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The Future of Higher Education in Europe: The Case for a Stronger Base in EU Law

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The Future of Higher Education in Europe: The Case for a Stronger Base in EU Law

Sacha Garben*

Abstract

Under the budgetary strain of the economic crisis, many European governments have introduced spending cuts in higher education. As a consequence, universities increasingly have to rely on tuition fees and private sources of funding to sustain themselves. This development fits in with a broader tendency of treating higher education increasingly as an economic resource and commodity, which is fostered by European-level processes such as most notably the Bologna Process and the Lisbon Strategy. Considering the fundamental importance of these issues, touching upon the core of our views on what an equitable and egalitarian society entails, it is imperative that the decisions that are being taken are democratically legitimate and that the policy makers are accountable for the measures they enact. Therefore, it is worrying that many of the most crucial and influential decisions are taken in intergovernmental contexts and implemented by means of soft law - of which the democratic legitimacy is doubtful. The Bologna Process is an intergovernmental policy forum, participation in which is voluntary and whose decisions are non-binding, suffering from all the accountability defects inherent in international policy making - magnified by its soft law character. The Lisbon/Europe 2020 Strategy does take place within the EU's institutional framework, but is an area where the EU's democratic deficit is particularly worrisome. Therefore, as this contribution shall argue, we need to consider a stronger and more democratic basis for these important policies, if we decide to pursue them. That basis is to be found in EU law.

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Table of Contents

Abstract

I. Introduction	1
II. The shaky democratic legitimacy of the Bologna Process and the Lisbon Strategy	7
III. The Marketization of education through Europeanization	20
IV. The way forward	24
ANNEX I	27
ANNEX II	29
ANNEX III	33

The Future of Higher Education in Europe:

The Case for a Stronger Base in EU Law

I. Introduction

In times of economic crisis, higher education often becomes a central part of the political discussions. On the one hand, there seems to be agreement that higher education is a key factor in finding a way out of the crisis, and in creating a stable and competitive knowledge economy that would be able to better absorb potential future economic downturns. As such, many will agree that it is more important than ever to provide public funding to universities and vocational institutions. On the other hand, higher education tends to be one of the first policy areas where budget cuts are made; probably simply because it is among the highest of public expenditures and perhaps because it is seen - or can be portrayed - as a luxury product that a society cannot afford without limits in times of economic hardship. Where the final balance is struck depends to a large extent on the public's views on the role and value of higher education in society and the economy, which will vary from country to country. Indeed, in the European context, it is clear that while certain countries have provided new investment to fund higher education since the start of the crisis (Germany, France and Portugal), others have decided to renege on previous commitments to increase funding (Hungary, Flemish Community in Belgium, Spain and Austria) or to introduce budget cuts varying from minor (less than 5% in the Czech Republic, Poland, Croatia, Serbia and Macedonia) to major (up to 10% in Estonia, Ireland, Lithuania and Romania, while Italy expects cuts of 20%, Greece of 30% and Latvia - which

had already seen a cut of 48% - foresees another 10% reduction).¹ In the United Kingdom, it has become clear that higher education will face a 40% cut of its current budget until 2015, as announced in the 2010 Comprehensive Spending Review,² and universities' teaching budgets will be reduced by up to 79%.³

The 2012 Bologna Process Ministerial Conference that took place in Bucharest on 26-27 April brought together 47 European ministerial delegations, the European Commission, as well as the Bologna Process consultative members and Bologna Follow-Up Group partners. The Conference touched upon these important issues, even if the economic crisis and its consequences for the public funding of universities was not an explicit agenda item. The Ministerial Communiqué that was adopted, states:

Europe is undergoing an economic and financial crisis with damaging societal effects. Within the field of higher education, the crisis is affecting the availability of adequate funding and making graduates' job prospects more uncertain.

Higher education is an important part of the solution to our current difficulties. Strong and accountable higher education systems provide the foundations for thriving knowledge societies. Higher education should be at the heart of our efforts to overcome the crisis – now more than ever.

¹ T. Estermann & E. Bennetot Pruvot, *Financially Sustainable Universities II, European universities diversifying income streams*, Brussels: European University Association Publications, 2011, pp. 80 - 81.

² HM Treasury, *Comprehensive Spending Review*, available at: http://www.hm-treasury.gov.uk/spend_index.htm.

³ T. Estermann & E. Bennetot Pruvot, *op cit*, p. 80. As Estermann and Pruvot note, it has now become evident that the high cost resulting from the loss of public funding will be covered by private contributions from students and is likely to follow recommendations proposed by the Browne Review in October 2010. Scotland, whose higher education system is different from the rest of the United Kingdom, has not remained unaffected and has also announced cuts of about 16% of the higher education budget for 2011.

With this in mind, we commit to securing the highest possible level of public funding for higher education and drawing on other appropriate sources, as an investment in our future. We will support our institutions in the education of creative, innovative, critically thinking and responsible graduates needed for economic growth and the sustainable development of our democracies. We are dedicated to working together in this way to reduce youth unemployment.⁴

Although these sentiments are commendable, it is difficult to see how they are more than high-sounding language, since there are no specific targets mentioned, nor do any of these noble aspirations have any legal bite. Indeed, it is unlikely that there will be a strong desire or a possibility to come to a more coordinated European approach to public spending on higher education. Nevertheless, it is a good thing that the European ministers responsible for higher education are exchanging thoughts and ideas on this issue, for it is clear that their higher education systems no longer operate exclusively in a purely national context - if they ever did - and have become increasingly interdependent and intertwined.

The Bologna Process is the most important example thereof, with its introduction of common degree structures in the participating countries (which include all EU Member States), but the influence of the European Union should certainly not be overlooked either. Over the past decades, the EU has become a major player on the European higher education scene, contributing to the Europeanization⁵ of higher education through so-called

⁴ Bucharest Communiqué, Making the Most of Our Potential: Consolidating the European Higher Education Area, 2012, available at: <http://www.ehea.info/news-details.aspx?ArticleId=266>.

⁵ As is often the case with powerful catchwords, the term is as popular as it is ambiguous. For the purpose of this contribution Europeanization shall be understood as European-level action in a certain policy area that consequently affects the domestic systems in that area. First of all, it should be understood that both the European-level action in itself and its domestic consequences are important parts of Europeanization. Secondly, 'European level' is to be broadly interpreted, in that it does not necessarily imply involvement of the EU or (all of) its Member States. Although many writers seem to see Europeanization as something intrinsically connected to the EU, and although the EU is undoubtedly a form of Europeanization as well as one of its sources, the Council of Europe and other European Organisations can also be regarded as forms or sources of Europeanization. There are also intergovernmental projects, taking place on the European level, that do not involve European Organisations, but do involve Europeanization, like the Bologna Process. Bilateral cooperation, by contrast, shall not be regarded as 'European-level action' for

positive integration (standard setting by means of law - such as Directives and Regulations - and soft law - such as support programmes and the Open Method of Coordination) as well as negative integration (the removal of barriers to student mobility by the European Court of Justice).⁶ Although the Member States remain primarily competent with regards to the organisation of their higher education systems, which is confirmed by Article 165(1) TFEU, this competence has to be exercised in conformity with EU law, such as the principle of equal treatment on grounds of nationality of Article 18 TFEU. This means, for instance, that Member States are not allowed to demand higher tuition fees to non-national EU students⁷ or to make their access to higher education institutions more difficult than it is for nationals.⁸ Maintenance grants in principle also fall within the scope of the Treaty and the prohibition of nationality discrimination.⁹ Furthermore, the fact that higher education is primarily a national competence and that harmonisation measures cannot be based on Article 165 TFEU (as the fourth paragraph of the provision specifies),¹⁰ does not take away from the possibility of adopting

the purposes of this research. In third place it should be noted that the specific action taken at the European level can take many forms. It can inter alia concern a 'mere' intergovernmental declaration, the creation of a European institution or the conclusion of a supra-national Treaty. It can also take the form of a 'strategy' or a 'process', which indicates a series of actions or a policy plan to achieve a general aim. Fourthly, the action in question can be taken by a variety of actors, governmental or not. Furthermore, it is important to realize that the effects that such action has on the domestic level can be manifold: social, political and legal. See S. Garben, *EU Higher Education Law, The Bologna Process and Harmonization by Stealth*, Alphen aan de Rijn: Kluwer Law International, 2011, p. 8.

