
THE EUROPEAN HIGHER EDUCATION AREA

Various perspectives on the complexities of a multi-level governance system

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Education has always been considered an area of national sensitivity, and that for a number of reasons. These range from the obligation of the state to provide compulsory education to the role of educational institutions as nationally embedded socialising institutions. Yet, despite the tenuous nature of the legal basis that gives some substance to policy-making at European Community level, the European Commission is assuming taking on an increasing role in education, and particularly in higher education. The main vehicles for re-defining the Community's role in this domain embrace the implementation of both the Bologna process and the Lisbon Strategy. In this paper, we discuss the European policy implementation processes and how they contribute to change European higher education while enabling the creeping competence of the European Commission in higher education.

Keywords: European higher education systems, policy implementation, soft law, open method of coordination

1. Introduction

Governance theory has to deal with the new and complex societies, «in which the local and the global interact in dynamic processes of structural change» (Newman, 2003: 3). In the European Union (EU) the dispersion of authority away from the central government resulting from reallocation of power upwards (to the EU), downwards (to the regions, local authorities)

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and sideways (to public/private networks) (Hooghe & Marks, 2001) creates complex problems, namely at the level of coordination (De la Porte & Pochet, 2004).

In the case of higher education, the European Commission (EC) has made frequent attempts to extend its powers, sometimes with the help of the European Court of Justice. These attempts were in some occasions countered by initiatives of the member states (Amaral & Neave, 2009a). In areas such as education, which the European treaties have reserved for the legal command of national authorities – subsidiarity principle –, the EU could not use the traditional «Community method» of passing European legislation. This was the case of the Bologna process that was an initiative of European governments, including also non-member states, initially without the formal participation of the EC, which was not allowed to sign the declaration. Following this initial rebuff, the EC assumed a low profile and offered useful help for member states to implement the process using the EC expertise and its human and financial resources. This attitude allowed the EC «to take on and take over a central role in the Bologna process, a role that acquired a very particular consistency by associating Bologna with the Lisbon strategy» (Amaral & Neave, 2009a: 277).

Member states have frequently used international organisations for gaining legitimacy for implementing national policies, a good example being the signature of the Sorbonne declaration. In a number of cases, governments have lost control over the process they initiated (Martens & Wolf, 2009) and the agent made opportunistic use of the chance to expand its competence, one of those cases being the Bologna process. However, national higher education systems are very diverse as are their problems, originating large preference heterogeneity (Hawkins, Lake, Nielson, & Tierney, 2006). Member states used the Bologna process to legitimise their own national policies, leading to an «a la carte» implementation that was recently criticised by European students (ESU, 2009).

As the EC was made an effective actor in the implementation process, the use of the open method of coordination (OMC) became the preferred policy instrument, and for the 2007 stocktaking report governments were asked to produce national action plans (for recognition), an OMC tool. There is an increasing use of «tools» and «networks» of new governance, which may be included in what some authors name as «mechanisms of soft law». These mechanisms include both the development of «administrative networks» in the area of higher education and the use of new tools or instruments of public policy, and are supposed to influence the behaviour of organisational actors participating in the implementation process, steering them to the desired objectives. In this paper we aim to understand how far those soft law methodologies, even when adequate to foster change, are adequate to ensure convergence and embeddedness of policy implementation and coordination, as there are successive levels (national, regional, institutional, etc.) with influence on the dynamic process of structu-

ral change. For this purpose soft law mechanisms used by the EU are compared amongst themselves and with soft law mechanisms used by OECD.

2. The uses of soft law and the OCDE tradition

There is an increasing popularity of soft law mechanisms in the European Union, including the «open method of coordination» (OMC) (Veiga & Amaral, 2009). In this section, we compare the soft law mechanisms used by the European Union with those in operation at the OECD, as Amaral and Neave propose (2009b).

Guzman and Meyer (2010) discuss why states enter into soft law agreements that are «non-binding», instead of opting for more binding forms of hard law. The authors define soft law as «those nonbinding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct» (*ibidem*: 174), and they argue that nonbinding rules can produce legal consequences when they shape states' expectations as to what constitutes compliant behaviour. In the case of the EU, soft law is useful to solve straightforward coordination games in which the presence of a focal point is enough to generate compliance; loss avoidance explains why the negative sum character of sanctions for violating international legal rules makes binding legal obligations inefficient in many cases; and the delegation theory explains why under certain circumstances soft law will be an effective way for states to control their uncertainty over the future desirability of legal rules adopted today (*ibidem*).

