

# 1 Introduction

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Continuing education and training (CET) is of growing importance to the German economy and, in particular, to the economy of Brandenburg; the ageing population and the advances of automation and other forms of technology mean that workers will need to update their skills frequently in the future, as skills demand evolves and changes. However, the complexities of European law – and especially, the EU state aid rules – mean that the state government and Brandenburg’s higher education institutions (HEIs) are uncertain about the legality of public funding of CET. This poses risks of under-investment in CET – which, in turn, poses risks for workforce development. The OECD project team has commissioned an analysis of the legal constraints of funding for CET, which is set out in this report.

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## The context in Brandenburg

The German federal state of Brandenburg is one of the former East German states (the new *Länder*). The state surrounds the federal capital, Berlin, and the state capital, Potsdam, borders Berlin.

The state's economy is undergoing structural change that will open new opportunities for highly skilled people. Coal production in the state is being phased out, while the state government is seeking to encourage the development of advanced manufacturing and to increase the capacity for innovative activity. These developments will likely increase the demand in the labour market for high-level skills.

At the same time, Brandenburg's population of 2.5 million is one of the oldest among the German states and the average age is forecast to increase further (Statistik Berlin-Brandenburg, 2021<sup>[1]</sup>). One consequence of this demographic change is that people are likely to remain longer in the workforce compared to in past, and will face a higher probability of changes in the nature of their work.

Alongside these changes, the workforce of Brandenburg – like the rest of Germany and all advanced economies – faces significant changes in their work roles as new technologies, automation and artificial intelligence change the nature of work. This digital transformation of work means that job requirements and the skills required for work will change (BMAS, 2020<sup>[2]</sup>). The OECD estimates that Germany is one of the countries most affected by this sort of change, with around 50% of all jobs subject to a significant degree of automation (Nedelkoska and Quintini, 2018<sup>[3]</sup>).

These changes mean that, throughout the workforce, the skills required for the majority of jobs – and, by implication, the need for continuing education and training (CET) – will change and increase (OECD, 2021<sup>[4]</sup>).

However, Brandenburg's public higher education institutions (HEIs) have so far been only marginal providers of CET. In order to expand their offer of CET, they would require more legal certainty about the use of their publicly funded resources in light of European Union (EU) state aid policy. This study does not call for more public funding for CET. Although additional public funding is desirable (Wissenschaftsrat, 2019<sup>[5]</sup>), it is not the focus of this study and is therefore not part of the recommendations.

## The aims of this study

The aims of this study are to classify CET programmes offered by Brandenburg's HEIs in the light of the EU's legal framework on state aid and to identify opportunities to use publicly funded resources for CET programmes.

The OECD project team commissioned a legal analysis of this question by KPMG Law. KPMG Law was asked to investigate how the different categories of education and training are reflected in the EU legal framework and to develop recommendations aimed at increasing legal certainty. The OECD project team further engaged a tax expert on HEI operations and collaborated with a senior expert on state aid law and research and innovation policy from the European Commission (EC). They both provided valuable advice for this work.

The study was part of the project “Analysis and advice for a renewed tertiary education strategy for Brandenburg and guidance on categorisation of scientific continuing education”, funded by the EC through the Structural Reform Support Programme. The application for funding of the sub-project on categorisation of continuing education and training was submitted by the University of Applied Sciences Potsdam (*Fachhochschule Potsdam, FH Potsdam*) on the initiative of its President, Prof. Dr. Eva Schmitt-Rodermund, in agreement with the other seven public HEIs in Brandenburg and the Ministry for Science, Research and Culture of the State of Brandenburg (*Ministerium für Wissenschaft, Forschung und Kultur, MWFK*). The project was conducted in close collaboration with FH Potsdam, the other seven public state's

HEIs, MWFK, and the Directorate-General for Structural Reform Support of the EC. This report presents the results of that investigation:

