

Papers on Higher Education

**Legislative Initiatives in the Context of the
Bologna Process:**

A Comparative Perspective

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Preface

The Bologna Process aims at constructing and launching a European Higher Education Area by 2010, setting an entirely new course for higher education in Europe. This vision was introduced in the *Sorbonne Declaration* (May 1998), elaborated in the *Bologna Declaration* (June 1999), and expanded further in the course of two ministerial conferences in Prague (May 2001) and Berlin (September 2003) respectively. The Bologna Process is truly a pan-European project, without precedent in the history of the continent.

At present, forty European countries and their higher education institutions are working to meet the requirements of the European Higher Education Area; this vast network will facilitate the production and transmission of knowledge in the region, increase the global competitiveness of European higher education, and substantially enhance students' prospects.

Considering the scale and far-reaching character of this enterprise, it will come as little surprise that ongoing study and stocktaking are essential. In fact, we should constantly undertake such exercises, in order to deepen/expand our understanding and open up new vistas as expected by stakeholders. UNESCO-CEPES is a consultative member of the Bologna Follow-Up Group (BFUG), which is tasked with the overall steering of the Bologna Process and the implementation of its objectives. As part of its contribution, the Centre recently undertook a thorough analysis of European policy documents and laws on higher education that play an essential role in the creation of current policy contexts and legislative frameworks, respectively. Such an analysis is intended to identify new approaches and emerging trends, and to support the submission of preliminary conclusions and policy recommendations to the

Conference of European Ministers Responsible for Higher Education (Bergen, 19-20 May 2005).

In this context, Dennis Farrington has embarked on a comparative analysis of legal and policy documents from several European countries. The preliminary version of the present comparative study was presented at the International Conference on New Generations of Policy Documents and Laws for Higher Education: Their Thrust in the Context of the Bologna Process, organised by UNESCO-CEPES and the Institute of the Knowledge Society [*Instytut Społeczeństwa Wiedzy*] and held in Warsaw (4-6 November 2004). The Conference enjoyed the high patronage of Aleksander Kwaśniewski, President of the Republic of Poland, and benefited from the collaboration of the Polish Ministry of National Education and Sport, the European University Association (EUA), the Council of Europe, and the Conference of Rectors of Academic Schools in Poland [*Konferencja Rektorów Akademickich Szkół Polskich – KRASP*].

An event on the BFUG 2003-2004 Work Programme, the Conference outlined the key importance of both primary and secondary legislation in initiating and regulating the implementation of Bologna Process objectives. Bearing in mind that national legislation arises out of national contexts, participants agreed that increasing regional convergence on the Bologna objectives must remain balanced by a rich diversity of national academic and cultural traditions. Legislation plays a central role, in that it can bridge European objectives, national policies, and institutional needs: 'bottom-up' and 'top-down' approaches must remain simultaneous, and complementary.

The Conference debates included numerous additional issues and captured the attention of policy-makers from European countries: diversification of institutional funding sources; development of foreign language skills; student and academic staff mobility; migration and brain circulation;

structure and duration of studies; prospects for future developments in the Bologna Process, etc.

It is our expectation that this publication will provide relevant comparative analysis of one of the most important mechanisms for the implementation of the Bologna Process.

The present publication will be the first of a series, focused on best practice and using a comparative perspective, which will support the Bologna Process and its advancement.

The editors

Introduction

This paper offers a comparative perspective on the efforts as of mid-November 2004 of the Bologna Process Member States to adapt legislative provisions for higher education and to achieve the Bologna Process goals within the agreed time-scale. The Process was the subject of debate in thousands of papers, countless seminars, and workshops held all over the world. A common expression points out that there is a 'mix of readily available information and much more difficult analysis'. It is the Bologna Follow-Up Group (BFUG) that has taken on the difficult task of analysis in view of the Bergen Ministerial Conference to be held in May 2005.

Making provisions for higher education in legislation is an intricate exercise given the various stakeholders involved in the process. The task is more difficult because of the lack of a pan-European consensus, let alone within the European Union (EU), on how different stakeholders should contribute to covering ever-increasing costs. An important element in a nation's overall provision for the education of its citizens, higher education has a long history, and its institutional and personal participants usually represent the social structure of a given state: many members of national parliaments, particularly in smaller states, would claim some expertise in the sector. It is not at all surprising, then, that the reform process is far from smooth sailing, as many interests of one sort or another are at stake. As a voluntary process involving stakeholders to the greatest extent possible, the Bologna Process may have to balance the wishes of different groups, from the professor who seeks to uphold traditional ways and produce 'rounded' graduates, to the ardent entrepreneur who seeks university-trained staff to make immediate and concrete contributions.

This paper attempts an analysis of the extant or draft legal provisions that incorporate the Bologna Process principles into national law, chiefly in terms of degree structure, quality assurance, and joint degrees. It is most encouraging to read various national reports and note the hard work put into the Bologna Process by distinguished academics and administrators. It will be impossible to do justice here to the work of so many knowledgeable and committed people, working on the Bologna Process in every state.

Goals of the Bologna Process

Broadly speaking, members voluntarily commit themselves to bringing some degree of uniformity to the higher education systems of the wider Europe while maintaining a diversity of approaches.¹ Through changes to legislation or otherwise, they endeavour to create a framework of comparable and compatible qualifications in terms of workload, level, learning outcomes, competences, and profiles. The uniformity of approach will increase student mobility opportunities; the EU mobility target of at least 20 percent of students by 2010 is achievable given the emphasis on common language learning within the common European framework (usually English) and freedom of movement across most of the Union's national borders. Freedom of movement elsewhere is problematic due to visa and other immigration controls, which will be touched upon later in the context of a holistic policy approach. The clear political and economic aim of the Bologna Process, as supported by the European Commission, is making the EU, indeed Europe as a whole, the most competitive and dynamic knowledge-based economy in the world. The related, if subordinate, educational aim is a mobile, highly trained workforce attainable by enhancing the attractiveness and competitiveness of European higher education institutions.

Aside from considerations of free movement of intellectual capital, whether restricted by control of movement of individuals, or control of free access to ideas, the most significant factor is clearly the highly specific nature of most public higher education systems. Designed or not, such systems incorporated no supra-national characteristics. We

¹ This author takes the richly documented genesis of the Bologna Process as read. It is essentially a voluntary agreement, not underpinned by any international treaty or convention. New members may accede by agreement of existing members, and presumably can secede; there does not appear to be any procedure for ejecting members who do not succeed in their voluntary commitment.

should recall that the EU and its predecessors have been in existence for nearly half a century, yet higher education has continued along much older pathways. In some cases, delineated in medieval times, universities sprang up owing to the initiative of groups with common scholarly or vocational interests, or later as a consequence of the industrial revolution. From the early Nineteenth Century to the present day – with some notable periods of regression – the major change achieved by legislation or other means of implementation was the opening of higher education institutions to all groups in society: women, the less financially sound, victims of racial, religious, or ethnic discrimination, and the disabled. Some of these changes became operational only over the past decade and their implementation arguably overcame serious limitations to the internationally accepted right of access to higher education for those who are academically qualified.²

Until the advent of the Bologna Process, public funding of higher education was designed to meet the needs of individual countries for highly educated and trained specialists, professionals, academics, and ‘generalists’. In some countries, to a markedly smaller extent in recent years, public funding guaranteed the provision of higher education as a public good. Legislation, in its various forms, gave effect to these aims. One reasonably consistent element of legislation or policy, even in countries like the United Kingdom, where until quite recently there has been very little

² For example, the long overdue (in this author’s opinion) extension of the Disability Discrimination Act 1995 to higher education in the United Kingdom by primary legislation; this took place only in 2000. Another example refers to the permission of Macedonian public universities to deliver courses in the Albanian language – spoken by over 25 percent of the population – granted by primary legislation in Macedonia as late as 2003.

detailed legislative control,³ is to hold institutions in receipt of public funding increasingly accountable for their contribution to national goals, however defined. Another is to assess how universities prepare people for the real world. Hence, for example, the recent media interest in evaluating institutional success in the United Kingdom, based on graduates' earning power. Unheard of until very recently, such an analysis directly relates to the controversial policy of the Labour government on significantly increasing student tuition fees in England by 2006.⁴

Similar moves to switch the burden of funding higher education from the state to the individual and/or to employers are taking place in other European countries, generally against public opinion, on the basis that the public interest in funding individuals to pursue their own education and training is now more limited. Except in totalitarian economies, governments have never been able to direct people to take courses directly relevant to public needs, such as Engineering, Education, or Public Administration. Lower entry standards, lower fees, or 'golden hellos' on graduation can make access easier.

On the other hand, free choice of provision by institutions and of courses by students leads to the genuine waste of public resources, which occurred in the 1970s, with a flood of scientists emerging from university into a world with very few employment opportunities for them. The redirection of resources to place a greater financial burden on the end-users of higher education almost certainly requires amendments to

³ The recent creation of the Office for Fair Access (OFFA) - known to all as 'OffToff', a 'toff' in English slang being a member of the upper classes - by the Higher Education Act 2004 is a current example of how academic autonomy is under pressure from government in response to public concern about alleged discrimination by leading universities in favour of the wealthier members of society. The cynical view is that 'Toff's will be 'sent off' by the new Director of Fair Access, a former university vice-chancellor. The real aim, however, is to secure fair access to university for those with a less well-heeled start in life, and ministers have made it clear that the freedom of any university to *admit* whomever it wishes, a long-established principle in English common and statute law, remains unaffected.

