessment.