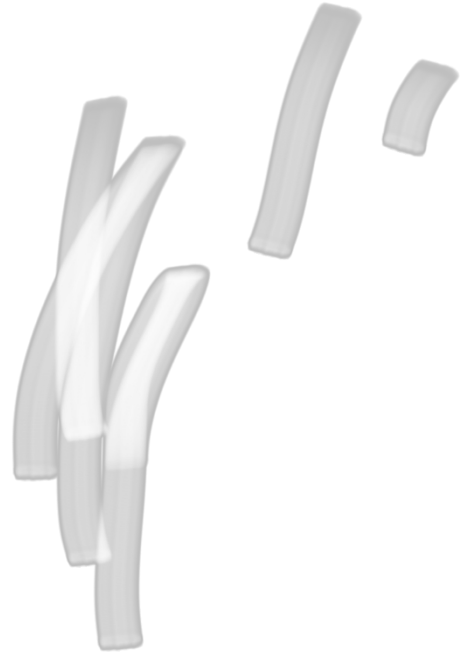


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**State Treaty  
on the Organization of a Joint Accreditation System for Quality Assurance in Studies  
and Teaching at German Universities (State Treaty on Study Accreditation)**

The State of Baden-Württemberg,  
the Free State of Bavaria,  
the State of Berlin,  
the State of Brandenburg,  
the Free Hanseatic City of Bremen,  
the Free and Hanseatic City of  
Hamburg, the State of Hesse,  
the State of Mecklenburg-Western  
Pomerania, the State of Lower  
Saxony,  
the State of North Rhine-  
Westphalia, the State of Rhineland-  
Palatinate,  
the State of Saarland,  
the Free State of Saxony,  
the State of Saxony-Anhalt,  
the State of Schleswig-Holstein,  
and the Free State of Thuringia



(hereinafter referred to as “the States”) conclude  
the following State Treaty:



## **Article 1 Quality Assurance**

(1) <sup>1</sup> Ensuring and developing quality in studies and teaching is primarily the responsibility of the universities. <sup>2</sup> They fulfill this responsibility through internal university measures for quality assurance and development and through the procedures set forth in Article 3, paragraph 1.

(2) Within the framework of quality assurance and development, the States shall jointly ensure that the equivalence of corresponding academic and examination achievements as well as degrees is guaranteed, along with the possibility of transferring between institutions of higher education.

(3) <sup>1</sup> Degree programs whose quality has been assured on the basis of this State Treaty shall be recognized in all states as having equivalent quality assurance under higher education law. <sup>2</sup> Other forms of quality assurance remain unaffected.

## **Article 2 Basis and Standards**

(1) Quality assurance and development must be ensured, particularly in bachelor's and master's degree programs, through compliance with the criteria set forth in paragraphs 2 and 3 and the professional relevance of the degrees.

(2) <sup>1</sup> Formal criteria include program structure and duration, program profiles, admission requirements and transitions between academic offerings, degrees and degree titles, modularization, mobility, and credit systems, the equivalence of bachelor's and master's programs to the previous diploma, state examination, and master's programs, and measures for the recognition of academic achievements in the event of a change of institution or program and of achievements obtained outside of higher education. <sup>2</sup> Article 4, paragraph 2, remains unaffected.

(3) The criteria relating to subject matter and content include

1. qualification objectives of a degree program corresponding to the intended degree level, including, among other things, scientific or artistic competence, as well as the ability to engage in qualified professional activity and personal development,

2. the alignment of the qualification objectives with a coherent program concept and its implementation through adequate resource allocation, appropriate qualifications of the faculty, and corresponding competency-based examinations, as well as the feasibility of the program, including self-study,

3. subject-specific content standards that reflect the current state of science and research,

4. measures to ensure sufficient academic success,

5. measures to promote gender equality and to compensate for disadvantages faced by students with disabilities or chronic illnesses,

6. the concept of the quality management system (objectives, processes, and tools) as well as the measures for implementing the concept.

(4) With regard to quality assurance and development, the applicable law of the state in which the institution is headquartered, and in the case of a branch, the applicable law of the state in which the branch is headquartered, must be observed.

## **Article 3 Procedures**

(1) The procedures for ensuring and developing quality in studies and teaching relate

1. to ensuring the effectiveness of internal university quality management systems with external participation (system accreditation),
2. to the quality assurance and quality development of individual degree programs with external participation (program accreditation); or
3. to other procedures agreed upon with the Accreditation Council and the respective state in accordance with the criteria of Article 2; for these procedures, paragraph 2, sentence 1, as well as the principles regarding appropriate academic participation set forth in this State Treaty and in the regulations pursuant to Article 4 shall apply mutatis mutandis.

(2) <sup>1</sup> The procedures under paragraph 1, items 1 and 2, shall be carried out

1. upon application by the institution of higher education, which must be submitted to the Accreditation Council or to the body designated in the procedure under paragraph 1, item 3,
2. on the basis of a self-evaluation report by the institution of higher education, which shall contain at least information on the institution's quality objectives and on the criteria pursuant to Article 2, paragraphs 2 and 3,
3. with the active participation of external independent experts from the social sectors relevant to quality assurance, in particular representatives from academia and professional practice as well as students,
4. through an assessment and the preparation of an expert report containing recommendations for decisions and evaluations in accordance with the standards set forth in the statutory regulation pursuant to Article 4, and
5. with the participation of university faculty members with relevant expertise.

<sup>2</sup> For the evaluation and preparation of the expert report pursuant to sentence 1, item 4, the universities shall, on the basis of private law, engage the services of one of the agencies registered with the European Quality Assurance Register for Higher Education (EQAR) and approved by the Accreditation Council pursuant to Article 5, paragraph 3, item 5. <sup>3</sup> The basis and criteria for the evaluation pursuant to sentence 1, item 4, shall be exclusively the provisions of this State Treaty and the regulations enacted on the basis of this State Treaty.