⁴ If 'OffToff' has satisfied itself that they are doing better in the social engineering stakes.

the legislative code. In some countries, redirection requires changes in the Constitution or at least new ways of working around the well-intentioned Constitutional provision that access to higher education should not be impeded by the financial status of the student or her/his family.

There is a definite move away from the concept of the university as the academic ivory tower, and towards it being a training ground for future entrepreneurs and policy-makers. Of course, there is room for diversity in higher education. For large parts of the relatively well-resourced Western European higher education system, it may be simple to make this adjustment, or to stratify their further and higher education systems to provide a range of opportunities and pathways. Yet, this is not so easy for ex-communist countries with relatively few resources and arguably trying to do too much with too little. Enacted during the work of, and greatly assisted by, the Council of Europe and its Legislative Reform Programme (LRP) for Higher Education (1991-2000), the new generation of higher education laws generally incorporates the essentials of higher education as a public good: freedom from political interference; a link between autonomy and accountability; individual academic freedom; fair access; a mix of democratic governance and strong management; and consumer protection and quality assurance, etc. Funding to achieving the objectives of the system, however, remains the universal problem. The latest generation of higher education laws has been drafted against this background.

Most countries are struggling with the issue of how to fund the rapidly expanding demand for higher education from the public purse. Whether mainland European systems can remain static or will shift along the continuum towards the US fee charging, market-driven, and public-private model, in the wake of the UK, Canada, and Australia, may not be clear by 2010. In this author's view, unless there is adequate provision for funding – public, private, or mixed – it will not be possible for many countries to reach the goals of the Bologna Process. In addition, it is frankly impossible for some of the new (and applying) members of the Bologna Process to achieve from

public sources, or even from a mixed income stream, the necessary funding for diversified, high-quality higher education. Therefore, it is essential that through higher education laws or otherwise, provision is made for shared delivery of higher education, through shared funding; not just at second cycle (Master's degree), but also at first cycle or combined first/second cycles, in such relatively expensive subjects as Medicine and related fields, Engineering, and Natural Sciences. This author has not found a single higher education law that directly authorises this sort of activity, although it may be implied to some extent and already exists in some regions with experience of collaborative provision (such as through shared languages, history or culture).

To quote from recent work by British academics, Ted Tapper and David Palfreyman,

The globalisation of higher education presupposes the erosion of national identities but it would be naïve not to recognise that the pressures for change are spread unevenly and that some systems are better equipped to respond to them than others in the sense that they have fewer adjustments to make (Tapper and Palfreyman, 2004).⁵

This is certainly true in the legislative context. By 2020, Tapper and Palfreyman's vision is for higher education systems "... to be converging either under increasing financial pressure in the gloom of the Bermuda Triangle or to be basking in the sunny Azores as an expanding worldwide industry." (id.). Figure 1 illustrates this.

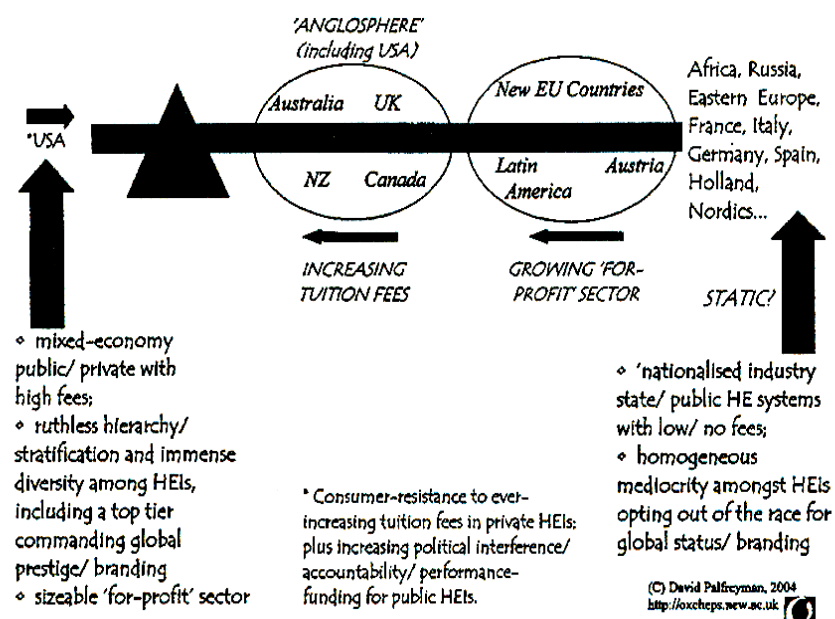
The essential nature of a country's higher education system has been its national character. For example, negotiating credit transfer between British and American universities has been a matter for the institutions rather than for the state, the credits transferred from the USA being accepted as equal to those earned in the United Kingdom and vice-versa. There has been little in the way of agreement at governmental level and

⁵ Available at <http://oxcheps.new.ox.ac.uk>.

no provision in the EU Treaties for recognition of anything other than professional or vocational courses. The Constitution of Europe, however, among its less controversial proposals, appears to promote higher education along the lines developed in the Bologna Process. The provision of higher education is part of a state system of education; while apparently not an absolute right in the context of the 'right to education',⁶ it sits at the pinnacle of any education system.

FIGURE 1: The Tapper and Palfreyman forecast

The Continuum of HE Systems - Convergence in the Bermuda Triangle or in the Azores?



Source: Tapper and Palfreyman (2004).

⁶ Article 2 of the First Protocol to the European Court of Human Rights.

Traditionally, in modern times, higher education institutions enjoy a higher degree of autonomy from the state (with exceptions for periods of totalitarian or autocratic rule of one sort or another) than do institutions offering other forms of education (schools, colleges, and training centres). This is because they offer, or should offer, intellectual stimulus, which turns students into free thinkers in a liberal environment. The fact that some legislation still imposes greater control over institutions than the spirit of the Magna Charta would suggest is in essence a hangover from earlier times. It preserves the position of outdated institutional forms (such as the legally separate faculties in universities of some countries of the former Yugoslavia), fossilises the status of professors, deans and other functionaries, and thereby inhibits any interdisciplinary or mobile tendencies. The reason for the very slow adjustment to new systems is that governments fear an uncoordinated *laissez-faire* approach, with consequent unanswerable demands on public resources. It is good to note the changes that are gradually taking place, again to cite the restructuring of higher education systems in the former Yugoslavia, in the new higher education laws or draft laws of Croatia, Montenegro, Kosovo (in the context of the UN Mission to Kosovo, UNMIK), Bosnia and Herzegovina, and Serbia. We await concrete steps to this effect in Macedonia. It is also the case that in some developed countries the progress in restructuring has been relatively slow due to internal resistance to change.

Importing and exporting higher education through student or staff mobility has been a feature of many initiatives since the Second World War, and of course has extended beyond Europe: the most well known initiative has been the US Fulbright programme. Now with the Bologna Process initiative, the impact of globalisation, and the growth of private providers focussed explicitly on higher education for employment, states have to rethink the aims and objectives of their public higher education systems.

To overcome obstacles to mobility, members are expected to introduce – indeed, mandate - by 2010, at the latest, a three-cycle higher education system based in part on the European Credit Transfer System (ECTS). A first cycle, Bachelor's, of 180-240 credit points represents a basic general higher education completed after secondary education. The second cycle, Master's, of 60-120 credit points (or a combination of first and second cycle leading to a 300-point degree) is more specialised. The third cycle consists of highly specialised Doctoral studies (the traditional Anglo-American PhD/DPhil or specialised Doctorates such as EdD and DProfStud (Education), DN (Nursing), DM (Midwifery), DBA (Business Administration), etc.) probably of 180 credit points. The starting point for credit accumulation might vary, as might the length of time taken to reach 180 or 240 ECTS points. The overall effect is to reach, at the end of the second cycle, an agreed Master's level at 300 ECTS points with opportunity to move on to the third cycle for those interested in an academic career.

This is not simply a matter of allocating credit points to existing courses but requires a radical overhaul of course structures, curricula, and syllabi and their relationship to a national qualifications framework. To overcome the organisational obstacles is probably more difficult, but nonetheless essential. Legislation is to facilitate all of these changes or at least not impede them. From the country reports and legislation examined, it is quite clear that most countries have at least adopted the two or three cycle system and most have moved to explicit allocation of ECTS credit points, with full recognition of the major changes required. Why it is necessary for some countries to continue older systems in parallel or maintain credit systems that are not directly convertible into ECTS points is an issue in each case of national policy. In some cases, it is the need for a smooth transition, so as not to disadvantage existing students or those with recently completed diplomas of the older kind. In other cases, there is no obvious logical explanation to the outside

observer, other than that is what the relevant Parliament has decided in its wisdom.

However, this is not just a question of how states organise their national systems of higher education. As illustrated in Figure 1, for-profit providers offering transnational or borderless higher education⁷ are a fact of life, so some attention should be paid to how national laws can regulate this, at least so far as quality assurance and perhaps joint degrees are concerned. More attractive offerings, particularly at second cycle level, in Business, Computer Science, and related disciplines, particularly those emanating from the USA in a somewhat unregulated way, could thwart the good intentions of the Bologna Process. Technology advances too rapidly for us to ignore the impact of courses given on-line and/or by video-conferencing. As far as this author can tell, not a single higher education law makes any attempt to regulate this sort of activity, presumably on the basis that there is no national or international legal framework regulating the Internet, save for some laws in countries outside Europe, which seek to limit freedom of speech or expression.

