

More Uniform, Transparent, Effective?

Procedures for the Assessment of Qualifications Acquired Abroad in Transition

Introduction

Although Germany can look back on a decades-long history of immigration, the subject of the accreditation (or 'recognition' in German: *Anerkennung*) of qualifications that have been acquired abroad has been given increasing attention only in roughly the last five years. The issue is becoming volatile because of demographic changes which will in the future only increase the shortage of skilled workers that is already noticeable in Germany and other European countries. According to the calculations of the Cologne Institute for Economic Research [German acronym: IW], in 2011 there was already a shortage of over 158,000 highly qualified workers, particularly in the industrial sector of the MINT professions (mathematics, informatics, natural sciences, and technology) (BMW 2012a).

In order to counteract this shortage of skilled workers, in June 2011 the German federal government reached an agreement on five strategies for tapping skilled workers.¹ Included in this is, among other things, the improved full utilization of domestic labor potential, particularly in the population of immigrant background (BMW 2011a),² which in 2009 included approximately 15.7 million people. Approximately three million people in this group had occupational qualifications acquired abroad (BMW 2011b), but only among roughly 500,000 of these people was their qualification recognized (Kaufmann 2012).

Often the educational certificate acquired abroad cannot be put to use in Germany, since the acquired qualifications are either not recognized or the accreditation procedure appears unpromising. This means that many educated foreigners are employed below their level of qualifications, as a result of which valuable potential ("human capital") is wasted and the integration process for the respective individual is made noticeably more difficult.

Against this background, in 2011 the German federal government introduced a legislative initiative which led to the passage of the "Act for the Improvement of the Establishment and Recognition of Occupational Qualifications Acquired Abroad" (in short, the Professional Qualifications Assessment Act – BQFG). The BQFG, which the *Bundesrat* approved on November 4, 2011, and which went into effect on April 1, 2012, is aimed at making the practice of accrediting

qualifications acquired abroad more uniform, transparent and effective and thus enabling better integration of the holders of such qualifications into the German labor market.

Structure of the Policy Brief

Published on the occasion of the coming-into-effect of this act, the present policy brief is devoted to the subject of the accreditation in Germany of educational certificates acquired abroad. In the following, first an overview is provided of the previous regulations on the accreditation of certificates acquired abroad and specific problems are addressed which have emerged from the previous practice of accreditation. In this context it should be made clear why a legal basis for recognizing qualifications acquired abroad seemed absolutely essential. Then the BQFG is presented in detail before a critical look is taken at the new regulations that have been introduced as part of this act: Does the law really represent a suitable method for solving the problems of previous accreditation practice and making it more effective? Or does the BQFG fall short of acquiring, as planned, skilled workers and of enabling more people to obtain recognition of their qualifications acquired abroad? Are there, parallel with the law, efforts underway to change the accreditation system itself? On these and other related issues the present policy brief offers an overview.

Evolution of the Accreditation Debate

Alongside the previously cited demographic pressure, lobbying by industry and increasingly public debate on the inadequate accreditation system in Germany has led to the need for political action. Bettina Englmann's and Martina Müller's study "Brain Waste" (2007) was an important step towards developing the BQFG, because it analyzed for the first time in detail the legal foundations as well and the accreditation competencies and possibilities with respect to qualifications acquired abroad. As a result, the study was the first official document which focused attention on the overall scope of the deficient and intransparent accreditation policies in Germany for certificates acquired abroad. At the same time, it showed that accreditation in Germany also depends on the immigrant's origin and not simply on their qualifications (Re-

iche et al. 2010: 15). Numerous other studies followed which dealt in particular with the *Bundesland*-related specifics of accreditation practice. Also, they examined the broader context for accrediting qualifications acquired abroad.³

Parallel to the study “Brain Waste,” with the publication of the “National Integration Plan” in 2007 the attempt to come to terms politically with the improvement of the situation relating to the accreditation of qualifications acquired abroad began (Bundestagsdrucksache [Bundestag document] 17/6919: 1). Nonetheless, in the “National Integration Plan” from 2007 the subject remained on the whole of secondary importance (Integrationsbeauftragte [Integration Commissioner] 2007), something that changed at the Dresden Education Summit in 2008. Here the heads of government of

the federal government and the states (*Bundesländer*) agreed to improve the accreditation in Germany of certificates acquired abroad (Maier et al. 2012: 3). Increasing criticism of the deplorable state of the accreditation system led at the end of 2009 to the “Benchmark Paper for the Improvement of the Establishment and Accreditation of Occupational Qualifications and Certificates Acquired Abroad.”

Parallel to the political debate at the national level, guidelines for practice were developed in most of the *Bundesländer* intended to serve as guidance for the disseminators of information.⁴ These guidelines provide information about the responsibilities and sequences involved in the procedure for establishing competence and in the accreditation procedure. While in 2007 such guidelines were still rare, currently 11 *Bundesländer* now have such instructions for practice.⁵

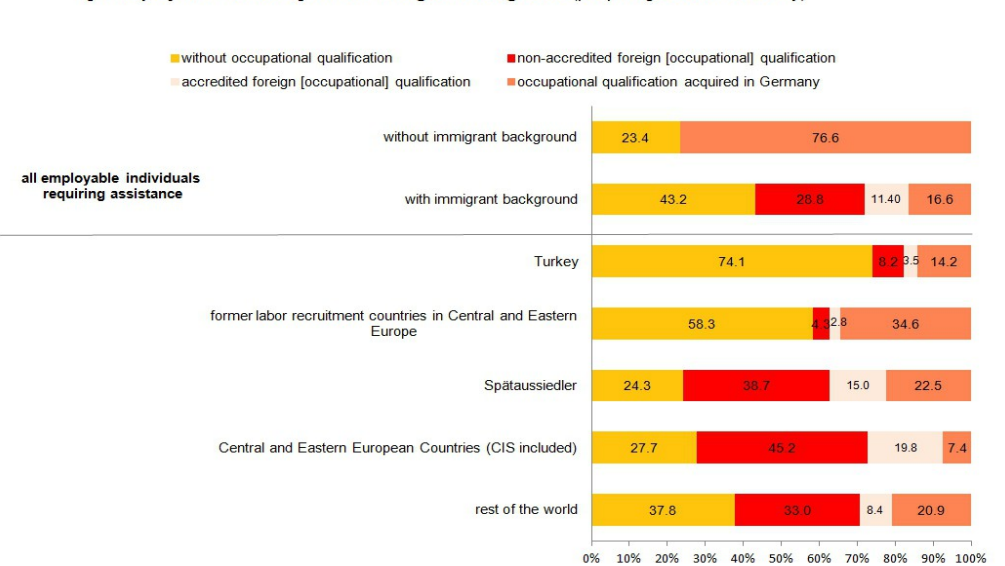
Until March 2011 the federal government was involved in developing draft legislation leading to the passage of the Professional Qualifications Assessment Act on November 4, 2011. This went into effect on April 1, 2012 (BMBF 2011). Now for the first time there is a nationwide uniform legal basis for the accreditation of qualifications acquired abroad.