(3) <sup>1</sup> The German Rectors' Conference shall develop a procedure that ensures sufficient academic participation in the appointment of university faculty members within the meaning of paragraph 2, sentence 1, item 5. <sup>2</sup> The procedure requires the approval of the Foundation Board. <sup>3</sup> The agencies are bound by this procedure with regard to the appointment of experts within the meaning of paragraph 2, sentence 1, item 4.

(4) Prior to the final decision pursuant to paragraph 5, the institution shall be given the opportunity to comment.

(5) <sup>1</sup> The decision of the Accreditation Council concluding the procedure shall include

1. a determination of compliance with the formal criteria pursuant to Article 2, paragraph 2, and
2. a determination of compliance with the academic and content-related criteria pursuant to Article 2, paragraph 3.

<sup>2</sup> The basis and standard for the decision under sentence 1 are exclusively the provisions of this State Treaty and the regulations enacted on the basis of this State Treaty. <sup>3</sup> The determination under sentence 1, item 2, shall be decided on the basis of the expert opinion under paragraph 2, sentence 1, item 4; a reasoned deviation is possible. <sup>4</sup> The decision referred to in sentence 1 is an administrative act within the meaning of § 35 of the Administrative Procedure Act.

(6) <sup>1</sup> The proceedings shall be documented. <sup>2</sup> The expert opinions and decisions shall be published in an appropriate manner.

(7) The university may seek administrative review of the decision under paragraph 5.

(8) For the conduct of the procedures referred to in paragraph 1, the Accreditation Council shall charge fees to the higher education institutions in accordance with Article 6, paragraph 4.

## **Article 4**

### **Regulation Governing the Details of Program Accreditation (Program Accreditation Regulation)**

(1) To ensure and enhance the quality of study programs and teaching, the states shall, by means of statutory regulations, specify the details regarding the formal criteria under Article 2(2), the subject-specific and content-related criteria under Article 2(3), and the procedure under Article 3.

(2) <sup>1</sup> For individual fields of study, the states may, by means of statutory regulations, stipulate that the criteria under Article 2(2) shall apply to these fields of study in accordance with special provisions, in order to ensure and develop quality in study programs and teaching appropriate to the field of study. <sup>2</sup> Fields of study within the meaning of sentence 1 include, for example, artistic degree programs at art and music colleges, as well as degree programs that provide the qualifications required for a teaching position.

(3) <sup>1</sup> The states shall specify, by means of statutory regulations, the details of the procedures pursuant to Article 3(1)(1) and (2), in particular

1. the details regarding the initiation of proceedings, particularly with regard to the university's commissioning of the agency,
2. the establishment of a uniform framework and uniform standards for
  - a) the expert opinions pursuant to Article 3(2), first sentence, item 4, as well as
  - b) the audit report on compliance with the formal criteria,
3. the composition of the body responsible for the evaluation and preparation of the expert opinion pursuant to Article 3(2), first sentence, item 4,
4. the professional requirements for evaluators,
5. the period of validity of accreditation decisions (reaccreditation periods),
6. the conditions under which accreditation or reaccreditation may be revoked, as well as
7. details regarding the relationship with procedures that determine the eligibility of a degree program under professional licensing law, as well as the implementation of common training frameworks pursuant to Article 49a of Directive 2005/36/EC, as amended.

<sup>2</sup> The regulations referred to in sentence 1 shall provide that, in the specific determination of the subject-matter criteria applicable in the individual procedures, university faculty members within the meaning of Article 3(2), sentence 1, item 5, shall hold the majority of votes on the body responsible for the evaluation.

(4) The Länder may, by statutory order, further specify the details of the procedures pursuant to Article 3(1)(3).

(5) The states may, by statutory order, establish regulations regarding the fees to be charged by the agencies, in particular regarding the grounds for fees, the amount of fees, and the calculation of fees; fixed rates or framework fees may be provided for.

(6) The regulations pursuant to paragraphs 1, 2, 3, and 5 must be consistent to the extent necessary to ensure compliance with the obligations of the states under Article 1(2).

## **Article 5**

### **Foundation for the Accreditation Council**

(1) <sup>1</sup> The Foundation for the Accreditation of Degree Programs in Germany, established by the North Rhine-Westphalian Act on the Establishment of a Foundation "Foundation for the Accreditation of Degree Programs in Germany" of February 15, 2005 (GV. NRW. p. 45), last amended by the Act of September 16, 2014 (GV. NRW. p. 547), bears the name "Accreditation Council Foundation." <sup>2</sup> The Accreditation Council Foundation is a joint institution of the states for accreditation and quality assurance in study and teaching at German



universities. <sup>3</sup> The State of North Rhine-Westphalia shall amend its law establishing a foundation “Foundation for the Accreditation of Degree Programs in Germany” in accordance with the following provisions. <sup>4</sup> The Foundation has its seat in Bonn. <sup>5</sup> It maintains an official seal as regulated in the bylaws.

(2) Through the Foundation, the federal states perform their duties under Article 1, paragraph 2, and thereby fulfill their national responsibility in the higher education sector to ensure the equivalence of corresponding coursework and examination results as well as degrees, and to facilitate the possibility of transferring between institutions of higher education.

(3) The Foundation serves to fulfill the following tasks:

1. To accredit and re-accredit degree programs and internal higher education quality assurance systems, as well as other quality assurance procedures agreed upon with the Accreditation Council and the respective state based on the criteria of Article 2, by awarding the Foundation’s seal.

2. It establishes the requirements for the recognition of accreditations by foreign institutions, taking into account developments in Europe.