⁶ P. Craig & G. de Burca, *EU Law, Text Cases and Materials*, 5th Edition, Oxford: Oxford University Press, 2011, p. 582. For the first discussion of these concepts see J. Pinder, Positive integration and negative integration: some problems of Economic Union in the EEC, *The World Today*, March 1968.

⁷ Case 293/83, *Gravier* [1985] ECR 593.

⁸ See for example Case C-65/03, *Commission v Belgium* [2004] ECR I-6427, Case C-147/03, *Commission of the European Communities v Republic of Austria* [2005] ECR I-5969, and Case C-73/08, *Nicolas Bressol and Others, Céline Chaverot and Others v. Gouvernement de la Communauté française* [2010] ECR I-148.

⁹ Case C-209/03, *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills* [2005] ECR I-2119. The Member States can, however, legitimately require the student to have a certain degree of integration into the host society, which Member States are - for now - allowed to establish by means of the proxy of a requirement of prior residence of 5 years. See Case C-158/07, *Jaqueline Förster v. IB-Groep* [2008] ECR I-8507.

¹⁰ See Annex I.

support measures such as the ERASMUS programme¹¹ and the European Qualifications Framework.¹² Besides, the competence of the EU in higher education is not limited to Article 165 TFEU, since legal measures adopted on the basis of other provisions in the Treaty (such as the internal market, diploma recognition¹³ and citizenship¹⁴) could also profoundly affect higher education.¹⁵

Moreover, higher education has become a key factor in the Lisbon Strategy, now followed up by the Europe 2020 Strategy - the EU's growth strategy for the coming decade to make Europe the world's most competitive knowledge economy.¹⁶ In order for the EU to become a smart, sustainable and inclusive economy, the Union has set five objectives on employment, innovation, education, social inclusion and climate, which are to be reached by 2020. The education objectives are to reduce school drop-out rates below 10%, and to reach at least 40% of 30-34-year-olds completing third level education. Each Member State adopts their own national targets in each of these areas and concrete actions at EU and national levels underpin the strategy.¹⁷ Although the European-level cooperation is mostly on a voluntary basis, it is clear that the Member States' education policies are becoming more and more Europeanized. The fact that the Lisbon/Europe 2020 Strategy and the Bologna

¹¹ For facts and figures on the Erasmus exchange programme see: European Commission, *The History of European Cooperation in Education and Training. An Example of Europe in the Making* (Office for Official Publications of the European Communities, 2006).

¹² The EQF constitutes a European reference framework, which is intended to act as a translation device to make qualifications more readable across Europe. This way, it promotes the mobility of the European labour force as well as to facilitate the lifelong learning of the European citizens. The EQF consists of 8 levels, based on "learning outcomes". See European Commission, *Recommendation of the European Parliament and of the Council of 23 April 2008 on the Establishment of the European Qualifications Framework for Lifelong Learning* [2008] OJ C 111/1-7.

¹³ Article 52 TFEU.

¹⁴ Article 21(2) TFEU.

¹⁵ See on this issue S. Garben, *The Bologna Process from a European Law Perspective*, *European Law Journal*, Vol. 16, No. 2, 2010, pp.186-210.

¹⁶ European Commission, *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, COM 2020, 3 March 2010.

¹⁷ See http://ec.europa.eu/europe2020/index_en.htm.

The Future of Higher Education in Europe

Process are slowly but steadily converging further adds to that.¹⁸ All the reforms seem to be directed at a modernisation of the national higher education systems and institutions, with economic considerations playing an increasingly important role. Although the European level stimulates higher national public investment, it also appears to be promoting a larger "financial autonomy" for the higher education institutions and a bigger role of private funding. Furthermore, the relevance of education is increasingly phrased in economic terms, favouring a skills-oriented approach, focusing on employability of graduates and encouraging universities liaising with the business community. It can be projected that the economic crisis and ensuing reforms will spur this development. Indeed, although the Bucharest Communiqué does mention the social dimension of education and commits to "strengthen policies of widening overall access and raising completion rates, including measures targeting the increased participation of underrepresented groups", it also confirms that Ministers will "work to enhance employability, lifelong learning, problem-solving and entrepreneurial skills through improved cooperation with employers, especially in the development of educational programmes".

There are arguments for and against an increased marketization of higher education. But considering the fundamental importance of these issues, touching upon the core of our views on what an equitable and egalitarian society entails, it is imperative that the decisions that are being taken are democratically legitimate and that the policy makers are accountable for the measures they enact. Therefore, it is worrying that many of the most crucial and influential decisions are taken in intergovernmental contexts, where there is a power-shift to the executive at the expense of the national parliaments,

¹⁸ See S. Garben, *The Bologna Process and the Lisbon Strategy: Commercialisation of Higher Education through the Back Door?*, *Croatian Yearbook of European Law and Policy*, Vol. 6, pp. 209 - 230.

and that they are implemented by means of soft law - of which the democratic legitimacy is doubtful, to say the least.¹⁹ The Bologna Process is an intergovernmental policy forum, participation in which is voluntary and whose decisions are non-binding, suffering from all the accountability defects inherent in international policy making - magnified by its soft law character. The Lisbon/Europe 2020 Strategy does take place within the EU's institutional framework, but is an area where the EU's democratic deficit is particularly worrisome. Therefore, as this contribution shall argue, we need to consider a stronger and more democratic basis for these important policies. That basis is to be found in EU law.²⁰

II. The shaky democratic legitimacy of the Bologna Process and the Lisbon Strategy²¹

To be regarded as both the product and the continuation of a series of European conferences and a certain number of policy decisions,²² the Bologna Process has as its aim the creation of a so-called European Higher Education Area.²³ To this end, the signatories have agreed to reform their higher

¹⁹ Ibid.

²⁰ Many of the arguments concerning the democratic legitimacy of the Bologna Process and the need for an incorporation in EU law have been put forward in S. Garben, *EU Higher Education Law, The Bologna Process and Harmonization by Stealth*, Alphen aan de Rijn: Kluwer Law International, 2011. This contribution provides an updated version of that argument, while linking it more clearly to the issue of marketization of higher education.

²¹ The sections that follow draw to a large extent on S. Garben, *The Bologna Process and the Lisbon Strategy: Commercialisation of Higher Education through the Back Door?* *Croatian Yearbook of European Law and Policy*, Vol. 6, pp. 209 - 230.

²² Eurydice, *Focus on the structure of Higher Education in Europe*, National trends in the Bologna Process, 2003/4.

²³ The European Higher Education Area (EHEA) was officially in March 2010 during the Budapest-Vienna Ministerial Conference. Of course, it is difficult to measure the extent to which such an area has now really come about and what that entails, but psychologically this is a relevant development and might shift the focus in the process beyond the adoption of common structures which were necessary to construct the EHEA to policies to increase mobility within the EHEA.

The Future of Higher Education in Europe

education systems so as to bring them in line with each other.²⁴ The core feature of the Bologna Process is the introduction of a common Bachelor-Master-Doctorate system. This revolutionary enterprise was set in motion quite suddenly. It was initiated in 1998, when at an international Forum organized in connection with the celebration of the 800th anniversary of the Sorbonne University, the Ministers of education of France, Germany, Italy and the United Kingdom decided on a 'Joint Declaration on harmonization of the architecture of the European higher education system'. It was open for the other Member States of the European Union (EU) as well as for third countries to join. The Italian Minister for Education extended an invitation to fellow Ministers in other European countries to a follow-up conference, which was to take place in Bologna the following year.²⁵ This conference indeed took place, in June 1999, and it was on this occasion that not less than 29 European countries agreed on a Declaration that would fundamentally influence the future of their higher education systems.²⁶

Reading the actual text of the Bologna Declaration, one cannot but be struck by the ambitious language it employs. The Declaration commences with the statement that "the European process, thanks to the extraordinary achievements of the last few years, has become an increasingly concrete and relevant reality for the Union and its citizens" and continues to say that "we are witnessing a growing awareness in large parts of the political and academic world and in public opinion of the need to establish a more complete and far-reaching Europe, in particular building upon and strengthening its intellectual, cultural social and scientific and technological dimensions". It seems difficult to imagine that these phrases stem from the same countries that have been keen on keeping higher education safely in the

²⁴ See S. Garben 2010, *op cit*, pp. 184 - 186.