- Chapter 1 describes the growing importance of CET in helping firms deal with the changing skills needs in Germany, and particularly in Brandenburg, and sketches the framework around the provision of CET.
- Chapter 2 lays out the European legal framework for regulating state aid.
- Chapter 3 analyses the requirements a CET programme must meet to be considered for a government subsidy under EU law, notes that the status of CET under that legal framework is not clear and explores the case law to identify principles that give guidance on the interpretation of EU law.
- Chapter 4 describes the application of this legal framework in practice at HEIs in Brandenburg.
- Chapter 5 provides recommendations to the state government and public HEIs in Brandenburg about how to clarify the status of continuing education and training as a state-aided activity. It also proposes pointers for interpretation and future reform of the EU framework on state aid, and provides suggestions for policy action.

## CET in Germany

### ***The national skills strategy***

The context in Germany and Brandenburg, in particular, means that a necessary condition for economic success is ensuring that workers have the opportunity and the incentive to refresh their skills progressively and continuously over their careers (OECD, 2021<sup>[6]</sup>). In light of this, the German federal government has established a National Skills Strategy (*Nationale Weiterbildungsstrategie*, NWS). The NWS focuses on CET as a means of lifting vocational capabilities.

The federal government aims to make continuing education and training a natural component of people's careers. The NWS includes a number of objectives relating to CET, for instance:

- increase the transparency and range of CET courses and programmes on offer;
- strengthen the responsibility of social partners in relation to CET;
- strengthen CET advice services for individuals and companies, and increase motivation to engage in CET;
- raise recognition and acceptance of skills acquired by employees through CET;
- develop CET qualifications and a range of programmes on offer;
- assure the qualifications of personnel involved in CET;
- improve CET statistics and strategic planning regarding future skills needs.

In setting the NWS, the federal government has recognised that maintaining, developing and enriching the skills of the workforce is an important national challenge to Germany's future prosperity, and that CET is a key component of addressing that challenge.

The OECD has also acknowledged the role NWS has played in fostering CET:

*"Germany has recently done a lot to modernise its CET landscape and improve the co-ordination of its many CET actors – not least through its National Skills Strategy. This path must be continued and expanded, especially through a stronger focus on those groups whose professional future depends most on continuing education and training" (OECD, 2021<sup>[7]</sup>).*

## Benefits of CET

Responsibility for CET is shared by companies, social and economic partners, CET providers and the government at national and federal state level (OECD, 2021<sup>[6]</sup>). In commenting on the OECD's 2021 study of CET in Germany, Federal Minister of Education and Research, Anja Karliczek, stated:

*"Continuing vocational education and training [berufliche Weiterbildung] is key to maintaining our competitiveness and the innovativeness of our country. Continuing vocational training is an absolute necessity for companies and for employees. It is part of lifelong learning. We have taken important steps towards a new CET culture with the National Skills Strategy... One of the steps we have taken is the improvement of access to CET by expanding basic vocational education and training... we reaffirm the joint responsibility of the business community, the social partners and the federal and state governments for shaping and financing continuing vocational education and training. Setting the right framework conditions remains the central task of policymakers..." (BMBF, 2021<sup>[8]</sup>)*

Workers experience benefits from participating in high quality CET – such as greater job satisfaction, lower risk of unemployment, enhanced opportunities for promotion and higher earnings. Likewise, employers benefit from their employees undertaking CET – because, in acquiring greater skill, workers lift their productivity, helping the enterprise to thrive. The comments of the Federal Minister of Education and Research recognise that there is, in addition, a public benefit from lifting the skills of the German workforce through CET. Given that the benefits of CET are shared between employers, employees and the public, there is a case for sharing the costs between those three parties; otherwise, there is a risk of under-investment in CET.

## Types of CET and their providers

The take-up of continuing education or training by adults in Germany is slightly above the OECD average (OECD, 2021<sup>[4]</sup>) – around tenth of OECD countries, with around half of respondents to the Survey of Adult Skills having undertaken some non-formal or formal training in the twelve months before the survey. However, there is a wide range of types and providers of CET (OECD, 2021<sup>[6]</sup>) (Table 1.1).