The Importance of Accreditation

In the context of the discussion on the accreditation of qualifications acquired abroad, various scholarly studies have made it clear that there is a connection between the recognition of immigrants’ qualifications acquired abroad and successful entry into the German labor market. Brüssig et al., for example, in 2009 studied the economic costs of a deficient structural integration of immigrants in relation to the connec-

tion between the drawing of social assistance pursuant to the German Social Insurance Code II (German acronym: SGB II; “Hartz IV”) and having an immigrant background. On a national average, 25% of SGB II recipients are migrants (cf.

Figure 1: Possession and Accreditation of an Occupational Certificate among Recipients of ALG II (Arbeitslosengeld) [Unemployment Benefit II] with an Immigrant Background (people aged 25 or older only)



Source: Brüssig et al. 2009: 7; figure in English elaborated by the editorial staff of focus Migration

Fig. 1). Of these, only 11.4% have an accredited certificate, while 28.8% have none (Brüssig et al. 2009: 7).

In carrying out their study, the authors established that people with qualifications acquired abroad who were unable to obtain accreditation of their certificates were just as unsuccessful in the labor market as those immigrants who lacked an occupational certificate altogether. With the accreditation of a certificate acquired abroad, the chances of finding employment, on the other hand, increased by 50% (Brüssig et al 2009: 8). In addition to ensuring Germany’s need of skilled workers, an improved situation for accreditation also pays off as far as social policy is concerned by better integrating immigrants into the labor market. Integration into employment matching one’s level of education accelerates the entire integration process (Schneider/Pfund 2009: 10f).

Moreover, the institutional confirmation of an equivalence between a foreign and a German educational certificate and the accompanying acknowledgement of qualifications acquired so far has a positive influence on the self-esteem of immigrants, since their (life) achievement up to that point is thereby recognized. The recognition of foreign qualifications in this sense provides advantages to both sides: to the German labor market through full utilization of the qualification potential of immigrants and to the affected immigrants themselves, since the latter experience an acknowledgment of their achievement hitherto and their labor market opportunities are considerably improved. In this way stabilization in employment areas far below one’s actual level of qualifications may be avoided (Van Hausen 2010: 191). Despite the repeatedly confirmed significance of the recognition of for-

eign qualifications for the (structural) integration of immigrants, the accreditation procedure system in Germany has been characterized up to now by numerous difficulties and obstacles. These will be discussed in the following.

Basic Principles Thus Far of the Accreditation of Qualifications Acquired Abroad

Accreditation practice in Germany is marked by federalism, because as an educational topic it falls in the area of the sovereignty of the *Bundesländer*. Although the procedures for the accreditation of qualifications acquired abroad (may) differ therefore in principle from one *Bundesland* to the next, there are three basic principles that apply nationwide and that will be presented in the following.

Academic Versus Occupational Recognition

Until now, educated foreigners, independent of their nationality, only had a legal claim to an academic accreditation procedure. This procedure verifies the equivalence of school and university certificates and achievement in order that access may be granted in Germany to further training or study courses. For this purpose, even before the coming-into-effect of the BQFG, despite the presence of decentralized struc-

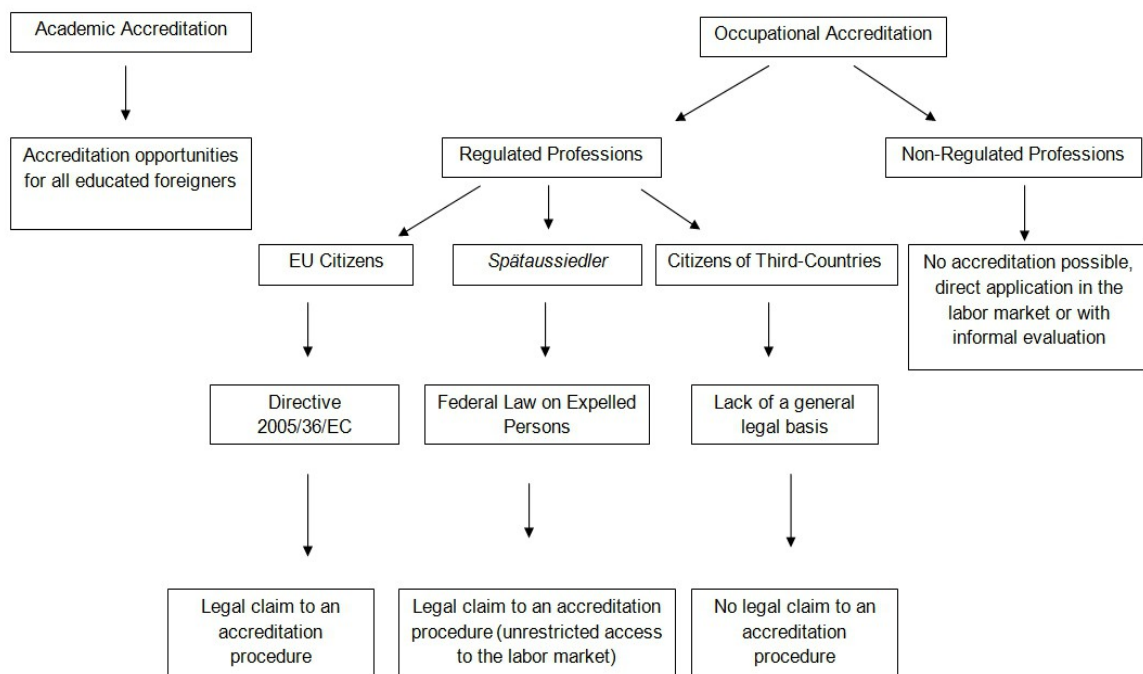
tures attributable to educational federalism, there were clear regulations for applicants from all countries of origin.