²⁵ E. Hackl, Towards a European Area of Higher Education: Change and Convergence in European Higher Education, *EUI Working Paper*, RSC No. 2001/09, 2001, p. 21.

²⁶ This is known as the 'Bologna Declaration'. Currently 47 countries take part in the process.

hands of the nation-state. Furthermore, the meaning of these phrases becomes quite ambiguous upon realizing that the Bologna enterprise is taking place outside the framework of the EU. While in words praising the achievements of the EU in the process of European integration and explicitly referring to the "Union and its citizens" and the aim of "consolidating European citizenship", the Declaration is in fact nothing more than a soft-law instrument which envisaged practically no involvement of the EU. Its intergovernmental character, in addition to its extended membership that currently enables 22 non-Member States to take part, places the Bologna Process outside the EU's formal policy-making process.²⁷ Hackl points out that the developments concerning the Bologna Process seem to contradict the "traditional resistance of the EU Member States to any harmonisation policy in education and to increased Community competences".²⁸ It is true that the pro-European integration wording and tone of the Bologna Declaration are in that respect remarkable. However, the fact that the Member States decided to tackle higher education issues in an intergovernmental manner actually illustrates their resistance against EU involvement and their desire to remain fully sovereign.

This desire to maintain control and keep out the supra-national EU can clearly be seen in the discussion of whether the Bologna Process constitutes or amounts to a harmonisation. The Sorbonne Declaration, which is the basis for the Bologna Declaration and Process, carries the term 'harmonisation' in its very title. However, in contrast with the Sorbonne Declaration, the Bologna Declaration carefully avoids the use of the word. In fact, the question whether the envisaged Bologna project constituted 'harmonisation' is reported to have been a highly contentious issue that had to be resolved before the Declaration

²⁷ R. Keeling, *The Bologna Process and the Lisbon Research Agenda: the European Commission's expanding role in higher education discourse*, *European Journal of Education*, Vol. 41, No. 2, 2006, p. 207.

²⁸ E. Hackl, *op cit*, p. 2.

could be signed.²⁹ There had already been discussion about the use of the term in the run-up to the conference. Most of the participating countries deemed the type of standardisation entailed by harmonisation to be undesirable in the field of higher education. Corbett points out that a paper by Guy Haug, an influential figure in the Bologna Process, on 'what the Sorbonne Declaration does say and what it doesn't' was necessary to allay fears, using a textual analysis to show that there was no hint of harmonization of content, curricula or methods, nor of a single model of bachelor, masters doctoral degrees, not of a European recognition system for the diversity of qualifications.³⁰ The paper was to show that "plans for 'Europe', let alone those infamous unelected Brussels bureaucrats of popular imagery, to impose structures of national systems, simply did not exist".³¹ Although the French minister Claude Allègre tried to convince his colleagues that 'harmonisation' as used in the text of the Declaration was not to mean 'standardisation' in its unwanted sense, the majority of participants preferred to stay on the safe side and leave out the term.

The fact that the governments have decided not to call it harmonisation does however by no means settle the question whether the Declarations and the Process in fact do amount to harmonisation or not. In the context of European law, harmonization is generally taken to mean the approximation of national laws in order to create one European standard.³² The strongest argument to

²⁹ Kirkwood-Tucker 2004.

³⁰ A. Corbett, *Universities and the Europe of Knowledge: Ideas, Institutions and Policy Entrepreneurship in European Community Higher Education Policy, 1955-2005*, Basingstoke: Palgrave Macmillan, 2005, p. 199.

³¹ *Ibid.*

³² With the exception of Article 99 EEC, regarding indirect taxes, the term harmonization was introduced by the Single Act, most notably in what was then Article 100a EEC (now Article 114 TFEU). The wording of this provision indicates that harmonization refers to EU measures for the approximation of the provisions laid down by law, regulation of administrative action in Member States, which have as their object the establishment or functioning of the internal market. See Van Gerven 2005, pp. 227-254. The concept of harmonization has been broadly interpreted by the ECJ, e.g. also the creation of a coordinating agency can constitute harmonization in the sense of Article 114 TFEU.

support the view that the Bologna Process does imply such harmonization is that Bologna standardizes the structure of the higher education systems of the participating states by constructing a system of undergraduate studies followed by graduate studies, and comparable degrees. The Declaration states that

access to the second cycle shall require successful completion of first cycle studies, lasting a minimum of three years. The degree awarded after the first cycle shall also be relevant to the European labour market as an appropriate level of qualification. The second cycle should lead to the master and/or doctorate degree as in many European countries.

The introduction of the 2-cycle Bachelor-Master system constitutes a uniform standard. As such it was only natural that the Sorbonne Declaration openly referred to the proposed reforms as harmonisation. The Bologna Declaration might have had that taken out, but the ideas and proposed reforms remained the same.

It is true that the Process does not entail harmonization of content, seeing that the courses are still determined by the individual countries and their universities. The Bologna Declaration aims for 'structural comparability but content diversity.'³³ But that does not take away from the common *structures* that were adopted. The key question is whether one can have harmonisation if the common standard is adopted through soft law instead of European-level legislation. This however seems an almost trivial technical issue, which ignores the reality that even though it has not been imposed by a European law, the result of the Bologna Declaration and Process has been the same as "traditional harmonisation", namely the approximation of national laws in order to create one European standard. There is some irony in the fact that apart from a more honest reflection of reality, it would also be strategically

³³ Vogel 2007, pp. 131–133.

much wiser for the Member States to admit that the Bologna Process amounted to harmonisation. After all, a broad interpretation of harmonisation would likewise broaden the scope of the aforementioned prohibition of harmonisation of Article 165(4) TFEU. By claiming that the Process does not amount to harmonisation, they admit that Article 165 TFEU grants the EU competence to bring about the Process within its institutional framework, if not by means of hard law then by means of soft law and potentially an Open Method of Coordination (OMC).

The tense relationship between the EU and the Bologna Process notwithstanding, the latter constitutes a catalyst for the promotion of student mobility and increased involvement in higher education not only outside but also within an EU context. Firstly, it is likely to strengthen the Court in its pro-student mobility approach. In Advocate General Sharpston's opinion to the *Bressol* case, the Bologna Process was indeed used to help set the scene for her progressive opinion.³⁴ Also Advocate General Ruiz-Jarabo Colomer invoked the Bologna Process in order to build up his argument for increased student mobility in his opinion to the *Morgan and Bucher* cases.³⁵ Furthermore, Bologna has allowed the Commission to gain influence within an EU context, mainly by - in reaction to the Bologna Process - developing "its higher education discourse as a key for the Europe of knowledge".³⁶ The Commission has been able to do this because many of the ideas of the Bologna Process have found clear correspondence with European Council documents, most importantly the Lisbon Council Conclusions, and consequently it has seen its political mandate in the higher education sector expanded.³⁷ According to

³⁴ Opinion of Advocate General Sharpston, *op cit*, para. 1.

³⁵ Opinion of Advocate General Ruiz-Jarabo Colomer, *op cit*, paras. 45-46.

³⁶ P. Ravinet, From Voluntary Participation to Monitored Coordination: why European countries feel increasingly bound by their commitment to the Bologna Process, *European Journal of Education*, 2008, Vol. 43, No. 3, p. 357.

³⁷ Although challenged by A. Corbett, Ping pong: competing leadership for reform in EU higher education 1998-2006. *European Journal of education*, 46 (1). pp. 36-53.

Keeling, "the Commission's dynamic association of the Bologna university reforms with its Lisbon research agenda and its successful appropriation of these as European-level issues have placed its perspectives firmly at the heart of higher education policy debates in Europe".³⁸ The Lisbon European Council was not a one-time event, and the goal to become a European knowledge economy has been firmly positioned on the European agenda ever since. In Barcelona, two years after the Lisbon Council, the European Council made even clearer reference to the emerging common area of higher education, calling for further action to "introduce instruments to ensure the transparency of diplomas and qualifications (ECTS, diploma and certificate supplements, European CV) and closer cooperation with regard to university degrees".³⁹

The most obvious example of this increased mandate of the Commission to act within the EU framework is the introduction of the Open Method of Coordination in education by the Lisbon Strategy. As Corbett notes, within five years of the launch of the Lisbon Strategy, education had become one of five of the most strongly institutionalised policy sectors under the new regime of the OMC.⁴⁰ The Commission plays a central role in the OMC, and is now in a position to set overarching goals for the European higher education sector. These are not legally binding, but it does boost the Commission's political power in this field. The Commission can influence the direction in which the European higher education sector(s) will develop and evolve, and that is quite a powerful position in a policy area where the Member States had always been particularly suspicious of the Commission and have done their utmost best to keep the Commission's hands tied. Nevertheless, although it is true that the Commission has thus been able to affirm its role in higher education

³⁸ R. Keeling, *op cit*, p. 203.