**Table 1.1. Categorisation of German CET**

Type of CET	Categories	Providers
Basic CET	Literacy courses Basic skills courses	Adult Education Centres Education institutes of trade unions Education institutes of churches Private non-profit providers
General CET	Second chance education	Evening schools Adult Education Centres Vocational schools/upper secondary schools Private non-profit providers
Vocational CET	<b>Initial vocational education and training</b> <b>Vocational retraining</b> <b>Adjustment measures</b> <b>Vocational upskilling</b>	Vocational schools Inter-company vocational training facilities Private non-profit providers Private commercial providers Enterprises Education institutes of the Chambers Technical Schools
Higher education CET	Bachelor's degrees Master's degrees Non-formal CET in higher education	Universities of Co-operative Education Universities for Public Administration Universities of Applied Sciences Universities Research institutes

Adult liberal education	Culture education Democracy education Literacy courses Basic skills courses Vocational CET courses	Adult Education Centres (Volkshochschulen) Church groups Political foundations Trade unions Commercial private providers Non-profit private providers
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Source: OECD (2021<sup>[6]</sup>), *Continuing Education and Training in Germany*, Getting Skills Right, <https://doi.org/10.1787/1f552468-en>.

There are many types of providers of CET in Germany – around 40% of them are private, some of which are not for profit. Types of providers vary from adult education centres to the education arms of organisations like the chambers. Around 10% of providers are HEIs and vocational education institutions (OECD, 2021<sup>[6]</sup>).

In order to further strengthen the take-up and offer of CET, (OECD, 2021<sup>[6]</sup>) has recommended to German policy makers to improve the governance structures in CET; undertake a systematic approach to guidance, validation and partial qualifications; expand funding and bundle financial incentives; and attract adults with low basic skills to CET.

### ***CET in higher education***

CET is one of the four core responsibilities of HEIs in Germany, as specified in the 1998 Federal Higher Education Framework Act<sup>1</sup>. Nationally, around 5% of adults aged 18-65 take part in CET in higher education in any given year, according to data from the German adult education survey (OECD, 2021<sup>[6]</sup>).

However, CET is not uniformly defined on either the federal or the state level. CET is referenced as a function of HEIs in the state higher education laws in various ways, particularly with regard to the purpose and form of the CET programmes:

- The Saxon Higher Education Act (*Sächsisches Hochschulgesetzes*, SächsHG) centres on the purpose of CET: "HEIs offer CET programmes. These are designed to expand specialised knowledge or develop scientific or artistic skills and abilities."
- The State Higher Education Act of Mecklenburg-Western Pomerania (*Landeshochschulgesetz Mecklenburg-Vorpommern*, LHG M-V) describes both the purpose and the concrete range of CET programmes to be offered: "HEIs develop and expand their scientific and artistic continuing education programmes in a manner that is oriented towards target groups and takes into account the requirements of lifelong learning. The CET programmes on offer include master's degree programmes that provide CET; foundational bachelor's degree programmes that provide CET; CET with a certificate of completion; and other CET events and courses. As a rule, the CET courses [at HEIs] are aimed at people with qualified practical professional experience."
- The Hessian Higher Education Act (*Hessisches Hochschulgesetzes*, HessHG) highlights the purpose of the CET programmes: "HEIs are to develop and offer CET programmes to deepen academic knowledge and supplement practical professional experience."

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (*Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland* or *Kultusministerkonferenz*, KMK) defines CET as: "the continuation or resumption of organised learning after the completion of a first phase of education and as a rule after the commencement of gainful employment or founding a family, whereby the CET programme selected is on the level of specialisation and didactic approach found at a HEI" (KMK, 2001<sup>[9]</sup>).

This is a very broad definition. The term "organised learning" can cover a wide range of activities, from a three-week language course to a full master's course. What is important about this definition is that CET in higher education is seen as directed at those who have undertaken (or completed) a first course of

education. The definition offered by the KMK is not a statutory definition. However, the KMK is an organisation in which ministers of culture of the *Länder* co-operate as members of government and as such, the content of their reports can be drawn upon at least for the interpretation of terms in acts of law.