Many higher education laws do however have appropriate provision for securing consumer protection in private institutions physically located on their territories, in compliance with the *Recommendation* of the Council of Europe on the recognition of private higher education.⁸ In modern laws, there is an absolute prohibition against an individual or organisation offering courses designated as higher education courses in a given territory without consent of the relevant authorities. There should at least be some discussion of the increasing problem of transnational education offered over the Internet, as it is well-understood that this poses a real threat to the viability of second-cycle degrees – and so, perhaps, to the whole sub-doctoral higher education process - in less well-developed systems. International trends in transnational educational provision also raise political issues about globalisation and the domination of American providers.

⁷ In addition, of course, to non-profit transnational providers.

⁸ Recommendation of the Committee of Ministers R (97)1.

In this connection, we should refer to the impact of the Global Agreements on Trade and Services (GATS), which, in most countries, are the responsibility of trade ministries. In particular, to what extent will the liberalisation of higher education services under this Agreement affect the implementation of the Bologna Process? This includes how GATS, which views higher education in a fragmented way and as a series of processes, might be a risk to institutional integrity. Higher education laws can have an influence on the incorporation of GATS-led initiatives, such as the extent to which restrictions on accruing non-state income may lead to profitable parts of institutions being in some way extracted from the mainstream, to the detriment of the rest.

There is considerable international interest in the Bologna Process.⁹ While such interest is generally welcomed, and while there are nascent proposals that the Process should be extended outside Europe, there is a potential conflict between the academic imperative of extending and improving mobility and transferability world-wide and the political goals of the Bologna Process. At the same time, the Bologna Process reflects the educational and cultural diversity of Europe in a way that is not possible to achieve worldwide. It is part of a set of initiatives, like TEMPUS or ERASMUS MUNDUS, which change our thinking about higher education, its role, and its value to society.

The ultimate 'Doomsday scenario' is that institutions as we know them today cease to have any relevance to the demands of the economy and the student. The argument runs that short of their formality and rituals, fancy diplomas and all the rest, universities are simply providers of services or 'undertakings' operating in an increasingly competitive world. If they are unable to adjust their offers and compete in the new market,

⁹ Presentations on the Bologna Process took place in Central Asia, in China, Australia and New Zealand, in the USA, and in South America. Most recently, presentations were made at the World Conference on Rights in Education and the Right to Education of the European Association for Educational Law and Policy, in the Education Law Association of the USA, and in the Australia and New Zealand Education Law Association.

then they will simply wither away, as will all the professors with them. Industry is arguably not interested in accreditation and quality assurance ratings given by professors sitting together in senior common rooms, but in whether a given person has the skills to do the job. Even public services might take the same view. The Bologna Process seeks to help institutions to adjust, at least within the European context. So those institutions and sponsor governments, which lag behind, can expect no more than they deserve.

Legislation and Reform

One question before us is how far legislation in itself helps to achieve the goals of the Bologna Process: Is it the catalyst for the achievement of these goals? Does it reflect progress towards the goals made by institutions? In some cases, it is clear that legislation forces changes in existing structures; in other cases, it reflects in a formal way what institutions and stakeholders in education already wish to do. Whichever path followed, it is important that legislation does not impede the Bologna objectives from being attained.

No international law or treaty supports the Bologna Process as such. Although the concept of developing a framework convention or a set of legally binding principles to underpin the emerging European Higher Education Area (EHEA) and European Research Area (ERA) is by no means new,¹⁰ so far the process relies on the voluntary commitment of Member States. This is not to say that higher education law has developed entirely spontaneously or in an un-coordinated way. As an intergovernmental organisation, the Council of Europe through its *Legislative Reform Programme in Higher Education and Research* (LRP)¹¹ was instrumental in providing expertise and assistance to countries in transition to reform their legislation and practice in higher education, well before the Bologna Process came into being. Essentially, countries emerging from a communist or socialist past, where universities seen as tools of the state had little autonomy, received LRP assistance.

Through a series of study visits, workshops, and publications, the LRP also helped to inform Western countries contributing to it about the developing higher education

¹⁰ For example, the European Education and Law Forums held in Bruges, Belgium, in 2002 and 2003, under the auspices of the European Association for Education Law and Policy discussed the issue.

¹¹ Available at <http://www.coe.int/T/E/Cultural_Co-operation/education/TCU/Legislative_Reform_Programme/default.asp>.

systems of countries having recently acceded to the Bologna Process and in several cases to the EU. It took as models the divergent systems of Western Europe, and while it did not specifically address possible shortcomings in these models, some of the study visit reports did comment specifically on problematic issues raised in the host countries.¹² The LRP did not set out to impose any particular model but to open up a dialogue about what should be the essential elements of education law related to higher education. One of the great advantages of the LRP was that its experts participating in missions came from diverse but always relevant backgrounds, from ministries and other state agencies, Rectors' Conferences and universities.

In general, the LRP welcomed the concept of an overall framework law on education, setting the overall structure, key individual rights, and government responsibilities, especially in federal constitutions. A good, if imperfect, example is the *Law on Education* adopted in the Russian Federation in 1992. The LRP strongly recommended a law on higher education to reflect the specificity of the sector, with its dual mission of teaching and research, adult student population, large and complex institutions, and relative autonomy. An early example of this type of legislation was the law adopted in Bulgaria, also in 1992. The LRP criticised attempts to manage the higher education system in detail through law, for example by fixing a minimum budget percentage (Russian Federation, 1992) or laying down elaborate appointment procedures for staff (Bulgaria, 1992), while encouraging Ministries of Education to assert a strategic policy role (Romania, 1994).

One of the first tasks of the LRP was to explain the then lack of a European norm for the organisation of studies, a choice between the Atlantic or 'stage' and Central European models. As the Bologna Process has developed subsequent to most of the LRP work, all countries have now agreed to what

¹² In the course of a Study Visit on Quality Assurance (QA) organised in Scotland, visitors from a range of countries commented critically on the complexity of the then model of QA in the United Kingdom.

was then called the 'stage' system partly for the prospect of flexibility and cost savings, and partly through the weight of examples from the USA and Asia. The straight progression to the Master's degree, of which, historically the English three-year *Artium Baccalaureus* or *Baccalaureus in Artibus* (BA) was only a staging post,¹³ was abandoned in favour of two distinct cycles with specific outcomes, as adopted in England many years ago. These cycles are now at the centre of the Bologna Process, but at the time of the LRP, the concept was not yet sufficiently developed.

Arising out of an analysis of the results of the LRP was a template for legislative frameworks for higher education, which assigned competences to different levels: primary legislation, secondary or derivative legislation, and university statutes. Reproduced in Table 1, the template served several countries in reformulating their legislation. The Council of Europe drafted the template in 1998, prior to the Bologna Declaration, and published it in 2000. It took account not only of the advice given to the 22 countries visited by the LRP, and how they acted on that advice, but also of the country reports from most member states of the Council of Europe that contributed to the two principal LRP-published texts.¹⁴ Actually, it is quite a comprehensive survey on the provision of European higher education legislation at that point in time. It has subsequently formed the basis of many presentations, notably in South-East Europe, as that region prepared for accession to the Bologna Process. The basic principle of the template is the subsidiary, in turn based on the concept of maximum institutional autonomy - whether provided in the relevant state Constitution or not. The LRP philosophy advocates for a bare minimum of regulation by the state, consistent with accountability for the use of public funds.

Of course, the LRP template cannot apply to every legislative environment; it is a guideline, not a prescription, and addresses issues which ought to be covered somewhere in the system.

¹³ See footnote 25.

¹⁴ Unfortunately, not all Member States responded to the request for contributions.

TABLE 1: Synthesis of suggested allocation of competences drawn from the LRP

A: Primary legislation

Define higher education
 Define types of institution delivering higher education
 Permit creation of private institutions
 Delimit circumstances under which private institutions may be accredited
 Describe the establishment, merger, or closure of public institutions
 Define and regulate the use of the term, university
 Provide for and delimit extent of autonomy of different types of institution
 Delimit the legal personality of institutions
 Define arrangements for certification, recognition of diplomas etc.
 Prescribe in general terms how public institutions are governed
 Prescribe in general terms how public institutions are funded*
 Delimit the conditions that may be attached to funding
 Prescribe arrangements for financial audit
 Delimit the extent to which institutions are required to report to the state
 Prescribe the extent of accountability of governing bodies for use of funds
 Prescribe in general terms arrangements for accreditation of institutions
 Prescribe in general terms arrangements for quality assurance
 Provide for academic freedom of staff and protection against arbitrary sanctions
 Delimit powers of public institutions to charge fees to local and non-local students
 Delimit extent of commercial activity allowed to public institutions
 Describe in general terms systems for student financial support
 Describe in general terms rights of students and staff to organise
 Provide mechanisms for resolving disputes between the state and institutions
 * This may (and in some countries does) include a legally established minimum percentage of state budgets to be devoted to higher education.

B: Secondary legislation

Set out minimum requirements for democratic internal governance and management
 Prescribe details of system of allocation of funding
 Prescribe conditions attached to funding
 Prescribe nature of statistical information required from institutions
 Prescribe requirements for institutional plans, budgets, reports etc.
 Prescribe detailed mechanisms for accreditation and quality assurance
 Prescribe details of student support arrangements
 Prescribe mechanisms for fixing salary scales for different groups of staff
 Prescribe arrangements for public institutions charging fees to different groups of students
 Set out minimum requirements for the effective resolution of internal disputes

C: Domestic legislation (charter, statutes, articles, etc.)