Reputation is important in encouraging compliance with international law, which explains the «naming and shaming mechanisms» that are usually associated with the OMC. When states fail to comply with an agreement they lose international credibility «and this will make it more difficult (...) to enter into future promises» (*ibidem*: 195).

Martens, Balzer, Sackmann, and Weymann (2004) distinguish three dimensions in governance: coordination, opinion shaping and instruments:

Governance by «co-ordination» refers to the ability of an international organisation to provide the means of organizing and handling procedures, which promote certain initiatives in a policy field. (...) International organisations can give incentives and initiate proposals for policymaking. (...) Governance by «opinion formation» expresses the capacity of an international organisation to initiate and influence national discourses on educational issues. (p. 2)

The international organisation generates visions and values which shape policymaking of its member states. (...) Governance by instruments thus refers to the capacity of an IO [international organisation] to draft and prepare legal decisions, international arrangements and agreed principles which influence national policies. (p. 3)

For Martens et al. (2004), the OECD lacks the power of the purse of the IMF (International Monetary Fund), the World Bank or even the European Union. And unlike the EU, the OECD has no legal instrument on its side to push or force decisions on its member countries. However, they argue the OECD has developed a strong co-ordinating capacity by organising and handling procedures, which promote initiatives in a policy field (*ibidem*). In the area of educational policy, the OECD has developed this capacity through its work on educational indicators that created «a climate of support among policy makers and analysts across member countries and even beyond» (Henry, Lingard, Rizvi, & Taylor, 2001: 88). There is evidence to suggest that the organisation's ability to shape expert opinion may be in part attributed to the regular publication of cross-national and comparative educational statistics and indicators – the annual appearance of *Education at a Glance*, the launching of the project on *International Indicators of Education Systems* (INES), the devising of the *International Standard Classification of Education* (ISCED), quite apart from the high profile *Performance Indicators of School Achievement* (PISA).

Porter and Webb (2007: 3) see the OECD «as a paradigmatic example of an identity-defining international organization». Henderson (1993) suggests the OECD acts by developing a set of distinctive norms and rules determining what is the appropriate behaviour of its members that integrate a «rich men's club» based on the appropriateness of liberal, market-friendly economic policies. March and Olsen (1989) argue that the OECD influences institutions by developing and transmitting the norms that induce actors of a given community to switch to the logic of appropriateness.

Both the OECD and the EU use networks and committees of experts and civil servants. Gornitzka refers to the presence at the EU level of «dense organisational structures that carry the education programmes, and these also involve a range of experts and national civil servants that prepare and are involved in the running of them» (Gornitzka, 2009: 111). The essential characteristic of networking, however, lies in being permeable, incremental and accumulative. Networking acts as a pre-legal or even a paralegal process, the winning of hearts and minds amongst key actors, whether civil servants, policy consultants or academic «experts». It is, to revert to the typology developed by Martens et al., a prime factor in governance by opinion-formation, as «individual staff members or groups of members can be very influential through their position (...)» (2004: 2). Porter and Webb refer to the socialisation effect that results from national officers being closely involved in OECD work, being able to use «the support of their peers in other member states to try to sway opinion in their own bureaucratic battles» (2007: 7).

The OECD uses routines to create a common sense of identification of national officials with notions of modernity, market-friendliness, liberalism, and efficiency (March & Olsen, 1998:

961). The OECD recognises that the review process «creates a community of policy practitioners (...) to bring their local knowledge to bear on the policy review process while also contributing to developing further the conceptual knowledge that they also need» (OECD, 2002: 9).

For the OECD, «the regular participation in the peer review process leads to the development of a new frame of mind» (*ibidem*: 11), its unashamedly assumed objective being «to have intellectual influence on policy makers» (*ibidem*: 7).

Marcussen (2004) argues the soft law used by the OECD is more important than often thought, an argument also supported by Porter and Webb (2007). The OECD (2002) refers to «soft» coordination by international organisations, carried by sophisticated modes of knowledge production and sharing. Approaches to soft law mechanisms include peer pressure resulting, for instance, from OECD's peer review exercises of national higher education systems or OECD's deliberate identity-defining process by calling attention to «leaders» and «laggards» among countries in their adoption of OECD norms (March & Olsen, 1998, as cited in Porter & Webb, 2007: 4). The OECD states that «mutual examination by governments, multilateral surveillance and a peer review process through which the performance of individual countries is monitored by their peers (...) are at the heart of OECD effectiveness» (OECD, n.d.) and emphasises that some advantages of the OECD methodology are:

more interaction with relevant national policy officials; (...) greater involvement in discussing and modifying reports; (...) the subsequent process of revising and approving report, which gives some ownership by the country to the final report (though this redrafting does consume a lot of time). (2002: 4)