³⁹ See P. Zgaga, *The Bologna Process: from Prague to Berlin and After*, paper on the basis of author's engagement in the Bologna follow-up group as rapporteur for the Berlin conference in September 2003.

⁴⁰ A. Corbett, *Education and the Lisbon Agenda: The shift from opportunistic to strategic EU policy-making*, in: D. Papadimitriou and P. Copeland, forthcoming 2012.

matters within the EU context as a consequence of the Lisbon Strategy, and has used the increased interest in achieving a knowledge economy to advocate its aims and programs in higher education, it seems that this is more a natural consequence of the momentum behind both the Bologna Process and the Lisbon Strategy than deliberate tactics of the Commission. It was the European Council that shortly after the Bologna Declaration lifted the latter's overarching philosophy to a higher level, in making it part of Europe's most important strategic objective. As Kahn put it: "two years before the European Council of Lisbon, the Sorbonne and Bologna Declarations foreshadowed the EU's well known "strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world"". ⁴¹ The fact that the Member States allow the Commission to take this front seat can probably be explained by the explicitly intergovernmental, flexible and "soft" nature of this cooperation. Arguably, the Member States feel safe enough seeing that their participation is entirely voluntary and that as such, they have ultimate leverage over the Commission if it decides to take matters in an unwanted direction. Furthermore, it is probably not inconvenient to the Member States either to have an expert and well-equipped organizer at the table, who can incidentally also function as a "scapegoat" or "lightning conductor" in case the formulated policies prove unpopular in the national arena.

The momentum of which the Lisbon Strategy within the EU and the ever-developing Bologna Process outside the EU are part causes them to increasingly converge. Considering the fact that many of the goals and ideas expressed in the context of the Lisbon Strategy concur with the overarching philosophy as well as concrete aims of the Bologna Process, this convergence is not surprising. The OMC plays a key role in this merging 'into one policy

⁴¹ S. Kahn, *The European Higher Education Area at the Crossroads*, *Revue en ligne "Etudes Europeennes"*, p. 2

framework'.⁴² Most of the elements or characteristics of the OMC; e.g. setting timetables, establishing indicators and benchmarks and operating accordingly, setting specific targets and periodic monitoring, evaluation and peer review, can now also be found in the activities around the Bologna Process. Since Berlin 2003 the Commission coordinates monthly 'Bologna seminars', which seek to push forward the spread of best practice through the OMC.⁴³ The European Network of Quality Assurance Agencies (ENQA) plays an important role in the implementation of the Bologna Declaration. As Furlong notes, the ENQA is a typical OMC institution in its structure and operations, set up and supported by the European Commission. In Berlin, this institution was mandated to develop standards, procedures and guidelines on quality assurance. Bologna has not (yet) been formally incorporated in the EU framework. Therefore it cannot be called a part of the OMC, or the Lisbon Process, as such. But the activities of the Commission in the framework of Bologna are considered to be part of the OMC, or the Lisbon Process. The Commission itself formulates it as follows:

The Lisbon Strategy encompasses the Commission's contribution to the intergovernmental Bologna Process, aiming to establish a European Higher Education Area by 2010, mainly in the areas of curricular reform and quality assurance. The Bologna process coincides with Commission policy in higher education supported through European programmes and notably Socrates-Erasmus, Tempus and Erasmus Mundus. The Commission stimulates Bologna initiatives at European level and participates as a full member in the Bologna Follow-up Group and the Bologna Board.

The focus of much of the research in this area is on the European Commission as a policy actor in the higher education sector, which is understandable because of its importance as well as fascinatingly difficult position. But it should not be forgotten that the EU Member States are the main driving

⁴² J. Huisman & M. van de Wende, The EU and Bologna: are supra- and international initiatives threatening domestic agendas? *European Journal of Education*, Vol. 39, No. 3, 2004, pp. 34–35.

⁴³ P. Furlong, British Higher Education and the Bologna Process: an Interim Assessment, *Politics*, Vol. 25(1), 2005, p. 55.

forces behind the reform movement sweeping European higher education, in their capacity as the Council and in Bologna's intergovernmental arena. The States seem keen to pursue the related objectives in several political contexts, both inside and outside the EU. It is not entirely clear why, nor whether they would be in favour of increased convergence. It is most likely that they, if provided with the choice, would prefer to keep Bologna separate from the EU framework. But at the same time, they do benefit from an increased convergence, or perhaps rather profusion of Bologna and the Lisbon Strategy. Apart from the objective aims to achieve in European higher education, the national political actors are suspected to have embarked on the Bologna Process for more subjective reasons. Many political scientists have reported on the "two-level game" that was played by the main political actors of Bologna.⁴⁴ As argued by Moravcsik, international cooperation redistributes domestic power in favour of national executives by permitting them to loosen domestic constraints imposed by legislatures, interest groups, and other societal actors.⁴⁵ The Bologna Process has been described as a "red herring", which the national governments use for their own domestic purposes.⁴⁶ Kahn notes:

it is a highly convenient pretext for nations to evade the responsibility for structural reforms, always necessary and suddenly indispensable because of an abstract and disembodied European constraint. If they cannot lay the blame for the constraint on some little 'bureau' in Brussels or elsewhere- there isn't one - they can always plead the fulfilment of undertakings to their partners: they must follow their partners' example or will lose ground.

⁴⁴ See, most notably C. Racké, The emergence of the Bologna Process: Pan-European instead of EU Governance, in: D. de Bièvre & C. Neuhold (Eds.), *The Dynamics of Changing Modes of Governance in Europe*, Cheltenham: Edward Elgar Publishing, 2007 and P. Ravinet, *op cit*.

⁴⁵ A. Moravcsik, *Why the European Union Strengthens the State: Domestic Politics and International Cooperation*, Centre for European Studies Working Paper Series no. 52, Harvard University, 1994, p. 1.

⁴⁶ S. Kahn, *op cit*, p. 4.

Perhaps the Member States even created, or conveniently did not resolve, the mistake that the Bologna Process was imposed by "Europe", taken to mean the EU. In this line, Ravinet argues that the governmental players "manipulate the objectives and use them as leverage and justification for reforms, even though they are not unilaterally obliged to implement these objectives". She explains:

The Bologna Process seems to have an element of juridicity (Pitseys, 2004), in that it appears to be legally binding in nature, especially when participating countries misinterpret their commitments as requiring conformity to superior and legally binding European policies. This lack of clarity can be used as a means to legitimise national reforms. This misconception is reinforced when Bologna declarations and communiqués are presented as texts of quasi-legal value, even though initially the Bologna Process did not have any official legal status.⁴⁷

In addition, several authors also argue that the use of the knowledge-economy rhetoric has contributed to the increasing sense of "being bound" to the Bologna objectives by the signatories themselves. Ravinet argues convincingly that the overlap between the Bologna objectives and those of the EC is, to a certain extent, "where they derive their authority and importance from, at least partly explaining why their use contributes so much to a sense of bindingness".⁴⁸ Fejes concurs, stating that "planetspeak rhetoric such as the ideas of the knowledge society, employability, lifelong learning, quality assurance and mobility [...] constitute a way of thinking that makes participation in the Bologna process and the implementation of its objectives a rational way to act".⁴⁹ In that sense, one can say that the Process has begun to lead its own life, once the "soft" and flexible product of informal intergovernmental cooperation, now turning into something that "needs to be done" without anyone knowing exactly why, or having different reasons to

⁴⁷ P. Ravinet, *op cit*, p. 353.

⁴⁸ *Ibid*, p. 357.

⁴⁹ A. Fejes, *The Bologna process – Governing higher education in Europe through standardization*, Paper presented at the third conference on Knowledge and Politics – the Bologna Process and the Shaping of the Future Knowledge Societies, 2005, p. 219.

think so. This partly explains the surprising force of this voluntary project of policy convergence. All the actors appear to have their own objectives, which can be located in some common rhetoric and therewith a powerful platform for action is created. As Corbett put it in the early days of the process:⁵⁰

governments want to use Europe to introduce domestic reform. The Commission wishes to extend its competence in higher education. University presidents want recognition. They each bring elements of the solution, as embodied in Bologna.