Set out name, general powers and objectives, prescribe seal and other symbols and emblems
 Delimit membership of institution (staff, students, etc.)
 Provide for staff appointments, terms, and conditions, discipline
 Detail arrangements for governance and management:
 Constitution of internal bodies
 Management positions
 Elections and appointments
 Responsibilities of internal bodies
 Financial accountability
 Regulate admission of students, progress, and discipline
 Provide for staff and student organisations
 Regulate arrangements for student accommodation, etc.
 Regulate mechanism for making academic awards
 Regulate intellectual property arrangements
 Provide mechanisms for resolving disputes between members and the institution

Source: Farrington (2000).

The Bologna Process goals related to competences in Table 1, item A, namely, those recommended for inclusion in primary legislation, concern the certification and recognition of diplomas and the outline of arrangements for accreditation and quality assurance. The other goals, for example regarding the degree structure and the use of ECTS, are not expressly stated in any of the boxes because, at the time, it was assumed that they would fall under the general rubric of accreditation and quality assurance. At present, it would be necessary, or desirable, that most countries include the Bologna Process goals explicitly in primary law, at least in outline form. This depends on the cultural approach to law: whether seen as positively mandating or permitting certain activity, or acting as a control or negative brake. The latter approach is more suited to a framework law, or to the common law system, the former to a more detailed code.¹⁵

Outside the framework of the LRP, and as the European University Association (EUA) *Trends 2003* Report indicated (EUA, 2003), the legal possibility to offer programmes of the

¹⁵ This may explain why the new law on higher education in Poland contains 251 articles, necessary in a positive legal system that replaces a communist one.

two-cycle type either exists or will soon exist in all Bologna Process countries. The survey undertaken for the preparation of the Report indicated that by mid-2003, more than half (19) of the ministries indicated that they had changed their higher education legislation since 2001 and a further 40 percent stated their intention to do so. In many cases, these legal changes related to the types and structures of degrees. Particular references included Austria (2002), the Flemish Community of Belgium (2003), France (2002), Norway (2002), and Spain (2001). About 40 percent of countries already operated a compatible two-cycle structure (the 'stage' structure discussed in the LRP), obviously the United Kingdom, Ireland, and Malta but also such countries as Bulgaria, the Czech Republic, Denmark, Latvia, Poland, and Turkey. Others were adjusting their existing two-cycle structure: the French Community of Belgium, Croatia, Finland, France, Norway, Portugal, and Serbia. The far-reaching change in the second-cycle degree in France was notable.

In order to ease the transition from one system to another, legislation often fixes a deadline after which no study programmes of the older type will be accredited or authorised. This varies between countries but in all cases assumes that the final cadre of students graduating under the old system will do so before 2010. In practice, student pressure, which is effectively coordinated through the European Student Information Bureau (ESIB), may accelerate this process: nobody will want to lag too far behind. Several member states have reported a more rapid switch to the new system than ministries had anticipated, with the possibility that the fundamental re-examination of the curriculum has not assumed the importance it must to achieve the overall aims of the Bologna Process, in particular readability and mobility. Some states are proceeding in a systematic approach

introducing gradually greater autonomy for institutions and reducing government interference to the minimum necessary.¹⁶

¹⁶ The Netherlands, for example, has operated two major changes in the last six years and plans to effect further changes in 2007.

Reviewing Relevant Legislation

The brief description of legislation given in the *EUA Trends 2003* Report led to the commission of the present work, which would take a full-time researcher many months,¹⁷ and constant updating of material: several states are processing new laws through Parliament with the objective of having them on the statute book by mid-2005, about the time of the Bergen Ministerial Conference.¹⁸ These procedures may allow for the introduction of amendments.

As this author and many others have remarked regarding the Council of Europe LRP and its successors, it is not possible to isolate legislation on higher education from the concerned political and social context; most importantly, not from other normative acts that concern the higher education sector. Among the latter are constitutional guarantees of institutional autonomy and academic freedom; laws on public finance, public and private institutions and foundations, and student support; detailed prescription of state standards in higher education; employment laws giving considerable protection to staff and entrenching 'expert professors' in some sort of unassailable position; and restrictions on cross-border mobility.

As Michael Daxner (2004) outlined in his article published by the Observatory of the Magna Charta, new legislation in South-East European countries (for this purpose the successor states to the former Yugoslavia and Albania) is often a compromise between governmental and external pressure for fundamental change in the system and incremental reform advocated by institutions and academics. For example, the

¹⁷ See, for instance, a more detailed analysis of the situation in France, Germany, the Netherlands, and the United Kingdom, undertaken by Johanna Witte of the Centre for Higher Education Development (CHE), Germany, and presented at the EAIR Forum, Barcelona, September 2004.

¹⁸ These include Norway, Hungary, and Poland. Bosnia and Herzegovina is also moving in this direction against a difficult political background.

laws that prolong the independent legal identity of faculties within a university, while trying to introduce elements of the Bologna Process, which are arguably unworkable in the absence of some overarching authority; this contradiction severely hinders students in concerned countries from full participation in a modern higher education system. Daxner's analysis is correct, but the intense external pressure prevails over internal resistance and the days of the independent faculty are numbered.

In some countries, the education or higher education law is a framework, within which they adopt regulations, decrees, and other instruments to give effect to the Bologna principles. Alternatively, institutions may collectively agree on how to implement these principles through national Rectors' Conferences, quality assurance agencies, and other bodies, with the state holding the trump card (money). In yet other countries, a detailed regulatory code exists; for example, highly specific articles in some laws that prescribe staff mobility in terms of time served at lower levels, or restrict staff workloads to a degree ridiculed in the private sector.

The whole concept of higher education regulated in detail by the state (except in relation to accountability for public funds and consumer protection) is the domain of the history books and no doubt will be in the years to come. Even if the 'Doomsday scenario' described earlier does not come to pass, when non-state, flexible alternatives are available at reasonable cost, state institutions offering inflexible programmes that fail to provide what good students want will soon feel the effect of market forces. Without generally the higher income streams and well-qualified and adaptable students that these courses bring, the institution may become a mediocre, poorly resourced entity existing just for its own sake. The 'wake-up call' is there for all to heed.

On the other hand, the extreme flexibility of some laws in South-East European countries, such as those allowing students to take examinations repeatedly over many years until they pass, in effect turns universities into 'long-term

parking' for the otherwise unemployed and has no positive impact on quality whatsoever. In that sense, higher education law is useful to affect a form of social engineering: it keeps people under the age of thirty in the official status of student, employed in some minor capacity, and off the official unemployment register. Cynics might argue that this is the whole point of massification anyway: better to have people doing something than nothing.

Analysing legislation just by reading its text is not academically sound. Lengthy and helpful explanation of what it is trying to achieve may precede some legislation, such as the *Ley Orgánica de Universidades* of Spain. On the other hand, to understand the meaning of some new laws – in particular those of the United Kingdom – calls for extensive research into the pre-existing legislation and the conventions and traditions governing institutional autonomy and public accountability. Naturally, there is extensive explanatory material provided for national Parliaments, but it has not been possible to report on any of this here. Such sources would provide a wealth of data for anyone interested in exploring the context within which they take national decisions on higher education policy.

There is a risk then of any analysis being dubbed 'Higher Education Legislation in Europe for Dummies'. It was decided early on that producing a mound of cross-references to articles of many laws would be neither informative nor of any practical use, even if the time to do so was available. Rather by reading as many of the documents as possible, and applying some common sense, this author has sought to analyse the legislation provided along the following headings:

- i) the process of adopting a common framework of reference of easily readable and comparable degrees;
- ii) the adoption of a system with three main cycles, with a first cycle relevant to the labour market, and a second (and third) cycle requiring the prior completion of a first cycle degree;

- iii*) establishing a system of credits (such as ECTS);¹⁹
- iv*) promoting mobility and eliminating obstacles to the mobility of students, teaching staff, and graduates; and
- v*) promoting European co-operation in quality assurance.

The remaining Bologna Process goals are more policy statements than actual legislative goals:

- i*) promoting European dimensions in higher education;
- ii*) seeing higher education studies in the context of lifelong learning;
- iii*) assuring involvement of students in development and implementation of reforms; and
- iv*) enhancing the competitiveness of the EHEA and its attractiveness to other parts of the world.

Because of the linguistic inadequacies of the author and the absence of translation assistance, it was not possible to analyse some information provided by participating countries in languages other than English. Some attempt have been made with major languages, but at any rate one hopes that everything will eventually be translated into the working language of English, in order to realise the prospect of a simple guide to the national legal frameworks underlying the EHEA.

The Appendix includes a table listing some of the attributes of national legislation, except for non-translated material. Major caveats accompany this table, which may necessarily suffer from various inaccuracies or over-simplification.

¹⁹ Some countries, such as Lithuania and Latvia, have a credit system related to ECTS and easily re-calculable into ECTS. However, this author has analysed this situation as NOT compliant, as it is not clear why the change to ECTS is not operational; no doubt, this can be explained.