It is true that the reports of the OECD reviews can be changed to remove «politically sensitive advice» (OECD, 2002), which makes them more acceptable to governments that could always veto the publication of the report. However, OECD reports in general are critical of some government policies. Another interesting aspect that has some parallel in other international organisations is the increasing coverage of the OECD: «Some have called it, without intending any criticism, “mission creep” into additional topics, in particular structural policies» (*ibidem*: 2), which shows the potential of soft law mechanisms to affect policy.

3. Policy-making in the EU

3.1. *The Community method and agency loss*

In the traditional EU Community method of governance, the EC has the monopoly for initiating legislative procedures and plays a major role in taking member states to court for fai-

ling to implement decisions. The Council of Ministers decides in most cases by qualified majority voting, the European Parliament plays an active role and the European Court of Justice ensures the uniform interpretation of Community Law (Wallace, 2000). In principle, the Community method might force a member state to implement measures it is vehemently opposed to (Hagedorn, 2003). However, this possibility was mitigated to settle a crisis between France and its five community partners and the EC through the Luxembourg Compromise, signed on 30 January 1966, which provides that:

Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community. (EEC Council, 1966: 5)

This political development is characteristic of the way EU moves towards European integration. The Treaty of Rome provided for a gradual transition from unanimous voting, to qualified voting, thus eliminating a number of veto situations. The Luxembourg Compromise is only a political declaration by Foreign Ministers and cannot amend the Treaty. However, the Luxembourg Compromise remained in force even though, in practice, it might simply be evoked without actually having the power to block the decision-making process.

Another characteristic of European politics is the use of carefully weighed wording, designed to overcome the incapacity of member states to agree on essential goals and priorities (Dehousse, 2005). The use of «weasel words», which seek to deprive a statement of its force or to turn a direct commitment aside, allows not only for diverse interpretations of the treaties, it enhances and reinforces the supranational role of the European Court of Justice, a development that member states viewed as increasingly undermining their sovereignty (Amaral & Neave, 2009a: 272). The EU Treaties and laws are frequently characterised «by a high degree of fluidity and vagueness»:

European law has, as every EC lawyer knows, a rich tradition of evolving through the aid of such «weasel-words», in the sense of terms which are ambiguous and open, and which are even chosen for these very characteristics. (De Búrca, 1999: 10, emphasis added)

The Community method and the characteristics of European political processes have allowed the EC to increase its competencies, backed by the European Court of Justice's extensive interpretation of its mandate (Schäfer, 2004). This «creeping competence» of the EC is emphasised by Pollack (2000):

Over time, however, the EU has expanded the range of its activities dramatically, so that by the early 1990s, the policies of the Union had spread from the core economic activities of the common market to embrace almost every conceivable area of political, economic and social life. (p. 520)

This phenomenon is known as «agency loss» in the literature on delegation (Schäfer, 2004) and has to do with asymmetric information. The principal-agent model allows the analysis of problems of agency relationships created whenever one party, the *principal*, delegates by contractual agreement with a second party, the *agent*, the responsibility for carrying out functions or tasks on the principal's behalf:

Two notable problems are *adverse selection*, where the principal, responsible for recruitment, is unable to observe directly and, therefore, assess the knowledge or skill possessed by the agent and *moral hazard*, where the agent enjoys superior information, not only about his or her own preferences and abilities, but also about the tasks assigned to him or her, and his or her own actions, which are not usually observable to the principal. (Kassim & Menon, 2002: 2)

The asymmetry of information may lead to the agent's opportunistic behaviour, namely when the structure of delegation «provides incentives for the agent to behave in ways inimical to the preferences of the principal» (Pollack, 1997: 108). The principal faces the dilemma of ensuring that the agent will perform as the principal would prefer, taking into account the cost of closely monitoring the agent's activities.

