

# Cuadernos Europeos de Deusto

Núm. 29/2003

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# **Cuadernos Europeos de Deusto**



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**Núm. 29/2003**

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# Estudios



# Qualifications and Qualification Frameworks\*

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University of Westminster

Bryan Maguire

Dún Laoghaire Institute of Art Design & Technology

1. THE MEANING OF UNIVERSITY QUALIFICATIONS.—
2. QUALIFICATIONS, QUALIFICATION DESCRIPTORS, QUALIFICATION FRAMEWORKS AND THE BOLOGNA PROCESS.—2.1. **A review of current developments in Europe.**—2.2. **Final thoughts.**

## 1. The meaning of University Qualifications

*Testantur hae litterae Gradum Baccalaureatus Scientiae in Collegio Dublinensi huius Universitatis participite rite constituto, ad Bryan Thomas Maguire delatum esse, Die XXX Mensis Octobris, mcmclxxxv*

Thus reads the diploma awarded to me on completion of my undergraduate degree in the National University of Ireland. What exactly is it that these letters testify? Why the solemnity of the Latin proclamation? In this paper I propose to look at the meaning of university qualifications in light of the evolving policy debate around the creation of a European Higher Education Area, and indeed the wider globalisation of higher education, and at recent moves to develop a framework for these qualifications.

The origins of university degrees are found in the origins of the university system itself in the middle ages. Letters or licences were

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\* In the following linked papers Bryan Maguire undertakes a philosophical examination of the meaning of university qualifications in the context of the emerging policy debate on qualifications frameworks in Europe and elsewhere. In the second section, Stephen Adam presents a practical analysis of some of the current alternative approaches to qualifications, qualification descriptors and frameworks together with their potentially far-reaching implications for the Bologna process.

issued to warrant that the award holder had indeed gone through the appropriate ritual of university. These licences then qualified their holders to hold certain offices, especially in the civil or ecclesiastical judiciary or to go on and teach in the university themselves. The various grades and titles of degrees evolved over time. Masters and doctorates were not originally separated in level, as they are now in the English-speaking usage, but could relate to different fields. Thus in England teachers of law were masters but teachers of theology were doctors<sup>1</sup>.

Up until recently the main apparent function of university qualifications was to confer eligibility for entry to various learned professions and to facilitate movement from one university to another for purposes of teaching or further study. Note that I do not say that this was the main function of a university education but rather the function of the letters that issue at the end of the process. In the last fifty years, however, the community of use for these letters has expanded dramatically as the higher education system itself has massified and the emergence of a multiplicity of what Scott «meanings of mass higher education»<sup>2</sup>. This had led to ever closer enquiry into what exactly it is that is being testified.

A key thrust in recent years has been to look at the learning outcomes of higher education. In various systems as more and more graduates are «produced», the question is being asked as to what it is that these graduates know or can do. Not far behind such questions are issues of whether or not the institutions are providing value for money, whether in terms of private returns to the learner or public returns to the broader society. Underlying this approach is the theory of human capital. By this theory investment in improving the knowledge, skills and competence of individuals and groups give rise to economic returns. This paradigm has been predominant in the actions of multinational organisations such as the World Bank and the Organisations for Economic Co-operation and Development, as well as in those of many national governments for the past half century.

Under the theory of human capital, qualifications should serve as indicators of capital accumulated. Qualifications should mirror nothing more or less than the learning achievements, the attainment of learning outcomes of the learner. In this way they can contribute to labour market efficiency. Employers can use qualifications to decide whether workers

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<sup>1</sup> University of Melbourne (2003) PhD Handbook. <http://www.gradstudies.unimelb.edu.au/pgstudy/phd/handbk/history>

<sup>2</sup> SCOTT, P. (1995), *The meanings of mass higher education*. Buckingham, UK: Society for Research into Higher Education.

have the skills and competence required for a given job. Likewise a prospective learner with a particular occupational goal in mind can choose a course that leads to a qualification that will be recognised by an employer. In current practice, there are a number of obstacles to the transparency required to promote this efficiency. Different systems of qualifications exist in different countries. A number of steps have been taken to reduce these obstacles. These include legal moves such as the 1997 Lisbon Convention of the Council of Europe and the UNESCO<sup>3</sup>, the provisions in relation to qualifications in the 1994 General Agreement on Trade in Services<sup>4</sup> and the actions of the European Union in relation to directives on recognition of qualifications<sup>5</sup> as well as steps of an informational nature such as the network of National Academic Recognition Information Centres<sup>6</sup>.

Historical conditions have given rise to different systems of qualifications within states also. These may vary by fields of learning or by the awarding institution or some other principle. In some jurisdictions initiatives have been undertaken in recent years to incorporate these various systems into overarching national frameworks of qualifications. Though they vary in the specific aims and scope, such initiatives can be identified in New Zealand, Australia, South Africa, the United Kingdom, Denmark, Ireland, Oman, and Thailand. Related developments can be seen in France, and Mexico. As Raffe notes, different commentators have used somewhat different definitions of qualifications frameworks<sup>7</sup>. One important difference is between those frameworks which aim to be comprehensive in range and those which have separate frameworks for higher education<sup>8</sup>.

The common ground between the different systems proposed by advocates of national frameworks is a focus on learning outcomes. The legislation establishing the national framework of qualifications in Ireland, for example, speaks of it as, «a framework for the development,

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<sup>3</sup> *The Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 1997*. [http://www.coe.int/T/E/Cultural\\_Co-operation/education/Higher\\_education/Activities/Recognition\\_of\\_qualifications/Convention\\_Explanation.asp](http://www.coe.int/T/E/Cultural_Co-operation/education/Higher_education/Activities/Recognition_of_qualifications/Convention_Explanation.asp)

<sup>4</sup> [http://www.wto.int/english/tratop\\_e/serv\\_e/serv\\_e.htm](http://www.wto.int/english/tratop_e/serv_e/serv_e.htm)

<sup>5</sup> [http://europa.eu.int/comm/internal\\_market/en/qualifications/](http://europa.eu.int/comm/internal_market/en/qualifications/)

<sup>6</sup> [http://europa.eu.int/comm/education/programmes/socrates/agenar\\_en.html](http://europa.eu.int/comm/education/programmes/socrates/agenar_en.html)

<sup>7</sup> RAFFE, D. (2003), «*Simplicity Itself*»: *The Creation of the Scottish Credit and Qualifications Framework*, University of Edinburgh, Centre for Educational Sociology, IUS Working Paper 7. [http://www.ed.ac.uk/ces/IUS/IUS\\_papers/IUSWP7.pdf](http://www.ed.ac.uk/ces/IUS/IUS_papers/IUSWP7.pdf)

<sup>8</sup> National Qualifications Authority of Ireland. (2002). *Frameworks of qualifications: A review of developments outside the State*. Research Working Paper. <http://www.nqai.ie/frameworksreview.pdf>

recognition and award of qualifications in the State, based on standards of knowledge, skill or competence to be acquired by learners». The National Qualifications Authority established to develop the framework elaborated this to describe the framework as, «the single, nationally and internationally accepted entity, through which all learning achievements may be measured and related to each other in a coherent way and which defines the relationship between all education and training awards». The key feature here is the exclusive emphasis on the outcomes acquired. Of course the learning achievement must be assessed and the attainment of standards subject to quality assurance processes. However, in principle, these requirements can be met even in relation to higher education qualifications, without «attending» university in any traditional sense.

Concerns about the outcomes of higher education programmes are common across quite diverse systems. In the United States,, where the traditional emphasis has been on a broad undergraduate formation, Lucas<sup>9</sup> proposes «some enumeration of the proficiencies or skills a student might be reasonably expected to acquire,,: discrete performative abilities such as using a computer for word processing, conversing in a foreign language, solving simple linear equations in mathematics, communicating ideas lucidly and clearly in written form or oral discourse, and so on» as a pre-requisite for further reform of the curriculum. In France, the recent report of Romainville for the Haut Conseil de l'évaluation de l'école pointed to a similar lack of consensus regarding the achievement of learning outcomes by French university students<sup>10</sup>.

Discussions of the nature of a university education have long recognised some tensions between the process and the outcomes. The process of education and training is not reducible to its awards or its learning outcomes. This was the purport of Newman's famous discourse on knowledge in relation to learning:

I protest to you, Gentlemen, that if I had to choose between a so-called University, which dispensed with residence and tutorial superintendence, and gave its degrees to any person who passed an examination in a wide range of subjects, and a University which had no professors or examinations at all, but merely brought a number of young men together for three or four years, and then sent them away as the

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<sup>9</sup> LUCAS, C.J. (1996), *Crisis in the Academy: Rethinking higher education in America*. London: Macmillan. (p. 159).

<sup>10</sup> ROMAINVILLE, M. (2002), *L'évaluation des acquis des étudiants dans l'enseignement universitaire*. Paris: Haut Conseil de l'évaluation de l'école. [http://cisad.adc.education.fr/hcee/documents/rapport\\_Romainville.pdf](http://cisad.adc.education.fr/hcee/documents/rapport_Romainville.pdf)

University of Oxford is said to have done some sixty years since, if I were asked which of these two methods was the better discipline of the intellect, —mind, I do not say which is *morally* the better, for it is plain that compulsory study must be a good and idleness an intolerable mischief, —but if I must determine which of the two courses was the more successful in training, moulding, enlarging the mind, which sent out men the more fitted for their secular duties, which produced better public men, men of the world, men whose names would descend to posterity, I have no hesitation in giving the preference to that University which did nothing, over that which exacted of its members an acquaintance with every science under the sun<sup>11</sup>.

Newman was not concerned with a qualifications framework. He is explicitly rejecting a focus on specific knowledge, skill or competence. Of course it might be argued that he is merely enlarging the definition of the kind of competence he seeks in the graduate. One of the struggles in establishing a framework is to have a range of learning outcomes that is sufficiently broad to reflect the multiplicity of outcomes within the various fields of learning and the emphases of different programmes of studies.

A framework's «theory of learning outcomes» has to be acceptable to and usable by a range of stakeholders who espouse diverse, even radically different, philosophies of learning in general, from constructivist to behaviourist. It follows that there are a variety of sources for the «theory of learning outcomes» and that the resultant system is deliberately eclectic. It has to be borne in mind that a framework is a device for the recognition of qualifications. It is not necessarily intended as a blueprint for curriculum development or the planning of learning.

The Bologna Process has seen the first steps towards a European framework of qualifications<sup>12</sup>. This topic was discussed at the Bologna Process seminar in Copenhagen in March 2003<sup>13</sup>. There is a considerable diversity of higher education qualifications structures in Europe and many of these are undergoing change<sup>14</sup>. A number of initiatives were presented

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<sup>11</sup> NEWMAN, J.H. (1859), *The idea of a university. Discourse V. Knowledge its own end*. Reprinted in F.M. TURNER (1996), *The idea of a university*. New Haven: Yale University Press.

<sup>12</sup> <http://www.bologna-berlin2003.de/>

<sup>13</sup> Danish Bologna Seminar website. [http://www.videnskabsministeriet.dk/cgi-bin/doc-show.cgi?doc\\_id=138030](http://www.videnskabsministeriet.dk/cgi-bin/doc-show.cgi?doc_id=138030)

<sup>14</sup> ADAM, S. (2003), *Qualification structures in European higher education. Alternative approaches for clarifying the cycles and levels in European higher education qualifications*. Report to Danish Bologna Seminar, 27-28 March, 2003. Qualification Structures in European Higher Education.

<http://www.vtu.dk/fsk/div/bologna/BasicReportforSeminar.pdf>

which bear on a common European framework, or meta-framework, notably the Tuning Project and the Joint Quality Initiative. The Bologna Declaration itself refers to two cycles of studies. However the only distinguishing feature mentioned in the declaration was that studies the first cycle should last a minimum of three years. This is of course measure of inputs and not of outcomes.

The Tuning project, funded by the European Commission and coordinated by the University of Deusto and the University of Groningen, showed that academics in trans-national collaboration can establish reference points for qualifications in the two cycles using an approach based on subject related and generic competences<sup>15</sup>. This is an important proof-of-concept for a Europe-wide qualifications framework.

The Joint Quality Initiative originated from a meeting in Maastricht in 2001 of countries with comparable quality assurance systems that had introduced bachelor and master programmes<sup>16</sup>. Actions are aimed at enhancing the transparency in bachelor and master programmes. The primary achievement has been the development of the «Dublin Descriptors», a set of descriptors with generic outcomes for Bachelors and Masters degrees which are shared by the countries taking part in the discussions. The usefulness of these descriptors, especially alongside the work of the Tuning project, was endorsed in the «Amsterdam Consensus» during the seminar, «Working on the European Dimension of Quality», held in Amsterdam, 12-13.3.2002<sup>17</sup>.

Together these initiatives suggest that there is momentum towards agreement on a framework for university qualifications in Europe, finding its basis in shared outcomes. The preliminary report from the Graz Convention of the European University Association recommended higher education institutions to «engage in the discussion and development of broad definitions of qualification frameworks and learning outcomes on the European level while safeguarding against potential risks of top-down prescriptions and threats to diversity»<sup>18</sup>.

These discussions however are predicated on the validity of the human capital account of qualifications. However there is another way of looking at qualifications that sees them as more radically social constructions than

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<sup>15</sup> Tuning Project Website <http://odur.let.rug.nl/TuningProject/index.htm>

<sup>16</sup> Joint Quality Initiative website. <http://www.jointquality.org/>

<sup>17</sup> Amsterdam Seminar Report. [http://www.bologna-berlin2003.de/en/bologna\\_seminars/amsterdam\\_results.htm](http://www.bologna-berlin2003.de/en/bologna_seminars/amsterdam_results.htm)

<sup>18</sup> ULLENIUS, C. (2003), *Preliminary report of the General Rapporteur to the EUA convention of higher education institutions*. [http://www.unige.ch/eua/En/Publications/Graz/Grazdoc/Graz0531\\_manus.pdf](http://www.unige.ch/eua/En/Publications/Graz/Grazdoc/Graz0531_manus.pdf)



as records of individual achievements. In various forms this may be referred to as credentialism or cultural capital theory. Credentialism, identified with Dore's diagnosis of «diploma disease»<sup>19</sup>, is the theory that qualifications (or credentials) exist not to recognise learner's achievements required for a post but to facilitate screening by employers. Qualifications required for a post become inflated, not because the demands of the post have increased but because the number of candidates holding the lower qualifications has increased and screening at the lower level is no longer adequate.

A more general analysis of qualifications from this perspective employs Bourdieu's concept of cultural capital<sup>20</sup>. Bourdieu and his followers have argued that education systems and qualifications systems in particular serve to preserve and reproduce the power relationships in society. Certain forms of education are marked as conferring higher status in society. The emphasis within contemporary qualifications frameworks on learning outcomes as opposed to learning processes or participation in the rituals of particular institutions is intended to reduce the reproduction of privilege. However theorists of cultural capital would maintain that the very forms of learning that are valued for purposes of qualifications in themselves constitute cultural capital. This is precisely why the diploma is in Latin. It is a language to hide the mystique of the qualification from the unlearned, though in the present day it is also hides it from most of the recipients.

Those developing qualifications frameworks are in general quite well aware of this critique. This is why frameworks are sometimes used as a means of valorising learning that had previously been ignored within formal qualifications systems. A good example of this is the accommodation in the New Zealand qualifications framework of Maori learning<sup>21</sup>.

Indeed the notion of a framework undermines the function of certain existing qualifications as devices for the sequestration of cultural capital (with restrictions on availability and a relatively range of outcomes) in favour of a more egalitarian concept of qualifications as representing human capital through a broader range of outcomes. This leads to political resistance. Such resistance has been observed in the development of national qualifications frameworks and may be expected at the international level also. The tension exists between groups of educational

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<sup>19</sup> DORE, R.P. (1976), *The Diploma Disease*. Berkeley: University of California Press.

<sup>20</sup> BOURDIEU, P. (1990), *Reproduction in education, society and culture*. Thousand Oaks: Sage.

<sup>21</sup> New Zealand Qualifications Authority (2003). *Ratonga Māori*. <http://www.nzqa.govt.nz/for-maori/index.html>

institutions, for example, across the so-called binary divide, where this still exists<sup>22</sup>, or, more generally, between research intensive and non-research intensive institutions. Tension may also be expected between disciplines and, indeed, between states.

A framework of university qualifications based exclusively on outcomes is a considerable departure from the historic practice reflected in the text of my initial diploma. Participation in the duly constituted ritual will no longer be the essence of a higher education qualification. Or rather the only ritual that counts will be the quality assured assessment of learning outcomes.

Even if the partisan interests in sustaining the cultural capital of existing arrangements can be overcome there remains the question of whether the resultant qualifications would enjoy sufficient recognition to be worthwhile. If qualifications (the letters, diplomas and testimonials) are a device for assuring other users, such as employers and receiving universities, that the learner has indeed achieved certain outcomes, then some degree of formality is required. The awarding body must indeed be duly convened and appropriate rituals followed. When the rituals of externally ordered quality assurance replace the rituals of Latin oration and medieval garb we should still bear in mind that they serve similar ritual functions of reassuring the participants and other stakeholders that that they are engaged in is important.

## 2. **Qualifications, qualification descriptors, qualification frameworks and the Bologna process**

The Bologna process will fail if those involved are unable to create a consensus between the various European stakeholders on the ways to express their qualifications and qualifications frameworks. This is a stark statement but one that becomes more self-evident when the issues are explored. Without some agreement about common approaches and techniques to create real transparency in this field, we could well find ourselves facing a measure of academic confusion and anarchy—the exact opposite of what was intended—.

The Bologna process seeks to establish real transparency between European systems of higher education by creating a shared basis for

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<sup>22</sup> HUISMAN, J. & KAISER, F. (2001), *Fixed and fuzzy boundaries in higher education. A comparative study of (binary) structures in nine countries*. The Hague: Adviesraad voor het Wetenschaps- en Technologiebeleid. <http://www.awt.nl/nl/pdf/as19.pdf>

them, founded on two main cycles that separate higher education into different levels often characterised as Bachelor's - Master's (BA-MA). What most people fail to realise is that this has, in effect, created the basis of a European qualifications framework. However, to make this division genuine and useful requires a far more precise understanding than exists at present, of the nature of different qualifications, and common ways and terms to describe them. Without this, the full recognition of qualifications, real transparency between academic systems, and thus the creation of an effective European Higher Education Area, will remain elusive.

Many European countries have recently adopted the two-cycle qualification structure based on the Bachelor's and Master's distinction but have done so with little Europe-wide agreement or common understanding to resolve what exactly distinguishes the two. Some hurried reforms have led to simplistic solutions where old qualifications have been crudely re-packaged without due regard to level and standards. The problem is more profound, in that national qualification structures invariably involve much more than a «simple» distinction between two cycles, since they commonly include intermediate structures, distinct qualifications and sub-levels. As much precision as possible is required for qualification frameworks at both national and international level.

It is important to remember that a national qualifications framework is simply a systematic description of an education system's qualifications where all learning achievements are measured and related to each other. A European qualifications framework would therefore amount to an agreement about a common structure or architecture within which different national qualifications could be located. It is essential to stress that this should not entail the creation of identical qualifications in terms of delivery, content or approach. A loose European qualifications framework would just provide a context within which qualifications could be located. It could provide a basis (an approach) for expressing different qualifications. It would use shared concepts and tools that help make different qualifications transparent and comparable.

Existing national qualifications frameworks are complex structures designed to achieve specific economic, social and political objectives. Many countries are re-examining their qualification structures for the same reasons they signed the Bologna Declaration, which is to modernise their education systems, in order to face the challenges of globalisation. National qualifications structures differ greatly in their detail, articulation and approach. The development of any over-arching European model must be flexible enough to encompass such variations. Qualifications frameworks can accomplish any or all, of the following: make explicit

the purposes and aims of qualifications; nationally and internationally raise the awareness of citizens and employers in relation to qualifications; improve access and social inclusion; delineate points of integration and overlap; facilitate national and international recognition and mobility; identify alternative routes; position qualifications in relation to one another; show routes for progression as well as barriers; facilitate and support learners and clarify opportunities.

It is important to stress that any European qualifications framework would just be a broad structure to accommodate precise national frameworks—with their all their variations, that represent different national priorities and cultures—. The most difficult aspect of such an innovation would be the development and acceptance of common techniques to describe and express different qualifications.

There are significant connections between the full Bologna agenda and the creation of effective systems for the description and location of European qualifications. Each of the ten «action lines», identified in Prague 2001, is fundamentally dependent on the development of common and effective qualification descriptors. Thus, the **adoption of a system of easily readable and comparable degrees** to aid recognition requires common and clear descriptors. The **adoption of a system essentially based on two main cycles** presupposes some agreement about the nature and role of degrees at different levels. The **establishment of a system of credits** is itself one approach to help describe and quantify qualifications and make them more transparent. The **promotion of mobility**—of staff, students and researchers— can only be facilitated by a common understanding of qualifications. The **promotion of European cooperation in quality assurance** requires transparent and, if possible, universal approaches to the expression of qualifications, qualification descriptors and other external reference points for quality and standards. The **promotion of the European dimension in higher education** can be helped by more transparency between existing courses, curricula and «levels». Regarding **lifelong learning**, any consensus for describing degrees and levels must have implications for qualification structures, non-university qualifications and degrees and thus all stages and types of learning. Finally, **promoting the attractiveness of the European higher education area** would clearly benefit when the readability and comparability of European higher education degrees is made easier by the development of a common framework of qualifications. It is remarkable how all of the «action lines» are becoming progressively interrelated. A better understanding of the essential nature, level and relationship between European qualifications is a necessary prerequisite for quality assurance, raising standards, recognition decisions, improving mobility, increasing competitiveness, etc.