3. It promotes international cooperation in the areas of accreditation and quality assurance.

4. It reports regularly to the states on the development of the tiered degree system and on quality development within the framework of accreditation.

5. It authorizes agencies within the meaning of Article 3, paragraph 2, sentence 2. A prerequisite for authorization is the agency’s demonstration that it is reliably capable of performing the tasks of evaluation and preparing the evaluation report; for agencies registered with EQAR, this is presumed to be the case unless proven otherwise.

6. It supports the federal states in the further development of the German quality assurance system and submits proposals for the statutory regulations to be enacted pursuant to Article 4.

## **Article 6 Foundation**

### **Assets, Fees**

(1) <sup>1</sup> To fulfill the foundation’s purpose (Article 5), the foundation receives an annual grant from the states. <sup>2</sup> The amount is contributed by the states in accordance with the Königstein formula, as currently in force. <sup>3</sup> The grant shall be provided only to the extent that the Foundation’s administrative expenses are not covered by fees pursuant to paragraph 4. <sup>4</sup> The states’ contributions shall be due in two installments during each fiscal year, on January 1 and July 1, in accordance with the budget estimates.

(2) The Foundation is entitled to accept donations from third parties.

(3) Income from the Foundation’s assets and other revenues may only be used in accordance with the Foundation’s purpose.

(4) <sup>1</sup> To cover its administrative expenses, the Foundation may, in accordance with the detailed provisions of the Schedule of Fees, charge fees for the conduct of the proceedings under Article 3(1) and Article 5(3)(5). <sup>2</sup> The Schedule of Fees must specify at least the facts giving rise to the fee, the fee rate, and the due date. <sup>3</sup> Sections 3 through 5 and 9 through 22 of the Fee Act for the State of North Rhine-Westphalia shall apply mutatis mutandis, unless otherwise provided in the schedule of fees. <sup>4</sup> The schedule of fees shall be adopted by the Foundation Board with the participation of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany.



## **Article 7**

### **Articles of Incorporation; Rules of Procedure**

(1) <sup>1</sup> The Foundation shall adopt a charter, which shall be approved by the Foundation Board with a two-thirds majority of its members and shall require the approval of the Ministry of Innovation, Science, and Research of the State of North Rhine-Westphalia; it shall be published in the Official Gazette of the State of North Rhine-Westphalia. <sup>2</sup> The same applies to amendments to the charter.

(2) The Articles of Incorporation shall regulate, in particular, the representation of the Foundation's governing bodies, the principles of cooperation between its governing bodies, as well as the details regarding the duties and working methods of the Accreditation Council, the incompatibility between membership in the Accreditation Council and an agency, the budget and annual financial statements, the discharge of the Executive Board, and the evaluation of the Foundation's work.

(3) The Foundation's bodies may adopt rules of procedure in accordance with the Articles of Association.

## **Article 8**

### **Organs of the Foundation**

(1) The governing bodies of the foundation are

1. the Accreditation Council,
2. the Executive Board,
3. the Foundation Board.

(2) The governing bodies must take gender-specific implications into account in all proposals and decisions (gender mainstreaming).

## **Article 9**

### **Accreditation Council**

(1) <sup>1</sup> The Accreditation Council decides on all matters concerning the Foundation. <sup>2</sup> In particular, it accredits and reaccredits, in accordance with Article 3, paragraph 5, the degree programs and internal quality assurance systems at German universities; accreditation and reaccreditation may be granted subject to a condition or a reservation of revocation, or may be linked to a requirement or the reservation of a subsequent addition, amendment, or supplement to a requirement. <sup>3</sup> It makes its decisions by a majority of its votes. <sup>4</sup> The day-to-day business of the Foundation is deemed to be delegated to the Executive Board, unless the Accreditation Council reserves the right to decide on a specific category of business or on an individual case.

(2) <sup>1</sup> Members of the Accreditation Council are:

1. eight university professors from state or state-recognized universities in the Federal Republic of Germany, who must represent at least the four subject groups of the humanities, social sciences, natural sciences, and engineering,
2. one representative of the German Rectors' Conference,
3. four representatives of the states of the Federal Republic of Germany,
4. five representatives from professional practice, including one representative from the state ministries responsible for civil service and collective bargaining law,
5. two students,
6. two foreign representatives with experience in accreditation,



7. one representative of the agencies with an advisory vote.

<sup>2</sup> The members referred to in sentence 1, item 1, shall be appointed by the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (Conference of Ministers of Education and Cultural Affairs) for a term of four years, upon the recommendation of the German Rectors' Conference. <sup>3</sup> In making its proposal, the German Rectors' Conference shall ensure that the various types of higher education institutions and the diversity of disciplines are appropriately taken into account and that the university faculty members do not belong to a university administration. <sup>4</sup> The members referred to in sentence 1, items 2 and 5, shall be appointed by the German Rectors' Conference; the members referred to in sentence 1, item 3, by the Conference of Ministers of Education; the representative of the state ministries responsible for civil service and collective bargaining law referred to in sentence 1, item 4, by the Conference of Ministers of Education in agreement with the Standing Conference of Interior and the other members under sentence 1, items 4 and 6, jointly by the Conference of Ministers of Education and the German Rectors' Conference; and the member under sentence 1, item 7, by the agencies accredited by the Accreditation Council, and are then appointed by mutual agreement of the Conference of Ministers of Education and the German Rectors' Conference for a term of four years; the bylaws may provide for a shorter term of office for student members. <sup>5</sup> Reappointment and reappointment are also permitted multiple times. <sup>6</sup> If a member resigns prematurely, the new member shall be nominated and appointed as soon as possible until the end of the current term of office; exceptions are governed by the bylaws. <sup>7</sup> Upon expiration of the term of office, the members shall remain in office until the appointment of the new member; the second half of the second sentence of paragraph 6 shall apply *mutatis mutandis*. <sup>8</sup> The members may be removed by the Foundation Board for good cause. <sup>9</sup> The members referred to in paragraph 1, items 1 through 6, may transfer their vote to another member of the respective member group.