By analogy, this perspective may be extended to include the workings of the European Commission that are in receipt of substantial delegated power from member states (Thatcher & Sweet, 2002). Schäfer recognises that «the Community Method delegates considerable power to the Commission and the European Court of Justice and offers ample opportunity to act independently of their principals» (Schäfer, 2004: 3). It is difficult for the principal to control the activities of the agent (Pollack, 1997), which created the opportunity for the Commission to considerably increase its competencies and area of influence over the years. A speech of John Major at the House of Commons raised this problem:

One of the greatest concerns has been what many hon. Members in the past few years have referred to as the «creeping competence» that comes about either by the abuse of articles in the treaty or by judgments of the European Court of Justice. (Prime-Minister John Major, House of Commons, 1992)

In the early 1990s, national governments decided to oppose further expansion of the EU's competencies that were eroding the sovereignty of the nation state (Dehousse, 2002: 2). Some governments were annoyed with directives imposed by the new qualified majority voting rule and were determined to avoid the interference of the Commission in sensitive areas such as education, culture or health (Pollack, 2000). In turn, some regions, such as the German *länder*, opposed what they considered an attack on their constitutionally granted powers. This reaction brought about the revival of the subsidiarity principle in the 1992 Maastricht Treaty with the famous «double negative» formulation of the principle in article 3b of the Treaty:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. (European Union, 1992: 6)

However, the Treaty did *not* rule out further expansion of EU regulation: «EU regulation remains an active regulator across a wide range of issue-areas, and will continue to play a role of a regulatory state predicted for it by Delors in the halcyon days of the late 1980s» (Pollack, 2000: 537).

These problems may be analysed using the Principal-Agent theory. Member states are thorn between the benefits from delegating in the Commission – including capture of policy externalities, resolution of disputes, enhanced credibility (Hawkins et al., 2006) – and the dangers of opportunistic agent behaviour and undesirable political developments. Delegation is also made difficult by large preference heterogeneity among member states in many political areas and differences in the relative power of member states (*ibidem*). This explains why member states shirk further delegation of sovereignty and their preference for a non-binding tool such as the OMC, the use of weasel words and the softening of the consequences of binding decisions. The present financial crisis revealed the difficulties of the EU to control the frequent compulsion of member states and politicians to free ride and made evident there is large preference heterogeneity among member states.

3.2. The open method of coordination

In the 1994 European Council held at Essen (European Council, 1994), heads of state and government reached an agreement on employment policy using a soft law approach that avoided the undesirable interference of the EC in domestic policy-making. The 1997, Treaty of Amsterdam in its employment chapter confirms the basic elements – definition of common objectives, national implementation plans and surveillance by the EC and member states – of what would become the OMC.

As this procedure did not include sanctions (De la Porte & Pochet, 2001), the Luxembourg process tried to overcome the lack of legal clout by creating mechanisms for reinforcing the commitment made by governments by «naming and shaming» the «laggards». Governments were asked to draw up a «yearly national action plan», detailing their approach to fighting unemployment. This document could be used thereafter to compare word and action and the degree of fulfilment of promises and implementation performances. Although being presented

as a tool for mutual learning and for revealing best practices, it also allowed for ranking of member states' performances, putting pressure on low performers.

At the March 2000 European Summit (European Council, 2000), the Lisbon strategy was adopted aiming at making the EU the world's most dynamic and competitive economy. As policy-making tool, the Portuguese government proposed to retrieve the procedures already implemented and applied with the Employment Strategy – European guidelines, national action plans, peer review and naming and shaming – that were presented as a quasi-novelty under the name of «open method of coordination» (European Council, 2000).

OMC is compatible with the subsidiarity principle, allowing the implementation of policies without further delegation of power to the Commission (Borrás & Jacobsson, 2004: 197), thus avoiding agency loss. Dehousse (2005) argues that the OMC:

appeared as a compromise between a desire for common action, on the one hand, and the governments' desire to maintain some degree of control over tools they considered essential for their political future, on the other. (p. 7)

As member states remain in control of politics they are not confronted with the principal-agent problem (Schäfer, 2004), while the nonbinding character of soft law protects them from undesirable consequences. And when they decide to implement unsavoury policies they can always use Brussels as a scapegoat.

What remains to be seen is how far a soft law instrument such as the OMC, without apparent enforcing power, can produce and coordinate change. Borrás and Jacobsson (2004: 196) quote Dolowitz and March (2000) to argue that policy change in the absence of coercion is possible. Scharpf considers that learning processes can play an important role in moving from a policy impasse into effective action (1997: 63) and Dehousse argues the OMC, as a learning process, can be a mechanism capable of «initiating or facilitating reforms to be conducted at the national level» (2002: 10) where mimetic and normative isomorphism play an important role (Radaelli, 2000: 29).