Traditional models and methods of expressing qualifications structures are giving way to systems based on explicit reference points using learning outcomes and competencies, levels and level indicators, subject benchmarks and qualification descriptors. This «new language» is certainly cold, rather uninviting and mechanistic. However, this is misleading, as these approaches should not lead to any stifling of academic creativity. These devices, when applied appropriately, just provide more precision and accuracy and facilitate transparency and comparison. The crucial question is how far will national education authorities move in this direction, and consequently, what would be the nature of an acceptable, non-intrusive, over-arching European qualifications framework that could accommodate the huge diversity of European educational awards? Can, and should, such a commonality of approach be sought?

The real danger is that the creation of Bachelor-Master awards (two cycles) will mask significant differences in their level, regard and practical application. It is possible that a hollow framework may emerge that hides and confuses, rather than illuminates. This would set back progress. This paper seeks to explore these issues by analysing some of the most recent European approaches to qualifications and qualification frameworks<sup>23</sup>. It does not try to present all the arguments but seeks to open up this critical debate.

### *2.1. A review of current developments in Europe*

It is apparent that across Europe a number of states are already reforming their education systems and therefore reconsidering their qualifications and the national frameworks within which they exist<sup>24</sup>. They are approaching the problem using a range of techniques and processes to construct and describe qualifications and qualifications structures. The positive side of this is that it reflects a real determination of these European states to change. The negative side is that, at present, despite some international initiatives, there is no uniformity of approach

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<sup>23</sup> This paper is largely based upon the detailed background report prepared by the author for the Danish Government Bologna Copenhagen Seminar that took place on the 27-28<sup>th</sup> March 2003: ADAM, S. (2003), *Qualification Structures in European Higher Education - to consider alternative approaches for clarifying the cycles and levels in European higher education qualifications*.

<sup>24</sup> It should also be noted that the move to revise qualifications structures is not just a European phenomenon as New Zealand, Australia and South Africa have recently introduced new systems.

or any consensus about what constitutes the Bachelor-Master continuum. It is useful to have a clear picture of the current situation. The following is a brief analysis of the most significant national and international initiatives and events that have led to noteworthy progress.

The **Joint Quality Initiative (JQI)** «Dublin Descriptors» is the first international attempt to produce solutions to the problem of defining the Bachelor-Master cycles<sup>25</sup>. The group rejected the approach of seeking compatibility between any existing national qualification descriptors. They decided to produce a shared or «generic» qualifications descriptor, not a shared level descriptor, to encompass all the variations in Bachelor's degrees. They recommended that such generic descriptors should be cross-referenced to detailed specific programme specifications. The idea behind these descriptors is to act as reference points comprehensible to all stakeholders across Europe. The Dublin work led to the «**Amsterdam Consensus**»<sup>26</sup>. The conference in Amsterdam linked the Dublin «generic descriptors» approach to that adopted by the «Tuning project», which uses subject-specific benchmarking techniques. The marriage of the two produces a useful combination that provides solid reference points against which qualifications can articulate. It is important to note that there are significant differences between qualification descriptors and level descriptors and they should not be confused. The differences are important as they relate to a number of fundamental conceptual issues. A level descriptor sets out the characteristic generic outcomes of each level of learning in a qualifications framework. There can be more than one type of qualification at a particular level. Qualification descriptors describe the outcomes of the main qualifications at each level, for example, a student completing a Bachelor degree will study at different levels as they move through their course —there is a progression and development to their learning—. The existence of a qualification descriptor usually implies coherence in the design of the individual qualification that is more than just the sum of its constituent parts. This is important in the case of credit accumulation systems where the issue is whether a degree is just the sum of all the individual module outcomes or something more. Furthermore, some Master's qualifications can contain significant amounts of sub-Master level study. Therefore, the distinction between qualification descriptors and level descriptors is important.

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<sup>25</sup> More information on the Joint Quality Initiative (JQI) an informal network for quality assurance and the accreditation of Bachelor and Master programmes in Europe, can be found at: <http://www.jointquality.org>. The Dublin descriptors resulted from a JQI workshop held in Dublin on the 15<sup>th</sup> February 2002.

<sup>26</sup> The product of the CHEPS Amsterdam Conference, 12-13<sup>th</sup> March 2002.

The **Helsinki Bologna seminar on Bachelor-Level Degrees (Finland, 2001)** marked a deepening of international understanding of Bachelor-level degrees and emphasised the need for a flexible set of common criteria to define them. The seminar emphasised the need for Bachelor-level curricula to include general core skills and competences. Also needed were appropriate, well-defined, intermediate qualifications and clear transition mechanisms between qualifications. The Helsinki conclusions emphasised that just reforming structures was insufficient and that transparency between the core BA-MA competencies by subject area, was required. This work clearly points to the need for further efforts to identify appropriate competencies at the Bachelor-Master level.

The report by Christian Tauch on «*Master Degrees in the European Higher Education Area*» in the **EUA Survey on Master Degrees and Joint Degrees in Europe** raises a number of important issues<sup>27</sup>. A main conclusion of the survey was that there is a dominant trend towards Master level degrees that require the equivalent of 300 ECTS credits (5 years of study) and that at least 60 of the 300 ECTS credits should be obtained at the graduate level in the area of specialisation. It suggests *inter alia* that a three-year Bachelor's degree should be followed by two-year Master's degrees. The report by Christian Tauch describes current practice across Europe and its recommendations raise a number of significant points including the worth and appropriateness of one-year (short) Master degrees unless they follow a 240 ECTS credit Bachelor degree. This and other suggested combinations between different Bachelor and Master degrees go to the heart of the need for some common methods to express and compare qualifications. The basis of any such decisions needs to be clear and agreed. It is certainly appropriate to use ECTS credits to describe the volume of learning that takes place. However, decisions about whether a qualification is worthy of the BA-MA nomenclature should also rest on qualification descriptors, level descriptors and the use of learning outcomes and competencies. Their use would allow more meaningful comparisons between similar types of qualifications (longer and shorter BA or MA, professional and academic Master degrees). A further complication is that ECTS credits are currently founded on a time-based measurement of their volume (60 credits = one full-time year of study). ECTS credits are insufficient in themselves to describe the content and quality of a programme. They are quantitative measurements, not qualitative descriptors. However, there is now a strong trend towards

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<sup>27</sup> TAUCH, C. (2002), *Survey on Masters Degrees and Joint Degrees in Europe*, European Universities Association (EUA).

expressing qualifications in terms of learning outcomes and competencies. This sort of «output approach» puts much less emphasis on time and concentrates on what the student is able to do on completion of their degree. This approach accommodates the requirements of lifelong learning and the possibility that qualifications are delivered at different speeds and by different modes, e.g. intensive study programmes, short courses, distance learning. The Bologna declaration already admits variations in the time it takes to gain a degree (three–four years). The use of learning outcomes provides a more accurate and precise way to express qualifications. Both quantitative and qualitative descriptors need to be used to express qualifications.

The **Lisbon International Seminar on Recognition Issues in the Bologna Process**, April 2002, strongly recommended the use of a learning outcomes approach for the purposes of facilitating recognition. Learning outcomes provide a solid set of reference points to aid transparency and thus the recognition of qualifications. The 1997 *Lisbon Convention on the Recognition of Qualifications Concerning Higher Education in the European Region*, provides the international basis for the recognition (and the process of recognition) of qualifications<sup>28</sup>. However, these fair and transparent principles that many countries have agreed to are not necessarily implemented very widely. Many higher education institutions are still ignorant of the Convention despite its ratification by their governments. Many find it difficult to implement. So, the development of common approaches to qualifications and qualifications structures, plus the adoption of similar methods to describe and express qualifications would certainly benefit the functioning of this very important Convention.

Several initiatives in the area of credits and international benchmarking have a direct relevance for the creation of qualifications and qualifications frameworks. The **EUA/Swiss Confederation Conference on Credit Transfer and Accumulation** lent major support to the extension of ECTS as a pan-European credit accumulation framework<sup>29</sup>. Credits are a useful way of helping to describe qualifications, and the adoption of common credit architecture across Europe would make all qualifications much more transparent. The conference did agree that ECTS credits should be based on the student workload required to achieve the objectives of a programme —objectives preferably specified in terms of

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<sup>28</sup> Developed jointly by the Council of Europe and UNESCO/CEPES.

<sup>29</sup> EUA Swiss Confederation Conference, *Credit Transfer and Accumulation - The Challenges for Institutions and Students*, Zurich, October 2002.



learning outcomes—. This bridges the input-focussed, time-based approach and the output-focussed, outcomes approach to credits.

The **Tuning Educational Structures in Europe Project** marks a new and significant development in expressing Bachelor-Master degrees by developing a subject-based consensus on knowledge, learning outcomes and competencies for particular disciplines<sup>30</sup>. In effect, it created subject benchmark statements by identifying common aspects of degree programmes across Europe. It also identified, and classified, generic competencies and investigated the requirements of an evolved ECTS credit accumulation framework. The various Tuning subject teams readily agreed a core set of learning outcomes and competencies (a common Bachelor's degree core) for first-cycle degrees but not for Master's programmes. Tuning also identified a clear and very important relationship between educational structures, learning outcomes, workload and the calculation of credits. The project did not resolve all the tensions between output and input approaches to the measurement and expression of credits. However, it highlighted intimate connections between learning outcomes, teaching, learning and assessment. This is to be a focus of Tuning II and has direct links to the use of the Tuning techniques for the purposes of quality assurance.

The BA-MA descriptors and some of the Tuning techniques have been employed in the new ENQA **Transnational European Evaluation Project** that seeks to develop a European methodology (common criteria) for the purposes of quality assurance at the European level<sup>31</sup>. The project makes an obvious link between learning outcomes, competencies and the generic BA-MA descriptors as crucial tools to facilitate the external evaluation of programmes of study. The Tuning subject-specific and generic competencies and the BA-MA descriptors all contribute different perspectives to illuminate the evaluation process. Without effective quality assurance tools and techniques the Bologna process would halt, due to lack of transparency and, therefore, mutual recognition.

Increasing numbers of European countries have introduced, or are about to introduce new qualifications frameworks in the light of Bologna. The **Danish Qualifications**

**Framework** is one example of a very recent national initiative that seeks to aid the clarity and transparency of its qualifications<sup>32</sup>. The

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<sup>30</sup> More information on the Tuning project can be found at: <http://www.relint.deusto.es/TuningProject/index.htm> and <http://www.let.rug.nl/Tuningproject/index.htm> .

<sup>31</sup> More information on TEEP can be found at: <http://www.fs.ku.dk/undervisning/temp/teep-2002.htm> .

<sup>32</sup> See the Danish Ministry publication, (2002) *Towards a Danish Qualifications Framework for Higher Education*, Ministry of Science, Technology and Innovation.

Danish approach marks a shift from the traditional input-focused approach to describing programmes of learning. The new system uses a competencies approach to describe degrees in a more explicit and systematic fashion. It will also make possible the explanation of differences between similar degrees. This is seen as crucial for all the stakeholders in Danish education. The system will explain and describe various levels within the education system and thus facilitate access, international recognition and the relationship between different awards. Benefits for the evaluation of education programmes and quality assurance are also foreseen. Foreign education qualifications will be evaluated against the new Danish levels in a process called «level evaluation». The added transparency of the systems will also lead to gains for employers who seek an understandable, simple and coherent qualifications system. Ireland is also about to introduce a new system —**the Irish Qualifications Framework**—<sup>33</sup>. This framework will include level indicators and award-type descriptors. Award-types refer to a class of named awards sharing common features and levels. The system is being created using a bottom-up approach, expressing outcomes in awards. It is to be consistent with promoting a lifelong learning society and employs a tripartite approach to learning outcomes.

**The UK qualifications framework** represents a pioneering approach<sup>34</sup>. It is a highly developed, integrated system that developed many of the innovations being introduced elsewhere. The UK framework is designed to make it easier to understand higher education qualifications and to clarify the achievements associated with Bachelor-Master degrees and other awards. It employs subject benchmark statements that set out expectations about the standards of honours degrees in broad discipline areas. These define what is expected of a graduate in terms of skills and understanding the subject. The system also uses an extensive code of practice and detailed subject specifications produced by institutions for each of their individual awards. Higher education courses are expressed in terms of learning outcomes. Currently, the UK does not have one national qualifications framework but one for Scotland and another for the rest of the country. Similarly, the UK does not have a single national credit framework but a very comprehensive advisory set of guidelines that cover England, Wales

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<sup>33</sup> More information can be found at: the National Qualifications Authority of Ireland (NQAI) website: <http://www.nqai.ie> .

<sup>34</sup> See the (2001) *The Framework for Higher Education Qualifications in England, Wales and Northern Ireland*, available at: <http://www.qaa.ac.uk> .

and Northern Ireland (EWNI) and an official integrated Scottish Credit and Qualifications Framework (SCQF), for Scotland. Most, but not all UK universities utilise academic credit systems. For those non-Scottish institutions that do, the EWNI guidelines include an exhaustive set of specifications for valuing, measuring, describing and comparing learning achievement. This credit framework explicitly links to academic standards using levels, level descriptors, learning outcomes and competencies. However, the SCQF system is perhaps the most advanced integrated lifelong learning, credit and qualifications systems in the world. It covers all learning —from those learners with profound learning difficulties to Doctoral studies—. It employs two measures to place qualifications in the qualifications framework —the levels of the outcomes of learning and the volume of these outcomes described in terms of credit points—. The SCQF contains most of the innovative and cutting-edge features identified so far in one integrated qualifications system. A national plan for its detailed implementation was launched December 2002.

Many other European states are currently revising their qualifications frameworks as they implement BA-MA structures and it is obvious that there are significant differences in design and approach. In the Netherlands and Germany universities can switch to the new Bachelor-Master system. However, in Germany the number of students on the new Bachelor's degrees is very low and there are problems over the public perception of them as end-awards. The Dutch, along with some other states have created what has been described as a «short» Master's degree worth 60 ECTS credits, which is considerably shorter than the minimum length in many other countries. A further complication is that in some states the progression from Bachelor's to Master's is automatic, whilst in others, access is competitive and no automatic right exists (e.g. UK). Furthermore, this raises recognition issues linked to the different attitudes adopted by systems and institutions towards selection and admissions.

To date, the most recent stage in the developments outlined above was the **Copenhagen «Bologna» Seminar on Qualification Structures in Higher Education in Europe**<sup>35</sup>. At this seminar in March 2003, the case was made for the acceptance of the need for revised national qualifications structures, using many of the new techniques described above. It also called for the launch of work on an overarching qualifications framework for the European Higher Education Area.

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<sup>35</sup> This took place on 27-28<sup>th</sup> March 2003. Details of all the recommendation are available at: <http://www.Bologna-berlin2003.de> .

## 2.2. *Final thoughts*

Clearly there is a growing perception that there are real advantages in new qualifications structures using the outcomes-focussed techniques to express qualifications. This does not mean the end of the «traditional approach» to qualifications and qualifications frameworks that have an input-focus, describing programmes according to admission requirements, length of study periods and lists of content. Such approaches remain valid but should be used in combination with the new techniques. The new approaches herald the introduction of complex systems based on explicit reference points using some or all of the following: learning outcomes and competencies, levels and level indicators, benchmarks and qualification descriptors. The precise architecture of these new national systems is not identical, nor should it be, but it is vitally important that they adhere to a common understanding of the Bologna first and second cycles. Differences in qualifications and ranges of Bachelor-Master degrees (including intermediate awards) are necessary to reflect the rich diversity of higher education in Europe. However, techniques to express BA-MA qualification and to provide transparency for the purposes of comparability, common standards and quality assurance, are a worthwhile goal.

The creation of the European Higher Education Area by 2010 is an ambitious target and the recent developments and approaches, described above, will have a direct and central impact on its successful creation. The refinement of qualifications (BA-MA) and qualifications frameworks is a prerequisite to the effective construction of the Bologna vision. Quality assurance (standards), recognition, transparency, efficiency and the competitiveness of European education all, to varying extents, rest on the development and understanding that come from sharing some common educational structures and approaches. The mutual recognition of qualifications between states is made much easier where standards, approaches, structures and expression of awards are not only explicit but also shared.

Several urgent questions now face European education systems. These can be summarised in the following checklist of issues for consideration: what would be the nature of national and any over-arching European qualifications framework in the context of the Bologna 10-action line? What is the role of levels, credits and Bachelor-Master descriptors? How should qualification descriptors be used together with programmes profiles and the Diploma Supplement? How should learning outcomes, competencies and subject benchmark statements be approached and developed?

Progress in these areas is central to the creation of the European Higher Education Area. The adoption of a common nomenclature (Bachelor-

Master) was just a first step. The next, and more difficult, step requires a deeper level of agreement (and thus transparency) about the types, principles, levels and purposes behind different European qualifications and their place in any over-arching framework.

Finally, the developments mentioned in this paper are not just idle speculation about something that might happen in the distant future, for the final draft of the Berlin Communiqué includes the following:

Ministers encourage the member States to elaborate a framework of comparable and compatible qualifications for their higher education systems, which should seek to describe qualifications in terms of workload, level, learning outcomes, competences and profile. They also undertake to elaborate an overarching framework of qualifications for the European Higher Education Area<sup>36</sup>.

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<sup>36</sup> Final draft of the Berlin Communiqué (1<sup>st</sup> September 2003), *Realising the European Higher Education Area - Communiquée of the Conference of Ministers responsible for Higher Education*.



# The Responsible University

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**Contents:** INTRODUCTION.—RESPONSABILITY.—THE UNIVERSITY - RESPONSIBLE FOR WHAT?—THE UNIVERSITY - RESPONSIBLE TO WHOM?—RESPONSIBLE - ON WHAT BASIS?—RESPONSABILITY, AUTONOMY AND FREEDOM.

## Introduction

Responsibility is a part of our lives from an early age. Parents want their children to be responsible enough to look after younger siblings, and they certainly want them to grow up to be responsible adults. A responsible person is much appreciated, and both personally and professionally we have to assume responsibility for what we do or do not do. A promotion at work is often connected with increased responsibility. In politics, the government would generally claim responsibility for what goes well and blame predecessors for what goes wrong, whereas the opposition will make the government responsible for what goes wrong and ascribe the rest to chance, unless the opposition has been in government so recently that it can take credit for successful policies by claiming that the government is merely continuing what the current opposition started. Responsible persons are sometimes thought of as admirable but boring, which is perhaps the reason why Garrison Keillor in his stories from a fictitious Minnesota town, which is peopled by Germans and Scandinavians, has equipped Lake Wobegon with a church called Our Lady of Perpetual Responsibility.

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Responsibility is, however, not the first thing that comes to mind when thinking about universities. This is not because universities are particularly irresponsible, but rather because we are much more used to emphasizing academic freedom and university autonomy than the responsibility of institutions, staff and students. However, we live in an age in which the demands on public institutions seem to increase, and universities tend to be thought of as public institutions no matter whether they are owned and operated by public or private bodies. An additional factor is that the resources available from traditional sources asking relatively few questions about their use seem increasingly insufficient to cover the real costs. This may be because these resources are actually decreasing or «simply» because they are not increasing at the same rate as the ambitions and obligations of modern universities, but this distinction is of little importance to the argument of principle.

The question of whether responsibility and its corollary, autonomy, should be differentiated according to type of higher education institution is both interesting and important. However, it is also an issue that would merit an article of its own, and for the purposes of the present article, I will therefore mainly focus on the traditional concept of the university.

## Responsibility

The dictionary defines responsibility as the fact of being legally or ethically accountable for the care and welfare of another, as the fact of being capable of making moral and rational decisions of one's own and therefore answerable for one's behavior and even as the ability to be trusted or depended upon; reliable<sup>2</sup>.

As may be expected, others have given diverging and more colorful and poetic definitions. Thus the Bible emphasizes that «unto whomsoever much is given, of him shall much be required»<sup>3</sup>, while John Cage on the contrary says that responsibility is to oneself<sup>4</sup>. True to form, Ambrose Bierce provides the most blunt definition in his *Devil's Dictionary*<sup>5</sup>:

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<sup>2</sup> The dictionary used is the *Illustrated Heritage Dictionary and Information Book* (Boston, MA 1977: Houghton Mifflin). The definitions have been adapted from those given for «responsible», as «responsibility» is defined as «The state, quality or fact of being responsible».

<sup>3</sup> St. Luke 12:48.

<sup>4</sup> «Lecture on something», from *Silence* (1961)

<sup>5</sup> Originally published around 1890; an accessible edition is *The Enlarged Devil's Dictionary* (Harmondsworth and New York 1983: the Penguin American Library)



«Responsibility, n. A detachable burden easily shifted to the shoulders of God, Fate, Fortune or one's neighbor. In the days of astrology it was customary to unload it upon a star».

Whichever of the quotes comes closest to the truth, they indicate three essential elements of responsibility. Firstly, there is an alternative—we may be irresponsible, whether by choice or inadvertently—. Secondly, responsibility is exercised (or not) in relation to someone, even if that someone may be ourselves. Thirdly, responsibility may be felt as a burden, and we may want to run away from it. Although the quotes do not say so, we might also add that the concept of responsibility may also be used to make people do things that go against their best judgment and that may not be justifiable on moral grounds. Calling on people to go to war for the sake of conquest is an obvious example of the latter.

To consider the «responsible university», we should therefore consider in which areas its main responsibility might lie, to whom or what the university may be responsible and on what basis.

## **The University - Responsible for What?**

Traditionally, the main tasks of the university are teaching and research. Of late, two additional elements have been increasingly emphasized, and both of these are important to the concept of responsibility.

Firstly, the emphasis on teaching—communication from teacher to student—has been complemented with that of learning, which encompasses the whole range of situations and methods by which students absorb knowledge and develop ability and understanding, and which places a part of the responsibility for the learning on students. Institutions, however, at least have a responsibility to establish a good «learning environment» and even a «culture of learning».

