

The Cardozo Electronic Law Bulletin

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Of the Cardozo Electronic Law Bulletin
Pier Giuseppe Monateri

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Abstract: This paper deals with the issue of university accreditation with regard to the proposed establishment of European Universities. Through a comparative analysis of several national systems, the study highlights differing approaches regarding the object, purpose, and governance of accreditation, revealing substantial heterogeneity across Europe and beyond. A particular focus is dedicated to France, whose historically state-driven yet institutionally diverse system illustrates how accreditation can function as a tool to structure, steer, and integrate a complex higher education landscape. In conclusion, the paper assesses the potential solutions for an EU-level accreditation mechanism. While formal harmonization remains excluded, the Union could support the establishment and accreditation of European universities within the aim to foster deeper cooperation and promote shared values.

Keywords: European Higher Education Area (EHEA) - European Universities Initiative (EUI) - Accreditation Systems - National regulations - Supranational Governance - Comparative Law

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1. *The European integration process in the field of Higher Education from the Bologna Declaration to the European University Initiative (EUI): introductory remarks*

In a well-known speech focused on the idea of a sovereign, united, and democratic Europe, which was held at the University of Sorbonne in 2017, French President Emmanuel Macron expressed his bid to give rise to European universities¹. In his proposal, these institutions should act as networks made up of academic institutions from different European countries and establish education paths characterized by mutual mobility of students.

Such a proposal represents the last step of a process that started at the end of the last century. In 1988, rectors of several European universities signed a first solemn declaration on the fundamental values of higher education institutions². Ten years later, 4 national ministers in charge of higher education adopted a preliminary declaration that stressed the need “to engage in the endeavour to create a European area of higher education, where national identities and common interests can interact and strengthen each other for the benefit of Europe, of its students, and more generally of its citizens”³.

However, the effective starting point of the ongoing process can be dated back to the 1999 Bologna Declaration⁴. The document, signed by several Higher Education Ministers, affirmed the need to progressively harmonize national higher education systems. In particular, within the aim of achieving greater compatibility and comparability of the systems of higher education, the national governments took

¹ Initiative pour l'Europe - Discours d'Emmanuel Macron pour une Europe souveraine, unie, démocratique (16 September 2017): <https://www.elysee.fr/emmanuel-macron/2017/09/26/initiative-pour-l-europe-discours-d-emmanuel-macron-pour-une-europe-souveraine-unie-democratique>.

² See Magna Charta Universitatum, signed up by 388 University Rectors summoned in Bologna in September 1988. The document can be download at <https://www.magna-charta.org/magna-charta-universitatum/mcu-1988>.

³ See Sorbonne Declaration adopted in 1998 by the Higher Education Ministers of France, Italy, Germany and UK. The document recognized the need to encourage a progressive harmonization of the overall framework by removing legal and administrative barriers and to develop a common framework for teaching and learning, which would enhance mobility and an ever-closer cooperation. The document is available at https://ehea.info/media.ehea.info/file/1998_Sorbonne/61/2/1998_Sorbonne_Declaration_English_552612.pdf.

⁴ The document, as the following ministerial documents relate to the consolidation of the European of Higher Education Area, is available at <https://ehea.info/page-ministerial-declarations-and-communicues>. On the Bologna process, among others, BARAGGIA A., L'autonomia universitaria nel quadro costituzionale. Già e non ancora ..., Milano, 2016, pp. 27 ff.; OLSEN J.P.– MAASSEN P., European Debates on the knowledge Institution: The Modernization of the Unversity at the European Level, in MAASSEN P.– OLSEN J.P. (eds.), University Dynamics and European Integration, Dordrecht, Springer, 2007, pp. 3 ff.; NEAVE G. – MAASSEN P., The Bologna Process: An Intergovernmental Policy Perspective, ivi, pp. 135 ff.; GORNITZKA A., The Lisbon Process: A Supranational Policy Perspective, ivi, pp. 155 ff..



on the duty to co-ordinate their policies to reach a few pivotal objectives. Among the others, the Declaration expressed the need to promote the establishment of a common system of credits and the cooperation within the field of quality assurance, with a view to developing comparable criteria and methodologies.

With specific regard to the assurance of quality, the following declarations adopted by the Bologna Follow-up Group insisted on the need to share and disseminate examples of best practices and design scenarios for the mutual recognition of evaluation and comparable mechanisms of accreditation and certification⁵.

Within this framework of increasing engagement of both national governments and higher education institutions and stakeholders, it came up the discourse of President Macron. The disruptive proposal launched in his speech focused on the creation of transnational interuniversity alliances within the long-running perspective of the settlement of European universities. The main idea was to build up inter-university campuses to increase the mobility of students, teachers, and administrative staff and foster structured collaboration in order to create common education paths.

On this ground, the European Council launched the European Universities Initiative (EUI), with the fundamental purpose of building bridges between higher education institutions (HEIs) and fostering academic cooperation throughout Europe⁶. Given the existing consolidated framework of exchange programmes and cooperation agreements between universities, the programme's main innovation consisted in the proposal to give an institutional dimension to these networks. Among the other goals, the European institutions intended to create tools and mechanisms that could ease the enactment of a European degree, that is, programmes accredited by the European Union itself, and the recognition of the legal entity upon the European universities.

That given, such a purpose raises questions of great significance both at the national and European level. Ruled out any intent to replace national higher education systems, the EUI programme aims at complementing them by setting new subjects in charge of performing activities of international reach. Within this

⁵ The declaration of such a goal can be found already in the final statement of the Prague Conference held in 2001. The document is available at https://ehea.info/Upload/document/ministerial_declarations/2001_Prague_Communique_English_55344_2.pdf.

⁶ European Council, European Council meeting (14 December 2017) – Conclusions, 2017, p. 3, <https://www.consilium.europa.eu/media/32204/14-final-conclusions-rev1-en.pdf>.



context, given the specificity of national regulations, the matter of accreditation represents one of the most complex challenges.

The present contribution aims to offer some remarks on such a topic by moving from a general comparative outlook and insisting on the peculiarity of the French model, with the final intent of providing a few suggestions regarding the European framework.