In Brandenburg, CET is discussed in the Brandenburg Higher Education Act (*Hochschulgesetz Brandenburg (BbgHG)*). § 25(1) BbgHG also initially defines CET programmes at HEIs in terms of their purpose – they are to serve further scientific, artistic and vocational qualifications, and to train the next generation of academics, scientists, researchers and artists. This content is to be co-ordinated with the rest of the higher education curriculum and is to incorporate practical, professional experience and requirements.

Although the wording of this definition is not the same, the content is the same as in the KMK version. Overall, § 25(1) BbgHG expresses the intention to provide further qualifications (*weitere Qualifikationen*), in other words, the resumption (*Wiederaufnahme*) of education and training. This, in turn, assumes that a first phase has already been concluded. Given that the CET programmes are to be co-ordinated with the rest of the curricula at the HEIs, it follows that the level of specialisation and didactic methods of higher education programmes are to be reflected in the CET offerings. This finding is made particularly clear by the first sentence of § 25(2) BbgHG, which provides that CET leads to a higher education degree (*Hochschulabschluss*) in accordance with the second sentence of § 28(1) BbgHG.

## The hierarchy of law relating to CET

Higher education institutions in Germany (*Hochschulen*) are governed according to a network of European, federal and state regulations which protect them while subjecting them to obligations.

### **Higher education – between Basic Law, state constitutions and European law**

The freedom of the sciences in Art. 5(3) of the Basic Law (*Grundgesetz, GG*) protects the activities of research and teaching from undue interference by the state and also provides the foundations upon which institutions of higher education, training and research can be established (Gärditz, 2019<sub>[10]</sub>)<sup>2</sup>. In the understanding of higher education laws of the states (*Länder*), HEIs are a cornerstone supporting the democratic state<sup>3</sup>. For this reason, these institutions are eligible for public funding by the *Länder*.

Art. 31(1) and Art. 32 (1) of the Constitution of the State of Brandenburg (*BbgVerf*) mirror the freedom of the sciences in the Basic Law. Art. 31(1) *BbgVerf* guarantees the freedom of the sciences identically with Art. 5(3) GG, while Art. 32(1) *BbgVerf* includes the right to self-administration for HEIs. HEIs can invoke Art. 31(a) and Art. 32(2) *BbgVerf* and Art. 5(3) GG (Basic Law) to defend themselves against undue interference by other public authorities in their scientific activities and self-administration (Gärditz, 2019<sub>[10]</sub>)<sup>4</sup>. The HEIs are, however, also public authorities and parties obligated to the constitution in all respects save for a state-imposed restriction on the freedom of the sciences. As a result, the HEIs are bound in their actions to the law in accordance with Art. 20(3) GG<sup>5</sup> (Geis, 2020<sub>[11]</sub>). All European, federal and state laws apply in their valid form in Germany to the HEIs.

European law takes precedence over national law. Therefore, if there is a regulation in European law applicable in a field and if the field has an EU relevance, then the European regulation takes precedence over both statutory regulations and the regulations of the Federal and the state constitutions<sup>6</sup>. The scope for both federal and state legislators to draft new laws is limited in the areas governed by European law (Callies/Kahl/Puttler, 2016<sub>[12]</sub>)<sup>7</sup> and this applies also to the domain of higher education, where European regulations must be given precedence.

### **Higher education laws are state laws**

Since the 2006 reform of the federal system in Germany, higher education laws have been almost exclusively within the legislative competence of the *Länder*<sup>8</sup>. The Higher Education Framework Act (*Hochschulrechtsrahmengesetz*, HRG)<sup>9</sup>, last amended in 2007, has not been repealed but is applied only in those fields in which a *Land* has not enacted a new law (Geis, 2020<sub>[11]</sub>)<sup>10</sup>. The *Länder* have amended their own higher education acts since 2006, with the result that the remaining scope of application of the (federal) HRG is narrow (Geis, 2020<sub>[11]</sub>)<sup>11</sup>.