However, despite the initial enthusiasm of many academic analysts, the OMC's naming and shaming may not be effective for a number of reasons: the limited monitoring capacity of the Commission as it relies strongly on data and statistics provided by national governments; lack of incentive and discretion of both the Commission and member states for shaming infringing member states; and, as obligations are not precisely drawn, member states can always make counter-claims discrediting an eventual shaming from the Commission (Idema & Kelemen, 2006: 111-113).

4. The Lisbon strategy and the tools of the OMC

The implementation structure of the Lisbon Strategy was designed to ensure that member states would have control over matters of high political salience (Scharpf, 2006). The European Council plays the role of major decision-maker, defining the agenda setting, while the Commission presents proposals and recommendations to the Council and assesses the policies and progress of the member states (European Commission, 2005). The Council agrees on a common vision for the EU, and sets medium- to long-term priorities based on the proposals of the Commission. However, the Commission plays an important role despite its seemingly modest posture:

The search for cognitive convergence, which is at the heart of the OMC, involves tasks the Commission is better able to accomplish than any other institution, such as the monitoring of national action plans or the preparation of reports on the situation at European level, which are key elements in a process of knowledge accumulation. (Dehousse, 2002: 11)

The EC can use its technical expertise, its knowledge of policy issues (*ibidem*) and its budget to progressively gain power by means of informal influence, as was the case of employment policies (Trubek & Mosher, 2003) or the Bologna process (Amaral & Neave, 2009a).

The implementation structure uses a large number of committees. The introduction of implementation committees into the decision-making process may be seen as aiming at «facilitating a degree of continuing Council control over the Commission in the exercise of its executive functions» (Scott & Trubek, 2002: 3). However, the Commission has frequently been able to domesticate the committees that were supposed to control its activities by moving them «from policing the outcome of rulemaking to technical collaboration with the rule makers», thus becoming «as much the artificers of Commission proposals as arbiters of their acceptability» (Sabel & Zeitlin, 2006: 12).

With the implementation of the Lisbon Strategy, committees of a different nature were created, holding a position in between the Council and the EC:

The Commission handles the secretariat and is also a full member of each committee, and the committees are to supply opinions on the request of either the Council or the Commission. This is different from both the implementation committees, which are under the Commission (the Comitology) and the preparatory committees, which are under either the Commission or the Council. (Borrás & Jacobsson, 2004: 198)

The OMC mutual learning process is based on tools used both for comparing best practices and for supporting «naming» and «shaming» actions aiming at putting pressure on member states. In the following sections, we analyse how these tools are used in the OMC.

4.1. National action plans

National action plans (NAPs) are yearly drafted by the governments of member states, reporting on progress made towards the proposed objectives and setting new targets for the following year. NAPs serve the dual purpose of being a mutual learning tool, facilitating the identification of best practices and innovative techniques (De la Porte, Pochet, & Room, 2001; Jenson & Pochet, 2002) and allowing the Commission and the Council to identify implementation problems, which may result in recommendations addressed to the «laggards». To facilitate comparison, monitoring and benchmarking, NAPS are drafted following a set of common guidelines. However, «neither the guidelines nor the recommendations are legally binding, and there are no formal sanctions for countries that fail to make progress towards common objectives» (Trubek & Trubek, 2005: 349).

Unfortunately, «national reports often tend to present a flattering situation and the action plans are more verbose on the progress accomplished than on the initiatives taken» (Dehousse, 2005: 15). NAPs are in general reports on past activity (Idema, 2004) carefully drafted by the relevant ministries, frequently without a critical analysis of progress made (Veiga & Amaral, 2009), «rather than as forward-looking action plans or strategic programming instruments subject to normal public scrutiny and debate by all stakeholders» (Zeitlin, 2005: 15).

4.2. Benchmarks

Benchmarking is a learning process aiming at improving the performance of companies by adopting the «best practices» available. Benchmarking monitors outputs and processes, not inputs, and focuses on performance indicators. Benchmarking in the EU was proposed by the European Round Table of Industrialists (ERT) to optimise competitiveness policies (ERT, 1996).

The OMC uses benchmarking both to identify good practices and for «naming and shaming» poor performers (Idema, 2004: 190). The early implementation of benchmarking activities was met with resistance from the member states when they felt at risk. Trubek and Mosher (2003) reported the opposition of member states to benchmarks in employment before they were diluted by amendments from the Council. To overcome the resistance of member states it was agreed that indicators should be contextualised, taking into account national differences and diversity (De la Porte et al., 2001; Hemerijck & Visser, 2003).