Degree Structures

It is relatively easy to provide for the legislative restructuring of degree systems, more or less prescribed in national legislation or under its authority.²⁰ Substantial differences existed in the previous structures, based as they were on Anglo-American, Latin, and Germanic (or combinations thereof) approaches to higher education, with the totalitarian legacies still partly with us. Many countries have passed laws or adopted policies mandating a switch to the new degree system, with some countries rapidly phasing in the changes. Others are lagging, leaving it to institutions to decide on the retention of traditional Master's-level initial degrees versus the introduction of new ones. Ultimately, probably this approach will not be acceptable in the wider Europe. Maintaining traditional approaches for their own sake does not square with the opening up of new opportunities for Europe's young people, and suggests self-protectionism (by states, regions, or institutions) or isolationism. If countries, particularly non-EU member states, wish to pursue independent lines of action that is, of course, within their power. A good example is the decision by the Norwegian Parliament to retain certain older titles (*candidatus* or *candidata*) for degrees in Medicine, Theology, Psychology, and Veterinary Science. But are such actions student-oriented or of practical use in meeting the Bologna Process goal of helping to make Europe (not just the EU) the most competitive and dynamic knowledge-based economy in the world? Do they help graduates to secure employment if the rest of the world either wonders about the meaning of it or has to seek explanations from a NARIC or ENIC centre? Of course, this applies as much to the French *Licence* or the Italian *Laurea* as

²⁰ An example of the latter is the Norwegian Act 22 of 1995, section 45, which vests in the King the power to decide on degrees awards. An example of the former is the *Law on Higher Education Establishments* of Latvia, also of 1995, which sets out the degree system in detail.

to the more common Bachelor's credential.²¹ Yet an important issue remains the determination of ECTS points associated with titles not readily understood outside the country or region.

Because national sovereignty is still overriding, the result is not a standard European system but compatibility among national systems. For example, the Bologna Process stipulates only that the new first- and second-cycle programmes combined must take at least five years of full-time study, following the completion of secondary education. A few countries have chosen to create a four-year Bachelor's and one-year Master's degree but the 'three plus two' model is clearly emerging as the norm, with 'integrated curricula' lasting five or six years in subjects such as Engineering, Architecture and Medicine, and special provision for pedagogical or professional supplementary training.²² Early interpretations of the original Bologna Declaration aimed at replacing all undergraduate programmes with 3-year first cycle degrees met, unsurprisingly, with considerable resistance from academics. In the first new higher education law to be drafted after 1999, that of Kosovo, there was quite clearly a mismatch between what could be achieved by school-leavers in three years and what would be recognizable in Europe as a first-cycle degree. The issue was resolved, but the argument continued up to the final adoption of the law in 2003.

Having a common and easily understandable degree structure will hopefully help to make higher education in Europe more attractive to foreign students in that it will be viewed essentially as a single system with a clear identity.

²¹ The title, 'Bachelor', comes from *Artium Baccalaureus* or *Baccalaureus in Artibus*, originally awarded upon completion of first studies at Oxford or Cambridge, but of limited significance; the candidate holding the BA received his/her MA about seven years after Matriculation. The MA was really the first 'degree', being a licence to teach; university received the authority over such licences from the Pope of the Roman Catholic Church.

²² In Article 26 of its changes and supplements to the *Laws on Higher Education*, 2003, the Republic of Macedonia adopted the formula that the first cycle (graduate) studies at the university (faculty) shall last for at least three years and at most five years. The provision will probably be amended in terms of ECTS points.

Using ECTS, the common structure will also promote student-centred education for lifelong learning.

Continental Europe in particular looks to the new system to help it compete with Australia, the United Kingdom, and the United States for foreign students. The United Kingdom (or rather, its devolved administrations with different higher education systems) has signed on to the Bologna Process, but already attracts thousands of foreign students including from within the European Union. Everyone, including employers, seems to know what an English BA or BSc signifies without reference to ECTS points or the Bologna Process.

Yet, as *The Chronicle of Higher Education* reported in a special issue on 26 September 2003, the changes often do not come easily. The new credit system assigns credits to courses based on student workload, while old systems weight every course equally. *The Chronicle* reported one Rectors' Conference, which represents a public system, as saying that full professors may see their lectures given fewer credits than seminars taught by more junior colleagues. For older faculty members who grew up in the traditional system, that may be hard to accept. Nevertheless, accept it they must, or give way to younger and more adaptable colleagues.

The degree of autonomy enjoyed by universities, and indeed faculties and departments within universities, varies dramatically across the EHEA. For example, in the former Yugoslavia even late Twentieth Century laws prescribe precisely the grading system to be used for student work (5-10, where 5 is a fail),²³ generally without relating this to ECTS or a National Qualifications Framework (NQF). NQFs, of which the Bologna Process cycles form a part, are in process of development; the most advanced countries in this regard are Scotland and Denmark. According to the Bologna Follow-Up Group (BFUG), a NQF should describe (i) how education qualifications interact and articulate, (ii) how one moves along in the education system, and (iii) the overarching framework of the EHEA. A NQF

²³ Contrast Romania, where the scale is 1-10 with 5 as a minimum passing grade.

should describe a qualification in terms of its level, workload, quality, profile, and learning outcomes and, perhaps most importantly, what one can do with the qualification. Qualifications frameworks are nothing new, but many European countries do not define their education systems in this way. A conference on a proposed European Qualifications Framework took place in Copenhagen, Denmark in January 2005.

One additional complication is the practical difference between some countries in relation to academic, professional, and vocational higher education. The current trend is to integrate these into the Bologna Process cycles, while perhaps distinguishing between diplomas. A progressive system, such as that of France, for example, first adopted a three-cycle structure and then integrated new degree titles into the system of education as a whole. The aims of the French system are to improve interdisciplinary studies, encourage greater synergy and collaboration, and reduce failure rates through restructured studies. Others, such as the Czech and Slovenian systems, make no distinction between professional and academic courses.

As noted already in the case of the former Yugoslavia, the ex-communist countries of Europe generally have detailed legislation spelling out what institutions may offer and requiring an *ex ante* accreditation procedure with relatively little room for manoeuvre by the institution.²⁴ Several such countries have moved explicitly to define the first, second, and third cycle as Bachelor's, Master's and Doctor's degrees, although what these titles actually mean is so far from clear that a special conference was organised in November 2004 in Saint Petersburg, Russian Federation, on the theme "Bachelor's Degree – What is it?" In addition, for what is it? According to the Bologna Process, the new Bachelor's degrees should be relevant to the European labour market, whatever that may imply. In other words, these degrees should qualify

²⁴ Article 29 of the *Law on Higher Education* of Montenegro, 2003 offers a recent example of some liberalisation: the institution may vary the accredited curriculum by up to 30 ECTS points (one semester equivalent) without re-accreditation.

graduates for jobs. However, tradition dies hard: in many countries, both students and employers have doubts about the value of a shorter undergraduate degree, and of course there remains the strong philosophical argument that higher education is not just about employment. Does the first cycle still offer a broad education or just training for a job? In addition, some countries do not call the first- and second-cycle degrees Bachelor's and Master's, but retain older names.

With its history of institutional autonomy and the influence of the common law, the United Kingdom does not follow this detailed legislative approach. Current legislation (1988-1992)²⁵ makes no reference to degree titles or cycles, defining 'higher' education to include a postgraduate course (including a higher degree course) and a 'first degree course' as well as certain other tertiary vocational qualifications and courses offered at a 'higher standard' than the final school-leaving examinations. In short, British universities are free to give any names they wish to whatever qualifications they offer; this can lead to immense confusion. Thus, it is that in Scotland, the first cycle Arts degree at Edinburgh is a four-year MA, while at Stirling it is a four-year BA, with the MA granted only as an honorary degree; the Edinburgh MA and the Stirling BA would earn the same number of ECTS points (240). In England, while the MA at Oxford or Cambridge is in practice (although not in theory) an honorific,²⁶ which requires no study (and receives no ECTS points), at the University of London, the MA is a taught degree of the second cycle earning ECTS points (60 for the one-year degree). Of the four examples, only the London MA would count as a second-cycle Bologna qualification. These quaint eccentricities, particularly the Oxbridge MA, may be acceptable in the United Kingdom yet, like the Norwegian *candidatus*, are clearly very difficult to understand on the international scene.

²⁵ The *Higher Education Act* 2004 has nothing to say on this subject, or indeed on any other Bologna Process-related subject.

²⁶ See footnote 21 for an explanation of this 'anomaly.'

Section 14 of the Republic of Ireland's 1997 *Universities Act* illustrates the 'hands-off' approach to university autonomy. In performing its functions, a university shall:

- have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs, and
- be entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom, and in doing so it shall have regard to
 - i) the promotion and preservation of equality of opportunity and access;
 - ii) the effective and efficient use of resources;
 - iii) its obligations as to public accountability.

In such an approach, quality assurance procedures ensure implementation of regulations and universities may decide for themselves on what titles to confer.

Calling the three cycles undergraduate, graduate, and postgraduate in the English translation of the new law in Croatia,²⁷ may cause some confusion: in some cases, Doctoral degrees and a range of others conclude the second cycle. In others while a Doctor in Medicine qualification earns 300 ECTS points, a Master's in a non-vocational subject, Graduate Engineer, Graduate Theologian, or Professor (in Education) qualifications earn the same points. Diploma Supplement explanations are obviously vital. By contrast, in Slovakia, the three cycles and the conjoined first and second cycle are clearly distinguished from the Doctoral cycle by degree titles.²⁸ In Lithuania, university sequential studies are defined in three stages: undergraduate studies (first stage), Master's studies, residency, or special professional studies (second stage); Doctoral studies and Art postgraduate studies (third stage).²⁹

²⁷ Articles 70 *et seq* of the *Science and Higher Education Act*, Croatia, 2003.