The *occupational accreditation procedure*, on the other hand, serves the aim of allowing immigrants in Germany to (continue to) work in the occupation they have learned. In contrast to EU citizens and *Spätaussiedler* [people of German origin emigrating from eastern Europe after 1980: trans.], however, who could invoke the 2005/36/EC directive and the German Law on Expelled Persons [German acronym: BVFG], the citizens of third countries had until now no legal claim to such a procedure. Each competent accreditation agency could decide independently if on a voluntary basis it should accept or reject the application of the third country citizen for an appropriate accreditation procedure.

Regulated Versus Non-Regulated Professions

To this can be added the subdivision into regulated and non-regulated professions. In *regulated professions* (such as that of physicians and teachers),⁶ the opportunities for access are limited by legal and administrative provisions, whereby the aim is to ensure quality standards in the exercise of a profession. In order to be allowed to work in a regulated profession, any educated foreigner must have their qualifications acquired abroad accredited in Germany. By contrast, the exer-

Figure 2: Basic Principles before April 1, 2012



Source: Author's own compilation, 2012.

cise of a *non-regulated profession* requires no such accreditation.⁷ Theoretically then, access to the labor market in the case of these professions is entirely open to holders of a certificate acquired abroad. Since these previously acquired qualifications cannot, however, be properly assessed by employers in the labor market, the chances of a job applicant are increased if the certificate is officially assessed and graded in terms of the known German (training or) educational system (KMK 2011).

The Principle of Origin

Before the BQFG came into effect, the influence of the origin of an educated foreigner played a decisive role in the recognition of qualifications acquired abroad, since, as previously mentioned, there was a legal basis of such recognition only in the case of EU citizens and *Spätaussiedler*.⁸ Citizens of third countries were legally excluded from the accreditation procedure. Figure 2 offers an overview of the basic principles applicable until now.

Actors in the Accreditation Practice

Responsible for carrying out the accreditation procedure are regional accrediting agencies. In Germany as a whole there are more than 600 of these. Most of these agencies consist of court divisions, ministries and other official agencies (AG 2011: 8). In general, the principle applies that the procedure for the recognition of qualifications acquired abroad lies in the field of jurisdiction of those official authorities which are generally responsible for the training and exercise of specific professions (BMWi 2012b). Which authority is responsible in each case is also determined by the place of residence, the particular profession, and the *Bundesland* where the applicant poses his demand for accreditation.

A physician resident in the *Bundesland* Hamburg, for example, who is in possession of a certificate acquired abroad must for the accreditation of his qualification turn to the examination authority for the healing professions (Landesprüfungsamt für Heilberufe) in Hamburg rather than to the State Chamber of Physicians for Hamburg (Landesärztekammer). While the examination authority is the only accrediting agency in Hamburg which carries out verification of the equivalence of a foreign medical degree and grants the license for practicing a profession,⁹ only the examination of the applicant's state of knowledge and the accrediting of medical specialist training completed in Germany falls within the area of competence of the Hamburg Chamber of Physicians (Braun 2011: 40). For a person with an educational certificate acquired abroad who lives in Lower Saxony but wishes to work in Hamburg, it is not the place of residence that is decisive but rather the place of business, in other words, Hamburg in this case. The person also needs to apply to the *Landesprüfungsamt für Heilberufe*. In Bavaria, for example, there are seven different agencies for the granting of a medical license and their scope of authority varies from one region to the next.¹⁰ Since so far there has been no nationwide agency which gathered in the information on the individual accrediting procedures in the various *Bundesländer*, in the

past there was often a lack of clarity with regard to the question which authority had to be addressed and was responsible for the accreditation procedure.

Reasons for Establishing a New Legal Framework

Inequality in Accreditation Practice

The missing legal basis up to now of accreditation procedures for qualifications acquired abroad, especially in the case of citizens of third countries, led in the past to significant anomalies and inequalities in accreditation practice. The International Placement Services (ZAV) of the German Federal Employment Agency (BA) in its final report for 2009 describes the "inadequate state of information relating to the complex accrediting options and competences in Germany" (Schneider/Pfund 2009: 9). The variety of divergent regulations of the federal government, the *Länder* and the European Union constituted one reason for the confusion and intransparency of the system in which immigrants had to find their own way to accreditation of their qualifications acquired abroad. Fragmented areas of competence and a lack of uniform administrative practice in the various *Länder* resulted from the lack of nationwide uniform standards and criteria for assessment and decision-making practice. The decisions made concerning accreditation procedures were not binding throughout Germany but instead applied only for the specific *Bundesland* in which they had been reached.

The case of doctor Yin Yu described by Ackermann/Meier (2011) illustrates the varying possibilities of qualifications accreditation from one *Bundesland* to the next. Ms. Yin Yu tried in vain to obtain a license¹¹ in Baden-Württemberg, whereas in Bavaria she obtained one without difficulty. The reasons for this were different criteria for the granting of a license to practice. In Baden-Württemberg the accrediting agency based itself on the content and duration of her studies; the agency competent in Bavaria, on the other hand, based itself on the university at which she had studied (Ackermann et al. 2011). A positive accreditation certificate was valid only in that region which had confirmed the equivalence of an applicant's qualifications, which in turn prevented any mobility within Germany itself.

Another shortcoming of accreditation procedures so far has been their length. Because there was no fixed period for a decision, in many cases very lengthy procedures occurred, some of which lasted for years. Overall, the old system can be described as intransparent and inefficient. It disadvantaged certain groups of immigrants structurally, especially because of the lack of a general legal claim to the performance of an accreditation procedure (Integrationsbeauftragte [Integration Commissioner] 2010).

Lack of Information

Many educated foreigners who wanted to have their certificates acquired abroad accredited in Germany failed, for instance, already during their search for the competent accrediting agency (Englmann et. al. 2007: 102). Hadeed (2004: 57)

was able to show that structural obstacles could prevent integration into the labor market even in the case of highly qualified immigrants. A mere 12% of the 260 respondents¹² interviewed by him had been informed of the possibility of having a certificate acquired abroad accredited in Germany. In addition, shortages of information also led to failure over the course of the accreditation procedure. There was uncertainty in particular concerning the issue of the sequence, the length, the compensation mechanisms, and the costs of the procedure (Braun 2011). High financial costs arose, for example, from the procedure fees at the accrediting agency, because of the translation of certificates, or because of the need to complete several months of post-qualification measures. Many of those affected were unable to come up with the financial resources required (Brussig et al. 2009: 10). Becoming aware of these shortcomings and shortages ultimately led to an insight into the need for a legal foundation for changes, which was then created by the passage of the BQFG.