Secondly, a new task has been added, often described as service to society at large, that clearly emphasizes making the results of teaching, learning and research available to society well beyond the confines of the campus. Dissemination, publication, courses for non-traditional publics, non-degree courses, popularization and the participation of university staff in television programs<sup>6</sup> are only some examples of this diverse task,

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<sup>6</sup> Examples can certainly be found in most countries. A very successful example was the program *Fråga Lund* (Ask [the University of] Lund, in which staff from one of Sweden's oldest universities answered questions from viewers concerning almost any domain of knowledge, and there was no doubt the program contributed to demonstrate the pertinence of academic life to a wide segment of the general public.

which is important for the relations between the university and the wider society.

A complementary way of considering the responsibilities of the university is to dwell for a moment on the main purposes of higher education. I believe these may be summarized in four elements:

- (i) preparation for the labor market;
- (ii) preparation for life as active citizens in a democratic society;
- (iii) personal development;
- (iv) development and maintenance of an advanced knowledge base.

I will try to answer the question of what a university might be responsible for by seeking to explore each element in some detail. In so doing, it may be helpful to consider that the relative emphasis each individual university puts on the different aspects of its mission may vary considerably.

### *Preparation for the Labor Market*

That higher education institutions play an important role in preparing students for the labor market seems so obvious that one might think it is a point to be mentioned only in passing. Indeed, the importance of education in relation to employment seems to be made everywhere—in unemployment figures broken down according to education level and socioeconomic category, in election campaigns, and in statements by economic actors—. The Bologna Declaration also strongly focuses on the function of higher education in relation to the labor market and, in an echo of criticism often made by industry, implies that the *status quo* is insufficient. Indeed, economic actors sometimes seem to express a preference for non-university higher education because they see them as better able to meet their current needs than traditional universities with their longer and less professionally oriented studies. Nonetheless, it may be worth keeping in mind that the call for a higher education more closely adapted to what are perceived as the needs of society is by no means new, nor has higher education generally been as far removed from society as its critics have wanted that society to believe<sup>7</sup>.

The importance of preparing students for the labor market is not at issue, even if the balance of attention to this task as compared to the

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<sup>7</sup> The point is made eloquently by Henry ROSOVSKY: «No Ivory Tower: University and Society in the Twenty-First Century» in Werner Z. HIRSCH and Luc E. WEBER (eds.): *As the Walls of Academia are Tumbling Down* (London/Pairs/Genève 2002: Economica)

other main purposes of higher education may be. However, we may wish to take a closer look at how a responsible university could fulfill this important function.

While in traditional societies, the employment market may be stable and the skills needed to succeed in it predictable, this is certainly no longer the case in a modern, complex society. Therefore, education can no longer aim to convey professional skills and knowledge that will last a lifetime, if this were indeed ever a realistic ambition. In this context, the distinction the TUNING project<sup>8</sup>, coordinated by the Universities of Deusto and Groningen, has established between subject specific skills and transversal skills is highly relevant. Both kinds of skills and knowledge are of course needed for employment, but in particular for posts requiring higher education qualifications, employers seem to emphasize generic competence as well as competence additional to a student's main academic specialization, such as foreign languages, law or cultural knowledge<sup>9</sup>. This is somewhat at variance with the often stated emphasis on shorter, professionally oriented programs like the ones offered by non-university higher education institutions, such as the German *Fachhochschulen*. The point is not that such programs are wrong or do not serve a purpose; it is rather that the labor market is diverse, and its needs for highly educated employees is equally diverse. It may well be that different institutions and programs should aim at filling different kinds of labor market needs, but this should be the subject of conscious decisions and it should also be recognized by policy makers inside and outside of the university.

However, there may be reasons for reconsidering the way in which universities prepare their students for the labor market. Do universities really develop the kind of solid knowledge of a broad academic discipline combined with transversal skills and other kinds of competence that will be useful both on the labor market and in other walks of life? Are many university programs, contrary to what is sometimes thought, too professionally oriented or is there at least too little emphasis on generic skills? Is there also too little emphasis on developing the ability to make use of and combine different kinds of knowledge in various situations and to seek new knowledge? Have students learned to learn? Have they learned not to take established

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<sup>8</sup> Cf. <http://www.relint.deusto.es/TuningProject/>

<sup>9</sup> The point was made quite emphatically by a representative of the Confederation of Danish Industry at the Bologna seminar on Qualifications Structures in European higher education organized by the Danish authorities in København on March 27-28, 2003, cf. [http://www.vtu.dk/fsk/div/bologna/Koebenhavn\\_Bologna\\_Reprot\\_final.pdf](http://www.vtu.dk/fsk/div/bologna/Koebenhavn_Bologna_Reprot_final.pdf)

solutions for granted but to ask whether a better solution might not be found—in other words to think critically?

This is not the place to settle such complex issues, but they serve to show that the role of higher education in preparing for the labor market is a complex one. A responsible university needs to go well beyond slogans and consider its contribution to the whole range of labor market need for highly educated personnel. Its conclusion may well be that it can only prepare students for some parts of the labor market, but whatever the niches chosen, a responsible university should not focus its programs too narrowly, nor should they be so general as to convey little but generic skills. A responsible university should provide its students with a solid background in at least one academic discipline, afford them an opportunity to build a competence in one or more academic areas other than their main specialization—thereby making use of the advantage a true university has in terms of the range of subjects offered—develop generic skills and stimulate the ability to obtain and develop new competencies. Granted, this may sound like a tall order, but a responsible university in a complex society should not aspire to less on behalf of itself and of its students.

### *Preparation for Life as Active Citizens in a Democratic Society*

In the early 1990s, when totalitarian governments fell in Central and Eastern Europe to join those, of a different political color, that had fallen in many countries of Latin America in the previous decade, one could be led to believe that once democratic institutions and democratic laws had been put in place, democracy was safe and secured. Alas, developments throughout the 1990s underlined that institutions and laws are necessary but not sufficient preconditions for a functioning democracy, and that democratic society can only function if it is built on a democratic culture. This culture has to be developed and maintained in each successive generation and to be adapted to changing realities. Education at all levels plays a vital role in this endeavor.

Already the Bologna Declaration refers to the role of higher education in building democracy, but it does so with a particular reference to South East Europe that is perhaps understandable given that the Bologna meeting was held days after the cessation of hostilities in Kosovo. Nevertheless, the democratic mission of universities is not limited to a specific region, and this was strongly emphasized in the Praha Communiqué of 2001. It was this Communiqué that truly brought the social dimension of higher education into the Bologna Process.

This part of the mission of the university is far from obvious. In fact, possible objections may range from the view that universities and

schools should be apolitical to believing that even if primary and maybe secondary schools have a role in what is often called civic education, this should be a completed stage by the time students reach higher education, where all emphasis should be on academic content. The belief among a large number of staff that student participation in democratic society is a «private matter» of no concern to the university was clearly demonstrated in a survey of attitudes at 13 European and 15 North American higher education institutions<sup>10</sup>. In this view, students should «concentrate on their education», and education is implicitly defined as the academic discipline the student is specializing in. This view was expressed to researchers in the project just referred to, where «[m]ost sites reported that university administrators and many faculty considered many aspects of citizenship and democracy to be entirely a *personal matter* such as decisions to vote, to volunteer in the community, to participate in campus organizations, or to engage in political debate and, therefore, not within their ken nor responsibilities as teachers and scholars.<sup>11</sup>»

This represents a narrow view of the purpose of higher education that is limited to the role of academic disciplines and that leaves little room for the social function of education. To the contrary, I would emphasize the role of universities as channels of citizenship. In this, democratic practice and participation is important, as is the development of attitudes and abilities. Democratic societies depend on citizens committed to active participation, but also to forming independent and informed opinions. Therefore, a key function of universities is to train the ability of students to think critically and to assess the opinions of others—including those of the university leadership and public authorities—on the basis of the available facts as well as democratic values.

The belief in apolitical society as something «pure» and of a higher order is perhaps understandable, especially in societies that have been subject to highly politicized dictatorships, such as the formerly communist countries of Central and Eastern Europe. Some universities in Central and Eastern Europe have tried to keep politics off campus by banning «political» student organizations, mostly meaning organizations affiliated with a political party. In the words of the report on the project on Universities as Sites of Citizenship:

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<sup>10</sup> The project, called Universities as Sites of Citizenship, was carried out by the Council of Europe and a consortium of North American higher education institutions. The final report, penned by Dr. Frank Plantan, was issued as a Council of Europe document bearing the reference CD-ESR (2002) 2.

<sup>11</sup> *Ibid.*, p. 13.

Another structural characteristic of universities is the legal and administrative prescriptions regarding organized political activity within the university. Many institutions in this study, particularly those in transitional societies or who have recently experienced violent conflict are attempting to respond to new statutory and constitutional arrangements. They are struggling with redefining roles and responsibilities while simultaneously dealing with basic issues of meeting their educational mission within tight fiscal and budgetary constraints<sup>12</sup>.

From a thoroughly «politicized» but tightly controlled system, the temptation to turn to one without both politics and control is great and perhaps even understandable, but is this feasible and desirable?

I believe the clamor for an apolitical society is a cry for Utopia and, as Fernando Savater has reminded us, the most dangerous Utopias are not those that remain Utopias but those that run the risk of becoming reality<sup>13</sup>. It is worth underlining that politics is about organizing and governing societies, and that no society can do without politics or a measure of political actors and organizations, even if these are not parties in the conventional sense of the term. No society can be governed «apolitically», notwithstanding the claims of certain dictators, mainly of the far right, to this effect. If anything, the behavior and results of those that have tried to put this maxim into effect should be a sufficient warning<sup>14</sup>.

Even where university staff are not opposed to politics in principle, there may be a desire to keep conflicts off campus by underlining the particular and uniquely academic character of the institution. Perhaps one could even see this as a particular version of the myth of the ivory tower. There may be a desire not to make higher education institutions battle fields for groups with sharply divergent views on conflictual issues, often linked to conflicts that divide the societies concerned, such as ethnic or religious conflicts. For secondary education, this view was expressed by a school principal in Strasbourg, who publicly made it very clear that she would not tolerate it if students at her multiethnic school brought any conflict between their home countries or any confessional conflicts into the schoolyard.

An example in the opposite sense is provided by Queen's University, Belfast, which has for a long time made consistent efforts to accommodate

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<sup>12</sup> The final report by Dr. Frank Plantan, CD-ESR (2002) 2, p. 19.

<sup>13</sup> Fernando SAVATER: *El contenido de la felicidad* (Madrid 2002: Aguilar), pp. 50-53.

<sup>14</sup> For an interesting, if depressing, example of the political thought of a right wing military regime, see Augusto PINOCHET UGARTE: *Política, politiquería, demagogia* (Santiago de Chile 1983: Editorial Renacimiento).

members of both major communities in northern Ireland and which has pioneered many of the measures that made the current Peace Process possible. Queen's has for a number of years made a point of catering to the sensitivities of the two main communities in Northern Ireland and to recruit students and staff from both, but also to avoid particularly divisive symbols, such as the playing of anthem(s) at University events. Maybe some of its individual choices may be open to discussion, but there is little doubt that the overall effect of Queen's policies has been to create a university open to all qualified inhabitants of Northern Ireland in an atmosphere that is welcoming to all but the most extreme sectarianists on both sides of the «Troubles». Rather than trying to isolate the university from the conflicts in the society of which it is a part, the leadership of Queen's successfully sought to make the University an example of how this conflict could be solved through greater openness and greater acceptance of the Other; ultimately through democratic practice and the development of democratic culture.

Solutions that have worked in a given circumstance are rarely transferable to other times and places without modification, and no doubt the leaders of both those universities that seek to ban politics from campus and those that, like Queen's, try to meet problems of society head on seek to act responsibly. There may indeed be circumstances in which any attempt to address contentious issues entails an unacceptably high risk of violence, and where seeking to bring together students from feuding communities on neutral ground around a neutral, suitably academic topic may by itself be a major advance. There may even be situations in which separate institutions for members of different communities may be the only solution, at least in the short run. For example, UNMIK<sup>15</sup> has decided that it is not yet feasible to teach students from the Albanian and Serbian communities in Kosovo within the same institution, but it has insisted that the separate institutions operate within one, joint education system for all of Kosovo, so as at least not to erect institutional fences complicating a different solution should this be possible in the future. Yet, whatever good reasons may justify different approaches, I cannot help thinking of Queen's University as a particularly valuable example of a responsible university, for the reasons outlined above.

While universities do in my view have a democratic mission, we should not fall into the trap of thinking this is because academia is inherently democratic. It is, unfortunately, not difficult to think of

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<sup>15</sup> United Nations Mission in Kosovo.

examples where both institutions and individual academics have been profoundly undemocratic and where they have contributed to man's inhumanity to man. Here, I will therefore only point to a few examples. Many of the Council of Europe's member states —and current or future participants in the Bologna Process— in their recent history have no shortage of examples of how Communist regimes used higher education institutions for their purposes and how many staff members and students played along. The judges at show trials<sup>16</sup> were graduates of law faculties, and party membership was no disadvantage in securing staff appointments or places of study, provided the membership was in the «right» party. In the Germany of the 1920s and 1930s, most university teachers were nostalgic for pre-World War One elitist society and lukewarm to the Weimar Republic and even if the majority of them were not Nazi supporters, it was only a minority that fought actively against the Nazi regime<sup>17</sup>. Even as anti-intellectual a movement as the Nazis had their student organizations and student supporters, and the medical doctors and biologists that performed experiments on live humans and that developed the race theories did not lack academic credentials. In Portugal, the main leaders of the Salazar regime had their roots at the University of Coimbra<sup>18</sup>. Nor is this a «privilege» of the undemocratic right. On the undemocratic left, we find students and staff in Maoist movements in Europe<sup>19</sup>, and a little further afield, the leader and ideologue of the Peruvian terrorist movement *Sendero luminoso*, Abimael Guzmán, was a philosophy lecturer at the University of Ayacucho<sup>20</sup>.

The point is of course not that universities, scholars or students are inherently undemocratic. For each of the examples mentioned, counter examples can be found. In Central and Eastern Europe, the movements that ultimately brought down the Communist regimes were also often led by academics, and immediately after the political changes in the early 1990s, some university departments were decimated because many of their members had been democratically elected to Parliament. Germany

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<sup>16</sup> See for example Ulrich MÄHLERT: *Kleine Geschichte der DDR* (München 1999: Verlag C. H. Beck), esp. pp. 62-65.

<sup>17</sup> See Notker HAMMERSTEIN: «Universities and democratisation: an historical perspective. The case of Germany» (Paper written for a Council of Europe conference on Universities and Democratisation, Warszawa, January 29-31, 1992, bearing the reference DECS-HE 91/97.

<sup>18</sup> Cf. Luis REIS TORGAL: *A Universidade e o Estado Novo* (Coimbra 1999: Livreria Minerva Editora)

<sup>19</sup> For France, see Didier FISCHER: *L'histoire des étudiants en France de 1945 à nos jours* (Paris 2000: Flammarion)

<sup>20</sup> An enjoyable fictional account probably modeled on the *Sendero luminoso* is Mario VARGAS LLOSA: *Historia de Mayta*.



not only had Nazi students, but also student resisters who paid with their lives, like the Scholl siblings and other members of the Weisse Rose. Academics played an important role in the opposition to the Salazar regime, especially from the 1960s onwards, voices like José Afonso gave artistic expression to this through the *fado de Coimbra*<sup>21</sup>, and Maoist student movements were not unopposed even in the immediate aftermath of 1968.

The point is, then, that politically, higher education institutions and their members are not much better or worse than society at large, and while they may tend to phrase their arguments in more theoretical terms, democracy must be maintained through both reflection and practice, on campus as elsewhere in society. A responsible university must contribute to this reflection on the basis of the best academic values, in search of truth and respect for the Other. This responsibility can in most circumstances better be exercised in engagement with the society of which the university is a part rather than through withdrawal from it. No responsible university can distance itself from its obligation to contribute to the development of the democratic culture on which our societies depend.

### *Personal Development*

Sometimes those who defend the classical model of the university seem to consider the personal development of students and teachers as the main and most noble purpose of higher education, something resembling an academic equivalent of Art for Art's Sake. At the other extreme, those who strongly underline the role of higher education in relation to the labor market seem not to give much importance to personal development at all.

In my view, both positions are in need of being nuanced. Certainly, the view that the classical university model was one in which studies were undertaken solely for the pleasure of studying, with the underlying wish to return to this «golden age», is undermined by two inconvenient facts. Firstly, it would imply a return to an eminently elitist society, as only the well off could possibly afford the luxury of spending years in pursuit of knowledge that served no discernible purpose beyond self-satisfaction. Secondly, it is at variance with historical facts. If the early universities focused on theology, medicine and law, in addition to the *studium generale* or liberal arts, it was precisely because these were the

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<sup>21</sup> See Maria DA FÁTIMA SILVA: «The University of Coimbra and its traditions at the beginning of a new millennium» in Nuria SANZ and Sjur BERGAN (eds.): *The Heritage of European Universities*.

studies that prepared for the academic labor market at their time. It is not a certain market orientation on the part of the universities that is new; it is the make up of the market<sup>22</sup>. On the other hand, disregarding the value of intellectual stimulus and the pursuit of knowledge for the pleasure of learning amounts to disregarding something that for many constitutes one of the main pleasures of life.

Rather, while identifying a number of purposes of higher education for closer discussion, it should not be forgotten that these purposes are indeed interlinked. Knowledge and skills that will help qualify a student for a certain part of the labor market may well also contribute to his or her personal development and *vice versa*. It is, however, true that the Bologna Process has so far not put much emphasis on personal development, and I would hope this aspect of higher education may still be developed before the European Higher Education Area is developed by 2010. I also believe a responsible university should give importance to the personal development of its students and staff.

The function of education in contributing to personal development is of course not new, and, if anything, the concept of the educated person was probably considerably more present in people's minds a couple of centuries ago than it is today. Even the name of the age —Enlightenment<sup>23</sup>— bears witness to this. The idea of personal improvement did of course not arise with the Enlightenment. We find it in Greek and Roman culture as well as in many other early cultures, and it is a mainstay of Christian thought as well as of that of other religions and indeed of much modern secular philosophy. One manifestation of this conviction is Kant's so called Categorical Imperative: act in such a way that your actions could be the model for laws. In other words, without being forced to do so by external force or pressure, we should of our own accord act for the common good and in such away that our actions are morally defensible.

We also have traces of this function of education in our language, in the distinction between education and training, between *educación* and *formación* or, in German, *Bildung* and *Ausbildung*. In each of the three languages quoted, the first member of the pair refers to learning that broadens our horizon and helps make us better persons, whereas the second member refers to learning that will better enable us to carry out certain tasks.

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<sup>22</sup> For a consideration of the university heritage, see Nuria SANZ and Sjur BERGAN (eds.): *The Cultural Heritage of European Universities* (Strasbourg 2002: Council of Europe Publishing).

<sup>23</sup> For a readable overview of the Enlightenment in Britain, see Roy PORTER: *Enlightenment. Britain and the Creation of the Modern World* (London 2000: Penguin).

Education, then, is something that affects and develops the whole person, whereas training has more limited aims, and this distinction provides an important clue for the responsible university. Few people would claim that everything a university does aims for the highest level of intellectual competence, but a university that did not seek to develop the whole personality of its students rather than «just» providing them specific competences in precise tasks or disciplines would fail in its ambition toward universality that is implied in the term «university» and also in its responsibility to ward its students and toward society.

### *Development and Maintenance of an Advanced Knowledge Base*

Modern societies are complex and rely on advanced knowledge in a wide variety of areas. Much of this knowledge has been obtained through research and development, and much of it can indeed be used only by those that have undergone high-level education. With reference to the previous paragraphs, I would underline that this is a question of education and not just of training.

The distinction between subject specific and transversal competencies made by the TUNING project is applicable also in this context, and the advanced knowledge base encompasses both elements. While the subject specific element is immediately understandable and will be the subject of further discussion below, it is also worth underlining that the transversal skills are also a part of the knowledge base. The ability to abstract and to think in terms of principles as well as to reflect in terms of ethics and a range of other generic skills such as capacity for analysis and synthesis, problem solving, adaptability, leadership, ability to work autonomously as well as part of a team are all of great importance<sup>24</sup>.

Research is perhaps what immediately comes to mind when we refer to the role of universities in developing and maintaining an advanced knowledge base, and research is certainly an important element of this. However, teaching and learning also play their part. While in most cases, the distinction between research and learning may be clear, there are cases in which it is not. I find the definition offered by Bo Samuelsson, former Rector of Göteborg University, attractive: learning is the discovery of knowledge that is new to the individual, but known to others, whereas research is the discovery of knowledge that is new not only to the individual, but also to others or to society<sup>25</sup>.

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<sup>24</sup> These are all generic skills defined by the TUNING project, even if the list is not complete.

<sup>25</sup> Private communication.

Again, the term university implies an obligation. While it is of course not possible for every university to cover every field of knowledge, a responsible university should aim to cover a wide and diversified area of knowledge. This responsibility cannot be limited to areas with high student numbers or good prospects of lucrative applied research contracts<sup>26</sup>. Many disciplines will have low staff and student numbers, but cultural, political, economic or other reasons will dictate that the country have a certain academic activity in these areas, which may concern less widely spoken foreign languages, less studied periods of history, relatively neglected cultural areas or fields of art or areas of mathematics and natural science currently out of vogue.

Part of the point is that even areas that seem less important now may suddenly find themselves in the focus of public attention a few years down the road, as when many European countries scrambled to upgrade their meager knowledge of Arabic language and culture in the wake of the oil crisis in the 1970s. An even stronger reason, however, is that areas that may not be important in numbers may be very important for our cultural identity, for understanding who we are, where we come from and where we should be going or as a basis for developing the key concepts on which more applied knowledge is based. These are areas in which our societies need advanced competence, but they may not need large numbers of people with this knowledge.