A critical attitude is warranted here. If European-level action is resorted to in order to avoid national public scrutiny, severe problems with the democratic legitimacy of the project arise. Such concerns have plagued the EU for a long time, and to a certain extent rightly so. The question whether the EU should possess, exercise and seek to expand its powers in higher education is an important one, and its answer closely relates to these legitimacy questions. But instead of that being a valid argument for the governments of the Member States to embark on the Bologna Process without and outside the EU institutions, it is an argument why it is even more worrisome that they have done so. The EU, for all its democratic defects, is still more democratic than the intergovernmental smoke-filled rooms in which the Sorbonne and Bologna Declarations came into existence. The Sorbonne Declaration, where the essential ideas were born and introduced, was the product of the birthday-party of a prestigious university celebrated by a select group of ministers among themselves. Also the subsequent Bologna Declaration was signed at an elite party, as an intergovernmental piece of soft law but with far-reaching ambitions, without any recourse to the institutional framework of the EU, thereby avoiding its built-in safeguards, checks and balances. There was hardly any parliamentary involvement, barely any public consultation,

⁵⁰ A. Corbett, *Europeanisation and the Bologna Process - A preliminary to a British study*, Paper presented to the One day conference co-sponsored by the ESRC and UACES, 2004, p. 12.

and most reforms were rushed through in only a few years. Although the governments proudly speak of the bottom-up approach of the Bologna Process, meaning that the state is in full control as opposed to supranational rule-making, many opine that the changes of the Bologna Process were imposed on the actors in the field in a top-down manner with little or no opportunity of debate.⁵¹

Indeed, this is one of the reasons why in previous research I have argued that the Bologna Process, if deemed necessary for the future of European higher education, should have been created within a EU context, preferably in the form of a Bologna Directive.⁵² This argument, however, is only really forceful if one contrasts the Bologna Process with EU hard law, adopted through the Community method. It is in fact only in that case that it can convincingly be claimed that the decision-making mechanisms guarantee a certain level of democracy and legitimacy and that the rule of law is upheld, not the least by the fact that individuals, such as students, have recourse to the European Court. The ever-increasing powers of the European Parliament should compensate for the loss of parliamentary control at the national level, a loss that is partly inherent in international law/policy making. From this point of view, therefore, the increasing use of soft law in the EU, such as the OMC, can be called as worrisome as the public international soft law making of the Bologna Process outside the EU's institutional framework. As Trubek, Cottrell and Nance note, recent years have indeed seen significant criticism on the use of soft law in the EU, the objections including that soft law lacks clarity and precision needed to provide predictability and a reliable framework for action and that it by-passes normal systems of accountability.⁵³ Although soft law

⁵¹ J. Lonbay, *op cit*, p. 253.

⁵² See S. Garben, The Bologna Process: From a European Law Perspective, *European Law Journal*, Vol. 16, No. 2, March 2010, pp. 186–210.

⁵³ D. Trubek, P. Cottrell & M. Nance, 'Soft Law', 'Hard Law' and EU Integration, in: G. de Burca & J. Scott, *Law and New Governance in the EU and the US*, Portland: Oxford, 2006, p. 66.

appears to be less intrusive to national autonomy, and thus more respectful of national preferences and diversity, it in fact proves to be a treacherously powerful policy source. More than it being a relatively unchecked and unlimited method of policy making, its power actually lies in that it is unchecked and unlimited. This lays bare its doubtful legitimacy as well as the underlying problem that apparently what politicians strive to achieve does not concur with what their constituencies believe. This gap between citizens and their governors has been often discussed both in a EU and national context. The debacle of the European Constitution is an obvious point of reference in this regard.

III. The Marketization of education through Europeanization

The undemocratic nature of the educational reforms of the past decade finds illustration in the protests and demonstrations that have taken place all over Europe. Students and teachers, the intended beneficiaries of increased intra-European mobility, seem to have turned *en masse* against the recent surge of Europeanization of higher education.⁵⁴ Although the protesting crowds are

⁵⁴ In 2005, French students protested against Bologna reforms, causing the University of Paris 8 Vincennes-Saint-Denis to temporarily shut its doors. See: Jane Marshall Paris, French protest over Bologna, 29 April 2005, *Times Higher Education*. In 2006, Swedish students protested against the proposal to cut PhD terms. See: C. Schubert, Swedish students protest proposal to cut PhD terms, *Nature Medicine*, Volume 12, p. 373. In 2008, numerous protests directed specifically at the Bologna Process as well as the “commercialisation of higher education” in general took place all over Europe, but mostly in Spain. On the 7th of May 2008, close to 5,000 students protested against the Bologna Process in Zagreb. On the 19th of June students representatives in Austria protested against further restrictions to take up a Master degree, part of the reforms introduced by the Austrian government in relation with the Bologna process. On the 8th of May, more than 10,000 students and teachers protested against the Bologna Process in Barcelona, after they had already done so in a huge demonstration with 10,000 participants in Barcelona and more than 3,000 in Sevilla on March 6th 2008. In Grenada, 150 protesting students occupied a faculty on April 24th. See *Estrecho.Indymedia.Org*. Protests also took place in Madrid where students blocked roads. The 22nd of October, protests took place in 30 cities across Spain against the Bologna Process and in defence of public education. The protests were taken up in Italy,

perhaps not always consistent in what they are protesting against, for sometimes it is the EU, sometimes the Bologna Process and sometimes their national government, it might be possible to distil a common objection against many of the reforms that the educational sectors of the Member States have seen over the past years. The general sense seems to be that despite of all the political high talk about how imperative education is for contemporary societies, the sector and its people are continuously subjected to cutbacks and downsizings, and increasing demands of economic efficiency. In that sense, it is probably more the economization than the Europeanization of higher education that is objected to, but there is some truth in conflating the two. The Bologna Process carries a distinct economic flavour, as does the educational policy of the EU. The former introduces the Anglo-Saxon model on the European continent, not only in terms of labels and structures, but arguably also in ideology. The latter has most often dealt with education from an economic perspective, most recently has brought it into the Lisbon Strategy to become the world's most competitive knowledge economy, and the educational rights that have been granted seem to flow more from a labour market logic than anything else. This is a valid objection against increased EU involvement in education, as well as against the Bologna Process. As Karlsen argues:

The Bologna main objects "The European Education Area" correspond well to the "Internal Market". In particular higher education and knowledge are looked upon and treated more like economic commodities inside a certain area. There is clearly a movement towards a marketization in the field of education (Schostak 1993).

where about 5.000 people assembled in Milan. Less than a month later, on the 20th of November, thousands of students in several Spanish cities protested again against the Bologna process. See *ThinkSpain.Com*, *Blip.TV*, *youtube.com*. In 2009, the Spanish resistance continued. On the 19th of March, students occupied the central building of the University of Barcelona in protest against Bologna, and teachers, parents, students, pupils and workers joined a demonstration counting 50,000 participants in the city center demanding different education policies. On 10 February 2009, professors and researchers in France joined the protest against the Bologna reforms in the nation's major cities. See: Education: Bologna process, sales time in French universities, at *CafeBabel.com: La Rivista Europea*.

The dominant aims for the exchange and mobility of “human capital” and knowledge are preparations for increasing competition on the global market place and preparation of students for the internationalized labour market. The cultivation of the individual (Bildung) is not absent, but primarily instrumental and not for its intrinsic values.⁵⁵

Indeed, apart from the politically strategic aims that we discussed above, the main reasons to embark on the structural harmonisation of the European higher education systems through the Bologna Process was to increase the competitiveness of Europe on an international scale. And the main purpose of the OMC in education is to fully exploit its potential in the creation of a European knowledge based economy.⁵⁶ More and more, the purpose of education in contemporary society is being phrased as an almost exclusively economic one. The economic benefits for both the individual and society at large are constantly stressed and argued as reasons for increased European-level cooperation. Although it is true that education is core to economic development and that potentially large gains are to be made by engaging in European-level cooperation in this area, it does reflect a dangerously one-sided perspective on education. One of the possible consequences of this development is that courses are increasingly designed to suit the needs of the market, rather than to instil students with knowledge for the sake of individual and academic progress. This means that the content of university studies might become tailored to the needs of the prospective employers, who demand graduates that are fully operational from day one, turning university education into vocational training. This development might equally threaten the existence of less economically viable disciplines such as history, archaeology and philosophy to the benefit of law, economics and business studies. In addition, the Bologna Process, but also the European Commission,

⁵⁵ G. Karlsen, *The Bologna process – A judicial confirmation of EU's policy of education?* Paper for the 3rd Conference of Knowledge and Politics at The University of Bergen, 2005, p. 4.