The Professional Qualifications Assessment Act

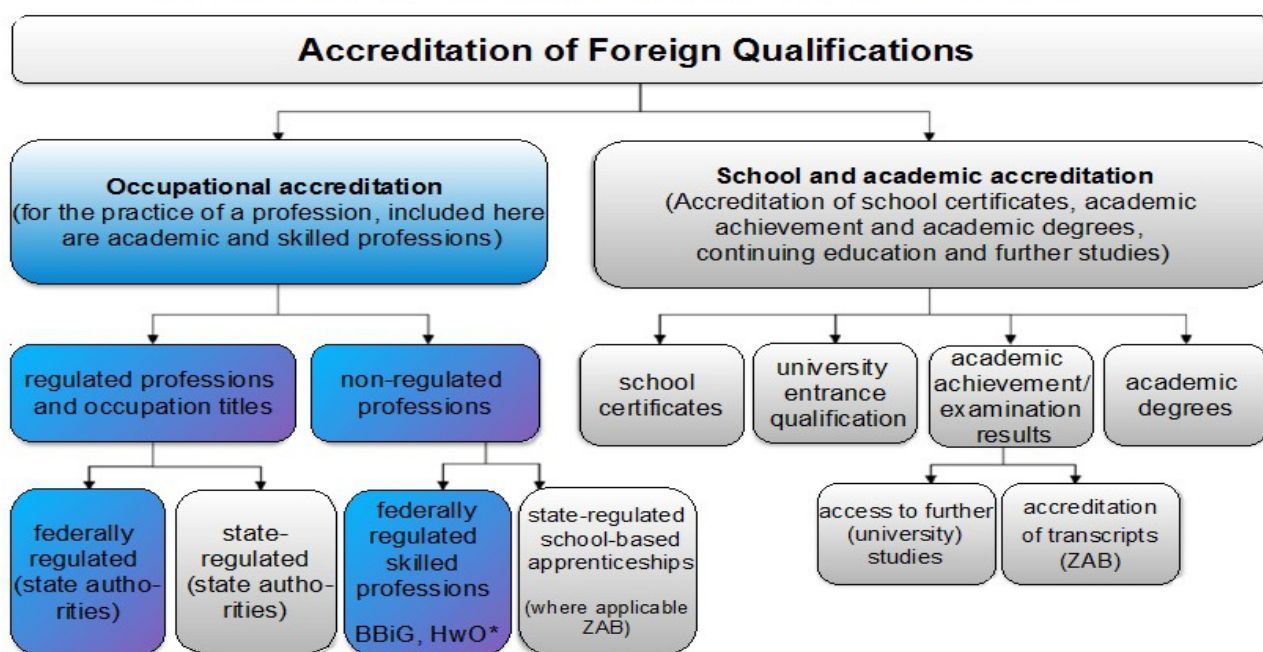
On December 12, 2011 the “Accreditation Act” was published in the German federal law gazette and on April 1, 2012 it went into effect. Because of the limited time that has passed

since it went into effect, no conclusive statements can yet be made concerning its practical impact, but still an initial view of the new regulations can be traced. By developing a law on the accreditation of foreign certificates, it was hoped that uniform and transparent structures and equal opportunities would be created for recognizing the qualifications of all people who had acquired an educational certificate abroad. In part the law fulfills this demand and resolves some of the basic shortcomings of previous accreditation practice. Nonetheless it should be noted that the law exhibits a number of weaknesses and that it only partly meets the demands and claims made in the public and political debate concerning accreditation. First, the improvements brought about by the law will be acknowledged. Then a critical look will be taken at the revisions.

Basic Structure of the Law

The Professional Qualifications Assessment Act is a so-called framework law.¹³ The first article of the law comprises the new “accreditation law” (complete title in German: Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen). The follow-up sections deal with changes in the occupational laws and the official regulations governing the regulated professions, such as in the Vocational Training Act,

Figure 3: Overview of the Accreditation Paths in Germany
(the blue fields show the field of application of the Accreditation Act)



*BBiG = Vocational Training Act; HwO = Crafts Code
(Chamber of Industry and Commerce-Foreign Skill Approval, Chamber of Crafts);
ZAB = Central Office for Foreign Education

Source: Maier et al. 2012: 6; English version elaborated by the editorial staff of focus Migration

in the Crafts Code, in the Civil Service Act, in the Tax Consultancy Act, etc. In relation to these occupational laws and regulations the BQFG is subsidiary, that is, it is subordinate to them (BQFG Art. 2(1); Maier et al. 2012: 4). Thus, under the purview of the BQFG are the 350 recognized trades of the dual system, approximately 40 regulated professions at the federal level, and approx. 100 additional regulated master-craftsman professions – *not*, however, professions governed by state (*Bundesland*) law, higher education degrees in the non-regulated area as well as the entire area of school and academic accreditation (Maier et al. 2012: 5) (cf. Figure 2).

Regulations of the Act

General Legal Claim

One of the greatest drawbacks of the previous accreditation system and the one most in need of being resolved was the linking of the right to an accreditation procedure to the origin of the individual seeking accreditation. Citizens of third states had no legal claim to a procedure for the accreditation of their qualifications acquired abroad. The new law immediately resolves this shortcoming by making the general legal claim to an accreditation procedure independent of the country of origin. In doing so, it clearly expands access to the accreditation procedure. Henceforth, any person who has acquired proof of formal qualifications and can prove that they intend to work in Germany in their learned profession may make an application for an examination of equivalence (Art. 2(2) BQFG). Because of this regulation, many immigrants for the first time are given the legal right to an accreditation procedure. This especially applies to citizens of third countries, who until now were without any legal basis for accreditation but are now treated on equal terms. The EU Directive on the Recognition of Professional Qualifications and the German Law on Expelled Persons continue to apply to EU citizens and *Spätaussiedler*.¹⁴

Accreditation Procedure for Non-Regulated Professions

The right to an accreditation procedure applies in addition to all non-regulated professions for which until now there was no possibility of accreditation but rather only of assessment.¹⁵ As was the case before the coming-into-effect of the new act, the accreditation of foreign certificates in the area of the regulated professions continues to be binding for the practice of a profession, while it remains voluntary as far as non-regulated professions are concerned (Maier et al. 2012: 10). Consequently, in the case of non-regulated professions the option still exists of applying for employment in the labor market directly without undergoing an accreditation procedure; this also applies in the case of a negative notification of accreditation (Maier et al. 2012:10).