²⁸ Section 2(5) of the *Law on Higher Education, etc.*, Slovak Republic, 2002.

²⁹ Article 39 of the *Law on Higher Education*, Lithuania, 2000.

Only at the third cycle is the title of Doctor (no longer just Doctor of Philosophy) apparently approaching international consensus, but the Bologna Process extended to this level only relatively recently. Various titles such as Doctor of Arts, Doctor of Science, and so on also apply for degrees of the third cycle.³⁰ In April 2004, the Coimbra Group, which represents the oldest universities in Europe, sought to stimulate student mobility by allowing students to attend PhD courses independently of enrolment; the Group hoped to create a 'brand', and identify its PhD programmes as upholding certain standards. Some members (including Oxford, Cambridge, Edinburgh, and Leiden) however are also members of the League of European Research Universities (LERU), an organisation that considers itself a more appropriate environment for developing a common approach to European research and to PhD programmes.

It is still difficult to explain the status of the so-called 'higher doctorates' (Law, Letters, etc.) which confusingly can sometimes – but not always – be obtained either by submission of published work or as an honorary degree. The continental CSc (Candidate of Science) and Habilitated Doctor titles have no real equivalent in the Anglo-American system. Finally, numerous individuals, particularly politicians, purport to be Doctors because they have received much-abused honorary doctorates, which receive no ECTS points.

³⁰ In Croatia, for example.

Recognition of Joint Degrees

We now turn to promotion of joint degrees at the second cycle-level. Joint degrees must receive legal recognition in all states providing input into the degree programme. This is absolutely crucial, given that the first cycle constitutes a basic form of higher education delivered in any member state, and it is at the second cycle that genuine European Master's degrees might emerge. The question of joint degrees closely relates to that of international co-operation in quality assurance, and to joint practice in this area. Arguably, it will be easier for citizens of some countries (notably the Bologna Process member states, yet not EU Member States) to have their studies recognised and to secure appropriate employment if their qualifications are accredited or validated by institutions recognised in the EU. To some extent, this might also apply to the recognition of qualifications accredited in the United States or elsewhere, depending on the subject. Accreditation or validation by a major American business school or consortium, in addition to local but Europe-wide accreditation, may be more appealing to a multinational employer than one granted by a single university in a European country (i.e. acting alone under its own devolved powers); unless the latter happens to be a well-known centre of excellence.

Within the EU, recognition of joint degrees by two or more member states will help multinational businesses to organise training programmes for their staff with universities in different countries. It will also make it easier for nationals of one member state the qualifications of which do not enjoy automatic recognition under the limited existing EU Directives (generally professional subjects), to avoid having degrees recognised separately, as per the mechanisms of the Lisbon Convention. Following the publication of a proposal, *Joint Master's for Europe* by the EUA in 2002, the issue was subject of discussions at considerable length in various Bologna

Process-related and EUA seminars, and in the ENIC/NARIC network meeting in Vaduz, Liechtenstein in May 2003.

Finally, the Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the Lisbon Convention) adopted a *Recommendation on the Recognition of Joint Degrees* in June 2004 in Strasbourg, France. The advent of ERASMUS MUNDUS will also help the process.

Recommendation on the Recognition of Joint Degrees (2004)

As is common in Council of Europe Recommendations, the Preamble of the above 'has regard to' or 'considers' numerous earlier declarations and recommendations including those already mentioned: the Bologna Process, the Lisbon Convention, the *Diploma Supplement* elaborated jointly by the European Commission, the Council of Europe, and UNESCO; the UNESCO/Council of Europe *Code of Good Practice* in the provision of transnational education; ECTS and the Council of Europe/UNESCO *Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications*, and so on.

The Preamble also refers to practical action in favour of the recognition of qualifications concerning higher education carried out by the Council of Europe/UNESCO European Network of National Information Centres on academic recognition and mobility (the ENIC Network). In the diplomatic language used on such occasions, the Committee was 'convinced' that the joint development of curricula between higher education institutions in different countries and the award of joint degrees contribute to academic and professional mobility and to the construction of the EHEA. The Committee was also 'convinced' that the development and improved recognition of joint degrees would contribute to the European dimension of higher education, and entail important benefits for individuals as well as for European society as a whole.

Finally, the Committee stated its awareness (to put it mildly) that the recognition of qualifications originating in such joint arrangements is currently encountering difficulties of a

legal as well as practical nature, and recommended the governments of States party to the Lisbon Convention:

- to take into account, in the establishment of their recognition policies, the principles set out in the Appendix [hereto] which forms part of this *Recommendation*;
- to draw these principles to the attention of the competent bodies concerned, so that they can be considered and taken into account;
- to promote implementation of these principles by government agencies and local and regional authorities, and by higher education institutions within the limits imposed by the autonomy of higher education institutions;
- to ensure that this *Recommendation* is distributed as widely as possible among all persons and bodies concerned with the recognition of qualifications concerning higher education;
- and invited the Secretary General of the Council of Europe and the Director-General of UNESCO, as appropriate, to transmit this *Recommendation* to the governments of those States invited to the Diplomatic Conference entrusted with the adoption of the Lisbon Convention but which have not become parties to that Convention.

The Appendix to the *Recommendation* sets out three general considerations:

That it is adopted within the framework of the Lisbon Convention and applies to the Parties to this Convention, however its principles and the practices described in it can equally well be applied to the recognition of qualifications in countries other than those party to the Lisbon Convention or to qualifications issued between or among national education systems. Its purpose is to improve the recognition of joint degrees.

While degrees that are considered as belonging to the education system of a Party to the Lisbon Convention even where parts of the degree have been earned in other education systems fall under the provisions of the Convention, the present *Recommendation* concerns joint degrees.

While the scope of the Lisbon Convention as well as of subsidiary texts adopted under the provisions of Article X.2.5 of the Convention concern the recognition of qualifications in countries other than that in which they have been earned, the provisions of the present *Recommendation* may equally well be applied, *mutatis mutandis*, to joint degrees issued by two or more institutions belonging to the same national higher education system.

For the purposes of this *Recommendation*, a joint degree should be understood as referring to a higher education qualification issued jointly by at least two or more higher education institutions or jointly by one or more higher education institutions and other awarding bodies, on the basis of a study programme developed and/or provided jointly by the higher education institutions, possibly also in co-operation with other institutions. A joint degree may be

- a joint diploma in addition to one or more national diplomas;
- a joint diploma issued by the institutions offering the study programme in question without being accompanied by any national diploma; or
- one or more national diplomas issued officially as the only attestation of the joint qualification in question.

General principles are:

- Holders of joint degrees should have adequate access, upon request, to a fair assessment of their qualifications;
- Competent recognition authorities should recognise foreign joint degrees unless they can demonstrate that there is a substantial difference between the joint degree for which recognition is sought and the comparable qualification within their own national higher education

- system. Competent recognition authorities of Parties whose higher education institutions confer joint degrees should recognise these degrees with the greatest flexibility possible.
- In respect of legislation, the *Recommendation* states that Governments of States party to the Lisbon Convention should, where appropriate, therefore review their legislation with a view to removing any legal obstacles to the recognition of joint degrees and introduce legal provisions that would facilitate such recognition.
 - Referring to the relationship between quality assurance and institutional recognition, the *Recommendation* states
 - Competent recognition authorities may make the recognition of joint degrees conditional on all parts of the study programme leading to the degree and/or the institutions providing the programme being subject to transparent quality assessment or being considered as belonging to the education system of one or more Parties to the Lisbon Convention.
 - Where the joint degree is issued on the basis of a curriculum developed by a group or consortium consisting of a number of recognised higher education institutions, recognition of the degree may be made contingent on all member institutions or programmes of the group or consortium being subject to transparent quality assessment, or being considered as belonging to the education system of one or more Parties to the Lisbon Convention, even if only some of these institutions provide courses for any given degree.

Dealing with information, the *Recommendation* states

- Institutions providing joint degrees should be encouraged to inform the competent recognition authorities of programmes giving rise to such degrees.
- As appropriate, in order to facilitate recognition, candidates earning joint degrees should be provided with

- a diploma supplement, and study programmes leading to joint degrees should make use of the ECTS.
- The diploma supplement issued with a joint degree should clearly describe all parts of the degree, and it should clearly indicate the institutions and/or study programmes at which the different parts of the degree have been earned.

Legislation

The *Recommendation* on legislation is of critical interest here. One important question under consideration in legislative reform is how to remove obstacles to the development and recognition of joint second-cycle degrees. These now clearly define as the equivalent of a one- or two-year taught postgraduate Master's degree offered jointly by one or more recognised (in some countries accredited) institutions, in the same or different member countries of the EHEA. Most countries have a standard way of describing the qualifications awarded by universities, although practice varies as already explained in the case of the United Kingdom.³¹

There are very considerable differences in legal systems; this is not simply a question of differences between common and civil law systems, although with the direct incorporation of EU laws (Directives and jurisprudence of the European Court of Justice) into the domestic law of all member States, the distinction appears to be more one of practice than of principle. Certainly, we would expect express provision for joint degrees to exist in legislation of common, mixed, and civil law jurisdictions.

