

Bundesrat

Resolution

of the Bundesrat

Proposal for a Council Recommendation on the European Qualifications Framework for lifelong learning and repealing the Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning

COM(2016) 383 final

At its 948th meeting on 23 September 2016, pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the *Länder* in European Union Affairs (*EUZBLG*), the Bundesrat adopted the following opinion.

1. The Bundesrat notes that the Commission's proposal for a recommendation for the revision of the European Qualifications Framework (EQF) pursues ambitious objectives and the further development or transformation of numerous aspects of the EQF. It recognises that the EQF is an instrument that can generate added value at European level by ensuring the transparency of qualifications. At the same time, it would point out that it takes time for instruments to become established. Fundamental questions regarding the work on both European and national qualifications frameworks have still not been answered. The EQF should not therefore be overburdened with new objectives and targets.
2. In its proposal, the Commission announces that it intends to set up an expert group to provide the necessary platform for cooperation between the Commission, Member States and relevant stakeholders in the implementation of the recommendation. This will include the tasks implemented by the EQF Advisory Group since 2008. The Bundesrat has concerns about the intended abolition of the EQF Advisory Group and its replacement by a new body with a much wider mandate:
 - The EQF Advisory Group is a body of education experts whose work has proved effective in the past and should be continued. A 'platform' to deal with the entire field of 'skills', and thus with a multitude of different topics, would not do justice to the complexity of the issues associated with the EQF.
 - The precise role of the new 'platform' is not explained in the proposal for a recommendation. Whereas the creation of the Advisory Group, its composition and its field of competence are outlined in the 2008 EQF recommendation, the new text is vague on these points.
 - The Bundesrat also regrets the lack of transparency in the Commission's approach to the changes in the governance structures it is seeking to achieve.
3. According to the proposal for a recommendation, the Member States are to ensure the coordination of the tasks implemented by the EQF National Coordination Points. The

Commission thereby seeks to consolidate the National Coordination Points with other bodies, such as the national Europass and Euroguidance structures. The Bundesrat would stress in this connection that the Member States alone are competent as regards national implementation and administration, which in Germany must also be geared to the country's federal structure. It rejects any interference in these structures by the EU (cf. also paragraph 27 of Bundesrat document 767/11 (Resolution)). The Bundesrat also has reservations about the Commission's attempt to create facts on the ground regarding the decision on national structures by introducing budgetary implications in the 2017 'Erasmus+' work programme, even before the Council has taken a political decision on the proposal. It rejects any prejudging of the Council's decision as unacceptable.

4. The proposal recommends that the Commission should set up peer reviews and best practice exchanges between Member States. In this regard, the Bundesrat would again point out (see, *inter alia*, Bundesrat document 386/15 (Resolution), paragraph 14) that learning-from-one-another activities at European level can take place only on a voluntary basis because of the way competencies are divided in the educational field. It therefore rejects the idea of peer reviews in this field. Instead, peer learning should be continued, having proved its worth in practice.
5. The Bundesrat notes that recital (13) presents credit systems as helping individuals progress in learning by facilitating the design, delivery and assessment of learning outcomes. It takes the following position on the inclusion of credit systems in a proposal for a revision of the EQF recommendation:
 - The EQF is concerned with qualifications alone, and not with components of qualifications, partial qualifications or modules, which are associated with credit points. The Bundesrat rejects any conflation of the EQF with credit systems, since they are two fundamentally different instruments. It would point out that the EQF does not give rise to any entitlement to recognition, and would therefore expressly warn against any confusion of recognition instruments with instruments intended to ensure transparency (see also Bundesrat document 725/12 (Resolution), paragraph 11). The modular approach associated with credit systems in particular is not compatible with the established German system of general and vocational education. In this context, the Bundesrat does not favour linking the EQF with credit systems.
 - It is up to Member States alone to decide whether to use credit systems, and their use can only be voluntary. The draft wording may indicate that compliance of credit systems with the common principles set out in Annex V will only be ensured without prejudice to national decisions to make use of credit systems, but the draft does ultimately assume that the use of credit systems is a legal obligation.
 - The Bundesrat would point out that the principles set out in Annex V - unlike Annexes II and IV - do not refer explicitly to the compatibility of well-established instruments at university level with the requirements of the Annex. In particular with regard to the objectives set out in points 3 (progression across institutional borders), 6 (validation of non-formal and informal learning) and 7 (development and improvement of credit systems through the cooperation between stakeholders at national and European level), it would be reasonable to conclude that new

forms of credit systems are to be developed which go further than the existing systems. For the university sector, among others, this would appear to be neither practical nor feasible, since at university level the European Credit Transfer and Accumulation System (ECTS) is now used far beyond the EU Member States and constitutes a key instrument in the Bologna process. In contrast, the European Credit System for Vocational Education and Training (ECVET) has shown clearly that it is difficult to implement a credit system in the vocational sector and that in practice such systems attract little interest.