The KMK was established in order to co-ordinate higher education legislation in the Federal Republic of Germany. The resolutions of the KMK are not binding on the *Länder*. Rather; the KMK may make recommendations which then require translation into the laws of each of the *Länder* (VGH Baden-Württemberg, 2016<sub>[13]</sub>)<sup>12</sup>. The acts passed by the *Bundestag* and the parliaments of the *Länder* (*Landtage*) hold sway, supplemented by statutory ordinances and by-laws added by subordinate bodies entitled to issue subordinate regulations. These include the HEIs themselves within their right to draw up their own statutes, see e.g. § 5(1) *Hochschulgesetz Brandenburg* (BbgHG).

### **Higher education budgetary law**

General budgetary regulations are set out in the Budgetary Principles Act (*Haushaltsgrundsätze-gesetz*, HGrG) and the Federal Budgetary Regulations (*Bundeshaushaltsordnung*). These federal laws are supplemented by regulations in the higher education laws of the *Länder* and higher education statute laws (*Hochschulsatzungsrecht*) (Geis, 2020<sub>[11]</sub>)<sup>13</sup>.

The budgetary laws set out the rights of HEIs to be granted funding. While HEIs are primarily funded from the public purse, they may also receive funding from third parties<sup>14</sup>. Third-party sources are typically fees paid by companies to commission research or expert reports, but they may also include fees paid for CET programmes.

How money from third-party sources is used can cause conflict between the HEI's own interests on the one hand and its public function and/or its educational mandate on the other.

The HEIs are also bound by justice and the law (*Recht und Gesetz*) in the same manner as with their third-party funded activities, even though these are generally governed by private law. The applicable prescriptions of EU state aid rules in particular are designed to prevent activities in this area that could lead to a distortion of the market.

## **Legal basis of European education policy**

Because the European Union was established originally as a mechanism to facilitate trade, its primary focus initially was economic. For this reason, for many years, its education focus was vocational education and training (VET) policy. Issues of general education, on the other hand, were less significant until the mid-1980s when the EU introduced exchange programmes for HEIs (the Erasmus scheme). The Treaties of Maastricht and Amsterdam then also gave the EU powers to engage in education and training but stopped short of attempts to harmonise national education systems (Wehling, 2020<sub>[14]</sub>).

On 1 December 2009, the Treaty of Lisbon came into effect. The Treaty has two parts: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The TFEU sets out rules on the legislative competence of the Union. According to the principle of conferral, in Art. 5(2) TFEU, the EU has only those competences that have been conferred on it by the Member States in the Treaties.

The competences are divided into three main categories:

- exclusive competences;
- shared competences;
- supporting competences.

In areas where the EU has exclusive competence (such as trade) European law has primacy over national law. Where the EU has only *supporting competence*, the EU can implement measures to support, co-ordinate or supplement the measures of the Member States, but the Member States' national law has primacy. In education and training policy, the EU has only supporting competence.

In particular, Arts. 165 and 166 TFEU determine the EU's priorities on education issues. The focus is on promotion programmes and on co-ordinating activities. Art. 165(1) TFEU contains a block on powers, meaning that the responsibility for shaping education policy remains with the Member States.

### ***Instruments in European education policy***

The EU has a number of different mechanisms at its disposal to actively shape and steer European education policy, including policy discourse, European benchmarking, monitoring and comparative research. Furthermore, the EU can provide a common direction, for example through recommendations, opinions or conclusions. These include:

- Open Method of Co-ordination (OMC) – a methodology for setting education policy objectives between Member States, offering the possibility of a common political approach.
- Research – where the EU steers policy through its funding of research; its "Horizon Europe 2021-2027" programme includes funding (of EUR 95.5 billion over seven years) and a set of priorities for science and innovation. Its strategy paper, which defines the thematic funding priorities and objectives, does not explicitly mention CET. However, it can be assumed that CET programmes could be used as an instrument for upskilling and reskilling. Particularly due to the many references to already existing structures, the search for progress and the further development of projects already underway, as well as the use of existing institutions and programmes, it can be assumed that CET programmes may also be eligible for funding.
- Policy co-operation (ET-2020) – a set of working groups on general education and vocational training to support common policy objectives. The ET-2020 working group on vocational education and training (VET) and continuing vocational education and training (CVET) focused on digitalisation.<sup>15</sup>