According to a EUA study, there is no common definition in use today, either explicitly or implicitly. Yet, as the *Recommendation* suggests, we can describe a joint degree as

³¹ As already stated, the first impediment for the United Kingdom is to explain to European colleagues the distinction between this type of degree and the MA awarded by the older Scottish universities and Oxford and Cambridge, and why some degrees take longer to obtain than others with the same title.

including all or some of the following characteristics: joint development and/or approval by several institutions; student mobility between all or some institutions for a substantial part of the programme; automatic and full recognition by partner institutions of periods of study and examinations; joint work on curriculum and co-operation on admissions and examinations; staff exchanges among institutions; compliance with any validation etc; and, crucially for the purposes of this project, students either obtain the national degree of each participating institution or a degree (usually an unofficial certificate or diploma) awarded jointly by the partner institutions.

The problem is that the sort of award described in the paragraph above is not really a joint degree. Those currently offered do not fall under the description of the qualification that the EHEA intends to promote. In the main, although they are branded with that description, they are based on mutual recognition of credits or courses towards a qualification awarded under national legislation 'where the music stops', i.e. where the student is primarily based and completes the qualification. The primary, secondary, or domestic legislation relative to degrees often prescribes attendance requirements or residence, and in some countries requires accreditation of all elements of a programme by national authorities.

In this area, the British and Irish jurisdictions have less to say at national level and more to say in charters or articles of Government and domestic rules. For example, it is common for an English Charter to give power to a University to join with another University or with any other public or private body, institution, authority or association having in view or promoting any purpose the same as or similar or related to any purposes of the University ... for such purposes as may be agreed upon or as may be permitted by law, on such terms and conditions as may from time to time be prescribed by the Statutes or Ordinances of the University. In effect, this gives the University power to enter into an agreement with another institution in Europe to offer joint degrees and issue joint

certificates, the details of which are prescribed by the universities concerned. Naturally, the provision will be subject to quality assurance procedures as collaborative provision. Rather than recognizing the degree in the United Kingdom as awarded by the British university, or recognised in the United Kingdom, under the Lisbon Convention, as awarded by the foreign university, it should be recognised in the United Kingdom as a joint qualification, albeit the foreign elements will not have been subject to British quality assurance processes. The view has been expressed, however, that the fact that national legislation, whether in the United Kingdom or elsewhere, does not specifically prevent joint degrees from being established or recognised is not a sufficient measure. Any review of national legislation should consider positive provision for the recognition of joint degrees rather than just abolishing any explicit impediments to such recognition.

Other countries have made specific legislative provision, particularly where they have re-worked their degree structure in the language of the Bologna Process, and use ECTS in their NQF. For example Article 87 (5) of the *Universities Act 2002* (Austria) states:

If a student successfully completes a dual diploma degree programme comprising up to 120 ECTS credit points of which at least 30 were obtained under the auspices of a foreign counterpart institution, or more than 120 ECTS credit points of which at least 60 were obtained at such institution, then the award of the degree may be evidenced by a certificate jointly issued in conjunction with the latter (BMBWK, p. 43).

This formula ensures that the work at the non-Austrian institution lasts at least one semester when the standard 30 ECTS points per semester are available to students.

In many European countries, the legislation incorporates the use of ECTS, although it is not necessarily a specific reference to joint degree programmes. The fact provides a basis for constructing programmes recognised throughout the

EHEA. However, whether or not the Austrian model is sufficiently flexible remains to be seen.

Institutions offering second cycle degrees and all institutions that advise students wanting to embark on postgraduate degrees should follow these processes closely. An awarded genuine joint degree could have significant market advantages for the institutions concerned, since it would equip graduates with a fully recognised, portable qualification. One solution may be to give autonomy to [public] institutions to offer degrees jointly with any institution recognised or accredited in its own territory, with only the local component accredited nationally.

It is clear from this short analysis of legislation and the 2003 country reports that very few countries make explicit provision for the recognition of genuine joint degrees. In some countries, approval of such arrangements *ad hoc* becomes the task of the board of accreditation or its equivalent. Whereas (No) in the last column of the table in the Appendix indicates that there is nothing in current legislation apparently authorising joint degrees, there is nevertheless a great deal of work being done in this area by individual countries or groups (such as the Nordic group). We must bear in mind the examples of joint degree systems such as the European Confederation of Upper Rhine Universities (EUCOR) (France, Germany, and Switzerland),³² Øresund Summer University (Denmark and Sweden),³³ European University Viadrina (Germany and Poland),³⁴ *transnationale Universiteit Limburg* (tUL) (Belgium and the Netherlands),³⁵ and Bulgarian-Romanian Interuniversity Europe Center (BRIE) (Bulgaria and Romania)³⁶.

In point of using public funds, governments and funding agencies are rightly concerned about proper use of funds and

³² URL: <<http://www.ub.uni-freiburg.de/eurocor>>.

³³ URL: <<http://www.summeruniversity.org>>.

³⁴ URL: <<http://www.euv-frankfurt-o.de/index.html>>.

³⁵ URL: <<http://www.tul.edu>>.

³⁶ URL: <<http://www.brie.ru.acad.bg>>.

value for money. Where public funds serve to mount a joint programme, particularly spanning EU/non-EU borders, the accounting and audit requirements of each state may place considerable administrative burdens on the institutions concerned. This is also true of programmes of any kind involving the sharing of resources across state borders, and can probably only be regulated by inter-governmental agreement of some kind.

Quality Assurance

A brief discussion here of quality assurance on an international level, as we still are not clear on what should be achieved domestically nor are we sure of what we *mean* by quality in higher education. So far, there is some progress towards a common European understanding of quality, which, while it does not yet contemplate the establishment of a supervening European Quality Assurance Agency, does encourage collaboration between national agencies on a European and regional basis. Without this, employers of graduates from other states, particularly those from outside the European Union (Russia and the Balkan states, for example) can have no real confidence in the comparability of qualifications even if they have the same name and carry ECTS points. Changes in the legal regulation of licensing and accreditation procedures, focused on competences and learning outcomes, will need to accomplish this aim.

A veritable mouthful of acronyms represents the various agencies tasked to submit a proposal to the Bergen Conference for an agreed set of standards, procedures, and guidelines. These include ENQA (the European Network of Quality Assurance Agencies), EUA (the European Universities Association), ESIB (the European Student Information Bureau, in effect the European association of national student unions, which in some countries are more than one), and EURASHE (the European Association for Academic Standards in Higher Education). The national systems of quality assurance should include (i) a definition of responsibilities (between government, agency and institutions), (ii) evaluation of programmes or institutions, (iii) a system of accreditation, certification or comparable procedures (a very tall order indeed), and (iv) international participation. The latter is especially important for small countries or groups of countries. A conference on this aspect of the Bologna Process took place in Santander, Spain in July 2004 and a further conference on co-operation between

accreditation agencies took place in Poland, in February 2005. If all this activity is successful, Europe should be able to present a united position on accredited higher education by mid-2005.

At the same time, subject disciplines set up their own accreditation systems that attempt to deal with the issue of whether a particular programme may be accepted as equivalent to others within the select group. It is not at all clear whether this process is transparent.

As international consensus on quality evaluation grows, the prospect of an international network of quality assurance agencies modelled on ENQA is more likely than the creation of an overarching European agency for quality assurance. In the recent *Tavenas Report* (2004), published by EUA, the late author compared and contrasted quality assurance arrangements in a range of higher education systems including those of the USA, Canada, and various member states of the European Union. He noted increased emphasis on institutional quality audits (such as the EUA Institutional Review process), and decreasing interest in invasive, discipline-based quality assessments. The qualitative evidence obtained from the *American National Survey of Student Expectations* conducted by Indiana University at Bloomington received particular attention and may extend, under contract, to Central Asia and South East Europe. In developed systems, internal quality assurance focuses on reflective analysis in self-evaluation reports, with external quality assurance now more focussed on how institutions enhance the quality of their work.

Under differing names and formats, there is usually a national authority with some function relating to recognition of overseas or foreign (where the country is not an island) educational and vocational qualifications, and to helping graduates with the international recognition of their qualifications. In Europe, this takes place through the National Academic Recognition Centres (NARIC) established within the framework of the European Commission and the European Network of Information Centres (ENIC) established within the

framework defined by the Council of Europe/UNESCO Recognition Convention (Lisbon Convention). The Lisbon Convention succeeded a number of earlier Conventions, including the Recommendation on the Recognition of Studies and Qualifications in Higher Education adopted by the UNESCO General Conference in 1993, which encouraged all Member States to take part in one or other of the recognition conventions.

According to the analysis of the legislation, almost all countries have followed the route of setting up a national quality assurance body, but very few explicitly mention European co-operation in quality assurance. Whether this is necessary depends on the nature of the system in any particular country. It is obvious that it is a good idea, but, if it costs money, one may well argue that there must be some legislative justification for it.

Consumer Protection

Most states are, or should be, anxious to protect their citizens from handing over large sums of money to receive 'qualifications' that turn out to be unrecognised and valueless, at least within the academic community. The possession of qualifications accredited by boards of accreditation, quality assurance agencies and so on is arguably less important than the acquisition of the competences these qualifications certify. It is increasingly unclear that these qualifications do certify competence, and that this lies more in the realm of professional practitioners than in that of traditional academies. As commercialism in education becomes much more overt, the ownership of rights in the commercial product becomes significant. The certification of competence can be a major earner.