The European benchmarks are reference levels of European average performance. Education benchmarks relate to objectives such as improving the quality and effectiveness of the EU education and training systems, facilitating access of all to education and training sys-

tems, and opening them up to the wider world. These benchmarks were updated for 2020 by the European Council of 12 May 2009 under the strategic framework for European cooperation in education and training (ET 2020) and include an objective of at least 40% of 30-34 year olds with tertiary educational attainment and an average of at least 15% of adults participating in lifelong learning (European Council, 2009).

The Council further recommended that the benchmark on early leavers from education and training should be improved, that the possibility of proposing further indicators in the areas of mobility, employability and language learning should be analysed and that special attention should be paid to the areas of creativity, innovation and entrepreneurship.

4.3. Indicators

The negotiation of appropriate indicators has led to lengthy and not always successful negotiations, as member states want to avoid indicators that would show them in an unfavourable light. The Commission recognised that «the development of relevant, analytically sound and universally accepted indicators, and especially of the underlying statistical data, is a long and complex exercise and demands technical expertise and political support» (European Commission, 2004a: 18) and deplored that so far data were still produced by countries on a voluntary basis.

Defining indicators faces two kinds of problems. On the one hand, member states will oppose indicators based on methodological issues raised by national experts, especially when those indicators would make some countries «look bad in certain performances» (Kröger, 2004). On the other hand, indicators are scoured by the low quality of available European statistics (Peña-Casas & Pochet, 2001). There were cases where no agreement was possible, for instance on inclusion policies (Kröger, 2004) or on measuring the efficiency of higher education systems (European Commission, 2004a).

To cover all policy areas within Education and Training 2010, the Commission established a list of 29 indicators that were used in the 2006 Commission's progress report (European Commission, 2006).

More recently, the European Council (2009) «with a view to achieving the four strategic objectives under the “ET 2020” framework» decided to monitor the progress towards these objectives using «indicators and (...) reference levels for European average performance (“European benchmarks”)». For the Lisbon strategy, the instruments for «naming and shaming» are the Lisbon scorecards produced by the Centre for European Reform (Tilford & Whyte, 2009). Countries are classified in relation to five issues: innovation, liberalisation, enterprise,

employment and social inclusion, and sustainable development. Good performers are labelled «heroes» and the worst performers are labelled «villains». There is also a Lisbon league table ranking countries on the overall Lisbon performance.

5. The Bologna process

When the European ministers of Education signed the Bologna declaration, the European Commission was not allowed to join them. Marçal Grilo, the Portuguese Minister of Education that signed the declaration, argued in an interview that the Bologna Declaration was meant to be a declaration of an exclusively political nature and all its words were analysed in great detail to avoid excessive embarrassment to any country... Such a document is both remarkable and vague. What is important is to understand that it is a political declaration, each party having surely its own intentions in its country (Veiga, 2010).

The Bologna process was initially much closer to the intergovernmental method than to the community method. In the intergovernmental method there is only a reduced role of the European Commission, the right of initiative being shared with member states. The European Council decides by unanimity, thus formally giving each member state capacity to block a decision by using a veto. Decisions are reached by consensus of the ministers for higher education of the 45 signatory countries involved. This approach acknowledges the diversity in Europe's higher education systems. The most important forum in the decision-making process is the biannual conference, where the ministers meet to assess progress and to plot the course for the near future.

After signing the Bologna Declaration, the ministers decided to create a follow-up structure to prepare the conferences and coordinate the action needed to advance its goals. The composition of the follow-up group has changed frequently to adjust to changing power relationships. The follow-up structure to prepare the Prague Conference comprised a «consultative group» of representatives of all signatory countries and a smaller «follow-up group» (BFUG) including representatives from the countries successively holding the EU presidency in the two years from Bologna to Prague (Finland, Portugal, France, Sweden), the Czech Republic, the European Commission, the Association of European Universities, and the Confederation of European Union Rectors' Conferences. The European Commission was conspicuously absent, as were academics and students.

In 2001, the ministers decided in Prague to include the European Commission in the BFUG and downgraded the role of the representatives of higher education institutions (European University Association – EUA – and European Association of Institutions in Higher

Education – EURASHE) to that of mere consultancy, a similar role being attributed to students (National Unions of Students in Europe – ESIB, now ESU) and to the Council of Europe (Prague Communiqué, 2001). In the following conferences, other organisations were added to the consultative members.