Fixed Terms

Another innovation consists of the fixed periods of time stipulated in the BQFG for the accreditation procedure so as to

ensure more efficient procedures. Whereas the procedures before could extend over months (in exceptional cases even years), the accreditation agency must now reach a decision concerning the equivalence of qualifications acquired abroad within a period of three months following the submission of all required documents. Under special conditions the procedure may be extended once for a maximum period of one month (Art. 6(3) BQFG and Art. 13(3) BQFG).

Accreditation from Abroad and Uncoupling of the Application Requirements from Residence Status

The new law represents real progress regarding the possibilities to access accreditation procedures. Immigrants who are still abroad but wish to work in Germany are now able to apply for accreditation of their foreign certificate from abroad (Maier et al. 2012: 13). The expectation is that this will significantly simplify the recruitment of skilled foreign workers and their integration into the German labor market (Sachverständigenrat [Council of Experts] 2011). A central aspect of this is the signaling impact of a *Willkommenskultur* [welcoming culture]. The obstacles facing those who want to emigrate to Germany should decline once it is clear that the qualification acquired abroad is recognized and as a result the assessment of the qualifications of the immigrating person is made possible for business enterprises, by which means access to the labor market is in principle facilitated.

In addition, the decoupling of the application requirement from the residence status also offers asylum seekers and “the tolerated” the possibility of applying for an examination of their certificates for equivalence, something that was not previously possible (Maier et al. 2012: 13).

Consideration of Work Experience

The BQFG allows for taking into account relevant (proven) work experience in the case where differences between the foreign qualifications and the domestic (German) qualifications have been determined (Art. 4(2.3) BQFG). If, for example, a doctor has worked for 20 years as an internist in Russia, this work experience may in future be counted towards the examination procedure, even if the field of internal medicine in Russian medical studies carried significantly less weight than in comparable German medical studies. This can enormously shorten the period of adjustment qualifications and also involves an appreciation of the practical experience that has been acquired by immigrants.

Accreditation where Required Proof Is Missing

Those seeking accreditation who for reasons beyond their control no longer have proof of their educational career may now, thanks to the BQFG, apply for an accreditation procedure. Until now this has not been possible. In Art. 14(1) the law stipulates that in such cases “other suitable procedures” for establishing and assessing equivalence must be used. These procedures may include “in particular work samples,

expert discussions, practical and theoretical examinations as well as testimonials by experts" (Art. 14(2) BQFG). This provision opens up the opportunity for refugees in particular, who may lack proper documentation, to obtain an accreditation procedure.

Quality Assurance

There were repeated demands for improved efficiency and more transparency in the accreditation procedure before the BQFG came into effect. Thus, for example, the Bündnis 90/Die Grünen parliamentary group and various of their members from the German lower house in an application to the German Bundestag demanded the establishment of "a central agency under the control of the German Ministry of Education and Research" charged with the role of "developing quality standards for a uniform accreditation and assessment practice." In addition, this institution would be charged with the task of regularly examining and further developing compliance with the established standards of accreditation procedure and at the same time with gathering information on foreign courses of studies and educational certificates (Bundestagsdrucksache [Bundestag document] 17/6919: 2).

The accreditation act fulfills these demands by determining the establishment of a central database aimed at compiling on an annual basis the personal data of applicants (inter alia, nationality, sex, country where educated, equivalent German occupational title, subject and type of decision) in order to evaluate the procedure (Art. 17(1–5) BQFG). In addition, the federal government at the expiry of four years is supposed to evaluate the actual implementation of the law and its impact (Art. 18(1) BQFG) on the basis of this statistical database.

Interim Conclusions

The regulations of the BQFG roughly outlined here point to the main features of the new law governing accreditation practice in Germany. Many shortcomings of the "old system," such as the lack of the legal right of citizens of third countries to a procedure for the accreditation of their qualifications and the associated discrimination of them vis-à-vis immigrants from the EU or *Spätaussiedler*, can now be resolved. The law nonetheless also has a number of weaknesses, which will be discussed in the following.

What Is Being Criticized?

"The accreditation act is a milestone in integration policy," the Federal Minister of Education Annette Schavan emphasized when the accreditation act went into effect (BAMF 2012b). In fact, however, in the framework of the legislative process there was repeated criticism of the fact that the law's regulations fell short. SPD Bundestag member Sven Schulz, for example, on September 29, 2011, called the draft of the legislation "lightweight" and concluded in his speech in the Bundestag that "this law (...) [is] an improvement but that it would not lead to the desired real progress" (Bundestagsdrucksache [Bundestag document] 17/15445). The following sec-

tion discusses those aspects criticized by opposition politicians and practitioners that have not been improved by the accreditation act when it is compared with previous practice.

Special Laws

Although the law creates a legal basis for all those seeking accreditation, because of the subsidiary regulation that gives precedence to the particular special law which governs a profession as opposed to the BQFG, in certain areas the citizens of third countries continue to be disadvantaged vis-à-vis EU citizens and *Spätaussiedler*. The special law governing lawyers, the Bundesrechtsanwaltsordnung [Federal Lawyers' Regulations], for example, stipulates that only EU citizens and *Spätaussiedler* have a legal right to an accreditation procedure. Moreover, in Art. 4 of the Bundesrechtsanwaltsordnung it is noted that the BQFG may not be applied. As a result, lawyers from third countries continue to be excluded from the legal right to an accreditation procedure. Nor does the general legal right to an accreditation procedure that is enshrined in the BQFG alter this (Lembert 2011: 9).

Academics in the Non-Regulated Sector

According to the BQFG, in principle the possibility of accreditation exists in the case of regulated and non-regulated professions. However, in the academic sector the "accreditation act" only applies to those certificates of higher education that in Germany lead to taking up a regulated profession. Academics who wish to take up a non-regulated profession (for example economists or social scientists) will continue to be limited to having their certificates evaluated by the Central Office for Foreign Education (German acronym: ZAB) (BMBF 2012). This represents a disadvantage vis-à-vis other occupational groups.

Laws of the Bundesländer

The purview of the accreditation law does not extend to those professions that are regulated at the state level, such as the engineering profession, kindergarten teachers or school teachers. For these professions the individual *Bundesländer* still have to create the legal bases for the accreditation of certificates acquired abroad. An initial step in this direction was taken by the city state of Hamburg. The Hamburg Authority for Schools and Occupational Training (BSB) and the Authority for Work, Social Affairs, Family and Integration (BASFI) of Hamburg worked out a ministerial draft bill, which the Hamburg Senate will in all probability pass in the summer of 2012. This draft has the title "Hamburg Law on the Accreditation of Foreign Occupational Qualifications" (HmbABQG) and is modeled on the Federal Act on Accreditation BQFG and a "model law" elaborated by the Federal-State Working Group on Accreditation.¹⁶ In large part the Hamburg draft legislation corresponds to the BQFG, but the HmbABQG is more far-reaching in that it includes the right to independent consultation (Art. 2(1) HmbABQG draft).