Some reasons may be cultural, such as developing and maintaining knowledge of less widely spoken languages and lesser known cultures in the areas where they belong. Where would Maori language and culture be taught if not in New Zealand, where would we maintain a knowledge of Inuit if not in Alaska, Canada or Greenland or, for that matter, where would Basque and Galician be taught and researched if not in the corresponding Autonomous Communities of Spain? The reasons for developing and maintaining a particular subject area at a particular university may even have to do with the research interests and academic traditions at the institution. For example, my home institution, the University of Oslo, had very strong research in Celtic studies in the early part of the 20<sup>th</sup> century, whereas it now runs a small but strong transdisciplinary research program focusing on the languages, history, anthropology, archeology and sociology of parts of Oceania, in cooperation with the Kon Tiki Museum and with financial support from

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<sup>26</sup> A related argument, in favor of the value of linguistic diversity, may be found in R.M.W. DIXON: *The Rise and Fall of Languages* (Cambridge 1997: Cambridge University Press), in particular pp. 116-121.

the Norwegian Research Council<sup>27</sup>. Oceania is not an area of strategic importance to Norway, but the research competence developed fully justifies such a research program.

A responsible university cannot just aim to cover a large number of academic areas by itself, though; it should also look at ways to pool its competence with others. Some interesting examples of such pooling and division of labor exist. The Community of Mediterranean Universities (CUM), which has some 170 member institutions from all sides of the Mediterranean, runs a scheme called CUM Schools, under which at least three Mediterranean universities cooperate organizing advanced level courses on Mediterranean topics and drawing on the expertise of the participating universities. Another example is the Nordic Agricultural University, which is not an institution, but a cooperation scheme under which certain courses are given at only one of the five participating institutions but they are open to students from all five institutions and given full recognition by the home institution. The Bodenseehochschule is a network of higher education institutions —mainly non-university institutions— in the areas of Austria, German and Switzerland bordering on the Bodensee, as well as the Fachhochschule Liechtenstein<sup>28</sup>.

The list of examples could certainly be made longer, but the main principle should by now be clear: the responsible university should feel an obligation to develop and maintain an advanced knowledge base in a broad range of academic areas, and particularly in those in which for reasons of heritage, geography, history, culture or the outstanding competence of current staff it has a particular advantage and thus a particular responsibility.

## The University - Responsible to Whom?

Even a more extensive response to the question of «responsibility for what?» than we have been able to undertake in the present article would, however, not be sufficient to explore the concept of the responsible university. In order even to scratch the surface of this rich topic, it is also necessary to give some thought to the «twin» question of «responsibility, to whom?»

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<sup>27</sup> Cf. <http://museumsnett.no/kon-tiki/Research/Oceania/>

<sup>28</sup> For the latter, see <http://www.bodenseehochschule.org/ibh/index.html>. A description of the other examples will be found in the publication *Council of Europe - Nordic Council of Ministers Joint Conference on Regional Co-operation in Higher Education* (TemaNord 1998:553), based of a conference held in Reykjavík in September 1997.

### *Society*

That the university has a responsibility toward society may be a commonplace, but nonetheless one that needs to be explored in some detail. Is society one of those catch words that nobody can be against, but nobody can also define? Can it be used to justify anything, something, as has at certain times been the case with the concept of national security<sup>29</sup>? Who makes up «society», and where is it to be found?

Even though I would argue that the university is a part of society and not isolated from it, it is clear that in this context, «society» is to be found outside of the institution. But how far away? Society is perhaps all encompassing, but it may nevertheless be beneficial to distinguish between the local, regional, national and international community, as long as it is kept in mind that they are not mutually exclusive, in the same way as most individuals have layers of identity<sup>30</sup>.

The university may even define an explicit mission with regard to one or more of these circles of society. For example, the University of Évora, which has ambitions and missions also at national and European level, plays a very important role in the development of the region in which it is located, and it does so on the basis of academic competence, not as a substitute for it. Another example is the University of Cergy-Pontoise, a recent institution located in one of the new towns surrounding Paris. Even by catering essentially to the local community, Cergy-Pontoise has a very international student body, as much of the local population is made up of immigrants, and the University plays an important role in opening opportunities for the local population as well as the local community as a whole. In the words of one observer, «[a]t Cergy-Pontoise, students are not seen as students per se, but as members of the community they live in through their associations in the area they reside... Students are very active in service with the community»<sup>31</sup>.

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<sup>29</sup> A concept much used by military regimes in Latin America in the 1970's and 1980's, see Alain ROUQUIÉ: *The Military and the State in Latin America* (Berkeley and Los Angeles 1987: University of California Press) and Genaro Arriagada Herrera: *El pensamiento político de los militares* (Santiago de Chile 1986: Editorial Aconcagua).

<sup>30</sup> I.e., without contradiction, we can identify with our city, our region, our country, Europe and the global community. An ardent Real Madrid supporter can cheer Barcelona players when they play on the national team. Or, in terms of the slogan used by Dominique Baudis when he ran for the European Parliament in the mid-1990's, he ran as *toulousain - français - européen*.

<sup>31</sup> For a description of Cergy-Pontoise, see Frank PLANTAN: *Final Report on the Project Universities as Sites of Citizenship*, especially pp. 15 and 29-33. The quote is from p. 31.

An even more pronounced example is provided by some institutions in Brazil, where in 1997 I had the privilege of visiting two institutions located in disadvantaged areas of Rio de Janeiro; one in what was described as a lower middle class area and the other in a *favela*. Neither has much claim to excellence in research, nor do they see this as their mission, but both play an immensely important role in providing youth from their sector of the city with an opportunity to obtain formal education. Their recruitment is eminently local, as few students come from other parts of the city, much less from outside of Rio. The degrees obtained provide the individuals with an opportunity for a better life but, since many of them stay in the area, these institutions also contribute both directly and indirectly to the development of the local community. They also run local projects, e.g. for improving the environment.

In particular in smaller countries, one or a few institutions can play a very important role at national level, in terms of both economic development and cultural heritage and identity. One example is the University of Iceland, established in 1911, which plays an important role in developing and maintaining a very vibrant culture based on a language spoken by few but the 250,000 inhabitants of Iceland, and which also contributes to the development of a sophisticated knowledge industry in fields like information technology and biotechnology, partly in partnership with other actors and partly through providing a flow of highly qualified candidates to industry. One should also not forget that the research this university carries out in the fields of volcanology and seismology is no trivial matter in a country situated on the Atlantic divide and regularly subject to volcanic eruptions. The University of Malta plays a similar role in another small island country.

The European and international commitment of universities is perhaps better known, and one often gets the impression that it is also considered as more prestigious. Certainly, large, traditional universities like Oxford, Salamanca, Sorbonne, Bologna, Coimbra, Kraków, Harvard, Yale, Stanford and a long list of others owe their strong international position and commitment to academic excellence over a long period of time, often centuries. The number of top rate research universities is necessarily small. Nevertheless, playing a European and international role is not the privilege of the happy few. As the success of mobility programs like ERASMUS, CEEPUS, NORDPLUS and the soon to be established Erasmus Mundus as well as of associations organizing those who work with internationalization at institutional level, such as the European Association for International Education (EAIE), illustrates, most universities today are engaged in some kind of international cooperation. Not to do so would indeed verge on the irresponsible, as it

would amount to closing the institution off from valuable new impulses or even from keeping up with developments in teaching and research.

Therefore, it is my contention that the responsible university, in addition to defining its role in regard to its local and national community, must define an international strategy. It may not be overly ambitious in all cases, but it must be there. It may well be defined on the basis of current contacts or of historical ties and precedence. In the Council of Europe's project on the heritage of European universities, two universities made clear indications to this effect: the University of Coimbra emphasized its role in cooperation with Brazil and Portuguese speaking Africa, while the University of Istanbul underlined its role as a bridge between Europe and the Middle East<sup>32</sup>. One theory even has it that the university is partly responsible for keeping the former Portuguese colony of South America together as one country (Brazil), whereas the former Spanish colonies of Latin America broke up into several independent countries. This is, of course, only a partial explanation, but the theory emphasizes that since almost all members of the Brazilian colonial elite were educated at Coimbra, bonds were created that helped keep the country together after independence<sup>33</sup>.

A university's priorities in international cooperation may even be decided in part by current political concerns. When the political changes in Central and Eastern Europe started in 1989-90, I had the privilege of playing a role in launching the University of Oslo Program for Central and Eastern Europe, and it was by conscious decision that the program in particular focused on cooperation with the main universities of Estonia, Latvia and Lithuania. In this, the University was supported by the Norwegian Ministry of Foreign Affairs, which saw university cooperation as a way of indicating support for Baltic aspirations to independence without making an overt break with what was still the Soviet Union.

The responsibility exercised by Queen's University in the conflict in Northern Ireland has already been described. Whether this is to be classified primarily as a local, regional or national role is of much less importance than the fact that a university is acting in favor of dialogue and understanding in a highly conflictual situation, and is thus exercising its responsibility toward society on the basis of its own academic values.

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<sup>32</sup> See Nuria SANZ and Sjur BERGAN (eds.): *The Heritage of European Universities*, pp. 50-51.

<sup>33</sup> José MURILO DE CARVALHO: «Political Elites and State Building: Brazil in a Comparative Perspective», in Eduardo P. ARCHETTI, Paul CRAMMACK and Bryan ROBERTS: *Sociology of «Developing Societies»: Latin America* (London 1987: Macmillan).



Sometimes, this responsibility can be exercised by individual students and staff members rather than by the institution as such. An extreme example is the situation in Serbia in the wake of the 1998 Law on Universities, which was one of the most repressive Europe has seen since 1945. The Milošević regime controlled the universities through collaborating academics it appointed to key positions as Rectors and Deans. However, many individual academics continued to uphold the academic values and to act responsibly toward society, the university and themselves. Many of them organized the Alternative Academic Education Network (AAEN)<sup>34</sup>, which served to uphold academic values and the European university heritage during the bleak years of the late 1990s. It is not least thanks to the AAEN and individual academics that Serbian universities are now again in a position to be active members of the European academic community. In this case, individuals took on the responsibility that the universities as institutions failed to uphold against a repressive regime, or that it was probably impossible to uphold as institutions given the circumstances.

### *Stakeholders*

The university's responsibility toward the stakeholders in higher education is somewhat like its responsibility toward society at large: the point seems obvious but it needs further exploration. Who are the stakeholders?

Taken to its extreme, the list of stakeholders in higher education is long, and it might be easier to try to draw up a list of those who are *not* stakeholders. If we agree that universities have an important responsibility toward society at large, almost all members of society may in one way or another be considered a stakeholder. While this may be a valid point, not least in political contexts where the public higher education budget is decided, it is not a very operational definition, and we might be better served by trying to identify the more immediate stakeholders. These include the academic community of scholars and students, to which we will return shortly, as well as public authorities, social partners, and those who run the institutions, whether these be a competent public authority, such as a Ministry of Education, or a private body.

What are the university's responsibility toward these «immediate» stakeholders, and how does it balance with the university's other responsibilities? I would find it difficult to argue that the university

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<sup>34</sup> See <http://www.aaen.edu.yu/>

should take no account of the priorities, policies and desires of these stakeholders, from both a principled and practical point of view. If the stakeholders wish to shift priorities from one academic area to another, or from focusing on advanced students to giving more attention to first degree programs, I cannot see that a university would be acting responsibly if it resorted to all out opposition. However, stakeholders may also make demands on the institution that go so thoroughly against the basic values of the university that a responsible institution would find it difficult to accept them. One such example is provided by the institutions belonging to the religious (i.e. fundamentalist Protestant) right in the United States, such as Oral Roberts University<sup>35</sup>, which seek to ensure that their students are protected from views that could challenge their faith in Creationism or their allegiance to the Republican right wing. In these times of trans-Atlantic tension, it should perhaps be underlined that these demands are institution specific rather than system related, as the practice of Oral Roberts has little to do with that of Harvard, Stanford, Berkeley, MIT or other top US higher education institutions.

The distinction between stakeholders and the wider society is not always easy to draw (as reflected by the term «immediate stakeholders» above), and exactly who is a stakeholder will vary from country to country, culture to culture and age to age. Nevertheless, I believe the concept is useful, and that it is useful to distinguish stakeholders from society at large as well as from the academic community of scholars and students.

### *Academic Community of Scholars and Students*

The university clearly has a responsibility toward its own members: the academic community of scholars and students. Not least, its responsibility is to further a sense of community among this diverse group, divided by age, origin and not least academic disciplines and faculty connection.

This is not a trivial matter, particularly in an age when students are increasingly referred to as clients, nor is the difference semantic. Whereas clients shop for the best offer at the lowest price and therefore easily move from one provider to another without an interest in either, members of a community share responsibility for and a stake in the

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<sup>35</sup> The mission statement of the Oral Roberts University may be found at <http://www.oru.edu/university/mission.html>. It emphasizes that «Oral Roberts University is a charismatic university, founded in the fires of evangelism and upon the unchanging precepts of the Bible. The Board of Regents and the president and chief executive officer are dedicated to upholding the University's founding purpose.»

development of their community. Whereas dissatisfied clients leave the shop, dissatisfied members stay to reform their community and leave only in desperate circumstances, in which case we talk about emigration. Universities are therefore accountable to their students but the students share the responsibility and are in their turn accountable to society as members of the university.

This, of course, does not mean that universities do not have material obligations toward their students and staff. Both groups should see themselves as a part of the institution and seek to improve it. That may not always mean they identify very strongly with the institution as such but they do at least identify with groups within the institution, such as the student body as a whole, a specific department, students at a specific department, etc. However, some kind of institutional identification would also be desirable, and the experience of some countries in which faculties are independent legal entities —mostly the countries of former Yugoslavia— shows the weaknesses of staff and students identifying only with faculties and not with institutions, quite beside the fact that it has proven difficult to reform universities where the Rectorate and Senate have very limited powers. It may even be that some models of higher education or some higher education cultures tend to encourage a stronger institutional identification than others. It is at least a superficial impression that US students identify more closely with their institutions than many continental European students do. In a sense, graduates and former students may be considered as «expatriate members» of the academic community, in the same way emigrants around the world relate to their community of origin as well as to their new community<sup>36</sup>.

The identification of staff and students with their university, as well as with the University as a model of learning and research and, for many, a way of life, is not and should not be uncritical. Students should have demands on their institutions and teachers, but if they no longer consider themselves as a part of the institution and the academic community, I believe higher education in Europe will have a very serious problem. The responsible university must work to make students and staff feel like members of an «imagined community»<sup>37</sup> that crosses national and institutional borders.

The responsibility of the university does, of course, also extend to more mundane matters, such as working conditions, access to facilities

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<sup>36</sup> I am grateful to Pedro Lourtie for suggesting this comparison.

<sup>37</sup> The term «imagined community» is normally used in discussions of nationalism and was coined by the political scientist Benedict ANDERSON in his *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London 1983: Verso), but, if used with care, the term may be fitting also for other kinds of communities.

like computers and libraries, possibilities for students and staff to stay in touch with developments in their field. Universities share the basic obligations of employers in such matters as health care and childcare and, unless the responsibility is taken by a body set up for the purpose, they may have a responsibility for student housing and welfare. The responsible university certainly has an obligation to provide good guidance and counseling to its students. Last, but not least, the university has an obligation to abide by the laws of the society of which it is a part, except in the circumstances—rare in democratic societies—in which civil disobedience would be justified on moral and ethical grounds. This obligation encompasses a whole range of laws regulations, from the physical environment (e.g. hazardous materials in laboratories) to auditing rules, and they apply even when they are felt as a burden. For example, general labor regulations apply also to universities, even if academic staff do not take lightly to attempts to regulate or curtail their working hours.

### *Institution Responsible to Itself*

Finally, universities have a responsibility unto themselves, to uphold their integrity and to make sure they continue to play their role as centers of learning and research, action and reflection. The responsible university has an obligation to uphold the university heritage, but this is not an obligation to refrain from change. Quite to the contrary, reforms are an important part of the university heritage, and the university as an institution would hardly have survived over the centuries had it not been willing and able to adapt to changing circumstances. Thus, the Bologna Process builds on the heritage of European universities. A medieval scholar might not recognize organized higher education exchange programs<sup>38</sup>, he would be surprised at the range of today's academic disciplines and the fact that academic discourse is no longer in Latin, and he would probably consider the idea of a Socrates Office in Athens as an unnecessary bureaucratization of philosophy. Yet, the idea of a European Higher Education Area is not only one he could easily identify with, but one he would probably take for granted.

It does not follow from this that the responsibility of the university is to look inward. Rather, it is to look outward on the basis of its values and to contribute to the main purposes of higher education. The responsible

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<sup>38</sup> Even if Dom Sancho I of Portugal set up a kind of mobility scholarship scheme as early as the 12<sup>th</sup> century, cf. José HERMANO SARAIVA: *História concisa de Portugal* (Lisboa 1978: Publicações Europa-America), p. 109.

university should also set up procedures to assess to what extent it succeeds in meeting its obligations to society, to stakeholders, to the academic community and to itself as an institution.

The responsible university must ensure it continues to be relevant, and to do so, it must address a number of overriding concerns. This leads us to the final part of our consideration.

### **Responsible - on what Basis?**

After having explored the university's responsibility in relation to its main purposes as well as to society, stakeholders, the academic community and itself, the time has now come to consider the basis on which this responsibility is exercised. This has to do with the university's responsibility toward its basic values.

#### *Values*

One way of looking at a university is as a community of values, in which case it has a moral and ethical responsibility. Even if the academic community tends to give a wide interpretation to the freedom of research, teaching, publication and expression, this does not imply that «anything goes». What does the university do about revisionist historians making denial of the Holocaust an element of their courses? These teachers could probably be attacked on the grounds of incompetence, since the reality of the Holocaust is not in doubt. Nevertheless, is there not a moral issue that may be more important than subject specific academic competence, namely that inciting ethnic and religious hatred is both illegal in many countries and a blatant violation of core academic values? Where is the boundary between what is ethically and morally indefensible and what is merely politically incorrect? The experience from the United States shows that the responsible university must not only defend its integrity against the kind of attack on its core values represented by revisionist historians, but also against political correctness, which designates what many see as a severe constraint on teaching, research and publication, not through any law or formal regulation but through a particular form of peer pressure which aims at preventing the expression of views contrary to a narrowly defined list of acceptable views. While the extreme form of PC<sup>39</sup> may be

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<sup>39</sup> It is perhaps an indication of the scope of the issue that PC, at least in the US context, no longer means only «personal computer».

peculiar to the US academic scene, elements of it can probably be found also in Europe, where peer pressure and self-censorship may prevent the expression of unpopular views even if backed up by personal research.

Can the responsible university free to sponsor a research program in any discipline, or individual researchers free to carry out the program, regardless of possible ethical misgivings? It is probably not difficult to agree that the answer is negative, but the current discussion on cloning illustrates that the boundaries between the acceptable and the unacceptable are difficult to draw. The debate on euthanasia is perhaps not research related, but some of the key actors are former medical students and perhaps also current academic staff, and the debate again illustrates a lack of agreement on a fundamental ethical issue.

Nor are the boundaries static: what is acceptable to one age may not be to another. A few years ago, the University of Oslo returned two skulls from its anatomical collection to the families of the victims, as the skulls were those of two of the executed leaders of a Sámi uprising in northern Norway in 1852<sup>40</sup>. The ethical and moral responsibilities of higher education institutions, staff and students are of course not limited to refraining from doing wrong; they also have a positive responsibility to lead the way in ethical and moral reflection. An example of collective action in this sense is the university pension funds that withdrew their investments from companies working in apartheid South Africa, whereas one among many individual examples is the philosopher Fernando Savater, who is a leading voice against violence and terrorism in the Basque country<sup>41</sup>. The latter can also illustrate the responsibility of higher education to a multi cultural outlook, in an age where it makes little sense to see education, heritage, history, political science, physics or any other discipline in a purely national perspective, and in which few if any universities worthy of the name employ only staff from the country in which it is located<sup>42</sup>.

If the examples given may seem reasonably clear cut, they are nonetheless intended to show that the line of distinction between the «high road» of the moral and ethic responsibility of universities and the «low road» of political correctness is not crystal clear. At what point does a legitimate concern for defending democratic values veer into the lane of political correctness? Is the right of an academic or an institution

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<sup>40</sup> For a description of the uprising in Kautokeino, see Karsten ALNÆS: *Historien om Norge*, volume 3 *Mot moderne tider*, pp. 347-364.

<sup>41</sup> See Fernando SAVATER: *Perdonen las molestias* (Madrid 2001: Ediciones El País)

<sup>42</sup> The concept of «national education» nevertheless survives in the title of some European Ministries.

to teach, research or publish on any topic of its own choosing an absolute or a relative right? Are there limits to the responsibility of universities toward the values on which they are founded?

Another value issue is the commitment of universities and members of the academic community to seek the truth based on facts as well as to revise their opinions if new facts make this necessary. This is not an unproblematic point, as is shown in medicine by the case of Semmelweiss, the current debate on human cloning and in more general terms by the tension between teaching and research in 16-17<sup>th</sup> century European universities, where teachers often had to lecture according to the established canon but disseminated new knowledge through their publications<sup>43</sup>. The responsible university should uphold the right of its staff and students to pursue their research based on a quest for truth and without undue external pressure; it should even press on them the obligation to do so.

This point is important also in relation to the search for funding, where it is important to bear in mind that strings are attached not only to public purses, but also to private ones. What conditions are there for funding of research and teaching? Are funds given for areas in which the university has a conscious interest, or are new courses developed simply to attract funds? Is research funding subject to limitations on publication of the results and, if so, are these limitations acceptable? The university needs substantial funding to fulfill its tasks; increasingly these will have to come from a variety of sources. While there may be virtue in poverty, such virtue may not bring many results in terms of research and teaching. The point is therefore not that universities should necessarily refuse funding but that the responsible university should have a conscious policy of what kind of funding to accept on what conditions.

