

Concluding Remarks by Dr. Gracienne Lauwers

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Angelika Schade underlined the importance of developing an efficient accountability system from the very beginning as an agreement about responsibility guaranteeing the credibility and autonomy of HEIs. The role of quality control and accreditation is in general accepted. So what can we expect from the behavior of these increasingly growing influential agencies? “What is the power play between the state, the agencies and the HEIs?” (*Dirk Van Damme*). “What will the decentralized responsibilities look like?” (*Friedrich Faulhamer*). As it is the case with the Flemish-Dutch accreditation agency, agencies’ statutes often contain a section dealing with good governance principles. Is the state of compliance of agencies with these principles of good governance satisfactory or is there reason for concern?

The current lack of institutional homogeneity with respect to agencies gives an impression of chaos. From the Dutch-Flemish example, it is however clear that even within an international agreement, differences appear due to the differences in the underlying legal systems.

Can we speak about agencies in general or should we not first clarify the categories of agencies?

- The first generation agencies are rather executive quality assurance agencies with a rather observatory role or mission of cooperation with no decision-making power.
- The second generation agencies refer to the decision making organs which comprise these agencies that have the power to enact legal instruments on quality control binding on third parties enjoying thereby a considerable influence over the adoption of behavior.
- The third generation agencies refer to true “regulatory” accreditation organs with a sanctioning impact on HEIs and with a discretionary power to translate broad legislation guidelines into concrete instruments focused at improving the output (efficiency) and outcome (effectiveness) of HEIs, realized in the employability of the students, which is the responsibility of universities (*Georg Winkler*). It is against these third generation agencies that there is a growing resistance.

From the Turkish example of *Ustun Ergüder* and the examples of Central and East European countries, it is clear that HEIs want to participate in quality control and even establish themselves a kind of agencies if the state does not take any initiative of this kind. It is a bottom-up approach instead of external control imposed from above. In developing countries, international bodies such

¹ Example: Gracienne Lauwers, Concluding Remarks of the Conference on "the Legal Aspects of Quality Assurance and Accreditation", Salzburg/ 2006, <http://www.lawandeducation.com/>

as UNESCO, OECD, Worldbank, set up regional authorities of quality assurance agencies and develop guidelines of good practices (*Seamus Puirseil*)

Independence of the agencies is perhaps the most central principle of good governance as the integrity of agencies can only be guaranteed by its independence. “Are agencies independent from the Ministry?” (*Andrei Marga*) Are agencies independent vis-à-vis HEIs? “Are peer reviews that critical?” (*Dirk Van Damme*) “How to tackle the danger of unavoidable subjectivity of peer reviews?” (*Leendert J. Klaassen*) It cannot be precluded that considerations linked with HEIs and ministerial or political interests or with peers may sometimes be taken into account within the decision making process. Independence, generally understood as the absence of pressures from political and HEIs interests, requires the adoption of a series of measures that will shelter the agencies against undue pressure.

An issue that has not been raised is the issue of the appointment of the members of agencies. Nothing prevents members of the government to join agencies without a cooling-off period and the other way around. Another question is whether there are provisions that prevents members of agencies to join HEIs they have been called to accredit once their term is over? Measures should be adopted to prevent conflicts of interests.

What about the lack of **participation of stakeholders**?

From the very beginning, *Jan De Groof* pointed at the danger of a new centralizing state policy. While there is deregulation progress made by the state, a new detailed regulation framework is set up by accreditation agencies and increasingly at European and international level as principles and indicators laid down in guidelines.

How does it fit with the academic freedom principle, or with the subsidiarity principle? (*Jan De Groof*) Are stakeholders and professional bodies sufficiently involved in the decision making procedures of the agencies? After all, the so-called new public management (*Friedrich Faulhaber*) requires that the responsibility for quality control lies with the institutions themselves as described by *Peter Williams*. A fundamental question is how can better participation be achieved? The involvement of stakeholders in the decision-making process may have a positive effect (credibility, openness and concern) vis-à-vis the operations thereby reducing the incentives for lobbying and other forms of external pressure. Another question has been raised by *Hermann Avenarius*: “What happens if a professor or a department resists to participate in the accreditation system?”

What about the **performance accountability** of the agencies themselves? *Dirk Van Damme* stressed the need for professionalism of agencies and for a meta-evaluation of agencies. *Jürgen Mittelstrass* on the contrary underlined the danger of the everyone-controlling-everyone phenomenon. *Georg Winkler* pointed at the need for being freed from dysfunctional overregulation

if HEI accept their accountability to society. As a reward for excellence, HEI would be rewarded with autonomy. *Norman Sharp* underlined the need of a partnership between HEIs and agencies and the need of agencies to be at the service of HEI and not around. *Leendert J. Klaassen* mentioned the requirement of consistency and need for objective assessment. *Friedrich Faulhamer* in his turn mentioned “What about the professional management of agencies?” Questions were also raised about the impact of the activity of agencies in terms of indirect costs which should be examined regularly and avoid that quality assurance is becoming an aim in itself. Is it worth to pay the cost of agencies if the cost is nothing more than establishing a minimum guarantee? How can it be determined whether agencies themselves have acted efficiently or whether they have failed to be an efficient solution for the quality assurance issue.

Transparency, accountability, self-reflections are the aim of external quality assurance (*Jan De Groof*). It should be welcomed that regulations regarding public access to documents explicitly provide for its application to the activities of agencies. But transparency also implies a certain degree of clarity and simplicity of the processes. The need for clear standards in assessment procedures, has been stressed by *Andrei Marga* and *Angelica Schade* and *many other speakers at the conference*. In this respect, the present degree of transparency of agencies is far from ideal since much of the work is carried out by opaque commissions. Improvements could be achieved in this regard. *Peter Williams* already underlined the importance of selecting international professorial reviewers and make them turn up for doing the job.

Finally, how to ensure the **judicial accountability** of agencies? It was *Charles Russo* who underlined the importance of this aspect in the USA. *Angelica Schade* underlined the importance of an appeal possibility. How is the review of the legality of decisions of agencies made? *Leendert J. Klaassen* gave us the example of the cases brought before the Council of State in the Netherlands. Are decisions of agencies challengeable before the court? It could be questioned whether acts of agencies should be subject to judicial review. Lengthy judicial review might deprive these decisions of most of their efficiency. In addition, it could be considered that courts of law are ill-equipped for evaluating academic control decisions. These arguments are not really convincing. On the other hand, it could be useful to have an institution that plays a role of filter against unfounded appeals by individuals or competitors who use judicial review as a means to protect their share of the market against newcomers.

To conclude

We have seen that the power balance between the state, agencies and HEIs is not satisfactory and create an unnecessary complex institutional framework. It would be good to engage in an analysis, the purpose of which would be to determine the optimal level of intervention from agencies.