⁵⁶ See for an extensive discussion of the marketization of education due to the Lisbon Strategy L. Martin, *L'Union européenne et l'économie de l'éducation - Emergence d'un système éducatif européen*, Larcier, 2011.

encourages the "autonomy" of the higher education institutions vis-à-vis their national governments. To a certain extent, this seems to explain the surprisingly supportive attitude of the higher education institutions towards the Bologna reforms. Autonomy could indeed be deemed desirable from an academic perspective, but its potential economic implications should not be underestimated. It might mean less "meddling" from the government, but that usually also comes at the price of less government funding. This implies an increased reliance on funding from other sources, such as the private sector, and although that might seem desirable from the viewpoint of saving public funds, it does raise concerns about the independence and objectivity of research and education.

It is in the first place the Member States who prove so keen to "economise" higher education. They promote this approach in their capacity as Member States of the EU, most particularly via the Council and its Lisbon Strategy, and they do so outside the EU framework, most notably in the context of the Bologna Process. Nevertheless, the EU institutions also play their part. The European Commission seems so keen to fully exploit the responsibility and power that it has finally acquired in this field, that it does not question the Member States in their policy decisions. It has never really objected to the undemocratic nature of the Bologna Process or the education OMC, and it faithfully plays its part in promoting closer ties between business and education, in promoting autonomy for higher education institutions and in arguing for efficiency and target-setting in education. Furthermore, the European Court almost limitlessly applies the internal market freedoms to educational actors and their activities. This does not only pose a legal problem in bypassing Article 165(1) TFEU, it simply does not seem to respect the fact that in education, considerations that are not economic – and that might very well be at odds with economic efficiency – play an important role. The

European Court has applied a more nuanced approach, allowing restrictions of movement if objectively justified. But the national policies in question have to meet a rigorous and strictly applied proportionality test if they even only indirectly hinder a free single market. It is understandable that some, on principle, object to internal market logic being the general rule and aims such as achieving a high quality of education the exception.

IV. The way forward

Dealing with educational matters with a fundamentally economically tainted view is not without consequence. Although there might be legitimate reasons to choose this approach, the point is that there should be an open discussion about this with the public at large. Perhaps there is majority support for taking higher education in this direction, but it could also very well be that there isn't. In that sense it could be called suspicious that the two developments that are responsible for most of the recent Economisation of higher education over the past decades, to wit the Bologna Process and the Lisbon Strategy, are both fundamentally undemocratic and unaccountable. Indeed, it would have been better to act within the EU legislative framework instead, especially with regard to the Bologna Process. If anything, such a move would have triggered a Europe-wide debate about higher education and its purpose in European societies. The Commission could have taken its time to gather the necessary knowledge about Europe's higher education systems and to gather the views of the stakeholders and the general public. Not unimportantly, this course of action would have allowed the European Parliament to weigh in on the matter.

It is indeed questionable whether in this scenario the Bologna Process, with its current content, would have come into existence at all. But rather than that constituting a reason why it was good that the EU legislative framework was avoided, it seems that this put the finger right on Bologna's unforgivable flaw: its undemocratic nature. To the extent that it pushes the commercialisation of higher education, it does do through the back door. Still, it is not too late. The Member States of the EU could decide to incorporate the Bologna Declaration into the *acquis communautaire*, for example by means of a Schengen-type protocol. They could base this on a combination of the free movement of persons provisions, the citizenship provision and the diploma recognition provision. This would mean that the commitments of the Bologna Declaration would become binding, and that the European Court of Justice could adjudicate on the compatibility of national laws and frameworks with the Bologna model, and it might accord individual students a right to diploma recognition or at least access to transparent and efficient recognition procedures. They might also decide to leave the issue of degree-structures outside the scope of hard law, and rather issue a non-binding Council resolution on this matter, and only adopt a Directive on the right to student mobility for European citizens (and potentially the third countries associated with the regime). This could provide for a *prima facie* right to have one's diploma recognised for the purposes of continuing education in a subsequent tier, perhaps subject to certain requirements of institutional capacity, course correspondence and quality assurance. This Directive could further codify the existing case law of the ECJ, thereby merging these important and inter-related student mobility issues into one comprehensive legal framework. Inspiration could be drawn from the proposed directive on patient's rights and mobility.

The Future of Higher Education in Europe

Although "the weight of Europe"⁵⁷ is deployed to push reforms into an economic direction, it is not Europe or Europeanization *per se* that forces a neo-liberal view on educational affairs. It is very well possible to aspire to a strong and unified Europe, without borders for educational mobility and with an active role in educational policy, also for non-economic reasons. Knowledge dissemination, cultural exchange, bundling of intellectual forces, achieving a better allocation of intellectual resources, creating centres of excellence, honouring Europe's intellectual heritage and many other reasons could support the case for a strong Europe in (higher) education affairs, without making this entirely contingent on an economic dimension. In fact, there can be a fruitful interaction between the economic and the social goals. From this point of view, it is very unfortunate that there is not a(n) (even) stronger legal basis for the development of a true European education policy. The absence of a fully-fledged EU legislative competence in this field compels the EU institutions to approach education more indirectly and narrowly, via the internal market. Although it would therefore be desirable to amend article 165 TFEU, it is highly doubtful that the Member States would ever support such a development. On the record, they might argue that such would impinge too much on their educational autonomy, thereby playing into the fears that the EU is out to Europeanize (and commercialise) higher education. Off the record, it seems that they do not object to the Europeanization (and commercialisation) of higher education, but that they object to doing that by more accountable and democratic means.

⁵⁷ H. Davies, Higher Education in the Internal Market, UACES European Studies Online Essays, available at www.Uaces.org, p. 6.

ANNEX I

Treaty on the Functioning of the European Union

TITLE XII

EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT

Article 165

1. 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.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education,
- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral

integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, on a proposal from the Commission, shall adopt recommendations.

ANNEX II

The Bologna Declaration of 19 June 1999

Joint declaration of the European Ministers of Education

The European process, thanks to the extraordinary achievements of the last few years, has become an increasingly concrete and relevant reality for the Union and its citizens. Enlargement prospects together with deepening relations with other European countries, provide even wider dimensions to that reality. Meanwhile, we are witnessing a growing awareness in large parts of the political and academic world and in public opinion of the need to establish a more complete and far-reaching Europe, in particular building upon and strengthening its intellectual, cultural, social and scientific and technological dimensions.

A Europe of Knowledge is now widely recognised as an irreplaceable factor for social and human growth and as an indispensable component to consolidate and enrich the European citizenship, capable of giving its citizens the necessary competences to face the challenges of the new millennium, together with an awareness of shared values and belonging to a common social and cultural space.

The importance of education and educational co-operation in the development and strengthening of stable, peaceful and democratic societies is universally acknowledged as paramount, the more so in view of the situation in South East Europe.

The Sorbonne declaration of 25th of May 1998, which was underpinned by these considerations, stressed the Universities' central role in developing European cultural dimensions. It emphasised the creation of the European area of higher education as a key way to promote citizens' mobility and employability and the Several European countries have accepted the

The Future of Higher Education in Europe

invitation to commit themselves to achieving the objectives set out in the declaration, by signing it or expressing their agreement in principle. The direction taken by several higher education reforms launched in the meantime in Europe has proved many Governments' determination to act.

European higher education institutions, for their part, have accepted the challenge and taken up a main role in constructing the European area of higher education, also in the wake of the fundamental principles laid down in the Bologna Magna Charta Universitatum of 1988. This is of the highest importance, given that Universities' independence and autonomy ensure that higher education and research systems continuously adapt to changing needs, society's demands and advances in scientific knowledge.