### *University heritage*

The values of the university are a part of its heritage, which encompasses material and immaterial traces of academic life and activity. By itself, the university can be considered as a special built historical environment in which collections, monuments, traces and also perceptions of what has been inherited are labeled to make an inhabitable and transferable heritage possible. Libraries and archives, collections and museums, built spaces, philosophies, scientific laws and achievements

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<sup>43</sup> See Hilde DE RIDDER-SYMOENS: «The Intellectual Heritage of Ancient Universities in Europe» in Nuria SANZ and Sjur BERGAN (eds.): *The Heritage of European Universities*.

have warped around how the university heritage in its own way builds a special model of transmission through teaching and learning. We are talking about enormous forgotten or disregarded heritage waiting not only for a preservation policy but also for recognition from the academic community and from the wider society as well as recognition in everyday life, in the daily functioning of the institution. This was the challenge: to situate institutional memory and projects for the institutional future within the same framework for planning. As we stated in a different context:

The university heritage is not a story of immediate gratification, nor is it one of constant and unending success. Its importance is of a different order: the heritage of European universities is one of the most consistent and most important examples of sustainable success and achievement that Europe has ever seen. The university is a part of our heritage, and its future is decided now... Our reflection on the university heritage coincides with a time when cultural heritage policies are no longer only identified with a typology or with a prescriptive approach to tangible and intangible resources, but they are also aimed at valorizing problems of heritage policies that also have to do with filiation and affective ties (cultural, sociological, confessional, territorial). From these ties a specific kind of current relationship to the ways of establishing memories can be defined, based on what is lived today<sup>44</sup>.

The responsible university should work to raise awareness of the heritage of the specific institution as well as of the University in generic terms among staff and students as well as among the general public and political decision makers. It should promote its heritage as part of its identity, and it should feel an obligation to conserve this heritage. Again, it should be kept in mind that heritage is not static, but a dynamic transmission from one generation to another. For example, values are important in the development and transmission of heritage, but values also change, and hence the interpretation of heritage. For example, whereas national greatness, military prowess and glory were important values in the interpretation of the national heritage at the beginning of the 20th century, tolerance and justice are now generally seen as core values and indeed as measures of a country's greatness. Also in this respect, it is therefore important to think of heritage as a process.

The Council of Europe project on the heritage of European universities has revealed that few universities have coordinated policies

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<sup>44</sup> Nuria SANZ and Sjur BERGAN (eds.): *The Heritage of European Universities*, p. 174.



for all their heritage, even if some have policies for specific elements of this heritage, typically individual museums, archives, libraries, buildings or monuments. However, coordination is sorely lacking, and the responsible university should have institutional policies for its heritage as well as a coherent administration to implement those policies. In the current phase of our project on the university heritage, we are therefore elaborating guidelines for the governance and management of the university heritage, which we hope will be of use to the institutions that want to be a part of the European university heritage and play a role in transmitting this heritage to future generations.

While we have emphasized the university heritage here, the point should of course be made that the responsibility of the university extends well beyond its own heritage. The university is not only a part of but also an important actor for preserving and transmitting the heritage of the society in which it functions. In a very practical way, many universities are, through archaeological and other museums, important repositories of the heritage of their country or region. More importantly, they also play a key role in transmitting and interpreting the cultural heritage of this society, including its language, knowledge and traditions. This is not necessarily a function of conservation or conservative function: heritage remains heritage only to the extent that people still identify with it.

### *Quality*

Quality assurance is one of the most topical themes in higher education in Europe, and one that is a key element of the Bologna Process. As recently as 1997, when the Lisboa Recognition Convention was adopted, there was still considerable discussion of whether countries should have formal quality assurance systems or not, but today the discussion is on the make up and methods of such schemes rather than the principle of them.

The provisions for quality assurance are an essential element of the public responsibility for higher education, where, in my view, public authorities should have an exclusive responsibility for the higher education framework<sup>45</sup>. This means that public authorities are responsible for setting up and validating the framework for quality assurance; they

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<sup>45</sup> The public responsibility for higher education was an important element of the Bologna seminar on the Social Dimension of Higher Education, organized by the Greek authorities in Athenai on 19-20 February 2003. The conclusions of the seminar are available on the Web site of the Berlin Higher Education Summit <http://www.bologna-berlin2003.de>; the presentations from the conference are under publication.

do not necessarily have to carry out the quality assessment procedures themselves.

Even if external assessment is an important part of the overall quality assurance in higher education, it should be matched by a similar concern for quality at the individual university. In part, this concern stems from the ambition of the responsible university for the quality of its own teaching and research, and in part from its obligations toward stakeholders and society at large. Again, these are complementary rather than contradictory. The concern should translate into arrangements for internal quality assurance at the institution. One example of international university cooperation in this area is the EUA (European University Association) institutional review program, which is intended to support universities and their leaders in their efforts to improve institutional management and, in particular, processes to face change. The emphasis is laid on self-evaluation and allows the institutions to understand their strengths and weaknesses.

Such reviews may make specific recommendations to institutional leadership regarding the internal allocation of budgets, but since the evaluation is independent of national or other funding sources there is no link to decisions concerning such funding. However, the leadership of a university would probably want to take corrective measures if a quality review were to show major problems in specific areas. What the consequences of a quality review may be, will probably depend on circumstances. An institution that is seen as important to the development of an underprivileged part of the country is likely to be looked at with more lenience than one that is located in an area where there are many alternatives, and the only study program in a discipline public authorities or institutional leaders consider important are more likely to receive the benefit of the doubt along with an infusion of funds than one that is considered expendable. In practice, public authorities are more likely to be concerned with institutions and the institutional leadership than with individual study programs.

### *Equal opportunities*

Ensuring equal access to higher education for all qualified candidates as well as equal opportunities for those accepted is another key responsibility of public authorities. Universities may not be able to accept all qualified candidates and may have to resort to selective admission procedures, but these procedures should be fair. Qualified candidates should be treated equally, i.e. the access process should correspond to the Weberian definition of the much-reviled term

«bureaucracy»: impartial decisions made according to transparent procedures and with predictable outcomes<sup>46</sup>. In other words, whether you are admitted to higher education should depend solely on your qualifications and not on who assesses your qualifications, at what time your qualification is considered (as long as you apply within the published deadlines), your opinions, beliefs or other characteristics or what favors you might do the person handling your application, generally referred to as corruption.

This is the classical conception of the rule of law<sup>47</sup>, which is essentially that of passively ensuring equal treatment on the basis of the applicant's current situation. However, contemporary European societies would tend to take a more activist approach under which public authorities are not only responsible for watching over the equitable application of rules but also ensuring equal opportunities through other means, for example by taking measures to increase the number of qualified candidates through improving educational opportunities for underprivileged groups. The task, then, is not simply to administer an equitable procedure for qualified candidates, but also to increase that pool of candidates, e.g. through providing better education opportunities at lower levels of the system.

However, if it is recognized that educational opportunities at least to some extent depend on place of residence and socio-economic or cultural background, one could argue that steps should be taken to ensure favorable access for members of underprivileged groups if these are considered to have the potential to do well in higher education even if they might not satisfy all access requirements at the time of application, or, if access is restricted and competitive, a certain number of qualified candidates from disadvantaged background may be given preference over better qualified applicants from more classical higher education backgrounds<sup>48</sup>.

Such measures, referred to as «positive discrimination» or «affirmative action», are often controversial, as proven by the discussions in many countries about favoring access of women applicants to study programs in

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<sup>46</sup> Cf. MAX WEBER: *Wirtschaft und Gesellschaft* (1922); the reference here is to a Norwegian edition of Weber's writings: *Makt og byråkrati* (Oslo 1982: Gyldendals Studiefakler), pp. 105-157).

<sup>47</sup> Possibly more precisely conveyed by the German term *Rechtsstaat* or the Norwegian *rettsstat*.

<sup>48</sup> See also Recommendation R (98) 3 on access to higher education in Europe, adopted by the Committee of Ministers of the Council of Europe and growing out of the Higher Education and Research Committee's project on access to higher education, as well as Recommendation R (97) 1 on private higher education.

which they are underrepresented or measures in favor of ethnic minorities. The latter has frequently been a bone of contention in US higher education, where the Bakke case is possibly the best-known example since *Brown vs. the Board of Education*<sup>49</sup>, and where the Bush Administration is now seeking to have current practice at the University of Michigan declared unconstitutional on the grounds that it discriminates against members of the «majority»<sup>50</sup>. In a recent case, Norwegian universities have been directed to review policies favoring qualified women candidates for academic positions, in an attempt to recruit more women in fields where they are underrepresented, in particular at the highest levels, because this has been judged unacceptable under the non-discrimination provisions of the European Economic Area.

While there may be disagreement on how far one should go in the direction of «positive discrimination», the responsible university cannot be indifferent to the issue of equal opportunities and should elaborate institutional policies to meet this concern. These may complement national policies and indeed legal regulations, or they may be pioneering efforts in societies where the issue of equal opportunities is still some way from the top of the political agenda.

## **Responsibility, Autonomy and Freedom**

University autonomy is one of the key principles of higher education in Europe and also one of the cornerstones of the Bologna Process. While autonomy is an issue that would deserve separate consideration<sup>51</sup>, it may be relevant, in concluding this article, briefly to consider the relationship between responsibility and autonomy, as well as that between the responsibility of the university and the academic freedom of staff and students. The point should perhaps also be made that while autonomy applied to institutions, freedom applies to individuals. This distinction is useful but also frequently disregarded in discourse, so that one may find reference to «academic autonomy» as well as to academic freedom.

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<sup>49</sup> In this landmark case from Topeka, Kansas, the US Supreme Court struck a decisive blow against the segregation of US schools.

<sup>50</sup> See the *International Herald Tribune*, January 17, 2003, p. 3

<sup>51</sup> A series of interesting papers on academic autonomy may be found in *Autonomy and Responsibility - the University's Obligations for the XXI Century. Proceedings of the Launch Event for the Magna Charta Observatory 21-22 September 2001* (Bologna 2002: Bononia University Press)

University autonomy cannot be complete, or universities would be entirely divorced from society. Rather, present day university autonomy is exercised in a situation in which there are increased demands on public service, and it does not matter much whether the university is a public or a private one. Whatever the «ownership of the means of research and teaching», to borrow a phrase from an outmoded ideology, the perception is that of an institution with a public function, a responsibility toward society and subject to general requirement of fairness and transparency, e.g. in admissions procedures, grading, examinations and hiring of staff.

Formal and legal autonomy from public authorities is, for the most part, no longer an issue for European universities. Rather, the issues of autonomy are related to how the legal regulations are implemented as well as to issues that cannot easily be settled through laws, such as the realities of financing higher education. In this sense, autonomy is not an issue only in relation to public authorities, but also with regard to private funding. While universities can and should not be divorced from the priorities of funders and other stakeholders, a responsible university should be discerning about its acceptance of funding and avoid, on the one hand, funds that come with unacceptable strings attached and, on the other hand, seek to avoid undue dependence on a single source of funding.

Perhaps one of the most serious questions facing the responsible university today is how it can maintain university autonomy, live up to academic values and carry on the heritage of European universities. Whether the university is public or private, the perception is that of an institution with a public function, a responsibility toward society and subject to general requirement of fairness and transparency, e.g. in admissions procedures, grading, examinations and hiring of staff.

The ivory tower may be a popular stereotype of the university, but it is hardly consistent with the idea of the university as a part of the European heritage and it is certainly not a model for the responsible university. Rather, the responsible university has to be fully involved in modern society to ensure its own autonomy, which is also linked to its relevance. If no man is an island<sup>52</sup>, the same is true for higher education. The university should interact with society and its numerous groups and individuals not isolate itself from society. At the same time, the responsible university must maintain sufficient distance from the surrounding society to allow it to continue to play its role as a place of discourse, reflection

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<sup>52</sup> «No man is an island, entire of itself; every man is a piece of the continent.» John DONNE, *Devotions*.

and *disputatio* on issue on a wide range of issues that go well beyond the immediate concerns of the day, a source of knowledge, skills and competence in a wide range of academic disciplines as well as in transversal and generic terms.

In short, the responsible university is both a participant and an observer, a performer and a critic. It is of this world and yet sufficiently distanced from it to offer guidance not just on how we can best reach the next street corner, but also on how we can find our way along the whole long and winding road ahead. The responsible university is a guide to the market place as well as to the deepest concerns of human existence. This is no small challenge, and it is one that can only be met by constant reflection and adaptation to changing circumstances in such a way that the core university values are preserved. It is also one that deserves the full support of the wider society. The responsible university is a *sine qua non* for the European Higher Education Area to become a success and a reality.

# Transnational Education

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**Contents:** INTRODUCTION.—MOVING FROM MYTH TO REALITY: THE MAPPING OF CROSSBORDER EDUCATION.—TRANSNATIONAL EDUCATION IS ALL ABOUT PROFIT AND PRIVATE FOR-PROFIT PROVIDERS?—LANGUAGE IS AN ISSUE, BUT IS IT A BARRIER?—TRANSNATIONAL EDUCATION UNDERMINES AND DISTORTS LOCAL PROVISION?—EVERYTHING WITH A «FOREIGN» SOUNDING NAME IS A TRANSNATIONAL PROVIDER?—TRANSNATIONAL EDUCATION IS OF POOR QUALITY...—CONCLUSIONS.

## Introduction

For centuries the notion of the travelling scholar, the mobile student, has been celebrated. By studying abroad the student has been exposed to new ideas, different cultures, perhaps to better or different ways of learning and teaching. In the twenty first century, millions of students are on the move and take either the whole of their studies abroad or participate in one of the wide range of regional and inter-regional exchange and study abroad programmes. The destination for the largest number of students is the United States of America, with the United Kingdom, Australia, France and Germany being other major destinations. However, over the last thirty years or so a new kind of mobility has been growing. Universities, through branch campus operations, and distance education provision are delivering their programmes and qualifications across national borders enabling students to experience some of the aspects of studying abroad while remaining at home. But, this world of borderless education —the mobility of education and training provision— is a controversial one provoking strong responses and challenging many long held values and beliefs about the nature of higher education, who should provide it and how it should be delivered.

## **Moving from myth to reality: the mapping of crossborder education**

One of the challenges posed by transnational education (where provision crosses national borders) is the lack of data and information as to what is going on, in order to inform debates about the quality, standards, relevance and impact of such provision. Traditional publications on international education, such as «Open Doors», record the mobility of study abroad students. The OECD, in its investigations about trade in education services, also focuses on study abroad or, more accurately, the recruitment of international students as an indicator because other information on transnational education has not been collected or indeed is difficult if not impossible to collect. The increasing number of programmes or courses being offered on-line, new types of students such as the expatriate worker and mobile professional, the «import» of education in order to «export» it through the recruitment of international students, distributed learning programmes and the development of increasingly complex partnerships to deliver programmes or related education services all serve to blur previously well-defined borders and make life difficult for those who are trying to map the growth of transnational education. A result of this has been the perpetuation of «myths» about transnational education—that is it is all of poor quality, unregulated, unwanted by authorities in the country of delivery and mainly carried out by commercial «for-profit» organisations—.

Like all myths there is some basis for some these beliefs but recently there has been an increase in the number of studies being undertaken on transnational education, and in particular distance learning, to establish the reality of what is going on and where it is happening. Current sponsors of studies include UNESCO and the Commonwealth of Learning, who have commissioned a mapping study on transnational tertiary education in countries as far apart as Jordan and Jamaica. The Council for Higher Education Accreditation (CHEA) in the United States of America, is sponsoring a similar study but with a focus on distance learning. Within Europe, the European Commission has sponsored three studies on transnational and borderless education, one of which, «Borderless education: lifelong learning knows no borders» (ACA, 2002), looked specifically at non higher education provision in transnational education and concluded that it was an area worthy of encouragement and promotion. The OECD, as part of its initiative of investigating trade in education services, is currently analysing trends in national policies and institutional/provider activities in cross border tertiary education in the three major regions of the OECD - North America, Europe and Asia Pacific; analysing «e»-learning case studies of



institutions in tertiary education; and, mapping current trends in international quality assurance, accreditation and the recognition of qualifications. At national level, Australian institutions and authorities now automatically include «off-shore» students—that is students studying for an Australian qualification outside of Australia—in their statistics of international students. Offshore students represent some 34% of the total number of Australian international students, indicating the volume if not the spread of borderless activity by Australian universities.

There is also the «invisible» or less visible consumption of transborder education through the take-up of on-line or other distance learning programmes by individual students and the vast numbers of students who sit for professional examinations and qualifications, in accountancy, banking and finance and computing and information technologies. This is the most difficult group to map. The borders crossed may be geographical or spatial but the import/export activity is not country to country but rather university or other provider directly to individual learners who may in some cases—for example the «global» MBA programmes such as that of Henley Management College—be scattered throughout the world. Overall, the numbers of such learners are huge especially if the learners who pass through the certification and accreditation processes of companies such as Microsoft, CISCO, SAP and Novell are included. While some of this is not higher education provision, many universities are either incorporating such certification within their part-time masters degrees or recognise these professional examinations for credit towards academic qualifications.

This article looks at some of the myths and emerging realities of transnational education and the implications and responses they prompt at university, national and international level for assuring the quality and standards of such provision.

### **Transnational education is all about profit and private for-profit providers?**

Trade in education services is currently a hot topic of debate. Although many in the education sector are in a state of denial about it, trade in education services, including higher education, is a reality and makes a substantial contribution to the economies of several developed countries such as Australia, the US, the UK and New Zealand. Other countries have clearly stated their aim to be knowledge based, service economies with education services as an important sector, and

have taken steps along this road by increasing the recruitment of tuition fee paying international students, and/or delivering programmes across borders through distance learning and corporate providers. These countries include Singapore, Malaysia, the United Arab Emirates, Kenya and India. Education services is one of the sectors in the World Trade Organisation (WTO) General Agreement on Trade and Education Services (GATS). It is one of the least committed sectors, partly as one would expect there are strong feelings that education cannot or should not be traded like motor cars. The debate on trade and education has been highlighted up by the recent round of WTO trade discussions, the Doha round, where requests and responses/offers to open up national education sectors to foreign providers are currently being negotiated. A consequence of these recent developments has been to highlight a new border and the need to improve «cross border» dialogue and understanding between trade and education ministries and officials at national and international level. While there is much disagreement about traded education there is consensus across all types of borders that the quality assurance of such provision and the protection of the interests of learners should be paramount considerations.

While it is undoubtedly true that commercial motives have fuelled much of the growth in cross border education there are also political and cultural motives. At national level, the desire of countries to attain or retain international influence through educating future generations of leaders and the need to broaden national cultural perspectives in a globalised knowledge society remain important factors. While many national scholarship programmes to support the mobility of students from developing countries remain in place, there are now examples of national government support for cross border development activities to reach new and wider constituencies, such as the recent German initiatives for campuses abroad and the creation of the UK «e» universities Worldwide, an «e» university to deliver programmes internationally.

At university level, internationalisation in higher education has in the past mainly been on a cooperative basis through exchange and networking activities. But, there is an increasingly competitive drive by institutions to establish or enhance their international «brand» image or profiles in new areas —both geographical and programme provision— in order to recruit and retain students and staff, to attract funding for research and development and to build links with international employers and the professions. In several countries, universities are being urged to diversify the sources of their income and move away from reliance on state funding. This has contributed to the development of cross border education by «public, state universities» from countries

such as New Zealand, Australia and the UK. However, a consequence of this is that what is a public university in one context is increasingly becoming a private and for profit organisation in another.

In many developed countries, the demand for «high level» lifelong learning provision, offered on a flexible basis, is creating a new pool of learners whose needs are often not recognised or being met by traditional university providers. The result of this has led to an increase in both visible and less visible cross border professional education using new forms of delivery, and to an increase in partnerships between public and private higher education institutions and commercial organisations, including the employers of the learners. The border between public and private higher education in the provision of lifelong learning and continuing professional education is becoming less visible.

The emerging picture of transnational education (indeed if there is one single picture) is a complex one. There are no accurate quantitative data on transnational provision but studies suggest that at the moment the majority of provision is through public or private universities who when they cross borders (either geographical or sectoral) operate either on a private-for-profit basis or at least on a minimum cost recovery basis—that is they charge tuition fees at a level to cover the costs of delivering the programmes in order not to have the taxpayer at home subsidise the student abroad—. There are many cases of public universities operating on a private for profit basis. For example, Melbourne University Private (MUP) the innovative private arm of the public University of Melbourne in Australia operates in eight countries and last year won the Victorian Government «Governor’s Export Award for Education». iCarnegie is a for-profit affiliate of Carnegie Mellon University, Pittsburgh, offering on-line courses in software development commercially. They affiliate partners with higher education institutions and other organisations internationally to offer students additional support, including face to face instruction. Partners gain access to iCarnegie certification but also faculty training and ongoing mentoring. Although all provision is sub-degree there is the possibility to include it within a degree.

Current mapping of the relationship between public companies and higher education suggests that «the rise of borderless education is characterised by deeper and more complex relationships between commercial entities and non profit higher education» although it is not known how far these relationships will develop and what will remain the province of the non profit sector (Garrett, 2003). Nevertheless, current evidence suggests that public and private not-for-profit universities and colleges have a much higher share of commercial cross-border activities in higher education than private for-profit companies.

## **Language is an issue, but is it a barrier?**

It is often believed that borderless education is the sole domain of English speaking countries (in particular the USA, UK and Australia) and that all transnational education is delivered in the English language. This is an indication of how language is an important barrier and issue in the borderless world. While it is indeed true that much transnational provision is delivered in English, many Australian and UK universities operating outside their national borders permit either all or part of their programmes to be delivered in the local language. This prompts concerns about quality assurance, and could potentially be misleading for employers and others who may be recognising the qualifications for formal purposes with expectations about the graduate's competence in English. In such cases the degree certificate and/or transcript should alert them to the fact that the student has not studied in the English language. However, there has also been an increase in the number of universities from non-English speaking countries who are delivering the whole or part of their programmes in English. The most prominent examples of these are business schools in Europe who are recruiting students (and staff) on an international basis. This too might prompt concerns about the quality and teaching and learning where all parties concerned are using a foreign language. A recent study by the Academic Cooperation Association (ACA) appears to discount such concerns in relation to provision in Europe, however, quality audit reports from the Quality Assurance Agency for Higher Education in the United Kingdom frequently comment on the challenges language poses in transnational provision particularly in relation to securing the integrity of the assessment of students learning.