Preliminary to any analysis of specific aspects, it becomes apparent the need to disentangle some hidden features. Indeed, regarding the academic field, in the general debate, accreditation is strictly intertwined with other concepts and may take on different meanings. On the one hand, the term can be referred to the more and more significant issue of the reputation of universities and higher education institutions. In a world characterized by competition, even in the field of education, to be ‘accredited’ by certain stakeholders appears to be crucial in the overall attempt to attract students and resources and, in general, climb the ranking of academic institutions.

On the other hand, accreditation refers to different aspects related to administrative proceedings. In particular, as mentioned before, within the ongoing process of mutual recognition and harmonization of national systems that started with the 1999 Bologna Declaration, accreditation has grown in importance within the framework of quality assurance systems⁷.

However, upon closer examination, these two terms are linked to each other. Quality assurance refers to the improvement of the ultimate quality of universities and academic institutions, and the education programmes activated. It relates to the principle of accountability of HEIs regarding their essential mission. Furthermore, with the overall aim of enhancing the competitiveness and attractiveness of the European system, the improvement of the quality of institutions and programmes is essential.

Conversely, relying on the meaning referred to in other fields of law, accreditation may relate to the different idea of the assessment of the presence of requirements necessary to conduct a delimited activity or achieve specific goals⁸.

⁷ Final communication of the Meeting European Ministers in charge of Higher Education in Prague on May 19th 2001 on the subject “Towards the European Higher Education Area” (available at https://ehea.info/media.ehea.info/file/2001_Prague/44/2/2001_Prague_Communique_English_553442.pdf).

⁸ A definition of the term can be found in the Regulation (CE) no 765/2008, art. 2) on the accreditation of conformity assessment bodies in the European Union relating to the marketing of products, that states



In this sense, regarding the academic field, the term accreditation is connected with the general issue of the establishment of universities and, in general, HEIs. Nevertheless, such a correlation is not indisputable. Moving back to the historical roots of universities, it must be stressed that, with some exceptions, in the origins they came into being as the result of a spontaneous movement of students and/or teachers⁹. Only in a second step, popes and emperors kept conferring powers and privileges to universities and their communities. Progressively, kings and, in general, heads of emerging states started establishing new universities¹⁰.

The increasing intervention of public powers in higher education can be related to specific political goals that have changed over the centuries. However, with some exceptions, it can be observed an evolution that from the original privilege charters moved towards the model of accreditation, that is the official recognition of the power to perform higher education programmes and, generally with regard to the European framework, deliver degrees and diplomas that have legal value¹¹. Sometimes, in the attempt to strengthen the monopoly of the authority, national governments reserved, and still reserve, to themselves the exclusive power to establish new universities, preventing any possible private initiative.

Based on the variety of national traditions, the current landscape appears to be remarkably diversified. In general, mostly at European level, accreditation refers to the authorization, delivered to higher education institutions by national governments, to conduct academic programmes and research activities. Despite the autonomy of the two concepts, quality assessment is not alien to the overall

“accreditation’ shall mean an attestation by a [national] accreditation body that a [conformity assessment] body meets the requirements set by harmonised standards and, where applicable, any additional requirements including those set out in relevant sectoral schemes, to carry out a specific [conformity assessment] activity”. A similar overlap of meanings can be found even in the health care services and the drug regulation sectors. On this specific issue among others, CONSITO M., *Accreditamento e terzo settore*, Napoli, 2009.

⁹ This was the case of the first European universities settled in Bologna and Paris. DEL NEGRO P. (ed), *La nascita delle università di stato tra medioevo ed età moderna*, Bologna, 2018; MOSCATI R., *L’autonomia universitaria del nuovo millennio*, in MARRA A. (ed), *L’autonomia universitaria del nuovo millennio*, Roma, Aracne, 2020, pp. 15 ff.; MEIX CERECEDA P., *Higher Education*, in *Max Planck Encyclopedia of Comparative Constitutional Law*, Oxford, OUP, 2017; RÜEGG W., *A history of the University in Europe*, vol 1, Cambridge, Cambridge University Press, 1992.

¹⁰ This is the case of the Naples’ University that was settled by the Emperor Frederick II in 1224 with a *generalis licentia*. With the creation of the *studium generalis* in Naples, the Emperor aimed at building up institutions committed to the education of the administrative clerks.

¹¹ In general terms, the concept of legal value refers to the recognition and enforceability of something under the law. It essentially means that something has worth or significance in a legal context, meaning it can be the basis for rights, obligations, or legal actions. With specific regard to the Education system, traditionally the concept has been used in the European framework to identify diplomas and degrees that enable to make access to higher levels of education as well as specific professions and job roles.



issue of accreditation. Indeed, as quality assurance plays a fundamental role within the mentioned process of harmonization of national systems, regulations started providing for periodic accreditation schemes. In this framework, the release of the final decision by the public authority relies on a comprehensive assessment of the quality requirements.

Given this scenery, the analysis aims to sketch out a classification of models enacted in the European landscape with the aim of providing a few suggestions regarding the issues raised by the EUI initiative.

2. The comparative outlook

Education systems represent one of the most important tools to build up and strengthen national culture and, in the end, national identity. As a result, they are perceived as a matter of reserved jurisdiction and convey the different approaches of national governments. In this context, even solutions and models of university accreditation are conceived as a matter of public interest and, accordingly, affected by national strategies on higher education.

Given the unfeasibility of any classification focused on the overall models, within the endeavour of identifying analogies and differences, the attention of the present contribution can be addressed to specific elements.

From a first perspective, a general distinction can be outlined regarding the object of the accreditation process.

Indeed, based on the overall definition of accreditation as the certification of the occurrence of requirements and elements necessary to perform specific activities, it can be distinguished the case of procedures focused on the education programmes to be activated from the different case of schemes addressed to evaluate the subjects in charge of the activities to be performed.