The course has been set in the right direction and with meaningful purpose. The achievement of greater compatibility and comparability of the systems of higher education nevertheless requires continual momentum in order to be fully accomplished. We need to support it through promoting concrete measures to achieve tangible forward steps. The 18th June meeting saw participation by authoritative experts and scholars from all our countries and provides us with very useful suggestions on the initiatives to be taken.

We must in particular look at the objective of increasing the international competitiveness of the European system of higher education. The vitality and efficiency of any civilisation can be measured by the appeal that its culture has for other countries. We need to ensure that the European higher education system acquires a world-wide degree of attraction equal to our extraordinary cultural and scientific traditions.

While affirming our support to the general principles laid down in the Sorbonne declaration, we engage in co-ordinating our policies to reach in the short term, and in any case within the first decade of the third millennium, the following objectives, which we consider to be of primary relevance in

order to establish the European area of higher education and to promote the European system of higher education world-wide:

Adoption of a system of **easily readable and comparable degrees**, also through the implementation of the Diploma Supplement, in order to promote European citizens employability and the international competitiveness of the European higher education system

Adoption of a system essentially based on **two main cycles**, undergraduate and graduate. Access to the second cycle shall require successful completion of first cycle studies, lasting a minimum of three years. The degree awarded after the first cycle shall also be relevant to the European labour market as an appropriate level of qualification. The second cycle should lead to the master and/or doctorate degree as in many European countries.

Establishment of a **system of credits** - such as in the ECTS system – as a proper means of promoting the most widespread student mobility. Credits could also be acquired in non-higher education contexts, including lifelong learning, provided they are recognised by receiving Universities concerned.

Promotion of **mobility** by overcoming obstacles to the effective exercise of free movement with particular attention to:

- for students, access to study and training opportunities and to related services
- for teachers, researchers and administrative staff, recognition and valorisation of periods spent in a European context researching, teaching and training, without prejudicing their statutory rights.

Promotion of **European co-operation in quality assurance** with a view to developing comparable criteria and methodologies.

Promotion of the **necessary European dimensions in higher education**, particularly with regards to curricular development, interinstitutional co-operation, mobility schemes and integrated programmes of study, training and research.

The Future of Higher Education in Europe

We hereby undertake to attain these objectives - within the framework of our institutional competences and taking full respect of the diversity of cultures, languages, national education systems and of University autonomy – to consolidate the European area of higher education. To that end, we will pursue the ways of intergovernmental co-operation, together with those of non governmental European organisations with competence on higher education. We expect Universities again to respond promptly and positively and to contribute actively to the success of our endeavour.

Convinced that the establishment of the European area of higher education requires constant support, supervision and adaptation to the continuously evolving needs, we decide to meet again within two years in order to assess the progress achieved and the new steps to be taken.

ANNEX III

Bucharest Communiqué

Making the Most of Our Potential: Consolidating the European Higher Education Area

We, the Ministers responsible for higher education in the 47 countries of the European Higher Education Area (EHEA) have met in Bucharest, on 26 and 27 April 2012, to take stock of the achievements of the Bologna Process and agree on the future priorities of the EHEA.

Investing in higher education for the future

Europe is undergoing an economic and financial crisis with damaging societal effects. Within the field of higher education, the crisis is affecting the availability of adequate funding and making graduates' job prospects more uncertain.

Higher education is an important part of the solution to our current difficulties. Strong and accountable higher education systems provide the foundations for thriving knowledge societies. Higher education should be at the heart of our efforts to overcome the crisis – now more than ever.

With this in mind, we commit to securing the highest possible level of public funding for higher education and drawing on other appropriate sources, as an investment in our future. We will support our institutions in the education of creative, innovative, critically thinking and responsible graduates needed for economic growth and the sustainable development of our democracies. We are dedicated to working together in this way to reduce youth unemployment.

The EHEA yesterday, today and tomorrow

The Bologna reforms have changed the face of higher education across Europe, thanks to the involvement and dedication of higher education institutions, staff and students.

Higher education structures in Europe are now more compatible and comparable. Quality assurance systems contribute to building trust, higher education qualifications are more recognisable across borders and participation in higher education has widened. Students today benefit from a wider variety of educational opportunities and are increasingly mobile. The vision of an integrated EHEA is within reach.

However, as the report on the implementation of the Bologna Process shows, we must make further efforts to consolidate and build on progress. We will strive for more coherence between our policies, especially in completing the transition to the three cycle system, the use of ECTS credits, the issuing of Diploma Supplements, the enhancement of quality assurance and the implementation of qualifications frameworks, including the definition and evaluation of learning outcomes.

We will pursue the following goals: to provide quality higher education for all, to enhance graduates' employability and to strengthen mobility as a means for better learning.

Our actions towards these goals will be underpinned by constant efforts to align national practices with the objectives and policies of the EHEA, while addressing those policy areas where further work is needed. For 2012-2015, we will especially concentrate on fully supporting our higher education institutions and stakeholders in their efforts to deliver meaningful changes and to further the comprehensive implementation of all Bologna action lines.

Providing quality higher education for all

Widening access to higher education is a precondition for societal progress and economic development. We agree to adopt national measures for widening overall access to quality higher education. We will work to raise completion rates and ensure timely progression in higher education in all EHEA countries.

The student body entering and graduating from higher education institutions should reflect the diversity of Europe's populations. We will step up our efforts towards underrepresented groups to develop the social dimension of higher education, reduce inequalities and provide adequate student support services, counselling and guidance, flexible learning paths and alternative access routes, including recognition of prior learning. We encourage the use of peer learning on the social dimension and aim to monitor progress in this area.

We reiterate our commitment to promote student-centred learning in higher education, characterised by innovative methods of teaching that involve students as active participants in their own learning. Together with institutions, students and staff, we will facilitate a supportive and inspiring working and learning environment.

Higher education should be an open process in which students develop intellectual independence and personal self-assuredness alongside disciplinary knowledge and skills. Through the pursuit of academic learning and research, students should acquire the ability confidently to assess situations and ground their actions in critical thought.

Quality assurance is essential for building trust and to reinforce the attractiveness of the EHEA's offerings, including in the provision of cross-border education. We commit to both maintaining the public responsibility for quality assurance and to actively involve a wide range of stakeholders in this development. We acknowledge the ENQA, ESU, EUA and EURASHE

The Future of Higher Education in Europe

(the E4 group) report on the implementation and application of the “European Standards and Guidelines for Quality Assurance” (ESG). We will revise the ESG to improve their clarity, applicability and usefulness, including their scope. The revision will be based upon an initial proposal to be prepared by the E4 in cooperation with Education International, BUSINESSEUROPE and the European Quality Assurance Register for Higher Education (EQAR), which will be submitted to the Bologna Follow-Up Group.

We welcome the external evaluation of EQAR and we encourage quality assurance agencies to apply for registration. We will allow EQAR-registered agencies to perform their activities across the EHEA, while complying with national requirements. In particular, we will aim to recognise quality assurance decisions of EQAR-registered agencies on joint and double degree programmes.

We confirm our commitment to maintaining public responsibility for higher education and acknowledge the need to open a dialogue on funding and governance of higher education. We recognise the importance of further developing appropriate funding instruments to pursue our common goals. Furthermore, we stress the importance of developing more efficient governance and managerial structures at higher education institutions. We commit to supporting the engagement of students and staff in governance structures at all levels and reiterate our commitment to autonomous and accountable higher education institutions that embrace academic freedom.

Enhancing employability to serve Europe’s needs

Today’s graduates need to combine transversal, multidisciplinary and innovation skills and competences with up-to-date subject-specific knowledge so as to be able to contribute to the wider needs of society and the labour market. We aim to enhance the employability and personal and professional development of graduates throughout their careers. We will achieve this by

improving cooperation between employers, students and higher education institutions, especially in the development of study programmes that help increase the innovation, entrepreneurial and research potential of graduates. Lifelong learning is one of the important factors in meeting the needs of a changing labour market, and higher education institutions play a central role in transferring knowledge and strengthening regional development, including by the continuous development of competences and reinforcement of knowledge alliances.