Transferability

Connected with the laws of the *Bundesländer* is the issue of the transferability of the accreditation decision. The BQFG leaves open the issue of the transferability of accreditation decisions from one *Bundesland* to the next. Since the BQFG is a federal law whose purview thus extends throughout federal territory, federally regulated professions may also be exercised in those *Bundesländer* in which the accreditation decision itself was not made.

In the area of state-regulated professions, confirmations of equivalence between a foreign and a German certificate in principle continue to apply only in that particular *Bundesland* which made the decision (Maier et al. 2012: 14). A teaching certificate acquired in Ghana and recognized as equivalent in Bavaria does therefore not entitle its holder to work outside of Bavaria. In state-regulated occupational fields, it lies in the sphere of responsibility of the *Länder* to reconcile among themselves their state laws in such a way that the accreditation notification becomes valid nationwide (AG 2011: 7). Co-ordinated action by the *Länder* is in this case essential in order to develop comparable and unbureaucratic accreditation and assessment procedures that ensure a transparent and uniform legal situation.

Consultation and Monitoring

The law does not regulate (Bundestagsdrucksache [Bundestag document] 17/6919, Bundestag document 17/6271) the legal right to consultation and monitoring before, during and after the accreditation procedure that has been demanded by various parties. At the same time it is precisely the advising of those seeking accreditation that forms the elementary basis for making such an application. Without such advising, the affected persons would have difficulty even after the BQFG takes effect in informing and orienting themselves in a focused manner. This is also made clear by a report from the Federal Office for Migration and Refugees (BAMF) concerning the service point for accreditation in the state of Saarland. "The support service provided by the service point is the first and essential step towards successful labor market integration" (BAMF 2011: 36).

A number of *Bundesländer* have created their own structures for supporting those seeking accreditation. Worth mentioning here is especially the Zentrale Anlaufstelle Anerkennung (ZAA) [Central Drop-In Center for Accreditation] in Hamburg, which since October 2010 has been advising immigrants who have educational certificates acquired abroad. In addition, in the framework of the nationwide support program "Network for Integration through Qualification" (IQ Network), set up by the German Federal Ministry of Labor and Social Affairs (BMAS), the setting up of initial drop-in centers in all of the *Bundesländer* has taken place in order to enable comprehensive personal advising of immigrants who have certificates acquired abroad.

The German federal government rejected the legal embodiment of the right to consultation on the grounds that "pursuant to SGB [the German Social Insurance Code] III there is already the legal right to labor-market related consultation

through the federal labor administration, which also includes issues of accreditation where needed (Bundestagsdrucksache [Bundestag document] 17/7382: 12). But in practice it has been shown that comprehensive consultation is one of the most important building blocks for successful integration into the labor market. "Only through consultation can occupational perspectives be opened up which are practicable and realizable," confirms the report on accreditation consultation in the state of Saarland (BAMF 2011: 23). The advising should be continued following the conclusion of the accreditation procedure – the report also goes on to say – in order to point out the opportunities available for continuing education, career changes, occupationally related language courses or employment application training. Because: a successfully completed accreditation procedure, which concludes with the confirmation of the equivalence of professional qualifications acquired abroad, is often not sufficient on its own to ensure successful integration into the labor market (BAMF 2011: 14).

Adjustment Qualifications

Definition

If in connection with an accreditation procedure for professional qualifications acquired abroad a partial accreditation of the credentials is pronounced, the ascertained deficiencies may be compensated for through so-called adjustment measures (also called "adjustment qualifications"). These include, for example, courses and internships. The successful completion of an adjustment measure leads without a concluding examination to a complete accreditation of the professional qualification acquired abroad (Hillenbrand et al. 2010: 23).

For *regulated professions*¹⁷ the BQFG stipulates that essential differences between the qualification acquired abroad and the German qualification may be compensated for through adjustment qualifications (an adjustment course of study lasting a maximum of three years or the passing of a qualifying examination in Germany). Those affected, however, have no legal claim to such an adjustment qualification (AG 2011: 24).

The need for adjustment qualifications and occupationally related language courses will, according to estimates, strongly increase in the first two years following the coming-into-effect of the BQFG, to approximately 25,000 applications annually (Knabe 2011: 5f.). This high level of demand is based on the new general legal claim to an accreditation procedure. It nonetheless remains unclear how this high demand should be met, since so far there are not enough continuing education services (BAMF 2011: 36).

Financing

The issue of the financing of adjustment qualifications has also not been adequately addressed. It is assumed that only

very few immigrants who want to have their qualifications acquired abroad accredited will be in a position to finance the post-qualification/adjustment measures needed on their own. The Federal Employment Center in the case where equivalence has been established assumes the costs arising for unemployed employable people, for example the costs of translations, certified copies and expert opinions, or when the accreditation agency assesses fees for establishing equivalence (Knabe 2011: 6).

A good example of an alternate model of financing is provided by the already existing stipend program of the city state of Hamburg, which supports all immigrants with foreign certificates who cannot be reached by the offerings of the Federal Employment Center. This stipend program goes further than the support offered by the Federal Employment Center in that it also covers living expenses. Fifty percent of it consists of a loan that has to be repaid and fifty percent consists of a nonreimbursable grant. In addition to this stipend, funds for other expenses, for example learning aids, course and examination fees, may be applied for (cf. www.diakonie-hamburg.de).

It is feared that the lack of financial support relating to adjustment qualifications might cause the failure of many accreditation procedures and that only a fraction of educated immigrants will profit from the BQFG. Michael Gwosdz from the Central Drop-In Center for Accreditation in Hamburg expresses this as follows: “The door to the labor market is now open. But many people will not make it beyond the threshold” (Kaufmann 2012). In order to ensure that all those affected have the same opportunities and that as a result the Federal Republic of Germany can make full use of the potential of skilled workers from abroad, the establishment of a (federal) support program is being demanded from the ranks of politics and by practitioners, a program that should cover the resulting costs while also ensuring the living expenses of qualified immigrants (Lembert 2011: 11, Bundestagsdrucksache [Bundestag document] 17/6919, Bundestag document 17/6271).