These changes show an increasing power of the Commission, which was initially in a backstage position. At the same time, there was a decrease in the power of institutions representing universities and the gradual increase of the number of consultant members to incorporate an enlarged array of stakeholders, eventually to ensure increasing legitimacy. This was the case of Education International (EI), which is supposed to represent the academics.

Working groups have been established since 2004-05. In a less formal way, task forces were also created to work on the qualifications framework, on stocktaking and in drafting the communiqué. In the work programme of 2005-07, other groups were added to focus on diverse issues, such as the strategy for the external dimension, the social dimension and the portability of grants and loans.

To monitor progress towards its objectives, the Bologna process uses a number of soft law type tools, including reports or studies conducted by consultative members of the BFUG, such as the EUA's «Trends» reports and the ESIB's studies *Bologna with Student Eyes*, stocktaking reports and scorecards, national reports on the implementation progress and, more recently, national action plans imported from the Lisbon strategy. The focus of the analysis is dependent on the institution undertaking the study. The EUA's «Trends» reports usually focus on the leadership of higher education institutions, and the ESIB's reports draw attention to issues, such as the social dimension, that were given less consideration by the Bologna process (Veiga & Amaral, 2006).

5.1. Stocktaking and scorecards

The stocktaking exercise was introduced for the first time in Berlin, in 2003, to provide reliable information on how the process was advancing and to identify corrective measures (Berlin Communiqué, 2003: 7). The BFUG was asked to prepare a stocktaking report in time for the 2005 Bergen Conference focusing on the progress and implementation of the intermediate priorities set for the following two years: quality assurance, the two-cycle system and the recognition of degrees and periods of studies. This report was based on the national action plans and the report *Focus on the Structure of Higher Education in Europe* prepared by the Eurydice network that included all the Bologna signatory countries (Bologna Follow-up Group, 2004).

In Bergen (2005), the ministers asked the BFUG to engage in continuing and widening the stocktaking process that should «be based on the appropriate methodology and to continue in the fields of the degree system, quality assurance and recognition of degrees and study periods» (Bergen Communiqué, 2005: 5). The 2007 stocktaking exercise was directed to look for progress in the new policy areas to be addressed by the national reports, namely quality assurance, qualification frameworks, joint degrees and recognition of prior learning. The ministers asked the BFUG to present comparable data on the mobility of staff and students, taking into account the social dimension as a policy area.

In London (2007), the ministers asked the BFUG to focus on further development of qualitative analysis in stocktaking, particularly in relation to mobility, the Bologna process in a global context and the social dimension. Stocktaking should continue to address the areas of the degree system and employability of graduates, recognition of degrees and study periods and implementation of all aspects of quality assurance in line with the European Standards and Guidelines (ESG). Additional areas included national qualifications frameworks, learning outcomes and credits, lifelong learning, and the recognition of prior learning. The BFUG was asked to define indicators for measuring and monitoring mobility and the social dimension, to monitor the transparency mechanisms and to follow-up on the recommendations from the analysis of the national action plans for recognition (London Communiqué, 2007).

In the 2009 Belgium conference, the ministers recommended that the BFUG should further refine its evidence-based methodology using relevant data collection provided by Eurostat together with Eurostudent and in cooperation with Eurydice. The BFUG was asked to produce an overall report integrating those data sources for the 2012 ministerial conference.

The instruments for «naming and shaming» are the Bologna scorecards. The stocktaking reports (Bologna Follow-up Group, 2005, 2007, 2009) address three priority areas: quality assurance, the two-cycle degree system, and recognition of degrees and periods of studies. Each area is given a mark from 1 to 5 and a colour: 1 (red) – little progress; 2 (orange) – some progress; 3 (yellow) – good; 4 (light green) – very good; and 5 (green) – excellent. A colour is also given to the aggregate results. The idea was that ministers' faces would blush when too much red was allocated to their countries. The Bologna scorecard can be seen as a set of composite indicators of progress providing a simple description of the level of the Bologna implementation in individual countries. However, the indicators are biased towards producing an image of success as the lowest possible mark corresponds to «some progress», cases of «no progress» being beyond the imagination of the BFUG.

5.2. National reports and national action plans for recognition

The first national reports were prepared for the Berlin Conference in 2003. These reports were produced under the responsibility of ministers of education. The chair of the BFUG considered that «reports offer an opportunity for member states to explain the data brought out by stocktaking» (Bologna Follow-up Group, 2004). However, the reports produced for the Berlin Conference were difficult to compare as no guidelines were provided for their presentation.