(3) <sup>1</sup> The Accreditation Council shall elect its chairperson and the chairperson's deputy from among the members referred to in paragraph 2, sentence 1, items 1, 2, or 3, for a term of four years. <sup>2</sup> Neither may belong to the same group as referred to in paragraph 2, sentence 1, items 1, 2, or 3. <sup>3</sup> Paragraph 2, sentences 5 through 7, shall apply *mutatis mutandis*.

(4) In votes on matters of the type specified in Article 3, paragraph 5, sentence 1, item 2, the members referred to in paragraph 2, sentence 1, item 1 shall have a double vote, which may only be cast as a single vote.

(5) <sup>1</sup> The members of the Accreditation Council serve in an honorary capacity. <sup>2</sup> They shall be reimbursed for their expenses and may receive an expense allowance.

(6) Further details, in particular regarding the requirements for resolutions and the consultation of additional advisory members, are governed by the bylaws.

## **Article 10 Executive Board**

(1) <sup>1</sup> The Executive Board implements the resolutions of the Accreditation Council and manages the day-to-day affairs of the Foundation; otherwise, the powers of the Executive Board are determined by the bylaws. <sup>2</sup> The Chairperson of the Executive Board represents the Foundation in and out of court and may, in individual cases or for a specific range of transactions, have a representative act on their behalf.

(2) The Executive Board consists of:

1. as chair, the Chair of the Accreditation Council,
2. the Vice Chair of the Accreditation Council,
3. the executive director of the foundation.

(3) Further details are set forth in the bylaws.



**Article 11**  
**Foundation Board**

(1) The Foundation Board shall oversee the legality and sound financial management of the Foundation's affairs by the Accreditation Council and the Executive Board.

(2) <sup>1</sup> The Foundation Board shall consist of:

1. six representatives of the states,
2. five representatives of the German Rectors' Conference.

<sup>2</sup> The members referred to in sentence 1, item 1, shall be appointed by the Conference of Ministers of Education and Cultural Affairs, and the members referred to in sentence 1, item 2, by the German Rectors' Conference for a term of four years. <sup>3</sup> Article 9, paragraph 2, sentences 5 through 7, shall apply mutatis mutandis. <sup>4</sup> The transfer of a vote to another member of the respective member group under sentence 1 is permitted. <sup>5</sup> Members of the Foundation Board may not simultaneously be members of the Accreditation Council.

**Article 12 Foundation**

**Office**

(1) <sup>1</sup> The Foundation maintains an administrative office at its headquarters, which is headed by the Executive Director. <sup>2</sup> It supports the conduct of the Foundation's business and is subject to the professional directives of the Chair of the Board of Directors.

(2) <sup>1</sup> The chairperson of the Executive Board is the supervisor of the Foundation's employees. <sup>2</sup> The collective bargaining agreements and other provisions applicable to employees in the country where the Foundation is headquartered shall apply to them. <sup>3</sup> With regard to the position of the Chairperson of the Executive Board, the general provisions of labor and civil service law shall apply.

**Article 13 Financial**

**Management, Accounting**

(1) The budgetary law of the Foundation shall be governed by Part VI of the State Budget Code of North Rhine-Westphalia, as amended, unless otherwise provided for in this State Treaty.

(2) <sup>1</sup> Prior to the start of each calendar year (fiscal year), the Executive Board shall draw up a financial plan in a timely manner, which shall be adopted by the Accreditation Council with the approval of the Foundation Council, whose approval requires the consent of a majority of its members pursuant to Article 11, paragraph 2, sentence 1, number 1. <sup>2</sup> The financial plan forms the basis for revenues and expenditures; an overview of the Foundation's positions shall be attached to it as an appendix. <sup>3</sup> If the State draws up a budget for two or more years, the same procedure shall apply with respect to the business plans. <sup>4</sup> The Foundation's business plan requires the approval of the Conference of Ministers of Education and Cultural Affairs and the Conference of Finance Ministers by a two-thirds majority.

(3) <sup>1</sup> Within six months after the end of the fiscal year, the Executive Board shall prepare the annual financial statements and submit them to the Accreditation Council and the Foundation Council, together with the auditor's report, the statement of assets, and the activity report. <sup>2</sup> Further details are governed by the bylaws.

(4) The Foundation's budget and financial audit are subject to review by the State Court of Auditors of the state in which the Foundation is headquartered.



(5) In all other respects, the legal provisions of the state in which the Foundation is headquartered regarding budgeting, cash management, and accounting, as well as auditing, and the administrative regulations issued in this regard shall apply.

#### **Article 14 Supervision**

<sup>1</sup> The Foundation is subject to the legal supervision of the Ministry of Innovation, Science, and Research of the State of North Rhine-Westphalia. <sup>2</sup> Section 76, paragraphs 2 through 4, of the Law on Higher Education Institutions of the State of North Rhine-Westphalia of September 16, 2014 (GV. NRW. p. 547) applies mutatis mutandis.

#### **Article 15 Evaluation**

The accreditation system shall be evaluated on behalf of the Standing Conference of the Ministers of Education and Cultural Affairs and the German Rectors' Conference, in particular with regard to the organizational structure and activities of the Foundation as well as other procedural regulations, at regular intervals and within a reasonable timeframe, for the first time five years after the entry into force of this State Treaty.