Our societies need higher education institutions to contribute innovatively to sustainable development and therefore, higher education must ensure a stronger link between research, teaching and learning at all levels. Study programmes must reflect changing research priorities and emerging disciplines, and research should underpin teaching and learning. In this respect, we will sustain a diversity of doctoral programmes. Taking into account the “Salzburg II recommendations” and the Principles for Innovative Doctoral Training, we will explore how to promote quality, transparency, employability and mobility in the third cycle, as the education and training of doctoral candidates has a particular role in bridging the EHEA and the European Research Area (ERA). Next to doctoral training, high quality second cycle programmes are a necessary precondition for the success of linking teaching, learning and research. Keeping wide diversity and simultaneously increasing readability, we might also explore further possible common principles for master programmes in the EHEA, taking account of previous work.

To consolidate the EHEA, meaningful implementation of learning outcomes is needed. The development, understanding and practical use of learning outcomes is crucial to the success of ECTS, the Diploma Supplement, recognition, qualifications frameworks and quality assurance – all of which are interdependent. We call on institutions to further link study credits with

both learning outcomes and student workload, and to include the attainment of learning outcomes in assessment procedures. We will work to ensure that the ECTS Users' Guide⁵ fully reflects the state of on-going work on learning outcomes and recognition of prior learning.

We welcome the progress in developing qualifications frameworks; they improve transparency and will enable higher education systems to be more open and flexible. We acknowledge that realising the full benefits of qualifications frameworks can in practice be more challenging than developing the structures. The development of qualifications frameworks must continue so that they become an everyday reality for students, staff and employers. Meanwhile, some countries face challenges in finalising national frameworks and in self-certifying compatibility with the framework of qualifications of the EHEA (QF- EHEA) by the end of 2012. These countries need to redouble their efforts and to take advantage of the support and experience of others in order to achieve this goal.

A common understanding of the levels of our qualifications frameworks is essential to recognition for both academic and professional purposes. School leaving qualifications giving access to higher education will be considered as being of European Qualifications Framework (EQF) level 4, or equivalent levels for countries not bound by the EQF, where they are included in National Qualifications Frameworks. We further commit to referencing first, second and third cycle qualifications against EQF levels 6, 7 and 8 respectively, or against equivalent levels for countries not bound by the EQF. We will explore how the QF-EHEA could take account of short cycle qualifications (EQF level 5) and encourage countries to use the QF-EHEA for referencing these qualifications in national contexts where they exist. We ask the Council of Europe and the European Commission to continue to coordinate efforts to make the respective qualifications frameworks work well in practice.

We welcome the clear reference to ECTS, to the European Qualifications Framework and to learning outcomes in the European Commission's proposal for a revision of the EU Directive on the recognition of professional qualifications. We underline the importance of taking appropriate account of these elements in recognition decisions.

Strengthening mobility for better learning

Learning mobility is essential to ensure the quality of higher education, enhance students' employability and expand cross-border collaboration within the EHEA and beyond. We adopt the strategy "Mobility for Better Learning"⁶ as an addendum, including its mobility target, as an integral part of our efforts to promote an element of internationalisation in all of higher education.

Sufficient financial support to students is essential in ensuring equal access and mobility opportunities. We reiterate our commitment to full portability of national grants and loans across the EHEA and call on the European Union to underpin this endeavour through its policies.

Fair academic and professional recognition, including recognition of non-formal and informal learning, is at the core of the EHEA. It is a direct benefit for students' academic mobility, it improves graduates' chances of professional mobility and it represents an accurate measure of the degree of convergence and trust attained. We are determined to remove outstanding obstacles hindering effective and proper recognition and are willing to work together towards the automatic recognition of comparable academic degrees, building on the tools of the Bologna framework, as a long-term goal of the EHEA. We therefore commit to reviewing our national legislation to comply with the Lisbon Recognition Convention. We welcome the European Area of Recognition (EAR) Manual and recommend its use as a set of guidelines for recognition of foreign qualifications and a compendium of good practices, as

The Future of Higher Education in Europe

well as encourage higher education institutions and quality assurance agencies to assess institutional recognition procedures in internal and external quality assurance.

We strive for open higher education systems and better balanced mobility in the EHEA. If mobility imbalances between EHEA countries are deemed unsustainable by at least one party, we encourage the countries involved to jointly seek a solution, in line with the EHEA Mobility Strategy.

We encourage higher education institutions to further develop joint programmes and degrees as part of a wider EHEA approach. We will examine national rules and practices relating to joint programmes and degrees as a way to dismantle obstacles to cooperation and mobility embedded in national contexts.

Cooperation with other regions of the world and international openness are key factors to the development of the EHEA. We commit to further exploring the global understanding of the EHEA goals and principles in line with the strategic priorities set by the 2007 strategy for “the EHEA in a Global Setting”. We will evaluate the strategy’s implementation by 2015 with the aim to provide guidelines for further internationalisation developments. The Bologna Policy Forum will continue as an opportunity for dialogue and its format will be further developed with our global partners.

Improvement of data collection and transparency to underpin political goals

We welcome the improved quality of data and information on higher education. We ask for more targeted data collection and referencing against common indicators, particularly on employability, the social dimension, lifelong learning, internationalisation, portability of grants/loans, and student and staff mobility. We ask Eurostat, Eurydice and Eurostudent to monitor the implementation of the reforms and to report back in 2015.

We will encourage the development of a system of voluntary peer learning and reviewing in countries that request it. This will help to assess the level of implementation of Bologna reforms and promote good practices as a dynamic way of addressing the challenges facing European higher education.

We will strive to make higher education systems easier to understand for the public, and especially for students and employers. We will support the improvement of current and developing transparency tools in order to make them more user-driven and to ground them on empirical evidence. We aim to reach an agreement on common guidelines for transparency by 2015.

Setting out priorities for 2012-2015

Having outlined the main EHEA goals in the coming years, we set out the following priorities for action by 2015.

At the national level, together with the relevant stakeholders, and especially with higher education institutions, we will:

- Reflect thoroughly on the findings of the 2012 Bologna Implementation Report and take into account its conclusions and recommendations;
- Strengthen policies of widening overall access and raising completion rates, including measures targeting the increased participation of underrepresented groups;
- Establish conditions that foster student-centred learning, innovative teaching methods and a supportive and inspiring working and learning environment, while continuing to involve students and staff in governance structures at all levels;
- Allow EQAR-registered quality assurance agencies to perform their activities across the EHEA, while complying with national requirements;

The Future of Higher Education in Europe

- Work to enhance employability, lifelong learning, problem-solving and entrepreneurial skills through improved cooperation with employers, especially in the development of educational programmes;
- Ensure that qualifications frameworks, ECTS and Diploma Supplement implementation is based on learning outcomes;
- Invite countries that cannot finalise the implementation of national qualifications frameworks compatible with QF-EHEA by the end of 2012 to redouble their efforts and submit a revised roadmap for this task;
- Implement the recommendations of the strategy “Mobility for better learning” and work towards full portability of national grants and loans across the EHEA;
- Review national legislation to fully comply with the Lisbon Recognition Convention and promote the use of the EAR-manual to advance recognition practices;
- Encourage knowledge-based alliances in the EHEA, focusing on research and technology. At the European level, in preparation of the Ministerial Conference in 2015 and together with relevant stakeholders, we will:
 - Ask Eurostat, Eurydice and Eurostudent to monitor progress in the implementation of the Bologna Process reforms and the strategy “Mobility for better learning”;
 - Develop a system of voluntary peer learning and reviewing by 2013 in countries which request it and initiate a pilot project to promote peer learning on the social dimension of higher education;

- Develop a proposal for a revised version of the ESG for adoption;
- Promote quality, transparency, employability and mobility in the third cycle, while also building additional bridges between the EHEA and the ERA;
- Work to ensure that the ECTS Users' Guide fully reflects the state of on-going work on learning outcomes and recognition of prior learning;
- Coordinate the work of ensuring that qualifications frameworks work in practice, emphasising their link to learning outcomes and explore how the QF-EHEA could take account of short cycle qualifications in national contexts;
- Support the work of a pathfinder group of countries exploring ways to achieve the automatic academic recognition of comparable degrees;
- Examine national legislation and practices relating to joint programmes and degrees as a way to dismantle obstacles to cooperation and mobility embedded in national contexts;
- Evaluate the implementation of the "EHEA in a Global Setting" Strategy;
- Develop EHEA guidelines for transparency policies and continue to monitor current and developing transparency tools. The next EHEA Ministerial Conference will take place in Yerevan, Armenia in 2015, where the progress on the priorities set above will be reviewed.

The Future of Higher Education in Europe

The Future of Higher Education in Europe

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