The «Exporting German Study Courses Programme», with projects in Singapore, Hanoi and Cairo, provides another «language» example but in a different context. Singapore plans to be a «thriving international education hub» bringing together large niche, public, private, foreign and domestic educational institutions, and is both an importer and exporter of education. The Singapore Economic Development Board set a target of attracting ten prestigious foreign institutions to the city by 2008. To date, nine universities have opened branches in the city including INSEAD (France), Wharton and Duke (USA) and the Technische Universiteit Eindhoven (Netherlands). A recent addition is the German Institute of Science and Technology (GIST), which is a partnership between the National University of Singapore (NUS) and the Technische Universität München (TUM). GIST is the first independent foreign subsidiary of a German university and also the first German university with a fully

English language curriculum. GIST draws on faculty of both universities and both universities award its degrees jointly but the institution is operated by TUM-tech Singapore Pte Ltd, a subsidiary of TUM. The students come from all over the South East Asia region. This example not only shows how a language barrier has been removed but how different types of borders are being crossed by a public, state institution operating as a for-profit concern abroad and recruiting on an international basis. While there are many Australian, US and UK institutions operating in Singapore, it is clear that the government sees no barrier in terms of sourcing education provision in the English language from countries where English is not the national language.

While it is common in the wider international community to hear about developments delivered either in the English language or by universities from English speaking countries, it is much less common to hear about the activities of other major language communities such as French, Spanish and Portuguese who have developed transnational initiatives in relative isolation (Observatory, February 2003). There is an information gap to be filled as there are many complaints from Latin American countries about the activities of transnational providers but the evidence has not been put in the wider international public domain.

An example of francophone transnational activity is the Agence Universitaire de la Francophonie (AUF), a Montreal based multilateral organisation of 430 francophone public and private universities, research institutions and international agencies. The Agence coordinates major projects promoting ICT in education, the global exchange of knowledge and student mobility, of which the Université Virtuelle Francophone (UVF) is one of the largest. The UVF comprises research projects and networks for francophone academics and funds and supports more than twenty international collaborative projects promoting international cooperation, teaching development and content creation.

«The AUF manages a number of university programmes and training institutes located in developing countries covering telecommunications, political science, computer modelling and financial management as well as doctoral programmes in linguistic engineering and social sciences. Five graduate level training institutes, located in Bulgaria, Mauritania, Vietnam, Laos and Cambodia are designed to train experts in management, business, computer science, tropical medicine and technology respectively. These institutes are managed multilaterally by the AUF in conjunction with the governments of francophone countries and are supported by faculty from French, Swiss, Belgian and Canadian universities. The students are awarded degrees equivalent to those of French Universities and trained as potential future managers for local

companies or faculty for universities in the region.» (Observatory, Breaking News, Feb 2003)

Open and Distance Learning Universities naturally enough were among the first major providers of transnational education. The Universidad Nacional de Educacion a Distancia (UNED), Spain, is one example of these and has fifteen study centres around the world including in the United States of America.

### **Transnational education undermines and distorts local provision?**

Cross-border education is not all supply led. There is huge unmet demand for access to higher education especially in many developing countries where there is little or no likelihood of it being satisfied by national, publicly funded provision along the lines of the traditional model of public higher education in most Western European and some Latin American countries. Around the globe from Central and Eastern Europe to the Asia Pacific, from the Arab region to Latin America greater enrolment in higher education over the last decade has been made possible through the diversification of providers and provision. The size of the private higher education sector has increased dramatically and in many countries in these regions private higher education institutions outnumber the public ones. According to a recent UNESCO questionnaire, an average of 31.5% of students worldwide are enrolled in private higher educations although percentages vary considerably among countries and regions.

A growth in open and distance learning has also increased access to higher education in these regions. For example, in the current academic year, 30% of the total number of students in South Africa study in this mode, and new open universities either on a national or regional basis—such as the Arab Open University, with its headquarters in Kuwait and six branch campuses including in Jordan and Egypt—are fast developing across the world. Much transnational education has been delivered through distance learning and until recently was regarded with great suspicion in many countries where it was «delivered» as not only «foreign» in origin but «foreign» in terms of being an unfamiliar medium with no national comparator. As a consequence, qualifications gained through such provision were considered to be of poor quality and were not recognised by the national authorities, no matter how prestigious the providing university was. However, as national distance education is being developed with specified standards, this stance is changing and «foreign» providers have a clearer idea as to the standards that apply and will secure recognition for and acceptance of qualifications.

Given the acute need to expand access to higher education in many countries, transnational education providers have been encouraged by some «importing» national authorities to establish branch campuses, to enter into partnerships with local providers (private and public) and to contribute to the overall enhancement of local provision in quantitative and qualitative terms. Examples of this have included the experiences of Singapore, Malaysia and SAR Hong Kong, all of which have increased the participation rate of national students in higher education through a planned combination of expanding local provision (including in Malaysia and Singapore through the approval of corporate and private universities) and importing provision mainly from the US, UK and Australia. For example, in the SAR Hong Kong more than 400 foreign programmes are registered to operate. This does not include distance learning programmes where there is no face to face element. Such programmes are exempt from Ordinance for Non Local Provision as are programmes offered in partnership with local institutions.

In Malaysia, the Lembaga Akreditasi Negara (LAN) has had the task of accrediting local private providers, many of who have partnership links such as franchises, articulation and credit transfer programmes with a range of universities mainly from the US, UK and Australia. The LAN has also accredited foreign campuses such as Monash University (Australia) and the University of Nottingham (UK) and uses the same standards to accredit foreign —crossborder provision— as national provision. But, Malaysia along with Singapore intends not only to increase local participation in higher education but also to recruit international students and has set a target of 50,000 foreign students by 2010. There are currently some 30,000+ international students in Malaysia and more than half of them are studying in private for profit institutions often for foreign qualifications. As part of its efforts to support international recruitment of students Malaysia intends to establish Education Bureaux in China, Indonesia, Vietnam, the United Arab Emirates and South Africa. So, the phenomena of import to support export and South-South transnational education providers are emerging.

Other countries with no indigenous higher education provision have invited foreign universities to open campuses to deliver a limited specified range of programmes. An example of this is Qatar where four foreign universities —Texas A&M University, Virginia Commonwealth University and Cornell have campuses along with the College of North Atlantic Qatar, a Canadian University—.

Recently the governments of India and of China (the largest exporters of students, with numbers growing every year) have indicated

that they would like more crossborder providers to deliver programmes in their countries, partly to reduced the foreign exchange drain of the larger and larger numbers of their students choosing to study abroad and partly to contribute to national capacity building in higher education through fostering partnerships with local institutions, especially in the case of China, and enhancing competition between universities. India, through the Indira Ghandi Open University and some of its ICT training companies is already an exporting country with a growing presence in the Gulf States.

There is a danger that unregulated transborder education could undermine or distort the local education community and provision particularly where resources, including quality assurance, to control and manage such provision are limited or overwhelmed and there is no clear strategic plan as to how best to exploit crossborder provision.

What might the distortions be?

- the provision of a limited range of subjects by cross border providers —mainly in business, management and computer and information technologies—. This is a common complaint —that foreign providers only offer programmes which are popular and cheap to put on and do not contribute to national capacity building and relevance in terms of offering a wider range of programmes, especially in areas deemed by the government as of strategic importance—. However, this poses the question of who determines relevance? Governments or learners? The demand for qualifications in business, management and ICT mirrors the popularity of such subjects with learners elsewhere and may offer a greater possibility of international recognition of qualifications especially in ICT;
- lack of awareness of the local cultural and employment context. This is a complex issue and one deserving of more investigation by universities and national authorities. Many students are attracted to crossborder provision precisely because it is not national, that is, it is perceived to be different either in terms of content, quality, teaching and learning experience, international focus or recognition. However, it is important that students are not disadvantaged in the national employment market by having inappropriate knowledge, skills and competences. Sometimes a condition of recognition or licensing of transnational education by the importing nation includes a requirement for specific course content eg the current requirement by LAN (Local Area Networks) for moral education or Islamic studies to be included in all programmes;



- lack of awareness of national policies in respect of widening access to higher education especially for under-represented groups of society. This is a very sensitive issue often raised by authorities in South Africa where higher education has a particular role in transforming society and redressing inequities. Access to fee-paying transnational provision is a burning issue in many countries. Recent suggestions as to enhancing access to such provision have included the reservation of 10% of places on a scholarship basis for students from disadvantaged groups. This is a practice already adopted by some universities, which operate on a for-profit basis in cross border activities.

When individual universities cross borders to offer programmes elsewhere they are often unaware of the cumulative effect and impact of their several individual efforts. The competitive nature of much transnational provision, between providing universities and indeed nations, appears to preclude cooperation between providers and enhances the need for attention to quality assurance matters at national and international level.

### **Everything with a «foreign» sounding name is a transnational provider?**

The development of indigenous private-for-profit education provision and the incidence of the import of transnational education has in several countries tended to develop in parallel. Sometimes there are partnerships between such organisations. However, this has often led to confusion as to who is providing what. These partnerships are often described as «franchises» but the use of a single term to describe the relationships is misleading. These partnerships are often complex arrangements with different services (sometimes of a very limited nature) being delivered by the «importing» partner and different levels of control (sometimes very significant) being retained by the exporter. However, from the outside things might look the same.

Appearances can also be deceptive in terms of provision that looks as if it is transnational but is in fact being delivered by indigenous private providers or independent «international» institutions. These institutions may have names that incorporate words such as, Anglo/British/American/European/International or incorporate the names of major world cities giving the appearance of links or standards that are more apparent than real. The issue here is to ascertain the status of such institutions, which may well be providing a quality educational experience, but not

necessarily one which is part of or has recognised links to a higher education system elsewhere. Indeed some of these institutions may be recognised as part of the higher education sector in the country where they are located rather than as transnational ones. While the authorities in all major exporting countries maintain public lists of their recognised/accredited universities and colleges and/or recognised accreditation bodies, there are constant problems over the identity of «apparent» transnational providers which add fuel to the fire of local academic communities in terms of the «poor quality» of transnational education and damage the reputation and standing of the system(s) to which they allegedly belong.

This situation is even more challenging in the cyber-world where there has been a proliferation of the incidence of diploma and accreditation mills operating on the Internet.

All of this points to the need to improve access to reliable information for would be learners as to the status of providers and to educate them to use such information to making informed choices about transnational study.

### **Transnational education is of poor quality...**

The quality assurance of transnational education provision is a real challenge but the picture is neither as gloomy nor as absolute as critics suggest. A variety of initiatives either by individual universities, importing countries and/or exporting countries, the wider development of national quality assurance systems, efforts to develop if not common standards then a common understanding of what standards are, and the emergence of national frameworks of qualifications (from the North to the South) are all examples of efforts which are contributing to the quality assurance of crossborder education. Nevertheless there is a long way to go and perhaps a «steady state» will never be achieved because of the fluidity not only of the world of transnational education but also of the world of quality assurance.

Questionnaires and surveys by international networks for quality assurance such as the International Quality Assurance Agency for Higher Education (INQAAHE) and the European Network for Quality Assurance (ENQA) reveal an increase in the incidence of national systems for quality assurance and accreditation across the world. And, there is evidence that some of the newest QA systems already incorporate standards for some aspects of transnational education. For example the recently revised standards for licensure and accreditation of programmes and institutions for the United Arab Emirates incorporate distance learning standards. The Commission of Academic Accreditation has circulated its standards to

quality assurance agencies in «exporting countries» inviting them to advise their members as to the changes they will have to meet to operate in the UAE. The draft guidelines for the national quality assurance and accreditation agency in Oman incorporate a qualifications framework providing guidance on expectations relating not simply to the structure of qualifications but also the expected student learning outcomes. The development of national quality assurance systems contributes to the quality assurance and recognition of transnational qualifications by providing a basis for comparing standards. Too often in the past transnational education has been condemned as of poor or dubious quality on the basis of prejudice alone rather than on measured comparison with explicit national standards.

Several major importing countries such as SAR Hong Kong, South Africa and Malaysia already have legislation and procedures in place to license and/or accredit foreign providers. And, there has been an increase in quality assurance activities on the part of some of the exporting countries. US regional accreditation agencies have always included scrutiny of the overseas branch campuses of the universities and colleges they accredit. Some of them have extended their (institutional) accreditation activities to non US institutions in other countries, that is independent institutions with no branch campus in the US. The QAA (UK) has continued a programme of audits of the management of overseas links and partnerships of UK universities through which transnational education is delivered. The reports of these visits are published and are available on the Internet. Finally, the DEST in Australia has announced that it will contract the Australian Universities Quality Agency to carry out audits of offshore provision. However, it appears that some of the «silent» exporters have yet to act either in terms of providing guidance to their universities in terms of Codes of Practice and standards for transnational provision or in terms of reviewing it and reporting publicly on the outcomes.

At discipline and professional level there are a number of international initiatives to set international standards for or to recognise transnational education. An example is in the field of Business and Management where well-known accreditation agencies, such as the AACSB International, a recognised US agency, and AMBA, a UK agency, are in effect competing in the international market to accredit non-national providers or provision. A third major player here is the accreditation programme of the European Foundation for Management Development (EFMD), an independent international player. They all accredit distance learning provision but not necessarily with the same criteria and standards. To some extent this range of competing «international accreditors» poses dilemmas for universities. Some, especially in the developing world cannot afford the accreditation process, others appear to feel the need, perhaps for recruiting or operating

in particular markets, to seek accreditation from all three. But, what does it mean when accreditation in one context is a statement of minimum quality and in another is taken as a sign of excellence in the international domain? Does this help the learner to make informed decisions about choice of programme or university?

Other commentators or standard setters for quality are emerging, including the media—in particular newspapers and journals who are not only ranking universities in the national context (for example «Stern» in Germany) but, are now doing so on an international basis, for example *The Financial Times* ranking of business schools—.

At inter-governmental level several initiatives in relation to the quality assurance of transnational education exist. Some two years ago the Council of Europe and UNESCO-CEPES published a Code of Good Practice in the Provision of Transnational Education which was endorsed as an annex to the «Lisbon» Declaration on the recognition of qualifications. However, recent mapping exercises on transnational provision in Central and Eastern Europe revealed little knowledge of the Code and even less use of it by operators in the region. In the context of the current debate on trade in education services and substantial increase in transnational education UNESCO has established a Global Forum on Quality Assurance, Accreditation and the Recognition of Qualifications that has developed an action plan incorporating capacity building exercises to improve quality assurance at national level, endorsing the development of Principles of ethical practice in crossborder education and partnerships between higher education, business and society and supporting the revision of the existing regional conventions on the recognition of qualifications to bring them up-to-date and take account of recent developments in higher education such as distance learning and the cross border provision.

## Conclusions

What does all of this mean for universities of the twenty first century? What vision can one have for the university without geographical borders? Universities that choose to operate across geographical border will do so on the basis of careful analysis of their capacity to deliver good quality and standards in new and challenging contexts. The learning experience from transnational education has taken and will take universities across new organisational borders into areas such as the assessment and management of risk, including succession and sustainability planning, the management of complex service delivery partnerships and joint international ventures, and, in some cases, a

different type of relationship with learners who view themselves as not only partners in the academic venture but also as customers with expectations about service standards and levels.

Transnational education has exposed in sharper relief the links between quality assurance and the formal recognition of qualifications and the need to remove borders to create a continuum—a flow from quality assessment to recognition—rather than a series of hurdles for universities and students to vault. However, not enough is known about the successes of students in transnational education. Universities that participate in cross border delivery will improve the tracking of their graduates to establish where they go and what they do. What success do they have what barriers, if any, do they face as a consequence of studying through transnational education?

Finally, universities will do impact assessment reporting looking beyond the financial/economic dimension of their transnational activities to the environmental and societal impact of their activities and the contribution they make to communities wherever and however they are operating.

## Resources

AACSB: [www.aacsb.org](http://www.aacsb.org)

ACA: [www.aca-secretariat.be/02projects/Borderless\\_education.htm](http://www.aca-secretariat.be/02projects/Borderless_education.htm)

CAMPBELL, C. & ROZSNYAI, C. (2002), *Quality Assurance and the Development of Study Programmes*. UNESCO-CEPES: Bucharest.

Council for Higher Education Accreditation: [www.chea.org](http://www.chea.org)

European Foundation for Management Development: [www.efmd.be](http://www.efmd.be)

European Network for Quality Assurance: [www.enqa.net](http://www.enqa.net)

GARRETT, R. (2003), «Mapping the education Industry: Public Companies and Higher Education», in *International Higher Education*: Number 32, Summer 2003: Boston.

International Network for Quality Assurance: [www.inqaahe.nl](http://www.inqaahe.nl)

OECD: [www.oecd.org/cei](http://www.oecd.org/cei)

Open Doors: [www.opendoors.iienetwork.org](http://www.opendoors.iienetwork.org)

StudyMalaysia: [www.studymalaysia.com](http://www.studymalaysia.com)

The Observatory for Borderless Higher Education: [www.obhe.ac.uk](http://www.obhe.ac.uk)

The Quality Assurance Agency for Higher Education: [www.qaa.ac.uk](http://www.qaa.ac.uk)

UK «E» Universitiesworldwide: [www.ukeuniversitiesworldwide.com](http://www.ukeuniversitiesworldwide.com)

UNED: [www.uned-usa.org](http://www.uned-usa.org)

UNESCO: [www.unesco.org/studyabroad](http://www.unesco.org/studyabroad)

World Trade Organisation: [www.wto.org](http://www.wto.org)



# European Universities in the 21st Century\*

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**Contents:** 1. THE MAIN FORCES LIKELY TO SHAPE THE FUTURE OF EUROPEAN UNIVERSITIES OVER THE NEXT DECADE.—2. SOME LIKELY CORE FEATURES OF THE EUROPE OF UNIVERSITIES BY 2015.—CONCLUSION.

This brief article sketches a perspective of European universities in a decade from now, i.e. by the time when the current efforts to build the European higher education area should have born fruit, as required by the Bologna Declaration that launched the process in May 1999. The pages that follow draw on a reflection about the main worldwide trends and European processes already at work and their likely outcome. It should be clear from the outset that my purpose is to provide a perspective and not a prophecy; I do not seek to describe a future reality that no one can predict. My main aim is more modestly to draw up a list of some of the main factors that are likely to shape this future reality, and to imagine one possible future scenario that seems in tune with current trends.

## 1. The main forces likely to shape the future of European universities over the next decade

### *The development of the knowledge society*

The knowledge society will place new demands on education systems in general, and on universities in particular. They have to do with the acceleration of knowledge production, the multiplication and diversification of the sources of new knowledge, its dissemination

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\* The views expressed in this article are his own and do not necessarily reflect those of the European Commission.

through varied learning channels and its application through innovation processes. While not all innovation is research driven, the development, quality and organisation of university-based research will be an important determinant of the future of universities in Europe, as well (less directly) as of the place of Europe in the world. The knowledge society is not based only on science, but engineering and technology, research, and innovation in these areas are likely to be of particular importance, including in multidisciplinary activities where they are combined with sociology, psychology, economics, humanities, etc. The premium going to talent in science and technology, and to highly educated people with advanced knowledge or expertise in all areas is unlikely to diminish, as competition for such talent is almost certain to increase around the world. The advent of the knowledge society will underline the need to develop a widely-shared «science culture»; to advance curricular reform; to increase lifelong learning opportunities in science and technology-related areas; to encourage more women and minority-origin citizens to take an active interest in these areas; and for new formulas to encourage, fund and utilise interface platforms with industry. It is also likely to boost networking activities which bring together research teams (both within universities and around them, for example in science parks, as well as at a distance) and persons or institutions with a complementary role, such as coordination or management.

### *Globalisation in an increasingly competitive environment*

The rising curve of demand for talent (human resources), money (access to information and technology), outreach (or «markets») and prestige is very likely to continue in the years ahead. Internationalisation and globalisation may well lead to a reduction in the extent to which universities are insulated within their national and/or regional areas by national borders and regulations. It will bring competition from other parts of the EU and from the rest of the world right into universities' courtyards, in the form of imported formal or non-formal education and training, often delivered by distance means, either in the local language or in English, as well as in the form of greater access to mobility for the brightest and best of talents. This will happen irrespective of the GATS (General Agreement on Trade in Services) debate on the liberalisation of «educational services», which is likely only marginally to influence the speed and direction of the impact on education of internationalisation and globalisation. Competition is likely to affect some segments of higher education more than others, with engineering and technology, postgraduate and doctoral studies, advanced management and quality



assurance (including accreditation) bodies among those most directly exposed to it.

This will mean a profound change at universities, especially in those countries, regions and institutions still enjoying a high level of protection due to regulation, linguistic reasons or restrictive quota systems which ensure artificial over-subscription; in such systems, the awareness of competition may remain lower for a longer period of time, with high levels of self-confidence and deferred incentives to adapt to the knowledge society, to learners' needs and to governments' and societal demands for accountability. Competition will not be restricted to the inter-institutional level: it is likely increasingly to take the form of competition between national systems and approaches, first and foremost within the EU but also with main overseas providers (primarily the USA, but possibly increasingly also a number of Asian systems in certain key areas). A complex picture of competition in some areas and cooperation with diverse partners in others is likely to emerge from this process.