However, sometimes consumer protectionism can go too far. As the Bologna Process reform gathers pace, it will be important for European institutions to ensure that their arrangements for providing or validating courses in other parts of Europe are legally watertight. This applies not just in the EU, although the case-law relates only to the Union; countries within the EHEA but outside the Union often have strict legal requirements, designed to protect both their citizens from exploitation and their state universities and colleges from unfair competition. Within the Union, a recent case before the European Court of Justice concerned the interpretation of EU legislation relating to a common vocational training policy, and to the recognition of diplomas awarded on completion of professional education and training. In this case, the stake was the recognition (or rather, non-recognition) by Italy of certain courses provided by a United Kingdom-approved college in Italy.

Mobility

Student mobility, not just to take part in joint degrees but also to experience other systems and earn transferable credits, is a key part of the Bologna Process. It obviously helps to prepare graduates for work in the wider European economy. It is good to see that almost all countries are eager to promote such mobility, either through legislation or through support of institutions that take part in EU mobility programmes. It is also of course important that staff should be able to take part in development opportunities, to plan and coordinate mobility programmes for students, and to attend international conferences and meetings – generally, to be part of the European process.

However, there are many obstacles to the free movement and mobility of students and staff from non-EU Bologna Process member states into and around the Union. Having worked in one such member state, the author is often appalled at the insensitivity shown by Embassies and Consulates with regard to the mobility of academic staff and students. It is for national governments to resolve the inconsistency between opening up higher education on a truly European basis and retaining strict immigration controls. A higher education law can do nothing in this matter; it rests on the commitment of responsible authorities to the Bologna Process.

Conclusion

The general conclusion drawn here is that, with the exception of those with very flexible pre-existing legal frameworks, most countries have adopted or are in the process of adopting new legislation to enable the achievement of Bologna Process goals. Some countries are moving slowly, but all express an intention to abide by the agreed timeframe.

The notable exception concerns joint degrees at second cycle, which will require changed regulations and practices regarding accreditation and quality assurance. Also, some new Bologna Process member-states need to make considerable progress in reforming their university structures, to allow for the easy adoption of ECTS and for internal as well as external mobility, and to enhance the appeal and competitiveness of European higher education. This author takes the view that in order to achieve the Bologna Process objectives it is essential for states to think outside the national or EU 'boxes' and to look into joint funding of expensive programmes. In this latter case, legislation must not place undue obstacles in the way of institutions.

It should also be stated clearly that whatever changes are made to education or higher education laws, until other obstacles to mobility (including visa regimes) are removed or reduced, there would be no real mobility of students or staff across the wider Europe, and no possibility of mounting joint degrees with countries outside the EU in any meaningful sense. Whatever views countries reasonably take about protecting their national security, to deny effective academic interchange through immigration controls³⁷ seems a regression

³⁷ The Netherlands (*Country Report 2003*) has explicitly recognised this as a problem, but it constitutes a problem for the EU as a whole and for non-Schengen countries in particular.

to former times. Obviously, it is a comment, but there needs to be a closer link between higher education and immigration policies, just as that between GATS negotiations and higher education, if the Bologna Process is really to succeed outside the EU.

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Appendix

Legislative or Other Compliance with Selected Bologna Process Goals

N.B. The table lists signatories in alphabetical order, according to their *constitutional* name in English. This information is taken from the reports published for the Berlin Conference and the laws and other policies made available to the author by UNESCO-CEPES in summer 2004 and from an examination of the 2003 Country Reports. It is clear, as explained in the main text, that some countries do not rely on legislation for the introduction of the Bologna Process, which is a matter for institutions with government, agency (e.g. quality assurance agency), or Rector's Conference encouragement. ECTS, for example, is commonly adopted but not always mentioned in the law. There is one major caveat: the states concerned have not verified this information. The information derives from examination of many documents, so there are inevitably errors for the Conference to correct and considerable updating to be done as states adopt new laws and regulations. Some changes are prospective for the period 2005-2007.

Signatory	Date of most recent relevant law or amendment	Degree framework	Three-cycle structure	ECTS	Mobility	Co-operation in QA	Joint degrees permitted
1. Albania, Republic of	2003	Yes	Yes	Yes	Yes	In hand	No
2. Andorra, Principality of	No law	No law	No law	No law	No law	No law	No law
3. Austria, Republic of	2002			Yes			
4. Belgium, Kingdom of		Flemish: Yes French: unknown ^s	Flemish: Yes French: unknown ^s	Flemish: Yes French: unknown ^s	Flemish: Yes French: unknown ^s	Flemish: Yes French: unknown ^s	Flemish: No French: unknown ^s
5. Bosnia and Herzegovina*	2004 (draft)	Law in draft	Law in draft	Law in draft	Law in draft	Law in draft	Law in draf

Signatory	Date of most recent relevant law or amendment	Degree framework	Three-cycle structure	ECTS	Mobility	Co-operation in QA	Joint degrees permitted
6. Bulgaria, Republic of	1999	Yes	Yes	Yes	Yes	Yes	No
7. Croatia, Republic of	2003	Yes	In hand	In hand	Yes	Not yet	No
8. Cyprus, Republic of	2002	Yes	2 cycles; doc not on Bologna Process model	Yes	No	No	No
9. Czech Republic	2001	Yes	Yes	No	Yes	Yes	Yes
10. Denmark, Kingdom of	2003	Yes	Yes	Yes	Yes	Yes	Yes
11. Estonia, Republic of	2003	Yes	Yes	Yes	Yes	Yes	In progress
12. Finland, Republic of	2003	Yes	Yes	Yes	Yes	Yes	No
13. France ^e	2002	Yes	Yes	Yes	Yes	Yes	Yes
14. Germany, Federal Republic of	2002 - amendment to 1998 Federal Law	Yes	Yes; parallel system until 2010	In process	Yes	No	Variant of European Master's
15. Greece, Republic of	2001	Yes	2 cycles; doc not on Bologna Process model	No	No	No	In progress
16. Holy See	1979	Yes	2 cycles; doctorate	No	No	No	No
17. Hungary, Republic of	2004/2005 (draft)	Yes	Yes	Yes	Yes	No	No
18. Iceland, Republic of	1997	Yes	Yes	No	Yes	Yes	No
19. Ireland, Republic of	1997	Yes	Yes	Yes	Yes	Yes	Yes
20. Italy, Republic of	2002	Yes	Yes	Yes	Yes	Yes	Yes
21. Latvia, Republic of	2000	Yes	Yes; also, second profession	No	Yes	Yes	No
22. Liechtenstein, Principality ^s	2004	Yes	2 cycles	Yes	Yes	Yes	No

Signatory	Date of most recent relevant law or amendment	Degree framework	Three-cycle structure	ECTS	Mobility	Co-operation in QA	Joint degrees permitted
23. Lithuania, Representatives of	2000	Yes	Yes	No	Yes	Yes	No
24. Luxembourg, Grand Duchy of	2003	Yes	Yes	Yes	Yes	Yes	Yes
25. Macedonia, Republic of	2003	Yes	In process	In process	Yes	No	No
26. Malta, Republic of	2002	Yes	Yes	Yes	Yes	No	Yes
27. The Netherlands, Kingdom of [§]	2002	In process	In process	In process	Yes	Yes	Yes
28. Norway, Kingdom of	2002 (new draft 2004/2005)	Yes	Yes	Yes	Yes	Yes	In process
29. Poland, Republic of	2002 (new draft 2004/2005)	In process	In process	In process	In process	Yes	In process
30. Portugal, Republic of [§]	2004	Yes	In process	In process	Yes	Yes	No
31. Romania [§]	2003	Yes	In process	Yes	Yes	No	No
32. Russian Federation	1996	In process	In process plus old system	In process	In process	In process	No
33. Serbia and Montenegro	2002	In draft	In draft plus specialist	In draft	In draft	In draft	In draft (not clear)
Serbia [Kosovo-UNMIK]	(2003 draft)	Yes	Yes	Yes	Yes	Yes	No
Montenegro	2003	Yes	Plus specialist	Yes	Yes	Yes	No
34. Slovak Republic	2002	Yes	Yes	In process	Yes	Yes	No
35. Slovenia, Republic of	2004	Yes	In process	In process	Yes	Yes	In process
36. Spain, Kingdom of	2001	Yes	Yes	Yes	Yes	Yes	Yes
37. Sweden, Kingdom of	2002	Yes	In process	In process	Yes	Yes	No
38. Switzerland, Confederation	2003	Yes	Yes	In process	Yes	Yes	No

Signatory	Date of most recent relevant law or amendment	Degree framework	Three-cycle structure	ECTS	Mobility	Co-operation in QA	Joint degrees permitted
39. Turkey, Republic of	1997	Yes	Yes	In process	Yes	No	No
40. United Kingdom*	2004	No provision in legislation	Yes, in all systems, but no provision in legislation	No provision in any legislation, ECTS not uniformly applied	No provision in legislation, Yes	No provision in legislation, Yes	No provision in any legislation and uncertain
England and Wales	1992	Yes	Yes	ECTS not uniformly applied	Yes	Yes	Yes
Scotland		Yes	Yes		Yes	Yes	Yes
Northern Ireland	2004	Yes	Yes		Yes	Yes	Yes

* In these countries, states, provinces, and entities or devolved administrations divide between themselves significant responsibilities for higher education.

§ Primary legislative material not available in English and no translation provided for; information taken from 2003 country reports where available in English: there is no information available to the author in English for the French Community in Belgium and no information at all on Andorra, which is understood does not maintain a higher education system.

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