### ***Strategies and developments***

The concept of lifelong learning is a recurring theme of European educational policy. The first step towards an adult education strategy came in the form of the EU Commission's Memorandum on Lifelong Learning in 2000, which was presented in the wake of the Lisbon European Council in March 2000. The summit of European heads of state and government adopted a programme that is also referred to as the Lisbon Strategy.

- Lisbon Strategy – Until 2010, the Union had the strategic goal "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".
- Europe 2020 – The new framework strategy proposed by the EU Commission in March 2010, in the aftermath of the financial crisis, aimed to help the Union emerge stronger from the crisis and transform it into a smart, sustainable and inclusive economy by 2020. Europe 2020 had the goals of i) 75% of the working-age population should be in work, ii) 3% of the EU's Gross Domestic Product (GDP) should be expended on research and development, iii) climate protection/energy targets should be achieved, iv) the proportion of early school leavers should be brought down to



below 10%, and at least 40% of the younger generation should have a higher education degree, and v) the number of people at risk of poverty should fall by 20 million.

- 2020 Council Recommendation on Vocational Education and Training recommended the adoption of vocational education and training for sustainable competitiveness, social fairness and resilience with the following targets to be attained at EU level by 2025: i) at least 82% of VET graduates should be in employment, ii) 60% of young VET graduates should be given the opportunity for work-based learning during their VET and CET programmes, iii) 8% of VET learners should benefit from learning mobility abroad.
- Osnabrück Declaration 2020 takes into account the above-mentioned Council Recommendation and focuses on the following four main areas for the period 2021–2025: i) resilience and excellence through quality, inclusive and flexible VET, ii) establishing a new lifelong learning culture – relevance of CET and digitalisation, iii) sustainability – a green link in VET, and iv) developing a European Education and Training Area and international VET.

### ***EU funding programmes***

The EU supports education initiatives in Member States via several EU funding programmes. However, it must always observe the subsidiarity principle in accordance with Article 5(3) TEU, which means that the EU funding measures may not replace the funding measures of the Member States, and so the EU does not as a rule provide 100% of the funding for a project.

The European Social Fund (ESF) and Erasmus+ emerge as the main EU programmes in support of education initiatives:

- European Social Fund (ESF) promotes CET, qualification and work-related training, and also dedicates at least 20% of its resources to promoting social inclusion and reducing poverty and discrimination. Each Member State develops its own funding programmes, taking into account national and regional specificities. The funds are administered decentrally through federal and state ministries, which select the projects for ESF funding. In transition regions, where GDP is between 75% and 90% of the EU average, up to 80% of the cost of a selected project can be supported by ESF funding. The programmes are diverse and are thus intended to be responsive to the different circumstances of those receiving support. In addition to institutionalised programmes organised by federal or state ministries and implemented by private institutions, there is also the possibility of individual funding, where individuals can be supported with funding for a CET programme of their own choice. However, ESF funds are subject to state aid law in the same way as other decentralised EU funds, in particular because Member States have discretionary powers in the selection of beneficiaries.
- Erasmus+ has been in place since 2014 and aims to promote lifelong learning, enable sustainable growth, strengthen social cohesion and European identity, and drive innovation. With a budget of EUR 26.2 billion for the 2021-2027 funding period, the EC focuses on i) inclusion and diversity, ii) digitalisation, iii) environmental protection and sustainability, and iv) internationalisation.

### ***EU rules on state aid***

While the EU has only supportive jurisdiction in relation to education policy, the original focus of the Union was to create a common market with fair trade. Anything that distorts competition – for instance, by favouring one player or one group of players in the internal market – contravenes the principle of fair competition and could run counter to the competition rules in the third part of the Treaty on the functioning of the European Union, which aim to prevent distortion of competition.