#### **Article 16 Transitional Provisions**

(1) <sup>1</sup> To the extent that program accreditation or system accreditation procedures have already commenced at the time this State Treaty enters into force, the law in effect prior to the entry into force of this State Treaty shall apply to the conduct of such accreditation procedures, subject to any other provisions in the statutory regulation pursuant to paragraph 2. <sup>2</sup> Program accreditation or system accreditation has commenced within the meaning of the first sentence as soon as the institution of higher education has concluded a contract with the agency for the performance of the program accreditation or system accreditation. <sup>3</sup> Agencies within the meaning of the second sentence are those agencies established pursuant to § 2(1)(1) of the Act on the Establishment of a Foundation "Foundation for the Accreditation of Study Programs in Germany" of February 15, 2005 (GV. NRW. p. 45), last amended by the Act of September 16, 2014 (GV. NRW. p. 547), have been accredited by the Foundation for the Accreditation of Study Programs in Germany.

(2) <sup>1</sup> The states are authorized to issue regulations setting forth the details regarding the transition from the previous law applicable to accreditation procedures to the law applicable under this State Treaty. <sup>2</sup> Furthermore, the states are authorized to regulate, by means of statutory regulations, the details regarding the continued application of the law in force until the entry into force of this State Treaty for the period between the entry into force of this State Treaty and the entry into force of the statutory regulations pursuant to Article 4. <sup>3</sup> The regulations referred to in sentences 1 and 2 must be consistent with one another to the extent necessary to ensure compliance with the obligations of the states under Article 1, paragraph 2.

#### **Article 17 Vocational Academies; Church Agreements**

(1) <sup>1</sup> The provisions of this State Treaty and regulations enacted on the basis of this State Treaty



shall apply mutatis mutandis. <sup>2</sup> Training programs at state and state-recognized vocational academies shall be deemed degree programs within the meaning of this State Treaty.  
(2) The provisions and agreements under state church law remain unaffected.

#### **Article 18 Final Provisions**

(1)<sup>1</sup> This State Treaty is concluded when at least 15 heads of government of the contracting states have signed it. <sup>2</sup> It enters into force on the first day of the month following the month in which the last instrument of ratification of a contracting state pursuant to sentence 1 has been deposited with the State Chancellery of the state where the Foundation is headquartered.

(2)<sup>1</sup> A state that has not signed the State Treaty by the time of its entry into force pursuant to paragraph 1, sentence 2, may accede to the State Treaty by signing it at a later date. <sup>2</sup> To this end, it shall submit to the State Chancellery of the country where the Foundation is headquartered a declaration signed by the head of government stating that the country wishes to accede to the State Treaty in the version in force at that time. <sup>3</sup> Accession shall be effective as soon as the acceding country has deposited the instrument of ratification with the State Chancellery of the country where the Foundation is headquartered.

(3)<sup>1</sup> This State Treaty may be terminated by any state by means of a written declaration to the other contracting states at the end of a calendar year, subject to one year's notice. <sup>2</sup> Termination must be declared in writing to the Chair of the Conference of Minister Presidents. <sup>3</sup> The termination by one state shall not affect the contractual relationship existing between the remaining states; however, any of the remaining states may terminate the contractual relationship at the same time within a period of three months after receipt of notification of the notice of termination given to the Chair of the Conference of Minister-Presidents.



For the State of Baden-Württemberg:

....., on .....2017

Guiprid Zusmann

For the Free State of Bavaria:

Berlin ..... den ? . 2017

[Signature]

For the State of Berlin:

B ..... the J. . 2017

Ludolf Linke

For the State of Brandenburg:

Berlin ..... den 16. . 2017

Dieter Wolter

For the Free Hanseatic City of Bremen:

Berlin ..... den ..... 2017

Arden Gieling

For the Free and Hanseatic City of Hamburg:

B ..... on ..... 2017

[Signature]

For the State of Hesse:

S ..... den 1.6. 2017

[Signature]

For the State of Mecklenburg-Western Pomerania:

S ..... on 6.6. 2017

[Signature]

For the State of Lower Saxony:

Berlin ..... den ...../.....2017

Meynen Whis

For the State of North Rhine-Westphalia:

....., on the 30th: .....2017

Handse Daff

For the State of Rhineland-Palatinate:

Selvia ..... den ..... 2017

Uwe Dreger

For the State of Saarland:

Ü....., on .....2017

M. S. LC

For the Free State of Saxony:

.....\*....., on .....2017

W. Müller

For the State of Saxony-Anhalt:

Berlin ..... , on .....2017

Reinhold

For the State of Schleswig-Holstein:

....., on .....2017

St. H.

For the Free State of Thuringia:

B ..... , on .....2017

Bodo R.

**Explanatory Memorandum to the State Treaty**  
**on the Organization of a Joint Accreditation System for Quality Assurance in**  
**Academic Programs and Teaching at German Universities (State Treaty on Academic**  
**Program Accreditation)**

## **I. General Information**

A central element of the Bologna Process, launched in the late 1990s, is external quality assurance in studies and teaching based on common European standards as a guarantee of high-quality education within the European Higher Education Area. On this basis, the German Rectors' Conference and the Conference of Ministers of Education and Cultural Affairs agreed in 1998 on the accreditation of tiered degree programs as a science-led quality assurance system for studies and teaching to ensure subject-specific content standards and the professional relevance of higher education degrees. In this system, the state fulfills its responsibility for higher education through the joint state structural guidelines for bachelor's and master's degree programs adopted pursuant to Section 9(2) of the Higher Education Act (HRG), which must serve as the binding basis for accreditation.