#### *Advancement of European integration in education and research*

Three complementary processes with direct relevance to European universities are currently at work:

- The «Bologna process», first started at the Sorbonne in 1998 by 4 countries and reinforced one year later by 30 countries. Its aim is to set up a coherent, compatible and competitive/attractive European higher education area, by means of structural reforms converging towards a set of common features: a degree structure articulated in an undergraduate and a postgraduate phase, a common framework of reference for first (bachelor-type), second (master-type) and third (doctoral) level qualifications, ECTS (European Credit Transfer System)-compatible systems for the accumulation and transfer of credits, quality assurance with a European dimension, joint/double degrees, etc. This process, based on intergovernmental cooperation, but with a strong input from universities and the European Commission, has already led to in-depth system reforms and curricular renovation in many countries. Its biggest challenge for the years ahead will be the setting up of a European mechanism (or «clearing house») for the mutual recognition of quality assurance outcomes (including in the form of accreditation). If this can be achieved, it would mean a breakthrough in the direction of compatible qualification frameworks, and a significantly better recognition of degrees for academic and professional purposes.

Progress on this particular front has, however, been rather slow since 2001, and at the time of writing it is not yet certain that higher ambitions will come out of the Ministerial meeting of Berlin in September 2003.

- The creation of the European research area, in the wake of the EU's new overall ambition to become by 2010 the most dynamic knowledge-based economy and society in the world (European Council of Lisbon, March 2000). The Barcelona European Council two years later set a concrete goal in this area, i.e. that the total investment in research and development and innovation (that is, both public and private) should reach at least 3% of GDP within the EU by 2010. With increased means made available through the Sixth Framework Programme, including the Marie-Curie scheme for the mobility of researchers within the EU and with the rest of the world, the research and innovation function of universities has received fresh attention from policy makers at national and EU level.
- The implementation of the Work Programme on the future Objectives of Education and Training systems adopted in 2002. This «Objectives process» is the education/training arm of the overall Lisbon strategy and represents the most comprehensive effort ever undertaken in Europe to make policies and structures in these areas converge towards the main EU goals for 2010, «in a lifelong learning and a worldwide perspective». The 3 strategic goals (quality, access, openness) and most of the 13 shared objectives set out in the Work Programme are of direct relevance for universities, e.g. on such aspects as quality assurance, the recognition of prior learning or the attractiveness of Europe to students, scholars and researchers from the rest of the world.

Even though they derive from different legal bases, these 3 processes have much in common: they have the same time horizon (2010), use similar levers for change (political cooperation based on comparison and peer pressure) and involve about the same 30+ countries (EU 15, 10 accession countries, EFTA and candidate countries). The combined impact of this European action on universities is likely to be much stronger than was the case in the past, when most action at EU level was restricted to the funding of mobility schemes. All 3 processes represent an agenda for structural change pointing in the same broad directions.

Their likely consequences are:

- the improvement of the *framework conditions* for the mobility of students, young researchers and higher education teachers and staff;

- the generalisation of ECTS credits as building blocks for more flexible curricula;
- the adoption across Europe of standardised transparency tools (European CV (Curriculum Vitae), Diploma Supplement, Europass, etc) - yet without compulsory or automatic recognition throughout Europe: universities should design their own recognition policies and should disclose them, bearing in mind that if these are too restrictive they will limit their access to the most precious resource of all for universities: students;
- the strengthened development of joint/double degree courses, etc, including the changes to national legislation required to make them effectively possible.

### *Investment policies*

Another consequence of the Lisbon strategy is related to its call for a significant annual increase in (total) investment in education and training. On this basis, the Commission's Communication on the imperative to invest more and better in education/training stressed that a substantial gap had opened up with the USA at university level. European universities suffer from a dual funding deficit in comparison to their US counterparts. They are at the crossroads of two comparatively under-funded areas: *higher education* (on which Europe spends in total less than half than the USA in terms of GDP: 1.1 % compared to 2.3 %) and *research* (1.9 % compared with 2.7 %). In both cases, the gap is due overwhelmingly to weaker private investment, while public spending on universities and on research is of a comparable magnitude. The Communication also identified a number of «signals of inefficiency» in the use of existing financial resources, including several that concern higher education in particular, e.g. longer study duration for a given level or degree, higher dropout and failure rates, higher graduate unemployment rates (which suggest a stronger mismatch between student output and labour market need), etc.

The development of funding policies over the coming years will therefore be a key determinant of the future of universities (and indeed of the whole of national higher education systems) in Europe and in the world. Where public resources are not sufficient to provide universities with enough resources for them to play their full role in an increasingly competitive context, there are in essence only two ways forward:

- one is to accept (overtly or not) that under-funded institutions and systems (and their students and staff) are to be at a structural

disadvantage and will inevitably find it increasingly difficult to sustain their position; but that for political (and perhaps societal reasons) there is no alternative to accepting this, even with its implications for the relative decline of universities in that country; —the other is to diversify universities' sources of income, and to look for higher contributions from students/families, enterprises and/or private donors.

It is hard to doubt that, in the longer term, in a more open European and international university area, a clear correlation will exist between the resources available (total level and sustainability of resources, efficiency of spending) and the outcome and reputation of individual universities and national higher education systems.

### *Demography*

The general trend in Europe has been towards declining birth rates. This entails an inevitable decrease in the intake of post-secondary initial university students—even though it may temporarily cohabit in some countries with a growth in the rate of access to higher education which will reduce the impact—. Similarly, in some (but far from all) countries, it is partly offset by an increase in the number of adult learners enrolled at universities. The likely consequence of these trends is increased competition between universities for students. While this may be more acute for students with some kind of special talent or knowledge (e.g. in science and technology, or at postgraduate level), the diminishing size of cohorts of new entrants is such in several countries that it will affect whole institutions and systems, which will need to fight to keep certain departments and research laboratories open. The only temporary exceptions are likely to be the few oversubscribed institutions and systems, including those countries not offering enough student places and not yet noticing the impact of diminishing demand for initial university education. Another likely consequence for higher education of demographic change will be a likely increase in mobility and transfer between institutions and countries, both within the enlarged EU and between Europe and the rest of the world. Marketing European higher education abroad will be an absolute necessity for some countries with diminishing domestic enrolments, if they want to safeguard their higher education, science and research potential.

The most important factor related to these changes is that they will entail new consumer power for students, and new demands from them. Students will no longer be trapped in their national system, however good or less good it may be. With increased physical mobility and

competition for talent, the development of courses taught in English in more and more countries, and the availability of imported education in many disciplines, students will have more ways than ever before to choose the higher education they want, either as a substitute or as a complement to provision from local universities. Those universities able to attract active students and deliver degrees they can use all over Europe (and beyond) are likely to benefit most from this trend. The others are likely to lose some of their best students, who will be aware of what is available elsewhere, and will seek to take maximum advantage.

## **2. Some likely core features of the Europe of universities by 2015**

### *Universities as a public good*

One common core feature of the Europe of universities in 2015 is likely to remain their status as public institutions. That higher education is a «public good» has been underlined repeatedly by governments, universities and student and teacher unions. Notwithstanding this chorus, however, three movements are likely to leave their footprints:

- the development of a more substantial private sector as a complement, and indeed an alternative to public universities. This may well be concentrated in some disciplines, professional areas or specific segments of the education and training continuum, and may also happen at the initiative of public universities themselves, who will seek (perhaps of reasons of financial or administrative flexibility), or be obliged (perhaps for reasons of declining public expenditure), to farm out certain activities, such as professional development courses where they are in direct competition with commercial providers, or special courses for which they need a specific regulatory or financial framework;
- the diversification of financial resources, i.e. the growing importance of contributions from enterprises (increasingly as contracts for research and other services) and donors, and possibly in some countries from students/families (perhaps more in some areas than in others, perhaps less at bachelor than at master level);
- the move in the direction of more professional management of available financial resources, as a response to the growing demand for accountability and efficiency.

On the basis of higher education as a public good, it is foreseeable that lifelong learning activities at universities will in ten years from now

have become a more tangible reality, although unevenly across Europe. General access for all may still not be available, but the recognition of prior learning acquired in all types of education as well as at work is likely to be much more widely applied than today —as a result of demography and growing competition for learners rather than of a spontaneous shift of university curricula in these directions—.

### *Diversified, differentiated institutions*

Another major foreseeable change resulting from the many combinations of factors shaping European higher education is that the degree of diversification, or differentiation, between universities is likely to increase significantly. While the basic articulation of degrees into bachelor-level, master-level and doctoral-level qualifications should be completed in all countries and at all universities, it is likely that their profile will be varied, depending on the type of institutions (more or less research-intensive, different approaches to research and learning), regional and cultural differences within Europe, the profile of renovated curricula, with more or less possibilities open to learners to customise their pathways (multiple entry and exit points). At the same time, there will certainly be more «bridges» between courses, institutions and countries, again mainly because students will be acknowledged as universities' main resource, and competition to attract them (and therefore to show how qualifications from elsewhere can be used) will be high.

The overall picture is likely to be one of a stratified, multi-layered system, where universities may belong simultaneously to various «layers» depending on the subject area or the approach considered. As a result of the need to encourage the emergence of «poles of excellence», one main line of divide may well turn out to be between a relatively small number of highly research-intensive universities of world or European class and other institutions; but if this does happen, it may be within three broadly different scenarios:

- an «ivy league» combined with a relative academic desert around it. This could be the ultimate effect of over-concentrating financial and human resources on «excellence», because would reinforce the concentration of the best teachers, researchers and (postgraduate) students into a small number of institutions;
- a plateau with peaks of excellence. In this scenario, the Europe of universities would be marked mainly by the development of high quality across the countries and regions of Europe, with a relatively high number of institutions featuring (sometimes very)

specific «areas of excellence», and of course a small number of them being recognised as generally «excellent» in Europe and the world. The main factor that could push the system in this direction might be a strong effort in favour of regional policies, drawing on the interaction between universities, industry, regional authorities and society in general; innovation has many sources and can spring up at all types of institutions, provided that a) it is valued there and b) it is made available to and acknowledged by the broader university community via appropriate networking;

- *a seamless European system.* This would consist of a continuum of more or less research-intensive universities, where broad-based or specialised knowledge, applied or fundamental research and diversified innovation activities would co-exist and complement each other. In such a system, institutional and curricular diversification would not be based on clear-cut boundaries between closed categories, and multiple networks would link similar as well as complementary institutions or parts of institutions. This hypothesis appears to be more dependant on substantial public funding than the other two.

#### *A framework of reference for quality assurance and accreditation*

In spite of current hesitations, it is most probable that some kind of mechanism to «organise» the diversity of European higher education qualifications according to the evaluation and certification of quality will have been completed by 2010. It is likely to include:

- a common framework of reference for the main levels and types of qualifications, setting out the basic characteristics of first, second and third level degrees. The need to keep, and indeed enhance the diversity of institutional and curricular profiles within this common architecture would mean that the European framework would be more comparable to a network or a matrix rather than a simple ladder of qualifications;
- a meta-system for quality assurance and/or accreditation. European higher education needs some kind of «clearing house» (perhaps based on peer review between national or regional quality assurance agencies) aimed at enabling the conclusions reached by national quality assurance or accreditation agencies to be valid beyond the national territory, because their own procedures and criteria have been shown to be trustworthy. The main idea is that quality assurance at national or disciplinary level must itself be

- subjected to quality criteria, and that when these are met the work needs not to be re-done: a simple clearing system is all that would be needed at European level;
- provision for much more extensive «vertical» mobility (students going abroad to complete a foreign degree, rather than importing a number of credits acquired abroad towards their home degree) and joint degrees. A major incentive for setting up a European clearing house is to avoid a situation where students from countries/institutions offering courses/degrees recognised only at home (i.e. «provincial degrees» opening only limited possibilities in the European labour market) lose out to graduates of universities/systems which have empowered themselves with the ability to award degrees widely recognised in Europe and beyond.

The setting up in Europe of a meta-mechanism for the demonstration of quality will be the ultimate test of the success of the Bologna process. There are good reasons to hope that this test will be passed, even though with considerable difficulties, and that the switches needed for it will be set no later than 2005. The European system is likely in due course to encompass countries currently not yet involved (notably Russia) and its creation may also accelerate the move towards a common higher education area with Latin America and the Caribbean (and maybe also with North America), marked by a combination of cooperation with competition.

### *Diversified funding*

The need for fresh and more diversified funding has already been pointed out, and the origins of university finance are likely to be much more diverse in ten years from now. There are also clear signals pointing towards more targeted research funding in the coming years. Tuition fees may have been introduced in more systems, but they are unlikely to have become a major new source of funding for universities: it seems more probable that they would function as a secondary financial resource, whose chief benefit might be to enforce a more efficient use of the system by students and their families. The principle of generalised access will remain a strong one in a European system permeated by the values of democratic equity and lifelong learning, and tuition fees will probably only be used in combination with fresh, more ambitious grant/loan schemes. It is also foreseeable that the role of universities in regional development will be stronger, which should entail an increase in regional funding. Finally, the role of universities in the Europe of



knowledge is likely to be acknowledged more concretely, with a more significant financial contribution from European sources such as the European Social and Regional Funds, the European Investment Bank and maybe new types of EU education/training/research programmes.

### *A modernised version of autonomy*

The picture sketched above can only become realistic if there is also a shift towards more professional governing bodies and decision-making procedures at universities. By and large, the importance of the management function is likely to be recognised much more as an essential part of the quality of educational as well as research system. Higher education, and even more research, are complex systems and their management must become more professional if quality is to be maintained and developed. With respect to their US counterparts, European universities overall may well not suffer from an adverse «quality gap», but the issue is whether they will be able to close the «management gap» (designing and streamlining institutional strategies with priorities and efficient management of human and financial resources) and the «marketing gap» (delivering what society and users expect and in getting better recognition for quality actually delivered).

This will entail major changes in the internal governance of universities, which in most countries requires changes in the law. Many countries have recently introduced legislation in this direction, stressing universities' responsibility in deciding their own curricular and research priorities and their administrative authority, in exchange for more transparent accountability. This pattern is likely to be more widespread by 2015.

At the same time, governments will have to recognise that universities must also have the appropriate degree of financial autonomy. They must make available to universities resources over a time-scale which permits them to plan ahead, to set strategic teaching and research priorities, and thus to provide an efficient service for society. That means a system of multi-annual financing, probably over a minimum period of 4 to 5 years.

### *Europe as a worldwide reference and a hub for higher education*

Making European higher education more attractive to both European and international students is an explicit aim of the Bologna process as well as of the «Objectives process», which reflects the desire of European Heads of State and Government that by 2010 Europe should be the primary destination of internationally mobile students, scholars and

researchers from other world regions. This would not really be new: Europe enjoyed this position up until the late Eighties or early Nineties, before losing it quickly and clearly to the USA. Whether Europe will be able to resume its leading role in this area will depend directly on the success of all other policies and reforms referred to in this article: it could in effect be seen as an overall indicator of whether or not the agenda for change and reform pushed by the various processes at work has delivered as it should. Promoting a more coherent image of Europe, launching new courses in tune with international demand, developing the impact of the recent or new programmes with Asia (e.g. Asia-Link), Latin America (e.g. Alban), or more generally with third countries (e.g. Erasmus Mundus, as the first of a new pattern of internationally-oriented EU programmes) —all these will help make this extremely ambitious goal a reality by 2010 or 2015—.

Success will of course also depend on other factors: will the number of internationally mobile students have reached a peak by then, after doubling or tripling since 2000, as more nations (maybe in particular in Asia) enter the knowledge society and build up their own capacities in higher education and research? Will the trend towards more courses taught in English continue or even accelerate, or will fears of losing linguistic diversity push in the opposite direction? Or will Europe be able to exploit its unique opportunity, offering courses in English to those who need/want it, as well as in a variety of other languages to those specifically sensitive to cultural/linguistic diversity? The scenario of Europe as a worldwide reference and a hub for higher education also implies the development of campuses abroad run by consortia of European universities to offer courses to (mainly undergraduate) students and high-level professional training or retraining.

All in all, this should make Europe a better partner for universities and students of the world, and should help lead to increased solidarity with the development of academic and research communities in developing countries.

## **Conclusion**

I have already stressed that the above scenarios are not meant as forecasts of a reality that belongs to the future and cannot by definition be predicted. The purpose of sketching the key factors at play, and a possible outcome of their interaction, is rather to underline that the future of European universities needs to be shaped and built-up, by means of proactive policies decided at institutional and national level,

but in view of the overall EU context. It cannot be left to chance and the effect of policies designed elsewhere and intended to support the interests of others.

One key difference of the Europe of universities of 2015 as compared to that of 2003 will in all likelihood be a much stronger European dimension in very many ways: investments, mobility, networking, cooperation and reforms in higher education will need to be designed and implemented in view of a broader European picture if they are to be effective and efficient. This is a very powerful engine of change. It is also matter for optimism, especially if we remember that the main reason for supporting moves in these directions is that they are designed to improve higher education «for the benefit of citizens and the EU as a whole», as the political introduction to the work programme on the Objectives of Education and Training Systems in Europe points out. The future may not be predictable, but its keys lie in our own hands.



# Universities Beyond Borders

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**Contents:** INSTITUTIONAL GOVERNANCE.—SCOPE OF INSTITUTIONS.—LEARNING PATHWAYS.—ECTS, *THE CREDIT SYSTEM*.—HOW TO KNOCK DOWN BORDERS.

In the past uncertainty about academic recognition and lack of finance were identified in several studies as being major «borders» for student mobility. With the help of programmes of the European Union, national governments, other organisations and also with the students themselves, many barriers have been knocked down since, at least partially. By doing so, not only new opportunities were created but also other threats revealed. It seems today that there are new borders which bar the development of universities and the learners in general. If they do, what are their characteristics, how can they be removed and what would be the situation if these threats did not exist? By answering these questions this article will use the term «university» in its broadest sense, covering any type of institution in higher education and will not limit itself to higher education only.

Borders could be related to

- institutional governance,
- scope of institutions,
- learning pathways.

This list can be extended easily but in the following facts about barriers in these areas will be identified and visions of future developments of a «better world» imagined. Also, ECTS (European Credit Transfer System) will be investigated as a tool, being a possible linchpin taking away borders. The headline encourages to dream: Imagine there were no borders, what a wonderful world would there be?

## **Institutional Governance**

### *Facts*

Corporate governance has become an issue because of the need to separate ownership and management control of organisations in general

and the increasing tendency to make institutions more visibly accountable to all stakeholders. Thus universities are for example run by former managers of businesses and on their boards a wide range of stakeholders are represented. It is obvious that this development entails a variety of potential conflicts of interest between the various stakeholders and the necessity of making the universities and their activities much more transparent. This will, of course, lead to many more questions in terms of methods and directions of these institutions.

The institutions have to ask themselves whom they should primarily serve and how the university management and teaching staff could be held responsible for this. As a guideline the expectations of the various stakeholders have to be considered, e.g. the employers, the students, society as such. What will they see as being acceptable in terms of the present situation and the future development of universities? It surely is also a question of power and it is important for the institutions to understand this to be able to design their own educational strategy. This has to be seen in the light that the influence of ministries is decreasing in many countries being often linked to a reduction of financial support. To a certain extent quality assurance is outsourced to particular agencies whose vote may decide upon the permission of a university to run a programme or to be able to exist at all. Of course, this cannot be seen without looking at the competences and resources of these organisations, the cultural influences and ethical issues to the extent how to integrate, e.g., students from other countries, or how to foster the education and training of those who used to be excluded. As regards governance there are significant differences in terms of traditions and frameworks. Therefore, it is not enough to look at the legal environment only.

Overall, more and more private organisations offer education at higher level and even have degree awarding power. Companies have moved into this sector as well and have founded corporate universities and a significant number of academies and other learning institutions. The legal status of universities is being changed or at least being considered. In the federal state of Lower Saxony in Germany, for example, a pilot project has been started to transform public universities into foundations. These foundations own their estate among other things and get an identified budget which, however, will decrease over time and will make it necessary for universities not only to compete for students but also for financial support, much more than they used to. Fund raising will be an issue, for which no experience exists yet—but for which great know-how is available across the ocean and also in some Member States of the European Union—. Some implications are obvious: a move towards business-type organisations with a management and staff focusing also

on such activities in addition to designing programmes of teaching and learning. In some places these are hard facts already.

### *Vision*

The vision being developed out of these issues may certainly cause many mixed feelings. There are several scenarios possible. In the best of all worlds, universities may accept to be transformed into a specific type of business organisation—at least in parts, crossing the border from an institution protected by ministries and national law, to an organisation which has to operate in the market of education and training services, facing competition in several ways, in terms of public and private finance, students, employers, and receiving the acceptance of society—. The hope is that this will be for the better in terms of educating and training learners more effectively and efficiently. It goes without saying that any effort has to be made to keep the norms and values of universities having been acquired over centuries do not get lost. It cannot be that only monetary issues dictate the supply of education and training.

A new culture will be developed which fosters closer relationships of the organisation and their stakeholders. Alumni organisations will be taken for granted and also life-long-learning programmes in the sense outlined below. Governments play the role of a night watchman, as Adam Smith once coined the term about his ideas of the role of governments in national economies. But it is not just that the borders between public and private organisations and between restricted and open markets will be diminished, also activities being practiced in the business world may become common practice. Mergers and acquisitions, for example, even cross-border forms of co-operation and concentration in terms of linking institutions across country borders will emerge. Strategic alliances as in the airline industry will have to be considered. Alliances in which the learner can move on the basis of a common code from one learning area to another (code sharing), taking with him all what he has achieved so far in the form of credits being generally valued and recognised. In parts these developments are already realised today, also within programmes of education and training of the European Commission. But these partnerships are so far relatively loose and most times legally speaking not binding. This may change.