Such a difference reflects the overall idea on the role of the national government in the education field. Accreditations of degree, master and, in general, education programmes meet the political decision to set a minimum standard of education paths in order to guarantee the achievement of specific cultural outcomes, whereas accreditation of universities shows a more pervasive control by the state. In similar cases, an express will come out to identify the minimal requirements that institutions in charge of performing the highest level of education of the national community must meet.



Usually, since the origins, state accreditation has insisted on institutional aspects. Within the ongoing trend of harmonization of the higher education system, increasing attention has been devoted also to programmes and activities. In this framework, among others, they can be mentioned the Italian and, as it will be better explained later on, the French experiences.

Since R.D. n. 1592/1933, the Italian system provides for wide freedom in higher education¹². So, besides state universities, ‘free’ universities may operate. Although most recent policy guidelines on the higher education system provide for a temporary halt in the establishment of new institutions, except for mergers of existing entities, there is no reserved power for the national government to establish new universities. However, based on the adaptation process to the Bologna system, since the enactment of D.Lgs. n. 19/2012, both public and private entities interested in conducting academic activities must undergo an initial, as well as a periodical, proceeding of accreditation. In parallel, an analogous administrative path must be followed for the launch of every education programme that aims at issuing diplomas with legal value.

That given, in some countries, the accreditation of programmes and courses takes on an autonomous relevance. This usually happens regarding private subjects. As mentioned before, institutions established on the grounds of private initiative are generally allowed and, given the pretended monopoly of the state on higher education, are asked to be recognized by the public authority. Nevertheless, sometimes the state limits itself by asking only for the assessment of the education activity. This is the case, for instance, of the Irish system¹³. Here, the system provides for different solutions on the grounds of the nature of the HEI concerned. Indeed, given the full freedom to establish higher education institutions, private ones can offer programmes, but only courses that rely on a prior accreditation by the Quality and Qualifications Ireland, the sole state agency with responsibility for the external quality assurance, can award degrees within the National Framework of Qualification (NFQ).

Another similar solution is provided by the Dutch system, where private-sector subjects do not take part in the allocation of public funds but may, upon

¹² BARBATI C., *Il sistema delle autonomie universitarie*, Torino, 2019, pp. 7 ff.

¹³ KILLEAVY M., *Practice and Procedures Regarding Accreditation and Evaluation in the Irish Republic*, in SCHWARZ S. - WESTERHEIJDEN D.F. (eds) *Accreditation and Evaluation in the European Higher Education Area. Higher Education Dynamics*, Dordrecht, Springer, 2004, p. 233.



accreditation released by the Netherlands-Flanders Accreditation Organization (NVAO), perform their education programmes¹⁴.

A second element of differentiation may be detected in the purposes of the accreditation schemes. Within this framework, a first general model can be found in the decision to delineate accreditation as a formal authorization to perform activities that are considered of public interest. Such a solution is inherently linked to the legal value of diplomas and certificates. Behind the mentioned model lies the concept of universities as subjects in charge of the ultimate aim of the state to form the managing class of the society. In other words, given the aim of the national governments to provide people, who are going to play a leading role in public life, with specific skills, only at the end of a determined path can it be assumed that people have achieved these competences and knowledge.

In other countries, the approach appears to be smoother: accreditation of universities is not a compulsory requirement to perform education programmes and research activities. Rather, it represents a prerequisite to take part in the distribution of public funds. Among the others, such a model can be found in the USA¹⁵. Given the lack of federal general competence over the higher education system, the national government has traditionally appealed to its spending power, related to the “general welfare” clause established in art. 1, sec. 8, Const., to prompt federated governments and local institutions and organizations to adopt specific programmes even in education. Regarding the higher education area, this approach has brought funding, both directly and indirectly, to universities that have officially been accredited by agencies and bodies empowered by the federal government¹⁶.

Unlike most countries, the national government here shows deference to the freedom and autonomy of education providers. Regardless of the varied and complex solutions adopted by state regulations, federal policies in the field of higher education cannot override the free choices of academic communities. Indeed, they may endeavour to lead the system toward specific goals only by providing financial support in return.

¹⁴ LAW D., *Going Dutch: higher education in the Netherlands*, in *Perspectives: Policy and Practice in Higher Education*, 2016, pp. 99 ff.

¹⁵ BAÑUELOS N., *Quality and innovation in American higher education accreditation: the case of the University of Phoenix*, in *History of Education*, 2021, p. 428

¹⁶ GAGLIARDI B., *Le competenze dell’Unione Europea in materia di istruzione superiore: un confronto con lo “spending power” degli Stati Uniti d’America*, in *Riv. Int. Dir. Pubbl. Comunitario*, 2021, 675, 702 ff.



Even more market-oriented is the model adopted in Finland with specific regard to engineering degree programmes¹⁷. Here, accreditation is drafted as a seal of excellence for the institution and its programmes. In other words, accreditation is perceived as a label conferred upon a quality assessment conducted by experts. Such a certification is not compulsory, nor is required in order to receive public funds. Rather, it being addressed as a tool to support the enhancement of quality and increase comparability and recognition of engineering degrees within the European area, the ultimate goal of the system is to foster the attractiveness of academic institutions for students and stakeholders.

In addition to the different solutions adopted with regard to the different objects and purposes of the accreditation procedures, the varied landscape of the bodies in charge of accreditation represent a further element of great interest.

Even in this case, national regulations show different solutions in the national governments' approach. From a general perspective, it must be recognized that, starting from the 1999 Bologna Declaration, the increasing focus on quality assurance has triggered a still ongoing harmonization process of the European HEIs systems, even regarding the accreditation and external evaluation schemes.

Progressively, legislators have established agencies and organisms charged with the assessment task, providing them autonomy and independence from the executive. These bodies are usually composed of representatives of academic institutions and, in dealing with their duties, take advantage of committees of national and, sometimes, international experts. Ministers in charge of Research and Higher Education must take their final decision on accreditation requests, relying on the evaluation performed by these agencies.

At the supranational level, such a trend has prompted the establishment of an association, and even a register, of quality assurance agencies that have elaborated common guidelines on evaluation standards¹⁸.