6. According to the proposal for a recommendation, the Commission would like to establish a basis for developing relationships between the EQF and national and regional qualifications frameworks in non-EU countries.
 - The Bundesrat would again repeat its criticism of cooperation with non-EU countries, as expressed in paragraph 7 of Bundesrat document 386/15 (Resolution). Before cooperation with non-EU countries is initiated, basic questions about cooperation with such countries must first be resolved, such as the extent to which the EQF can or should be used systematically as a meta-framework in conjunction with the existing national qualifications frameworks of non-EU countries. The Bundesrat considers that the EU and the Member States should first concentrate further on establishing the EQF within the EU and referencing the various national qualifications frameworks.
 - In its proposal, the Commission also places cooperation with non-EU countries in the context of the recognition of the qualifications of migrants, including refugees. However, in that context, such cooperation would require the countries from which most refugees come to have qualifications frameworks and to be in a position to cooperate with the EU in establishing the comparability of the frameworks. The Bundesrat rejects this approach because the countries from which refugees typically come either do not have or have lost the state structures necessary to do this.
7. The Bundesrat has numerous technical and formal concerns about the origins of the proposal for a recommendation:
 - For example, it was astonished to note that, despite commissioning studies on, for example, international sectorial qualifications systems and frameworks, the Commission tabled its own proposal before the reports from those studies were published. This approach is methodologically questionable.
 - The Bundesrat very much welcomes the fact that the Slovakian Presidency has placed the negotiations on the proposal for a recommendation under the auspices of the council of education ministers. It is critical of the fact that work on the EQF recommendation, which is unequivocally a matter of education policy, originated under the auspices of the Directorate-General for Employment, Social Affairs and Inclusion, and rejects any such shift of responsibilities at EU level for future initiatives in the field of education.
 - The Bundesrat very much regrets that no account was taken of the criticism expressed, regarding cooperation with non-EU countries for example, in the course of consultations with actors at EU level, including in the Council's

Education Committee and the EQF Advisory Group. It considers that the opinion of experts should be taken seriously as part of the consultation process.

- Moreover, neither an impact assessment nor a public consultation was conducted before the proposal was drafted. The roadmap for the revision of the EQF argued that this was because the proposed options were purely technical improvements to the EQF recommendation which would not have any significant impact. The Explanatory Memorandum on the recommendation proposal itself states that the proposal leaves flexibility to Member States on the way it is implemented at national level and that therefore no impact assessment was carried out. This is at odds with the fact that the Commission even carries out impact assessments for non-legislative acts, such as communications. Furthermore, the Bundesrat is of the opinion that the draft contains substantial changes which are far more than technical adjustments and could have significant consequences. An impact assessment should therefore have been conducted.
 - In view of these shortcomings, the Bundesrat believes that the Commission has failed to meet the objectives set in its Communication on better regulation (COM(2015) 215 final, Bundesrat document 242/15, paragraph 2.1), namely to ensure openness and transparency, to consult more and to listen better, and thus to improve the evidence base.
8. Recital (19) of the proposal for a recommendation states that information on qualifications referenced to the EQF will be reflected in the multilingual European Classification of Skills, Competences, Qualifications and Occupations (ESCO). However, ESCO is currently still being developed. At present, it is impossible to say either whether ESCO will ultimately be operational or whether it will bring any significant added value. The EQF is an instrument intended to create transparency in the field of education that is completely independent of ESCO; its approach is cross-sectoral. This role should not be narrowed by the fact that ESCO's focus is purely on qualifications which are of relevance to the labour market. The Bundesrat is therefore inclined to reject a stronger linkage between ESCO and the EQF, not least on account of the use of a common format for the electronic publishing of information at national and EU level pursuant to Annex VI.
 9. The Bundesrat notes that in Annex I of the proposal the Commission intends to replace the word 'competence' with the words 'responsibility/autonomy', on the grounds that the new wording fits in better with the learning outcomes descriptions. Although the term 'competence' is to some extent differently defined in EU documents and in the national context, it has been established within the framework of the EQF Recommendation. Changing the terminology could lead to further ambiguities in both the EU and the national contexts.
 10. The Bundesrat also notes that the Commission proposal now also contains definitions of 'international qualifications' and 'international sectorial qualifications', in contrast to the 2008 EQF Recommendation, which only defined the term 'international sectorial qualification'. The definition of 'international qualification' states that it includes learning outcomes based on standards developed by an international body, organisation or company. Neither private companies nor international bodies can by themselves establish generally binding qualification standards which have legal

force.