In the following reports, implementation guidelines were used to ensure comparability. In 2005, the guidelines imposed specific questions on the degree system, recognition, mobility, internationalisation and quality. In later reports, further items were progressively added to meet the recommendations of the ministers. These included the implementation of standards and guidelines for quality assurance as proposed in the ENQA Report; the implementation of the national frameworks for qualifications; the awarding and recognition of joint degrees, including the doctorate level; and creating opportunities for flexible learning paths in higher education, including procedures for the recognition of prior learning.

The 2005 Bergen conference introduced for the first time national action plans in the Bologna process. Recognising that 36 of the 45 participating countries had ratified the Lisbon Recognition Convention (Council of Europe, 1997), ministers committed to

draw up national action plans to improve the quality of the process associated with the recognition of foreign qualifications [which represents another step towards the adoption of the OMC mechanisms]. These plans will form part of each country's national report for the next Ministerial Conference. (Bergen Communiqué, 2005: 3)

These national action plans are quite similar to the NAPs currently used for other areas such as employment and follow a common structure and should report on previous and future developments concerning mutual academic recognition issues.

6. Discussion and conclusions

In most cases of delegation, there is a single principal (e.g. the state) and multiple agents (e.g. higher education institutions). In the European Union, there is a reverse situation with multiple principals (the member states) and a single agent (the EC). There is also very large preference heterogeneity, as principals have many diverse economic, social and cultural interests, which explains why soft law is so widely used. In this context the creeping power of the EC in areas such as higher education is visible. By adopting an apparent low profile and by seizing golden opportunities as those offered by the Bologna process and the Lisbon stra-

tegy, the EC has been able to increase its influence over European higher education. The increasing role of the EC is visible in areas such as quality and the promotion of ranking systems (U-Map and U-Multirank) and the implementation of the new European Institute of Innovation and Technology.

Just like the OECD, the EC has been able to use to its advantage the extensive array of committees playing a role in policy implementation, those «dense organisational structures that carry the education programmes» (Gornitzka, 2009: 111). And by careful allocation of financial resources the Commission helps in defining the political agenda and setting new areas for intervention. Examples are research programmes and reports financed by the Commission, such as Tunning, U-Map, U-Multirank, Map-ESG and IBAR on the implementation of the European Standards and Guidelines, Bologna trends reports, etc. And there are numerous organisations, proudly self-declared as independent, that survive with the help of generous EU funding.

The combination of a multiple principal with large preference heterogeneity makes more problematic the control of the agent's activities and helps to explain the creeping power of the EC. It will be interesting to observe how far the present economic crisis and the leading role being assumed by the French-German couple may change this situation by shifting the balance towards more hard law and decreasing the power of the EC.

There is no doubt that the Bologna process has resulted in important changes in European national higher education systems, converging to a common degree structure. However, a more detailed analysis reveals substantial lack of convergence towards the endorsement of the European Higher Education Area.

The first references to implementation problems of the Bologna process were made in the 2007 EUA's «Trends» report. This report refers to employment difficulties of the new Bologna graduates, incorrect or superficial use of ECTS, low implementation of the Diploma Supplement, confusion over national qualifications frameworks, disincentives to mobility and difficulties with recognition of periods of study in other institutions. The 2010 «Trends» report also refers to most of those implementation problems.

The Bologna Process Independent Assessment, from 2010, recognises «there is a large difference in the speed of implementation between individual countries» creating a «European Higher Education Area of different speeds of implementation and varying levels of commitment» (European Commission, 2010: 6). The report also argues that due to different starting points and different management and governance arrangements, «the implementation of national reforms deviated from Bologna intentions» (*ibidem*), and this divergence was amplified as different key actors at different levels of the process «interpreted elements of the Bologna reform agenda differently» (*ibidem*).

The 2010 ESU report also refers to a number of problems, such as lack of financial support for mobility, lack of recognition of studies abroad, superficial implementation of ECTS, difficult implementation of national qualifications frameworks, growing number of unemployed bachelor graduates, and recognises there were different paces of implementation of the process, which can fundamentally endanger the vision of a common EHEA (ESU, 2010: 9).

Some authors argue that «the central aim of coordination is to encourage national reforms, convergence being seen as a side-effect rather than as an end in itself» (Biagi, 2000: 159) or «most coordination processes are aimed at initiating or facilitating reforms to be conducted at the national level» (Dehousse, 2002: 10). However, these results confirm the idea that soft law mechanisms are capable of producing change although coordination and convergence can be a problem.

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