¹⁷ The accreditation programme is carried out by the Finnish Education Evaluation Centre (FINEEC). More information available at https://www.karvi.fi/sites/default/files/sites/default/files/documents/KARVI_1_2022_web.pdf. With regard to engineering programmes, a similar framework can be detected in France. For a deeper analysis on this country experience, see SANCHEZ-CHAPARRO T. and others, Benefits and Challenges of Cross-Border Quality Assurance in Higher Education. A Case Study in Engineering Education in Europe, in *Quality in Higher Education*, 2022, p. 308.

¹⁸ The reference is to the EQAR, ENQA and the ESG elaborated in 2015 and available at <https://www.enqa.eu/esg-standards-and-guidelines-for-quality-assurance-in-the-european-higher-education-area/>.



Despite this harmonization process, some differences in states' approaches can be detected. A first aspect of interest insists on the margin of autonomy of the agencies regarding the executive and, from a different perspective, the margin of discretion given on the Ministers. From a general point of view, regulations provide for full autonomy upon quality assurance institutions, that operate as independent authorities, and a limited discretion on the executive branch. Nevertheless, on this point, some peculiarities can be observed in different countries.

Among the others, the Italian experience can be mentioned. Similar to other countries, the national regulation has conferred wide competences to the National Agency for the Evaluation of Universities and Research (ANVUR), asking the Minister of University and Research to rely on the evaluation performed by the authority¹⁹. The organism is formally external to the ministerial administration. Its activity is connected to the governmental body. Indeed, it must comply with the specific political directives expressed at the governmental level. In addition, the composition of the Agency itself is affected by the decisions taken by the political authority. Despite the academic origin of the members of the organism, they are all appointed by the Minister upon a discretionary evaluation. As a result, the Agency's activities align with the Minister's guidelines²⁰.

From a different point of view, it must be referred to the wide margin of discretion granted to the Minister of Science and Higher Education in the Polish experience²¹. Indeed, even in this case, since 2002 it has been established a national agency, the Polish Accreditation Committee (PAC), in charge of the external evaluation of institutions and programmes. This organism evaluates applications from unregistered public and non-public HEIs for the accreditation of their educational programs and institutions. The Minister has to consult the PAC before taking the final decision on the accreditation. Nevertheless, the current system still provides for the possibility to act on its own in case of non-compliance with obligations and duties prescribed by law. In addition, as a residual rule, the Minister may also refuse to grant a permit if he/she finds that a given programme does not respond to socio-economic needs on the date of the submission of the application.

¹⁹ BARBATI C., op cit., pp. 61 ff.

²⁰ COCCONI M., Nel prisma della valutazione dell'attività di ricerca svolta dalle università. Pluralismo e unità dei risultati della ricerca come effetti non neutrali dei metodi e degli attori della valutazione, in CHITI E. – GARDINI G. - SANDULLI A. (eds.), *Unità e pluralismo culturale*, Firenze, Firenze University Press, 2016, pp 171, 184 f.

²¹ KUDŁAJ. - STACHOWIAK-KUDŁA M. – FIGURSKI A., *The Impact of Funding on the Quality of Public Higher Education in Poland* (November 11, 2014). Available at SSRN: <https://ssrn.com/abstract=2537075>



Opposite to the just-mentioned cases, in some countries, it can be observed an extremely weak role of the executive branch in the accreditation issue.

From this perspective, a first model can be identified in the Maltese system²². The national regulation has undergone recent reforms aimed at complying with international standards. In this framework, a National Commission for Further and Higher Education (NCFHE) has been established for the HEIs' external evaluation. However, state higher education establishments have been granted self-accrediting status, being conferred the sole responsibility for programmes' quality assurance. As a result, the minister in charge of higher education has a limited role in providing general policy guidelines for the development of the field.

Even more autonomy from governmental supervision may be detected in Luxembourg²³. Despite the Minister of Higher Education and Research's competence in delineating the guidelines for external evaluation, in this case the assessment is conducted by an evaluation committee composed of experts from international quality assurance agencies. Thus, the asserted monopoly on higher education system substantially vanishes in favour of foreign, non-political, subjects.

On the same lines, it seems to move the accreditation system operating in the USA²⁴. Indeed, for public universities and non-profit institutions, accreditation is generally carried out by regional organizations that are established on an association basis. In other words, universities that seek accreditation participate in these organizations with their representatives. All the members of the association agree on methods and criteria for the evaluation process and, through their delegates, give their contribution to the accreditation of the other partners. With for-profit institutions, such a task is deferred to nation-based organizations characterized by the presence of representatives of professional stakeholders, who inexorably play a central role in the standardization of the education offer.

In all the cases last mentioned, though higher education programmes continue being a matter of public interest, the accreditation is not managed by organisms that are part of the public administration. Rather, they express the sensitivity of economic or professional stakeholders, which may profoundly differ from the political guidelines professed by the government.

²² <https://eurydice.eacea.ec.europa.eu/euryperia/malta/organisation-education-system-and-its-structure>

²³ <https://eurydice.eacea.ec.europa.eu/euryperia/luxembourg/quality-assurance>

²⁴ GAGLIARDI B., op. cit., pp. 709 ff.



The American experience offers suggestive remarks also from a different perspective. Indeed, so far, the attention has focused on the three main elements of the accreditation system: objects, subjects, and purposes. However, a further element of great interest for the development of the European process can be found in the territorial aspects of the accreditation schemes.

Usually, accreditation models are fundamentally affected by the territorial organization of the states. Therefore, in unitary countries, the accreditation system is traditionally shaped around the central position of the minister in charge of higher education.