11. The Bundesrat notes that the Commission intends to support consistency in the implementation of the EQF across Member States by developing methodologies on the levelling of national qualifications. Methodologies on the use and application of learning outcomes in qualifications are also to be developed. The Bundesrat firmly rejects these plans. On account of the way competencies are divided in the educational field, a framework in this area might be possible, but the development of methodologies would have to be rejected as constituting an inadmissible interference in national systems.
12. The Bundesrat's position on the criteria and procedures for referencing national qualifications frameworks and systems to the EQF is as follows.
 - The annex deals with the referencing of national qualifications systems. However, it is not qualifications systems that are referenced to the various qualifications frameworks, but rather qualifications.
 - Point 3 of the annex stipulates that the national qualifications framework or system and its qualifications are linked to arrangements for validation of non-formal and informal learning and, where these exist, to credit systems. This goes beyond the referencing criteria elaborated by the Advisory Group to serve as a basis for further referencing.
13. The Bundesrat cannot accept an obligation on the Member States regularly to update the referencing of the levels of the national qualification framework, as proposed in point 3 of the proposal for a recommendation. To avoid excessive reporting obligations and red tape, it would be preferable for referencing to be updated as and when necessary, that is to say when there are significant changes to national qualifications.
14. One new element in comparison with the 2008 EQF Recommendation is that Member States should ensure that referenced qualifications comply with the common principles for quality assurance set out in Annex IV (point 4 of the proposed recommendation to the Member States). In the 2008 recommendation, quality assurance principles in general and vocational education were simply to be promoted and applied, and the principles set out in the annex were not only broadly formulated but also intended solely for university and vocational education. In contrast, the approach followed in the current proposal is intended to cover all areas of education, as well as non-formal and informal learning and international qualifications. The Bundesrat rejects this all-encompassing requirement for quality assurance principles for all these areas because it goes too far.
 - It would point out that requirements for quality assurance mechanisms extend far into national qualifications systems, into the various educational sectors, and thus into national competence regarding education. The countries which are part of the EQF process regulate quality assurance in different ways, in line with the diversity of their education systems. Annex IV states that quality assurance principles at European level for general education are currently the subject of discussions. The Bundesrat would therefore refer to the strict limits set for Union competencies regarding education in Articles 165 and 166 TFEU, in particular the prohibition on

harmonisation. Since requiring European quality assurance principles for general education would exceed those limits, the Bundesrat rejects any such requirement.

- Annex IV lays down ‘quality assurance principles for qualifications referenced to the European Qualifications Framework’. However, no provision is in fact made in the current system as it stands for direct referencing of qualifications to the EQF, as proposed *inter alia* in the heading of the quality assurance principles; qualifications are referenced solely to national qualifications frameworks. Quality assurance principles should not be used to pursue the referencing of so-called international (sectorial) qualifications, as repeatedly propounded by the Commission in the past. The Bundesrat regards direct referencing as a paradigm shift which would conflict with Member States’ exclusive responsibility for their own education systems, and therefore rejects it as unacceptable.
 - The Bundesrat would point out that many of the statements in Annex IV are formulated ambiguously. It cannot accept controversial subjects such as the referencing of so-called international (sectorial) qualifications being slipped into the recommendation via opening clauses.
 - It welcomes the fact that footnote 2 to Annex IV refers expressly to the European Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG). However, as regards the requirement that referencing should be based on clear and measurable objectives, it has serious doubts about whether this could be implemented. For example, the ESG refer only to sufficiently defined objectives and their review. Moreover, the ESG are not used in all courses. Under these circumstances, the Bundesrat calls for the requirements set out in Annex IV to be formulated in a more open manner with regard to the higher education sector.
 - Furthermore, it remains unclear what the Commission means by the ‘external monitoring bodies’ referred to in point 9 of Annex IV, which are to conduct systematic and cyclical evaluations.
15. Exploring the possibility of developing a European register for bodies monitoring quality assurance systems for qualifications is closely linked to the requirement of quality assurance principles. Such a register would be concerned with quality assurance bodies outside the field of higher education. However, in this context the Bundesrat would point out that the structures in the fields of general, vocational and higher education are all different and come under the auspices of different institutions, all of which operate under well-established systems. It doubts whether the potential added value of such a register would sufficiently justify the administrative burden involved.
16. The Bundesrat notes that the Commission recommends that it develop a standardised way of communicating about the EQF, in particular how to present EQF levels on new certificates, diplomas and qualification supplements. It would point out that the design of official documents is a fundamental element of Member States’ sovereignty over education matters, in respect of which no binding requirements may be laid down at EU level.
17. With regard to the recommendation in point 19 that the Commission report on

progress following the adoption of the recommendation, as appropriate, the Bundesrat urges that this must not give rise to new reporting obligations for Member States.

18. The Bundesrat is submitting this opinion directly to the Commission.