Uniformity and Transparency

Not only the state-regulated professions come under the jurisdiction of the *Bundesländer* but also the implementation of the “accreditation law” for all other professions. As a result, the BQFG fails to create a nationwide uniform accreditation and assessment practice, although it contains guidelines for standardizing the accreditation process. The law is also unable to reduce the great number of accreditation agencies and the associated confusion of competences which thereby results. In principle it provides for the possibility of bundling competences but it is unable to assert this in a compelling way (AG 2011: 7).¹⁸ This means that the BQFG is applied differently in each *Bundesland*, a fact which impedes the introduction of nationwide uniform procedures. In some occupational fields, however, efforts are being made – independent of the BQFG – to counteract the problem of fragmented areas of responsibility and to make accreditation practice more transparent.

The Accreditation System in Transition

Bundling of Competences

The German Chamber of Industry and Commerce (IHK) bundles together its accreditation agencies on a cross-*Länder* basis. Starting at the end of March 2012 in Nuremberg, the IHK Foreign Skill Approval (FOSA), a central agency for nationwide accreditation and assessment in the area of the chambers of industry and commerce, took up its work. The advising of those seeking accreditation takes place, however, on a comprehensive basis in the individual chambers of industry and commerce on location (IHK FOSA 2012).

The Chambers of Crafts (HWK) decided to form so-called “central chambers” (*Leitkammern*) under whose jurisdiction certain groups of countries fall and which support the regional accreditation agencies in their consulting responsibilities (AG 2011: 9). The project PROTOTYPING also aims to promote a unified approach in the assessment of foreign qualifications in the chambers of crafts sector.¹⁹ This project identifies approaches and tools for determining occupational competences outside the formalized examination system with the goal of establishing action guidelines with which the chambers may apply uniform nationwide examination procedures (Westdeutscher Handwerkskammertag [West German Chambers of Crafts and Skilled Trades’ Council] 2012).

Accordingly, independent of legal regulations, efforts are underway to create a bundling of competences, the aim of which is to make the system more transparent. Overall, the accreditation system with the numerous different accreditation agencies and the differing occupational and state laws remains confusing despite the BQFG. Improved access to information aims to provide orientation.

Access to Information

Since so far there has been no official Internet page for the accreditation of qualifications acquired abroad, two new Internet portals have been set up. The page www.bq-portal.de of the German Federal Ministry of Economics and Technology supports decision-makers in the accreditation process by gathering comprehensive information on professional qualifications acquired abroad. The webpage www.anerkennung-in-deutschland.de, which has existed since the end of March 2012, provides information on the accreditation law and has been commissioned by the Federal Ministry of Education and Research. It is aimed particularly at immigrants who want to have their qualifications acquired abroad accredited and assists them in the search for the appropriate competent accreditation agency (BMBF 2012). Both portals offer essential information on the legal situation as well as on the procedures and areas of competence relating to the accreditation of qualifications. In addition, with the coming-into-effect of the BQFG a central telephone hotline was established in the Federal Office for Migration and Refugees, which makes available the required initial information needed by those seeking accreditation. In the first month following its establishment the telephone hotline was already used over 1,000 times (BAMF 2012a).

Initial Drop-In Centers for Accreditation

In the area of the accreditation of qualifications acquired abroad, the IQ Network, as already mentioned, aims to supply improved initial advising for those seeking accreditation. In many *Bundesländer* there is now at least one such so-called “initial drop-in center for accreditation,” providing the person in question with advice independent of the accreditation agency itself. The regionally active IQ Network has at the federal level created a nationwide active “Expert Section for Accreditation,” which scientifically monitors the implementation of the BQFG and acts as a service point and a dialogue panel for regional network actors (IQ Expert Section for Accreditation 2012).

Beyond these measures, from the perspective of the Federal-State Working Group the pilot role is important, since statutory institutions such as aliens’ registration offices, immigrant advisory offices and youth immigration services, diplomatic missions, and employment agencies represent drop-in centers for immigrants (AG 2011: 20). In order that the decision-makers in question may take on this pilot role, they need further training.

Conclusion

The Act for the Improvement of the Establishment and Recognition of Occupational Qualifications Acquired Abroad which took effect in April 2012 establishes for the first time a general legal right to a procedure for the accreditation of qualifications acquired abroad. Henceforth citizens of third countries for whom legal access to such an accreditation procedure had been denied hitherto may also invoke this law. This general legal right applies furthermore independent of one’s resident status in Germany so that even for asylum seekers the opportunity exists to have their qualifications assessed. At the same time, holders of non-academic professions may apply – other than was the case previously – for an examination of equivalence even in the area of the non-regulated professions.

These regulations significantly extend the circle of those who may benefit from a qualifications accreditation procedure. Whether the approximately 300,000 people who have educational certificates acquired abroad out of a total of roughly three million immigrants currently living in Germany are actually reached by these new regulations will, however, only be revealed in actual practice, particularly since the purview of the law only extends to federally regulated professions. For the last-named professions the BQFG introduces uniform procedural regulations and procedural flows with the aim of making the assessment practice more transparent.

On the whole, access to accreditation procedures is made more just, fairer and more “potential oriented.” The newly created information services also provide those affected with essential support before, during and after the accreditation procedure. Especially the “initial drop-in centers for accreditation” (Erstanlaufstellen Anerkennung) should be cited as important advisory contact points. Especially as far as orientation within the system of accreditation is concerned, they play an important role, since the responsibility for accrediting

qualifications and educational certificates acquired abroad still lies in the hands of the individual *Bundesländer* with their specific implementation regulations. In addition, different regulations governing professional rights compound the problem of accreditation so that supportive consultation represents an important building block.

Financing the accreditation procedure and the adjustment qualifications which may be required remains for many educated foreigners a big obstacle on the way to having their qualifications acquired abroad accredited, since the law has adopted no regulations to this end. As long as no financing programs have been developed, it is to be assumed that many holders of qualifications acquired abroad will for financial reasons decide against pursuing an accreditation procedure. In the end, accreditation procedures could also fail because there are too few or too few suitable adjustment measures for dealing with the expected large number of applicants.