In regional states, settings may be different consistently with the level of decentralization/devolution of powers. As a result, given the limited competences conferred to the regional governments in higher education, in Italy, the accreditation system is substantially unitary, with a unique evaluation agency appointed by the national government. Conversely, under its nature as a quasi-federal state, Spain presents a smoother framework with a competence on higher education shared by the national and regional levels of government. On the grounds of the recently updated system²⁵, public and private universities may be created by an act of the Legislative Assembly of the Region or the national parliament, depending on the competences conferred to the local level of government by the different regional constitutions. Regarding accreditation, every academic institution, both public and private, must be registered in a specific register under the responsibility of the Ministry of Science, Innovation, and Universities. The final decision on the creation of a new academic institution relies on the national or local government, based on the specific division of competences, that must follow a prior report of the General Conference on University and an evaluation of the development plan performed by an accreditation agency. Within this context, the system presents two possibilities. Indeed, as a general rule, the overall assessment is performed by external bodies that each autonomous community may empower within the framework of its competences. However, in case of no competence in the local government, the system guarantees the intervention of the National Agency for Quality Assessment and Accreditation (ANECA)²⁶.

²⁵ Organic Law on the University System (LOSU) n. 2/2023 and Royal Decree n. 822/2021.

²⁶ FUENSANTA H.P., Evaluación y acreditación del profesorado, programas e instituciones educativas, in *Revista Electrónica Interuniversitaria de Formación del Profesorado*, 2014, p. 17



With regard to federal states, two different models can be reported. The first case is represented by the American scheme. As mentioned, due to the spirit of the American system, the organization of the higher education area reveals a softer approach of the public authority towards education providers. Such an attitude by the executive branches has triggered a sound diversity with regard to institutional types of higher education actors that follow different operational schemes. In this framework, the accreditation is mostly regarded as a voluntary step to take part in the allocation of public funds. Nevertheless, consistent with a market-oriented approach, accreditation is significant for enhancing the attractiveness and competitiveness of HEIs. In this framework, both state, and federal governments play a secondary role in the accreditation mechanism. As mentioned before, the evaluation is conducted by agencies established on an association basis with a potential contribution from professional stakeholders. The only role of the federal government is to recognize and ‘legitimate’ the assessment conducted by these subjects.

A second model, more akin to the peculiar articulation of the federal principle of the system, is represented by the German case²⁷.

As it happens in the USA, even in Germany the federal government has no regulatory competence, it being allowed to adopt framework provisions and, above all, spend its influence by the use of the spending power. In particular, according to the Basic Law, the Federation bears the power and responsibility for establishing the framework rules governing admission to higher education institutions and degree courses, as well as the promotion of scientific research and admission to specific professions. The organization and overall regulation of HEIs rely on the exclusive competences of Länder, which carry out also the administrative functions related to the field. As a result, institutional accreditation, as well as the overall responsibility for quality assurance, is up to regional governments.

Differently from the American experience, the accreditation task is not devolved to associative organisms. On the contrary, based on the claimed monopoly on higher education, the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder established the Accreditation Council Foundation²⁸. Such an

²⁷ SCHADE A., Recent Quality Assurance Activities in Germany, in *European Journal of Education*, [2003] p. 285; KEHM B., The German System of Quality Assurance and Accreditation in Higher Education, in https://www.fondazioneagnelli.it/wp-content/uploads/2017/08/B._Kehm_-_The_German_System_of_Quality_Assurance_and_Accreditation_in_Higher_Education_2013.pdf.

²⁸ <https://www.hrk.de/resolutions-publications/resolutions/beschluss/detail/reorganisation-of-the-accreditation-system/>



organism is a joint institution of the Länder in charge of the accreditation and quality assurance of the state universities. It is an independent authority made up of representatives of the Länder governments, HEIs, students, and professional practitioners. The ultimate goal of a unitary supervision over higher education providers relies on the express will of promoting the equivalence of the corresponding study programmes to ease the possibility for students to change higher education institutions and, more in general, an osmotic mobility between all the subjects involved in the field.

In coherence with the cooperative nature of the German federalism, given the territorial limits of the regional governments, in case of non-state institutions the institutional accreditation is carried out on behalf of the Länder by the German Science and Humanities Council, the first European advisory organism on higher education settled by the Federation in 1957. In this way, the federal level runs in aid of and compensates the regional government by granting a certification that enables the institutions concerned to operate in a network of subjects characterized by common quality standards.

3. *The accreditation of academic institutions: the peculiarity of the French model*

The comparative framework depicted reveals an array of solutions deeply different from each other. Indeed, the traditional classification of higher education systems, based on the Anglo-Saxon, the Humboldtian, and the Napoleonic models, seems not to be fitting in the attempt to categorize current national experiences²⁹. Nor do they provide useful solutions regarding the efforts of the European institutions in tackling the issue of accreditation. British and American market-driven approaches may fail to achieve the fundamental aim of creating a system of Higher Education Institutions (HEIs) aligned with European values and goals. The Prussian model would create a system in which the operators would be disconnected from the politics and programmes of the European institutions, and the Napoleonic one would create a system in which the operators would be tightly linked to the politics and programmes of the European institutions.

²⁹ On the topic, among the others, see HERBST J., *University and government in the age of nationalism*, in ROMANO A., *Università in Europa*, vol 1, Soveria Mannelli, Rubettino, 1995, pp. 169 ff.; BARONE C. – BOFFO S.– DI PIETRO F. –MOSCATI R., *Le trasformazioni dei modelli di governance*, in MOSCATI R. – REGINI M. –ROSTAN M. (eds.), *Torri d'avorio in frantumi? Dove vanno le università europee*, Bologna, Il Mulino, 2010, pp 131 ff.



That given, among the different national systems, some useful suggestions stem from the French experience. Indeed, the current regulation represents the outcome of a quasi-millennial evolution. Together with Bologna and Oxford, Paris represents the cradle of modern university institutions. However, unlike the Italian, academic realities in France fall within a political context already characterized by the presence of a national political system. The overall interest of the royal authorities in consolidating their power directly affects even the birth and the spread of academic institutions³⁰. Actually, after the first period (XII-XIII century), epitomised by the autonomous and free birth of academic realities in different parts of the country and the subsequent recognition and conferral of privileges and immunities by the ecclesiastic or royal authorities, from the XV century the Monarch, as well as local princes, started creating new universities within the aim of strengthening their respective political position.