With the agreement on the foundation "Stiftung: Akkreditierung von Studiengängen in Deutschland" dated December 16, 2004, the states transferred the tasks of the Accreditation Council to a foundation to be established under the law of the State of North Rhine-Westphalia as a foundation under public law with legal capacity, namely "Stiftung: Akkreditierung von Studiengängen in Deutschland." They have likewise transferred to the foundation the performance of its tasks in implementing the joint structural requirements pursuant to Section 9(2) of the Higher Education Act (HRG) for bachelor's and master's degree programs at state and state-recognized universities, as well as for bachelor's degree programs at state and state-recognized vocational academies. North Rhine-Westphalia subsequently enacted the Act on the Establishment of a Foundation "Foundation for the Accreditation of Degree Programs in Germany" of February 15, 2005, which entered into force on February 26, 2005.

In a ruling dated February 17, 2016, the Federal Constitutional Court has now issued a landmark decision regarding the legal requirements for the accreditation system. In substance, the approach of mandatory external quality assurance of teaching through accreditation—which is not limited to academic criteria but also evaluates the organization of studies, academic requirements, and student success—is affirmed. However, shortcomings are identified in the legal implementation, as the decisions essential for accreditation must be made by the legislature itself. This

the standardization of substantive, procedural, and organizational requirements for accreditation, the scientifically appropriate composition of the stakeholders, and procedures for establishing and revising the evaluation criteria. In doing so, the court not only ruled that the provisions of the North Rhine-Westphalian Higher Education Act underlying the decision were unconstitutional, but also that the Accreditation Foundation Act and the reference to it in the relevant KMK agreements—which is based solely on executive authority—were unconstitutional. The (North Rhine-Westphalian) legislature was instructed to enact new regulations by December 31, 2017, that comply with the requirements of Article 5, Paragraph 3, Sentence 1 of the Basic Law in conjunction with the principle of democracy and the rule of law. Until that date, the existing regulations remain in effect.

Against this backdrop, the Standing Conference of the Ministers of Education and Cultural Affairs has advocated a coordinated approach among the states aimed at achieving a comprehensive, cross-state solution. The primary focus is on implementing the requirements set by the court, in particular the establishment of a sufficient legal basis for a quality assurance system. In a resolution dated June 17, 2016, the Conference of Ministers of Education endorsed accreditation as a form of external quality assurance. It confirmed the need for action on the part of the states and deemed the implementation of the necessary legal provisions in accordance with the requirements of the highest courts to be urgent. It also recognizes the need for further optimization of the accreditation system and has therefore agreed to examine, in addition to proposals for the legal implementation of the Federal Constitutional Court's requirements, proposals for making the external quality assurance system more flexible, granting universities greater autonomy, and streamlining procedures to reduce administrative burdens and costs.

This State Treaty establishes the legal basis for an accreditation system based on the following guiding principles:

- primary responsibility of universities for quality assurance and –  
Development in Teaching and Academic Programs

- Accreditation as an external, academically guided quality assurance system for studies and teaching to ensure academic standards and the professional relevance of higher education degrees
- Assumption of state responsibility for the equivalence of corresponding coursework, examinations, and degrees, as well as the possibility of transferring between universities pursuant to Section 9(2) of the Higher Education Act (HRG) within the framework of the accreditation system
- Program and system accreditation as accreditation instruments, as well as the option to further develop quality assurance through accreditation (experimental clause)
- Compatibility with the standards and guidelines for quality assurance in the European Higher Education Area (ESG) agreed upon at the European level.

**II. Regarding the individual provisions Article 1 , Quality Assurance**

The State Treaty refers exclusively to accreditation as a possible form of quality assurance and development in studies and teaching, which has proven itself in its current form and is not called into question by the decision of the Federal Constitutional Court. In addition to quality assurance through accreditation, there is scope for other quality assurance options (which, however, do not achieve the effects associated with the State Treaty).

Paragraph 1 underscores the primary responsibility of higher education institutions for quality assurance and development in studies and teaching. Paragraph 2 reflects the responsibility incumbent upon the state under § 9(2) HRG for the structural homogeneity of the higher education system as the basis for the recognition of degrees and the guarantee of mobility.

Paragraph 3 establishes the mutual recognition of degree programs that have undergone quality assurance on the basis of the State Treaty.

## **Article 2 : Basis and Standards**

Article 2 permits the inclusion of programs other than bachelor's and master's degree programs in the accreditation process, thereby reflecting developments in system accreditation, which in some cases already includes programs leading to state examinations. The provision is formulated in a procedurally neutral manner and thus applies to all forms of accreditation.

Article 2 adopts the previous objectives of accreditation: compliance with formal criteria, academic content standards, and professional relevance; however, it distinguishes between formal criteria on the one hand and academic content standards on the other, which include professional relevance, with a peer review process for consultation and evaluation provided for the latter.

The formal criteria (para. 2) briefly outline the core elements of the joint structural requirements of the federal states. The substantive criteria (para. 3) are listed within a catalog of objectives. This is based primarily on the Accreditation Council's existing regulations and specifies criteria that the Federal Constitutional Court has also expressly mentioned as permissible. Compliance with the formal and substantive criteria must be demonstrated by the institution in its self-evaluation report (see Art. 3, para. 2, no. 2).

Paragraphs 2 and 3 are limited to mentioning the indispensable criteria established by case law, while the specification of a corresponding statutory regulation by the states—which is also required under the guidelines of the Federal Constitutional Court—remains reserved (authorization basis in Art. 4). This relieves the burden on the State Treaty and reduces the risk of time-consuming amendment procedures. The uniformity required, including with regard to implementation, is to be ensured by a model ordinance to be developed within the framework of the KMK.

Paragraph 4 contains a legal clarification that state regulations, in particular, for example, examination regulations, are not superseded by the State Treaty and, if necessary, must also be taken into account within the framework of accreditation

. This clause is based on previous experience with the Accreditation Council and agencies.