The law on accreditation represents an initial success in improving the accreditation of qualifications acquired abroad, although important aspects of the issue have still not been adequately addressed. Whether the regulations fall short and whether the primary goal of the law – “better utilization of professional qualifications acquired abroad in the German labor market” (Art. 1 BQFG) – is attained, will be shown at the latest in four years when the German Bundestag and the *Bundesrat* are presented with the first assessment report from federal statistics.²⁰

Accreditation and Recognition of Occupational Qualifications Acquired Abroad after the BQFG Entered into Force

Strong points	Weak points	Comments
For the first time legal accreditation framework established	Only for federally regulated professions	
General legal entitlement to an accreditation procedure	Not for all professions because the BQFG is subsidiary to professional laws	
Accreditation in the field of non-regulated professions is now possible	Not for academic professions	
Transferability of a positive evaluation and accreditation in federally regulated professions from one Land to the next	No transferability in state-regulated professions; accreditation only valid in the Land that has formally recognized the qualification	There is a chance that transferability will be established also in state-regulated professions; this depends, however, on the related laws that are currently developed in the Länder
Decision concerning the equivalence of a qualification acquired abroad must be taken within 3 months following the application for accreditation	In exceptional cases this period may be extended	
BQFG establishes uniform accreditation procedures	Risk of heterogeneous implementation in the various Länder (federalism: sovereignty of the Länder in educational matters)	
Access to accreditation procedures where required proof of the educational career (transcripts etc.) is missing	There is no standardized procedure yet to examine the competences of the applicant in the case of missing proof	
Consideration of previous work experience in accreditation procedures	There is no standardized procedure yet to examine the competences and work experience of the applicant	
Uncoupling of application requirements from residence status		Persons without secure residence status as well as potential immigrants who do not yet live in Germany may profit from the BQFG
	No legal entitlement to counseling and advising	Newly established information infrastructure: - central telephone hotline, - two new Internet information portals - establishment of regional Drop-In Centers for Accreditation
	No legal entitlement to adjustment qualifications; insufficient offer of such qualification measures	An accreditation procedure may fail because of a lack of adjustment qualification offers
Data base to monitor and assess the implementation of the BQFG		Data base creates more transparency
	No financial support to have qualifications acquired abroad accredited (expenses for accreditation procedures may be very high)	High expenses may hinder persons with qualifications acquired abroad to have them accredited
	The BQFG does not create clear, transparent and uniform arrangements with regard to accreditation procedures	Complexity and lack of transparency because of: -parallelism of several legal norms (e.g. special laws, laws of the Länder) - -decentralized responsibilities and competences -different regulations depending on occupation and Bundesland

Author's own compilation

Notes

- ¹ 1. Activation and safeguarding of employment, 2. Better compatibility of family and employment, 3. Educational opportunities for all from the start, 4. Qualification: education/training and continuing education, 5. Integration and the immigration of qualified persons (BMAS 2011).
- ² The Federal Ministry of Economics and Technology (BMWi) states in another study that six million people of immigrant background have an occupational qualification acquired abroad. This dossier makes use, however, of the oft-cited figure of three million people (BMWi 2010: 3).
- ³ For example Reiche/Tröger/Scheibe (2010); IAQ/ZEW/Universität Magdeburg et al. (2009), various guidelines of the *Bundesländer*.
- ⁴ Employees of accreditation agencies, immigrant counseling agencies, immigrant organizations, labor offices, integration commissioners (*Integrationsbeauftragte*), commissioners for foreigners as well as coordinators for immigration, integration course institutions.
- ⁵ Brandenburg, Bremen, Hesse, Hamburg, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Saxony, Saxony-Anhalt.
- ⁶ Approximately sixty different occupations in the public health system, in the educational sector, in the technical and skilled crafts sector, in food production and control, in agriculture and forestry, in the administration of justice, in accounting/auditing and tax consultancy and in all positions of the civil service (Beramí 2010: 15).
- ⁷ These include roughly 350 occupations in Germany. In the academic sector this involves, for example, social scientists or computer scientists; in training/educational occupations, among others, commercial or agricultural vocations (cf. www.berufliche-erkennung.de).
- ⁸ And for citizens of countries which have bilateral agreements with Germany, such as Switzerland, France and Austria (Reiche et al. 2010: 23).
- ⁹ The license to practice is according to the German Federal Medical Code (Bundesärzteordnung) Art. 10 compulsory for the practice of medicine by citizens of third countries.
- ¹⁰ Responsible for Mittelfranken, Lower Bavaria, Upper Bavaria, Oberfranken, Oberpfalz, Swabia and Unterfranken.
- ¹¹ An occupational license entitles the holder thereof to practice the profession they have learned in their country of origin in Germany. A work permit, on the other hand, entitles one to work in Germany.
- ¹² In 2004 Hadeed interviewed highly qualified asylum holders and Jewish quota refugees in Lower Saxony who had a permanent right of residency and hence also a work permit for Germany.
- ¹³ An umbrella law (omnibus law) is a law consisting of articles which include amendments in other laws or the introduction of new so-called principal laws. The individual amending acts are for the purpose of simplifying the legislative process brought together in an omnibus law (Maier et al. 2012: 4).
- ¹⁴ *Spätaussiedler* may choose if they wish to apply for accreditation pursuant to Art. 10 BVFG [Law on Expelled Persons] or pursuant to BQFG (Maier et al. 2012: 8).
- ¹⁵ *Spätaussiedler* who have obtained accreditation in non-regulated professions on the basis of the Law on Expelled Persons form an exception (Maier et al. 2012, p. 12).
- ¹⁶ The Federal-Länder Working Group on Accreditation works in the framework of the "Qualifications Initiative for Germany" for a simplification of the accreditation procedures for foreign qualifications.

- ¹⁷ In non-regulated professions there is no possibility of obtaining an adjustment qualification. The federal government justifies this by pointing to the discrimination of German nationals, since German nationals in the case of interrupted education or when they have failed examinations do not have the possibility of obtaining credit for past performance either (Knabe 2011: 5). Holders of a non-accredited foreign qualification in non-regulated professions can attempt to apply for employment directly in the labor market or they may begin additional training (Maier et al. 2012: 24).
- ¹⁸ In Art. 8(1–3) BQFG the law names some of the agencies responsible depending on the profession in question, but confers the authority to adjudicate on the agencies themselves pursuant to Art. 8(5) BQFG.
- ¹⁹ Coordination is done by the West German Chamber of Crafts Council, promotion by the Federal Ministry of Education and Research (BMBF) in collaboration with the German Central Confederation of Skilled Crafts [Zentralverband des Deutschen Handwerks].
- ²⁰ Four months after the Accreditation Act had entered into force, first reactions on the changed situation with regard to the assessment of occupational qualifications acquired abroad were published on the official online platform on the Accreditation Act. (www.anerkennung-in-deutschland.de)

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Additional Information

www.anerkennung-in-deutschland.de/

www.berufliche-qualifikation.de

www.bq-portal.de/

www.netzwerk-iq.de/

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