Universities were considered as institutions that could play an important role in the education of people who would have taken an active part in the functioning of the state as constables, officeholders, and counsellors of the king. Nevertheless, academic communities claimed and insisted on their historical autonomy, even by taking positions in contrast with the royal authorities. From a different perspective, since their advent, universities had focused on a limited bunch of teaching fields. In particular, activities mainly insisted on law, philosophy, theology, and medicine. Most parts of scientific areas, like engineering, had not been taken into consideration.

Within this framework, the rising divergences and conflicts between the universities and the king steered the evolution of the system in a twofold direction. On the one hand, based on the weakening of the connection between the monarch and the academic community, the political legitimacy and authority of the universities underwent a gradual but inescapable decline³¹. On the other hand,

³⁰ On the origins of the universities in France, among the others, see VERGER J., *Les institutions universitaires françaises au Moyen Age: origins, modèles, évolution*, in ROMANO A., *Università in Europa*, vol 2, Soveria Mannelli, Rubettino, 1995, pp. 64 ff.

³¹ On this topic, see NOGUES B., *Les échelles de l'université dans la France moderne: entre chrétienté, pouvoirs locaux et état*, in DEL NEGRO P. (ed.), *La nascita delle università di stato tra medioevo ed età moderna*, Bologna, Il Mulino, 2018, pp. 97 ff.; GOROCHOV N., *Università e Stato in Francia nel secolo XV*, ivi, pp. 119 ff.; GAUDEMMENT J., *Les universités et la vie politique (XIII-XVIII siècles)*, in ROMANO A., *Università in Europa*, vol 1, cit., pp. 13 ff.; VERGER J., *Les universités françaises et le pouvoir politique, du Moyen Age à la Révolution*, ivi, pp. 19 ff.; Id, *Les institutions universitaires françaises au Moyen Age*, cit., pp. 75 ff.



since the XVI century, kings started creating new institutions, schools, and colleges that should teach and train people in technical sciences³².

On the ground of this approach, it came out a system not coherently structured, characterized by an array of subjects with different configurations and competences. As the overall political system, even such a multiform structure was seriously affected by the disruption prompted by the 1789 uprising. In 1793, the Revolution abolished both the universities and the technical schools.

The system was restored only with the Napoleon empire. Nevertheless, the overrun of the revolutionary spirit was characterized by the enactment of a centralized and unitary system of government³³. In this framework, even the HEIs had to be organically placed in the overall structure of bodies and organisms that would have to steer the country. As a result, the new higher education system established by Napoleon in 1806 provided for the partition of the country into about thirty areas. In each of them, an academy was created, that is, a compound of academic secondary schools called lycées and university faculties. Hence, the ancient autonomous institutions got to be reorganized into simple administrative units with no autonomy and endowed with mere teaching duties and competences³⁴. However, the new system turned out to present the same variety of bodies and organisms that characterized the original model³⁵. Indeed, not all former universities were laid in the new framework: based on the specificity of the field of activity, engineering, as well as higher technical and military schools continued to be organized through specific institutions³⁶. Furthermore, even research activities were mainly confined to non-academic institutions.

Such a multiform state-driven organization governed the field of higher education until the 1968 turmoil. Actually, despite the formal reestablishment of the universities in 1896, academic institutions were again conferred the power to issue

³² The Collège de France was created in XVI century, whereas in XVIII the king established the first Grand Ecoles. On the topic, see VERGER J., *Les universités françaises et le pouvoir politique, du Moyen Age à la Révolution*, cit., pp. 32 ff.. The author underlines that, differently from the universities, which continued claiming their original autonomy, these institutions could have a structure that didn't replicated the university model and, above all, were "perfectly" managed by the government.

³³ See, GERBOD P., *Les pouvoirs politiques français et les facultés de l'Etat, de la fondation de l'Université impériale (1806) au deuxième colloque de Caen (1966)*, in ROMANO A., *Università in Europa*, vol 1, cit. pp. 199 ff.

³⁴ HERBST J., *University and government in the age of nationalism*, in ROMANO A., *Università in Europa*, vol 1, cit., pp. 171 ff.

³⁵ VERGER J., loc. cit.

³⁶ HERBST J., loc. cit.



diplomas and activate courses of their own, but their activities fell into a strongly centralized ministerial bureaucracy.

It was only at the end of the 60s that the unrest of the student movement triggered a systemic intervention by the government³⁷. According to the 1968 loi Faure (L. n. 68-978), universities would have been awarded decision-making power with a corresponding reshaping of the competences of local faculties and the national government. Further, a higher level of participation was provided, with the engagement of both students and administrative officers in the university council. However, the reform passed did not enhance the autonomy of the HEIs, nor did it provide for integrating teaching and research activities into the same organization. The renovated system maintained a double scheme. On the one hand, universities and institutions conducted teaching activities, dependent on the Higher Education Minister's funding and regulation; on the other hand, there were centres and organisms dependent on the Minister of research activities responsible for research tasks. As a result, there were researchers not in charge of teaching activities and, conversely, teachers with no research tasks³⁸.

In the last 50 years, the overall organization has undergone different reforms. Different attempts have been made to unify and simplify the system. Nevertheless, the model still appears multifaceted³⁹. From a first point of view, it must be observed a division between teaching and research activities with a general distinction of institutional tasks. A large share of the scientific research is conducted by research establishments such as the National Centre of the scientific Research (Centre Nationale de la Recherche Scientifique - CNRS) or the National Institute of Health and Medical Research (Institut National de la Santé et de la Recherche Médicale - INSERM), which are not formally part of the universities. However, most times, the research units of those establishments are located inside universities (or other higher education establishments) and operated by research establishments and academic institutions through joint organisms (Unités Mixtes de Recherche - UMR)⁴⁰.

³⁷ See ALLIOT M., Les pouvoirs politiques et la réforme de 1968 en France, in ROMANO A., *Università in Europa*, vol 1, cit., pp. 277 ff.

³⁸ On this structure, see STAROPOLI A., *L'insegnamento superiore in Europa. Il modello francese*, in *Modelli di Università in Europa e la questione dell'autonomia*, Torino, Fondazione G. Agnelli, 1996, pp. 6 ff.