### **Article 3 e Procedures**

Article 3(1) defines the possible accreditation instruments (system and program accreditation) without giving preference to any particular procedure, while at the same time opening the door to other accreditation pathways that are also subject to the criteria set forth in Article 2 (experimental clause). Furthermore, for these procedures, to which the criteria of Art. 2 apply, compliance with European quality standards (ESG) regarding academic participation is stipulated in accordance with the provisions of the State Treaty through the reference to para. 2, sentence 1. The Accreditation Council may, within the framework of consultation with the state, refuse its approval only if the procedures do not comply with Article 2, paragraph 2, sentence 1, as well as the principles regarding the appropriate involvement of the academic community set forth in this State Treaty and in the statutory instrument pursuant to Article 4.

Paragraph 2 sets forth the requirements for program and system accreditation procedures, including the involvement of all relevant stakeholders and university faculty members with relevant expertise in the evaluation, which is conducted by agencies listed by EQAR and approved by the Accreditation Council. For alternative procedures within the meaning of paragraph 1, item 3, the provisions of paragraph 2, sentence 2 (requirement for agency involvement) do not apply.

With regard to the procedure as well, the specific details are left to the legal regulations of the federal states in light of the reasons set forth in Article 2.

Paragraph 3: The development of a scientifically sound procedure for appointing the evaluating university professors is entrusted to the HRK, which already practices established and proven procedures within the framework of the DFG. More specific requirements regarding the professional qualifications of reviewers are to be set forth in the statutory regulations (Art. 4, para. 3, sentence 1, no. 4). This allows the State Treaty to dispense with detailed provisions

reviewers in the State Treaty. The procedure requires the approval of the Foundation Council, in which the states hold the majority. The agencies are bound by the procedure.

Paragraph 4 grants universities the right to submit comments prior to the final decision of the Accreditation Council.

Paragraph 5: In contrast to the accreditation procedure followed to date, a distinction will henceforth be made between, on the one hand, the evaluation and preparation of the evaluation report—including recommendations for decisions and ratings—to be carried out by the agencies (system and program accreditation), and, on the other hand, the accreditation decision, which will henceforth be made by the Accreditation Council. This measure serves to promote deregulation and increase efficiency, as it fosters a consistent decision-making practice based on the specified criteria by eliminating the previously often-varying agency standards. Furthermore, clear legal relationships are established between the agencies organized under private law—acting as service providers for the universities—and the Accreditation Council, which acts in a sovereign capacity. The accreditation decision is expressly defined as an administrative act (para. 5, sentence 4), against which administrative appeal is available (para. 7). Any deviation from the recommendation regarding the decision and evaluation must be justified.

The division of the decision concluding the procedure, as provided for in paragraph 5, into the determination of formal criteria on the one hand and substantive criteria on the other, follows the separation of these criteria in Article 2. However, this division also serves to streamline the procedure: The formal criteria do not require review by the agencies' experts; compliance with them is verified by the agency's administrative office itself, which prepares the review report. The evaluation concerns only the substantive and content-related part. This relieves the evaluators of the burden of examining purely formal criteria. Furthermore, the State Treaty also ties this separation to the determination of qualified majorities among the participating university faculty members. Such majorities are required only for decisions concerning substantive and content-related issues (Art. 4, para. 3, sentence 2).

Par. 8: For the conduct of the accreditation procedures, the Accreditation Council charges fees to the universities in accordance with the fee schedule (Art. 6, para. 4). This has the following consequences for the universities and the accreditation system as a whole: In addition to the fees for the accreditation decision, the institutions incur costs for the evaluation by the agencies. However, these costs are reduced compared to previous fees due to the elimination of the decision-making function, as the procedures at the agencies can be designed to be less complex, thereby reducing the workload. In addition, the State Treaty allows for the fees incurred by universities for the agencies' evaluations to be capped if necessary. Thus, the regulatory authority provides for the possibility of regulating agency fees in order to achieve the desired cost reduction (Art. 4, para. 5).

The transfer of accreditation decisions to the Accreditation Council is also fundamentally cost-relevant, as the review of expert reports containing decision and evaluation recommendations in preparation for the Accreditation Council's decisions entails a workload for the Accreditation Council's secretariat. However, this is offset by a significant reduction in workload and thus costs, resulting in particular from

- the significant decline in program accreditations due to the growing trend toward system accreditation
- the elimination of the previous procedures for monitoring the accreditation process
- the discontinuation of agency accreditation in favor of a formal admission procedure based on membership in the European Quality Assurance Register for Higher Education (EQAR), Art. 5(3)(5)
- the transition to less time-consuming reaccreditations, which is now virtually universal in program accreditation
- the extension of reaccreditation deadlines provided for in the relevant regulations.

Against this backdrop, it can be assumed that the costs incurred by both the higher education institutions and the system as a whole will at least not increase and may even decrease in the future as the aforementioned framework conditions take effect.

Paragraph 6 governs the documentation and publication requirements.

#### **Article 4 Regulation Governing the Details of Program Accreditation**

Article 4 contains the regulatory authorization to specify the formal and subject-specific criteria as well as the procedure, in particular to ensure uniform standards for the preparation of expert reports with recommendations for decisions and evaluations, as well as for the audit report on compliance with the formal criteria. These are a prerequisite for the prompt processing of program accreditations by the Accreditation Council and form the basis for the significantly more lenient approval process compared to the previous accreditation by agencies.

Possible content of the statutory regulations regarding the formal criteria includes the joint state structural requirements, possibly in a modified form. More detailed specifications regarding the procedure are to be aligned with the ESG.

Special provisions may be established for individual fields of study within the framework of the statutory regulations. This applies in particular to teacher education programs as well as artistic programs at art and music colleges (para. 2). Special provisions regarding accreditation procedures, e.g., for teacher education programs, may also be established within the framework of para. 3, item 7, if necessary.