One effect of this is that if a Member State makes a policy in relation to education (in which the EU has limited jurisdiction) that is deemed to distort a market, then that would represent a breach of the competition

rules. For instance, in the case of CET, if a government were to provide funding for some CET providers and exclude others from that funding then that would need to be justified in relation to the competition and state aid rules. If that was found to breach the rules on competition, then the EU would have the right to exact penalties on the Member State.

The broad private offer of CET in Germany makes competition between public and private providers likely to happen in many areas. This has important implications for the classification of CET programmes as economic or non-economic activities under EU state aid rules, as well as the opportunities of using public funding for CET.

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## Notes

<sup>1</sup> § 2 Abs. 1, S. 1 *Hochschulrahmengesetz*.

<sup>2</sup> On the function of the freedom of the sciences, Art. 5(3) marginal 15 ff; on the freedom of the sciences as a warranty of obligation (“*Gewährleistungsgarantie*”), see marginal 195 ff.

<sup>3</sup> See, for instance, § 4(1) *Berliner Hochschulgesetz* (BerLHG), § 3(1) *Hamburgisches Hochschulgesetz* (HmbHG), § 3(1) *Hochschulgesetz Nordrhein-Westfalen* (HG NRW), § 2(1) *Landeshochschulgesetz Baden-Württemberg* (LHG BaWü).

<sup>4</sup> Art. 5(3) marginals 35 ff., 47 ff.

<sup>5</sup> See § 58 HRG, marginal 14 ff.

<sup>6</sup> According to the case law of Federal Constitutional Court (BVerfG), the primacy of European law is effective only by virtue of and within the framework of a continued authorization under constitutional law, so that substance of the basic protections of the German law can be maintained via the Federal Constitutional Court. See BVerfG, Judgment of 30.06.2009 – 2 BvE 2/08 u.a., NJW 2009, 2267, 2273, 2284, Rn. 240, 331. Insofar as the organs of the European Union act beyond their powers (*ultra-vires*), the primacy of European law does not apply, see BVerfG, Judgment of 05.05.2020 – 2 BvR 859/15 u.a., NJW 2020, 1647, 1669, Rn. 234.

<sup>7</sup> See Art. 4 TEU marginal 101.

<sup>8</sup> The federal government retains legislative power over admission to higher education and degrees awarded by HEIs only within concurrent legislations, Art. 73(2)(33) GG. Due to the divergence of legislation in the *Länder* (1<sup>st</sup> sentence, no. 6 of Art. 72(3)GG), this is of no substantial importance.

<sup>9</sup> In the version of the published version of 19 January 1999 (BGBl. I p. 18), as amended by Article 2 of the Act of 12 April 2007 (BGBl. I p 506).

<sup>10</sup> See marginal 8 ff.

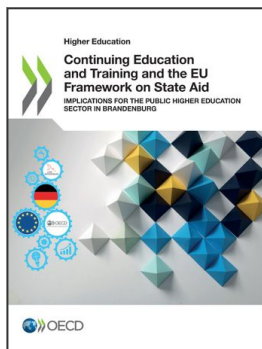
<sup>11</sup> See marginal 10 ff

<sup>12</sup> Check BeckRS 2016, 40955, marginal 5.

<sup>13</sup> See § 5 HRG, marginal 20 ff.

<sup>14</sup> As permitted by the provisions of e.g. § 40(1) BerLHG, § 71(1) NRWHG, § 77(1) HmbHG, § 41(1) LHG BaWü.

<sup>15</sup> The focus areas of the working group on VET and continuing (vocational) education and training were i) ensuring the use of modern learning technologies in VET and CVET; ii) promoting proactive and flexible VET systems to support smart specialisation strategies and co-operation through industry clusters; iii) promoting quality and excellence in VET; iv) enhancing governance and funding through cost-sharing and investment in infrastructure; v) promoting learning mobility in VET, career paths without borders and the internationalisation of VET.



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