³⁹ A general analysis on the current system can be found in MUSSELIN C., France, in FOREST J.J.F. - ALTBACH P.G. (eds), *International Handbook of Higher Education*, Dordrecht, Springer, 2007, p. 711; *Les grandes problématiques de l'enseignement supérieur et de la recherche*, in *Administration & Éducation*, 2025/HS2, pp 212 ff. and *L'administration de l'enseignement supérieur et de la recherche*, *ivi*, pp. 370 ff.

⁴⁰ On this subject, see the 1982 L. n. 82-610 on the political guidelines and plans for research and



From a different point of view, it can be observed the maintenance of an array of different institutions in charge of higher education programmes. In particular, besides the universities, usually characterized by a limited variety of fields of activity, the current framework presents a group of Grands Établissements, that usually offer secondary level programmes in the fields of technical sciences and management, as well as political studies. Furthermore, there are also the IUTs (University Technical Institutes), a sort of university colleges installed as satellite realities of larger universities that offer post-secondary study programmes designed to provide higher vocational education or the technical skills needed to perform the tasks of a specific job⁴¹.

At a deeper inspection, it must be observed that the current system repeals the state monopoly traditionally active in other national experiences. In particular, since the end of the XIX century, the coexistence of both public and private bodies can be noticed. The steady intention of the governments to rule and control the whole higher education system has not hindered the establishment and proliferation of private actors. Hence, likewise the Italian case, alongside universities and grands établissements of public nature, the French system is characterized by free private colleges (universités libres and some grandes écoles) and technical private colleges (écoles techniques). Some of them have progressively been nationalised⁴², others have been structured as not-for-profit associations. Finally, education programmes may be offered even by commercial for-profit companies, which may represent both national actors and local branches of foreign universities.

That given, the state has not decided to leave its traditional role in the domain of higher education. Regulations enacted since the end of the last century have gradually broadened the margin of autonomy of academic institutions by establishing a contractual scheme. As a result, the education offers of universities and grand établissements rely on periodical negotiations activated between each institution and the Ministry. Further, the habilitation to deliver degrees with legal value is given only to public institutions and, according to art. L.732-1 of the Education Code, private subjects characterized by a not-for-profit structure and

technological development and the 2006 loi Goulard (L. n. 2006-450) on the revitalization of research activities

⁴¹ In this case, degrees awarded by IUTs are not comparable to ordinary bachelor's degrees delivered by academic institutions (both universities and grand établissements), rather they are more similar to bachelors of applied science.

⁴² This is the case, for instance, of the Science Po institution. Created in 1872 as a free private college, it was nationalized in 1945 as a public Grande École.



expressly recognized by the Ministry as institutions of general interest (établissement d'enseignement supérieur privé d'intérêt général - EESPIG).

Therefore, private companies may freely offer courses and programmes, but they are not officially recognized as degrees: they may be accredited or certified by the Ministry of Higher Education as diplomas (diplômes visés) or public vocational training courses.

Nevertheless, even private institutions may get the possibility to deliver official degrees in two ways. On the one hand, the system admits the possibility for private actors to sign a partnership convention with a public higher education institution, upon which the education programmes supplied by the private subject are framed within the overall offer of the public institution. A different solution relies on the statutory law recently enacted by the national government. Within the overall aim of simplifying the HEIs' framework, since 2018 a ministerial order allows public universities to establish cooperation agreements that integrate both public faculties and organisms, as well as private actors classified as EESPIG⁴³.

In this way, though preserving the recognized freedom of institutions and actors in charge of higher education, the state exploits its accreditation role and encourages the adoption of specific schemes both at the organizational level and in the education offer⁴⁴. Alongside, despite the recognition of the freedom of research, the predominant role played by national research institutions encourages universities to establish forms of structural cooperation by establishing mixed organisms.

4. The accreditation issue within the framework of the European University Initiative: some conclusive remarks on the ongoing process

The overall analysis reveals the complexity of the issues that affect the regulation of higher education institutions and their accreditation. However, some suggestions can be extrapolated regarding the ongoing European Union integration process and, in particular, the European University Initiative.

⁴³ Ordonnance n° 2018-1131 du 12 décembre 2018 relative à l'expérimentation de nouvelles formes de rapprochement, de regroupement ou de fusion des établissements d'enseignement supérieur et de recherche, available at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037800979>. The idea of a structured cooperation among different HEIs can be observed already in the 2013 loi Fioraso (L. n. 2013-660) on higher education et research, which strove towards the establishment of academic federations.

⁴⁴ Within this context, it must be observed that the national government has repeatedly tried to enhance cooperation even among the territorial entities. On this topic, see *La gouvernance des universités et la politique de site: La résolution progressive d'injonctions contradictoires*, in *Administration et éducation*, 2025/Hors série, pp 375 ff.



At first sight, from the analysis briefly depicted, it comes out that the accreditation issue is generally connected to the contended monopoly of the states in the higher education area. As a direct consequence of such reserved jurisdiction upon national governments, the European Treaties do not provide for a clear competence of the supranational institutions in these fields. Based on EU Treaties provisions, on education EU institutions have a limited “competence to carry out actions to support, coordinate or supplement the actions of the Member States” (art. 6 TFEU). More in particular, according to art. 165 TEU the “Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity ... excluding any harmonisation of the laws and regulations of the Member States”.

Therefore, it should be concluded that the creation of European universities and the establishment of a European accreditation system should fall outside the field of action of the European Union.

Nevertheless, it has been observed that the EU has gradually consolidated its position in the higher education area. Despite the lack of any harmonization competence⁴⁵, European institutions have acquired importance in supporting education policies. Indeed, on the grounds of the substantial legitimation carried out by the CJEU, competences in education have broadened⁴⁶.

From a different perspective, resorting to its spending power, European institutions have effectively supported the declarations settled in the Bologna process and prompted a deep evolution in the European system of higher education. A milestone tool in the establishment of the European Higher Education Area is represented by the Erasmus+ programme. Elaborated as a tool enabling short mobility exchanges for university students, the programme has broadened its scope by including the sharing of best practices among academic partners and the organization of joint programmes.