Other matters reserved for the statutory regulations include, among others,

- the accreditation and reaccreditation periods
- the professional requirements for evaluators

- the conditions under which accreditation or reaccreditation may be revoked
- ensuring a majority of votes by university faculty members within the agencies.

Paragraph 4: The statutory regulations may also—where applicable, on a state-by-state basis—specify in detail the alternative accreditation procedures permitted under the experimental clause pursuant to Article 3(1)(3).

Paragraph 5 further provides for the possibility of establishing regulations within the framework of the statutory regulations regarding the fees to be charged by the agencies in order to limit costs. A corresponding legislative authority of the states arises from an ancillary competence under higher education law.

Paragraph 6 requires that legal regulations be uniform with regard to the rules on formal criteria, special provisions for certain fields of study, the procedure, and the fees to be charged by the agencies, to the extent that this is necessary to ensure state responsibility within the meaning of Article 1, paragraph 2, as the basis for mutual recognition and the guarantee of mobility

#### **Article 5 Foundation Accreditation Council**

Article 5 incorporates the content of the KMK agreement on the “Foundation for the Accreditation of Degree Programs in Germany” dated December 16, 2004 (exercise of the federal states’ overall state responsibility through the Foundation) and describes the Foundation’s tasks.

According to Art. 5(1), the existing Foundation for the Accreditation of Degree Programs in Germany will not be dissolved. Rather, this foundation will continue in the future as a joint institution of the states under the new name “Accreditation Council Foundation.” Legally, this will be implemented through an amendment to the North Rhine-Westphalia Foundation Act of February 15, 2005.

The foundation's primary task is the accreditation and reaccreditation of degree programs and internal university quality assurance systems, as well as other accreditation procedures approved under the experimental clause, through the awarding of the foundation's seal. Pursuant to Section 3(5), the previous accreditation of agencies is replaced by the licensing of agencies, which, by analogy with commercial administrative law, is made contingent upon proof of reliability. The concept of reliability is sufficiently defined in case law, so that it should be permissible within the framework of a professional regulatory scheme. For reasons of European law, agencies registered with EQAR are presumed to be reliable, although this presumption may be rebutted (reversal of the burden of proof).

The foundation's other tasks essentially correspond to the currently applicable Foundation Act.

#### **Article 6 Foundation Assets, Fees**

Essentially corresponds to the previous legal situation; the Conference of Ministers of Education and Cultural Affairs must be involved in the Foundation Board's decision-making regarding the fee schedule.

#### **Article 7 Bylaws; Rules of Procedure**

Corresponds to the previous legal situation

#### **Article 8 Organs of the Foundation**

Corresponds to the previous legal situation

#### **Article 9 Accreditation Council**

Article 9(1) governs the duties of the Accreditation Council, which, in particular, accredits and re-accredits degree programs and internal quality assurance systems at higher education institutions. In accordance with this new function, the academic community is now represented by eight university professors from state or state-recognized universities. This takes into account the Federal Constitutional Court's requirement for a composition that is appropriate to the academic community. The German Rectors' Conference is additionally represented by one member

. Paragraph 4 further provides for double voting rights for the representatives of the academic community in decisions regarding compliance with subject-specific criteria, in order to ensure the majority of the academic community required by the highest court's guidelines. In contrast to the previously applicable regulation, the affiliation of the academic representatives is specified as belonging to at least the four major subject groups of the humanities, social sciences, natural sciences, and engineering. This regulation leaves room for representatives of other fields of study not covered herein (e.g., art).

#### **Article 10 e Executive Board**

Consistent with the current legal situation

#### **Article 11 Board of Trustees**

Corresponds to the current legal situation

#### **Article 12 Foundation Office**

Corresponds to the previous legal situation

#### **Article 13 Financial Management, Accounting**

Consistent with the current legal situation and KMK resolutions. The requirement regarding the quorum for approval of the Foundation's financial plan refers to the FMK.

#### **Article 14 e Oversight**

Corresponds to the previous legal situation

#### **Article 15 Evaluation of the Accreditation System**

This provision provides for a regular evaluation of the accreditation system on behalf of the KMK and the HRK.

#### **Article 16 Transitional Provisions**

According to Article 18, the State Treaty enters into force in the month following the deposit of the last instrument of ratification. For the period following this entry into force, it must be determined which legal provisions apply to accreditation procedures that are still ongoing and have not been completed at the time the State Treaty enters into force

. According to paragraph 2, these are the provisions that applied to the accreditation of degree programs until the entry into force of the State Treaty.

Furthermore, after the State Treaty enters into force, the regulations under Article 4 must be enacted. For the period between the entry into force of the State Treaty and the entry into force of these regulations, there is a need to decide flexibly which law regarding accreditation shall apply during this period. The regulatory authority under paragraph 2 takes this into account.

### **Article 17 Vocational Academies; Churches**

Paragraph 1 ensures that the degree programs of state and state-recognized vocational academies leading to bachelor's degrees, which have previously been included in the accreditation process, are incorporated into the State Treaty.

Paragraph 2 provides for exceptions for degree programs subject to regulations or agreements under state church law. This applies to theological degree programs and ensures compliance with the "Key Points for the Study Structure in Degree Programs in Catholic or Protestant Theology/Religion" of December 13, 2007, regarding accreditation, which were adopted in consultation with the churches.

### **Article 18 Final Provisions**

Paragraph 1 corresponds, with editorial adjustments, to the provision in the State Treaty on the Joint Institution for University Admissions, excluding the provisions therein regarding the consequences of the State Treaty's expiration.

Paragraph 2 contains an accession clause.

If this State Treaty is terminated by one state, the contractual relationship between the remaining states remains unaffected (Paragraph 3).