Due to the lack of explicit competences of EU institutions on education, the Council decided unanimously to launch the programme by referring to the art. 235 EECT (now art. 352 TFEU) which confers to the European institutions the implied powers, that is the possibility to intervene in domains where the Union has not

⁴⁵ GOHIER B., *The EU's Competence in Higher Education: Evolution, Instruments and Limits*

⁴⁶ Among others, C-293/83, *François Gravier v. City of Liège* [1985]. On the role of the CJEU caselaw, see BARAGGIA A., *op. cit.*, pp. 18 ff.



clear competences where it is necessary to fulfil tasks expressly affirmed in the treaties⁴⁷.

In this general framework, it can be understood the progressive claim of the Commission and the other institutions towards the recognition of a direct competence in the Higher Education Area. As a result, the European University Initiative and its two main different programmes currently under the lens of European political actors, one on a European degree and the other on a Union of skills within the field of training and lifelong learning⁴⁸, fall within this overall landscape. Even though at the moment apparently overlooked, a third general objective can be further detected in the discourse held by the French President: the establishment of a system of European Universities.

As observed in the preceding exam, the idea of European programmes and European HEIs inevitably recalls the need to enact an accreditation system. Therefore, it is compulsory to assess the solutions that could be adopted and what function a European accreditation could play.

Moving on from the last question, the starting remarks on the origins of the accreditation must be recalled. Emperors, Popes, and Kings did not start ‘recognizing’ free associations of students and teachers to affirm their monopoly on higher education and, in the end, the sovereignty over the territorial community. Rather, they started accrediting these social formations to ‘legitimate’ their activities and, from a different perspective, receive, in turn, an endorsement for their public role. Only in a second time, they kept authorizing universities to pursue specific political goals. Even today, as it has been shown by the French case, national governments may not be interested in claiming the monopoly of higher education by banning any possibility of programmes organized by private companies.

⁴⁷ Similar attitude can be detected even in other fields where there is a concrete interest in dealing with issues that, from a formal point of view, fall outside the jurisdiction of the Union itself. An example of such an attempt of the European Institutions to broaden their field of activities may be found in the recent proposal for a regulation of space activities. Notwithstanding the lack of competence on this topic, the Commission presented a proposal for a European Space Act based on its general competence related to the achievement of an internal market of goods and services.

⁴⁸ European Commission: Directorate-General for Education, Youth, Sport and Culture, Blueprint for a European degree – Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions, Publications Office of the European Union, 2024, available at <https://data.europa.eu/doi/10.2766/496478>; Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - The Union of Skills, COM(2025) 90 final, 5.3.2025 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025DC0090>.



Within this framework, it must be convened that also the EU could enact a system of accreditation for HEIs and programmes. The substantial lack of sovereignty or reserved competences in this field would not hinder such a decision. Actually, having been rejected the intent to replace national higher education systems, European institutions could be interested in awarding institutions and programmes with a seal that reveals the accomplishment of specific goals and the implementation of specific values. Such accreditation could be tied to the decision to circumscribe the number of subjects eligible for grants and fundings as well as to the identification of skills that graduates mandatorily have to develop if they want to apply for a position in EU institutions. In this way, formally HEIs would be free not to adhere to the requirements provided for by the EU guidelines. On the same ground, Member states they would keep their ultimate jurisdiction in the definition of elements they deem necessary to perform higher education programmes and activities. Nevertheless, from a practical point of view, the decision of EU institutions to circumscribe its support to those HEIs that preliminary have been accredited by and on the ground of European provisions would steer the overall system in the looked-for direction.

That given, on the specific question of the model to implement, a first evaluation can be conducted regarding the territorial organization. On this point, the solution can be different based on the perspective assumed. In relation to the general process of harmonization originated by the 1999 Bologna Declaration, it seems that under the principle of subsidiarity (art. 5 TEU) a decentralized model, both the German and the American ones, would better fit with the division of competences.

Conversely, it must be observed that the European University Initiative may significantly affect the current system. Relying on the direct interest of European institutions in accrediting subjects and programmes for specific issues, irrespective of any consideration on their legal structure⁴⁹, the European Universities would be new subjects that fall outside the national scope. Thus, the national accreditation systems would probably be incapable of assessing these institutions. In this sense, the solution of a European organism in charge of accreditation, like the German Science and Humanities Council, would tackle the issue properly.

Regarding the institutional organization of accreditation, it seems that the solutions may sensibly differ on the grounds of the purposes pursued with the

⁴⁹ GAGLIARDI B. and others, The Path towards the European University in the Current EU Legal Framework: the Unita – Universitas Montium Experience, in *International Journal of Film and Media Arts*, 2022, p. 10 available at <https://revistas.ulusofona.pt/index.php/ijfma/article/view/8315>.



assessment procedure. However, notwithstanding the potentially different goals to work for, it can be observed that the harmonization process, which started on the grounds of intergovernmental cooperation, has led to common guidelines on quality standards and, above all, an interoperability of the national systems. In this framework, a European accreditation system could take advantage of the different national quality assurance institutions and, in the end, the supranational organization that represents the local actors⁵⁰.

Substantially, it can be remarked that within the ongoing integration process the idea of a Europeanization of the HEIs system is progressively getting to be accepted. As Jean Monnet said, “European construction, like all peaceful revolutions, needs time – time to convince, time to adapt minds and adjust things to great transformations”. Many steps have already been taken and, in this framework, the comparative landscape offers different tools and models that could be further enacted. Nevertheless, European institutions still need time to ‘accredit’ themselves before national governments as the right boost for the future of our community.

⁵⁰ Among the different actors currently working at a supranational level it must be mentioned the European Association for Quality Assurance in Higher Education (ENQA), a stakeholder organisation of quality assurance agencies active in the EHEA, committed to represent the interests of its members at international level and promote networking opportunities (<https://www.enqa.eu/about-enqa>)