Linked to this the role of study-programmes will have to be reconsidered. Is it the best way to register students in programmes in which they have to follow a pre-determined course, more or less? The introduction of ECTS as an accumulation system seems to encourage this way of thinking. But it is just the other way round: ECTS allows the

institutions to identify their profiles in terms of well defined degrees to which many paths are possible depending on the individual learner and his or her background. In other words, there is a move away from institutional study-programmes towards individualised learning programmes, not in the sense of a «pick-and-choose cafeteria system» but in the «well-thought through menu system» which —with the expertise and help of university staff— will give the student the necessary orientation to design his or her own path to improve employability. In other words, the present borders which sometimes make it impossible or at least extremely difficult for a student to swap between programmes, will be abolished.

This may also have other consequences: Increasingly students will be «hand-picked» (which happens in some countries already) which means that the selection can be made much more geared towards the learning outcomes and not —as most times in the past— on the status of the qualifications achieved prior to entering the institution of higher education. Restrictions like «numerus clausus» will disappear, not only because there may not be enough students but also because institutions of higher education will be much more aware that «learner relationship» begins right at the start when an individual student is being selected and does not stop there as the learner has to be monitored throughout their studies.

## **Scope of Institutions**

### *Facts*

European institutions have set up offshore institutions to a limited extent only. In many countries it is relatively new that universities have started to set up institutions somewhere, mostly outside Europe, in Asia or the US. Otherwise, institutions from e.g. the United States or Australia run off-shore establishments in many a place in the world. In particular British institutions have looked for franchise agreements anywhere, some with the focus in Europe. Although franchisees have to pay a fee these arrangements can be very successful, even in countries where education is basically free of charge. The reason is that through the franchise agreement national institutions could move into different areas which at national level they are not allowed to do.

In the past German universities of applied sciences (Fachhochschulen) were not allowed to offer degree programmes beyond bachelor level. By co-operating within franchise agreements with British institutions,



however, they were able to offer Master-programmes —though not awarding the degree which went along with it—. Realising that the German market share of degrees at international level would decrease and joining forces in the framework of the Bologna Declaration, these institutions today are allowed to award their own degrees as well which means that the graduates receive both, a foreign and a German degree. Thus, national borders (regulations) were lifted through international developments. These double-degree programmes have spread across countries and have had an impact on national degrees. Most of these awards are not more than a doubling of the degrees without integrating syllabi of the participating institutions. The programmes in the respective countries may even be identical —but lead to two degrees—.

Quite often, these franchise agreements are not regarded as a purely business link but have developed further, e.g. in the design of programmes which include elements of both institutions. Sometimes they may integrate a part or several elements of the sister institution. Still, for the time being it is not possible that one joint degree is being awarded.

### *Vision*

Borderless from the viewpoint of institutions means that they could go off-shore and arrange for co-operations anywhere with passing the degree awarding power. In other words, if a French Grand-Ecole believes that there was a demand for its education and training in Denmark, it could set up a school there and award to their Danish students a French degree, etc. Transnational education and training would be borderless.

Also, the development of joint degrees is being fostered. The institutions have the legal right to award a joint degree on the basis of their common programme. In fact, the present development within the Bologna process fosters this idea. Accepting the assumption of what has been said at institutional level it could be imagined that the same will be true across institutions of the participating countries: individualised study-programmes based on sound advice from experts in education and training, guiding the learner through the enormous richness of opportunities to finally get «the best of all» of the European Higher Education Area. To this extent any bachelor or master is a joint degree per se as they are accepted as being equivalent and leaving it to the individual rather than to the institution to put together the most adequate curriculum and syllabus for the learner. This example should not be mixed up with «Wim», the student who was «invented» when ECTS was introduced in 1989 to highlight the enormous advantages of a European credit system when studying one semester here and there. What is

intended to be outlined is that networks of universities exist within which learners are guided to develop the best of their potential for the future labour market and that this student will receive one degree which is identical at any of the participating institutions.

If this is the case we should not worry any more about legal authority; also institutions are free to move anywhere and will award their degrees which —by name— are identical. Origin of the degree, nationality of the institution etc. will only be revealed by the documents, in particular the Diploma Supplement.

The idea of «origin» could be taken a step further. Going back some years, concerns were expressed in industry by companies which felt challenged by enterprises from outside which undercut prices for products and services considerably. This «dumping» has been a major concern of the World Trade Organisation (WTO) since as the intention of this manoeuvre is to destroy a competitor and increase prices after his exit. If in all Bologna states degrees would be identical theoretically those institutions would attract all students which are cheapest or do not ask for any fees at all —which has nothing to do with low-quality education—. Is Germany therefore the centre of Bologna education and training in the future because education is free of charge? There might be something as a «natural barrier», the language. But, will the German language still be used at all institutions of higher education in Germany? It is interesting to note that more and more institutions, not only in Germany, have invested in offering study-programmes in English. But, respecting all the enthusiasm of understanding each other, one enormous value of Europe might be at stake: its diversity. This should not be endangered. Therefore the intention should not be «harmonising» but «tuning» as the respective project of more than 100 universities in fact tries to achieve.

It can also be imagined that the question has to be asked where the learning programme really comes from. Imagine a course in Britain is being run by a British institution but the contents as such were designed in Japan. Whose degree is it? The «rule of origin» may answer this question: it would be a Japanese degree. Does this mean that some institutions may develop into «screwdriver plants», operating the programme only but not having designed it? This even goes beyond the franchise agreements as it does not foresee any individual development at local level at all.

Shall we be faced with the well-known question: what is **European** education and training? The Memorandum helps us but there must be more to it. To challenge the imagination of the reader: Using ECTS round the world does this imply that all education and training programmes

become European? This can be assumed if present competition laws were applied. If there is a European dimension the European Commission has a word to say according to the issue: Is this initiative compatible with the education and training sector in Europe?

## **Learning Pathways**

### *Facts*

Learning takes place anywhere, not only in formal education and training but also in non-formal and informal ways. By definition learning means change. Up to now formal education is allocated to listed institutions, often in the hand of public authorities. Non-formal education and training takes place in many institutions, often organised by private organisations, most of them on business grounds. Informal education and training has not yet really been respected and not being looked at seriously when the intention was for a person «to trade in» his achievements.

Education and vocational training are most times seen as separate strands. This is not only underlined by the fact that in many countries different ministries are responsible but also by a number of other elements, such as the final level a learner could achieve when participating in these programmes. If a learner wants to move from education to vocational training or vice versa, this creates serious problems as «the borders are closed». There are a few developments which allow for crossing the borderlines and bringing these areas together. The initiative to introduce ECTS for any type of learning is one of them. In some countries also laws have been passed and a more flexible cross-over is possible.

As regards non-formal and informal learning some Member States have already or have started to introduce systems but not on the basis of ECTS. The UK has had the APL/APEL procedure for a long time, France has followed and even makes it possible today for someone who has never seen a particular university from the inside to receive a degree on the basis of non-formal and in-formal learning (University of Lyon, 2002). Germany allows a move with a «Meister-qualification», in this case the qualification achieved in a trade on the basis of vocational and professional training, to some study-programmes without respective formal school qualification (Abitur). However, these are all individual national or even local initiatives which may work in a very particular personal case but do not really help in the development of the «European Learning Area».

*Vision*

On the basis of findings of e.g. the project «Tuning educational structures in Europe» in which more than 150 universities from all regions in Europe participated in the disciplines business management, chemistry, education, geology, history, mathematic, physics (other areas like engineering, medicine, law, languages, veterinary medicine were involved in the discussions at the level of «synergy-groups») and considering that anyone should share a common understanding of the various technical terms, learning outcomes are being defined according to their relatedness to subjects or generic competences.

Subject related competences reflect the level of acquisition of knowledge in the sense of widening and deepening in a subject area. Generic competences document the ability to access knowledge by applying instrumental, interpersonal and systemic skills.

In terms of widening the following questions are of central importance: which subject areas, which contents are essential and characteristic for a given learning programme? Or without which learning areas would no one consider this learning programme as such or not even recognise it at all (e.g. Business Management without Accounting)?

A deepening of knowledge implies that the specialisation and/or the degree of specialisation will be determined by defining those learning areas which complement the existing learning programme. These relationships should be perceived from vertical, horizontal and lateral aspects. The vertical relationship highlights the link to modules which form requirements or those which are logically built on the module in question. As an example it might be useful, to investigate further parts of a foundation programme. In a business programme the various business functions are normally dealt with in the in the first part of the studies as an overview (Purchasing, Production / Servicing, Marketing...). In terms of employability a deepening into one or two business functions, mainly in the second part of the programme, might be recommended.

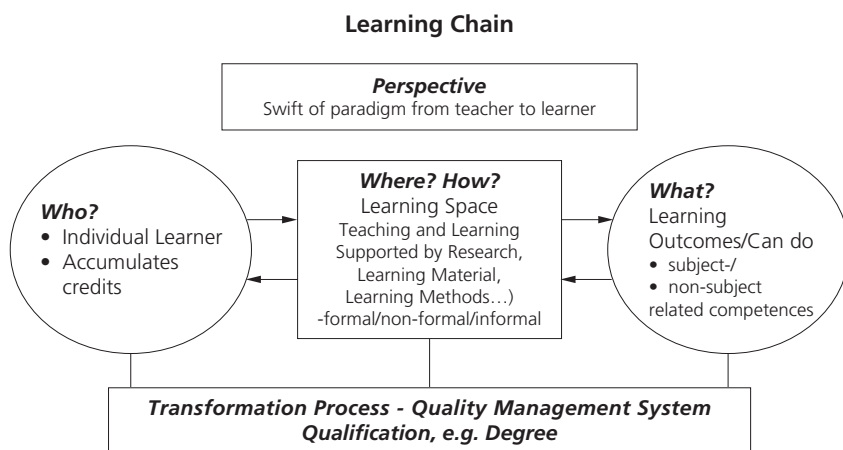
From a horizontal point of view an interdisciplinary approach should be pursued. Thus, a combination of engineering and business modules might be a focus of the learning programme.

The most difficult relationship to imagine surely is the lateral one. At least from the viewpoint of the development of the labour market, it might be useful indeed, to link learning areas which have nothing to do with each other on first sight. Theatre or Music studies—even at non-university level— have nothing to do with economics, one may think. However, the closer this might be scrutinised the more it might become obvious that there are many a link in particular within the applied sciences of business

management: Rhetoric, Presentation Skills, facial expressions, gestures, for example. Also it might be worth thinking to develop the learning of these unrelated areas to foster «general studies». This does not imply that all these modules have to be offered at one institution. If it makes sense, a co-operation between different institutions, working together across subject areas could be very interesting (see strategic alliances)<sup>1</sup>.

Taking employability as a starting point, the learning outcomes of a learning process should be defined. The respective workload has to be calculated and converted into credits. This approach is valid for any form of learning, i.e. for formal, non-formal and informal learning in any mode: initial education, vocational training, continuing education, distance learning, etc. Learning may take place anywhere: at school, university, vocational college, training area, on-the-job, etc. Credits guarantee accumulation and mobility in all types, i.e. regional, national, in all Bologna signatory states and —surely soon— world-wide.

Employability reflects the learning outcomes, from which activities in the learning space but also the profiles of learners can be worked out. This is, however, not a one-way-street. The diagram below highlights that there is a permanent exchange of feed-back and feed-forward within the learning chain.



**Diagram 1**

The Learning Chain

<sup>1</sup> The author is aware that some of these developments have become reality, but this may not be general knowledge yet.

This diagram reveals the following relationships:

- learning outcomes and employability,
- learning outcomes and work-load,
- learning outcomes and learning areas / modules,
- learning outcomes and learning programmes,
- learning outcomes and learner,
- learning outcomes and processes.

To introduce an effective system a shift of paradigm has to be achieved. This means that today's focus on teachers has to be changed and the perspective of the learner has to be taken instead. This also implies a move away from the input of resources towards the result, the output, in form of the learning outcomes; or, in other words, the present push-system will have to change to a pull-system. What does this mean?

Decisive in terms of developments is the orientation towards employability of the learners. This does not mean training for a particular job but taking up responsibility by the teacher or trainer, to enable the learner through adequate learning material and respective methods to cope with requirement of future labour markets. Narrowly defined learning-programmes, such as the typical study-programmes for a teacher in many countries in the past, have to be designed in a way that graduates of such programmes could also perform professionally other activities than teaching, if the teacher wants or the labour market asks for it. Because of this «pull» system the precise definition of learning outcomes is the major task. It must be possible that they can be achieved by the learner in a defined period of time, in a learning space, and with adequate methods. Fortunately these issues are being tackled within the «Tuning» project.

Having outlined various visions about the future of «universities beyond borders» tools have to be identified or designed which enable the process of implementing change. The instrument at hand is ECTS to which the text referred already. Which role can ECTS play as regards the removal of borders outlined above? To which extent can it help to make the ideas become real? Are there facts and visions as well? Could ECTS be **the** tool?

## ECTS, *the* Credit System

### *Facts*

ECTS was introduced as a project of the European Commission in 1989, at first as a transfer-system but at the latest since the Bologna

Declaration as a transfer- and accumulation system. ECTS is based on the allocation of credits to learning which is achieved by defining learning in workload and linking a number of credits to it. The annual size of workload is expressed in 35-40 weeks which means 1,500-1,800 hours and corresponds to 60 credits. Additionally, the introduction and application of instruments are required which accompany the learning process and ameliorate the process quality by achieving transparency about all steps in the learning process, mobility and academic recognition. The instruments having successfully been tested are:

- Course Catalogue.
- Learning Agreement.
- Transcript of Records.
- ECTS Grades.
- Diploma Supplement.

ECTS as any credit system has to respect the perspectives of its users. These are students, employers, stakeholders, and the society as such. Also, a credit system is not only for university learning but has to cover all areas of learning, formal, non-formal and informal.

A major problem as regards the allocation of credits to all forms of learning is the lack of concise and precise learning outcomes of educational processes. A reference framework of formal learning appears to be a must to be able to design a general reference point for all types of learning. These learning outcomes have to be related to time necessary to achieve them as outlined in the model of the learning chain. If such defined learning outcomes existed it did not matter in which mode they were achieved. It solely becomes a question whether the time can be set aside to achieve them, taking into account prior learning or, even in the form of fixing entry requirements. This leads to the question whether learning outcomes are related in a cascading fashion and whether there is one ladder only. The outline of the vision of the role of ECTS below will give some ideas. What has become obvious though across Europe is that a reference framework should not be «qualification»-based, i.e. in the sense of making the status of levels rather than learning outcomes the basis of compatibility.

The Zurich conference of the EUA (European University Association) in 2002 made quite clear that —as a first step— credits can only be allocated to learning when a reference exists. If there is no reference a credit allocation —for the time being— does not appear to be feasible. That does not mean that for such learning there is no acceptance. This form of acknowledgement is based on a very personal investigation.

Another major barrier of introducing a credit system for informal and non-formal learning appears to be in the mind of people. The change of paradigm —as a basic element of ECTS— often causes problems and misunderstandings. Many welcome the step forward as regards non-formal learning but are very surprised concerning informal learning.

In most countries different ministries are responsible for the various forms of learning. This is not necessarily helpful. Non-formal learning often concerns vocational and/or professional education and training. This is quite often within the responsibility of a ministry different from the one of higher education, for example the Labour Ministry or sometimes there is even a specific one for vocational training. It also happens that the Ministry for the Internal Market appears to have a say. This does not facilitate the development of a «tuned» system.

### *Vision*

It should be tried to design one type of a credit system. Learners should be seen, independent of their age, as those achieving learning outcomes to which a workload, expressed in credits, is allocated. In other words, in this context, learning outcomes are not linked to a specific target group.

Credits awarded on the basis of a given reference, may still be regarded as less or more valuable in other contexts. This has to do with the absolute and relative value of credits. As soon as a credit which is allocated purely on one type of learning experience and not within a programme is put into a context of a learning programme which consists of various elements, its «absolute» value becomes «relative». This does not mean that identical learning outcomes carry fewer credits; it has to do with programmes allocating less time to achieve them as they ask the learner to have acquired some knowledge somewhere else before, for example in a different module, within or even outside the institution. For receiving a specific award the credits have to be achieved within a given context. The way of learning, formal, non-formal, informal, however, should not play a role as regards their acceptance.

Introducing ECTS in vocational training is not a technical problem; there are problems deriving from the scope of authority of different bodies and from mindsets as outlined above. Qualifications, in the form of papers, are in the focus, professions are closely defined and the orientation is towards contents and not learning outcomes. There is also a missing awareness of the need of mobility (inside and outside) and professional organisations often set up borders. All these elements can be imagined to be overcome.



The tools having been introduced in vocational training, such as

- Training Contract.
- Europass.
- Certificate.
- European Curriculum Vitae.

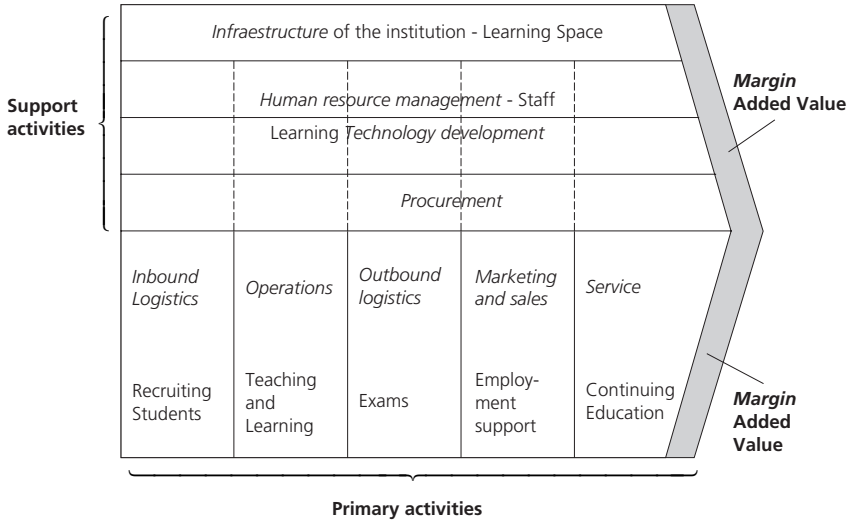
want to achieve the same objectives as the ECTS tools do. It is not difficult to identify that a training contract corresponds to a learning agreement, the Europass to the Transcript and the Certificate explains the performance which is also documented in the Diploma Supplement. The present ECTS-instruments could be usefully complemented by the European Curriculum Vitae. It is obvious, that the tools listed above should carry identical names as the ECTS instruments if the contents are the same.

The system can be used for continuing education, too. However, there are not yet any developments which fulfil the requirements of a European-wide control of process quality. Also here the anticipated and later on evaluated workload, having to be invested to work at learning areas, and to achieve those competences which are defined in the learning outcomes with the help of adequate learning methods has to be specified.

It can be assumed that the professional activity in principal corresponds to the anticipated annual workload of about 40 weeks and 1,500-1,800 hours. The learner, therefore, can only dispose of those learning times which are not yet taken by the normal job, that means 12 weeks with about 450-540 hours respectively. Additionally, times at week-ends can be added. But, respecting the health of learners, a learning programme should take this situation into account. Of course, these are different types of learners, who demand different methods, and also the place to learn has to be quite flexible. It seems realistic to assume that not more than half of the workload of a full-time student can be considered, this means between 750-900 hours per year. From this it may be concluded that programmes in continuing education which aim at comparable degrees in full-time mode need twice as much time as not more than 30 credits can be achieved annually. However, this is nothing but a «model» which has to be tested towards its suitability and acceptability and which surely should take into account the learning experience day in and out at the work-place in some programmes.

Concluding from what has been said so far it can be said that ECTS can be applied in all modes of learning and is even a must to realise the concept of life-long learning. It forms, in fact, **the** linchpin between the various teaching and learning institutions, forms and modes of

learning. This statement can be supported by models taken from business literature, e.g. the «value chain» and the «value chain network». This is outlined in the following diagrams.

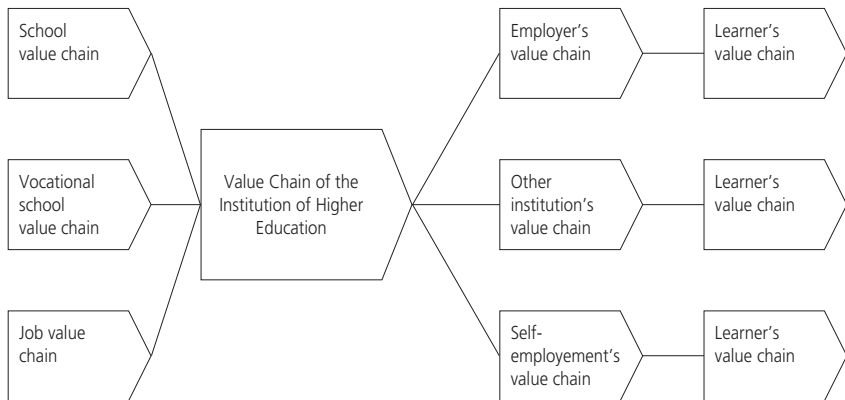


**Diagram 2**  
The Value Chain of an Institution

The concept of life-long learning demands a co-operation of several organisations which offer education and training programmes. Starting from the value chain of a learning area the creation of «education and training networks» appears to be a suitable strategic orientation. Business literature describes a «value (chain) Network» as follows:

«A value network is a value system where the inter-organisational relationships are more fluid. For example, a particular activity or component may be available from several “members” of the network on an entirely interchangeable basis. However, the members of the network are tied together through their commitment to particular product and service standards, shared data... and not least, shared values and trust... Competence in understanding and managing these links and relationships —both inside and around an organisation— is an essential aspect of creating and delivering customer value and may be the source of competitive advantage for some organisations...» (Johnson/Scholes, Exploring Corporate Strategy, 6th edition, 2002)

The programmes of the European Union, such as SOCRATES, LEONARDO DA VINCI, TEMPUS and JOINT ACTION in particular, form value chains by which learning chains of respective organisations are linked to each other to create additional value to the learner. However, there are advantages for the partners as well, as win-win situations are created and synergy effects possible. The following diagram highlights the network of ECTS learning chains of various learning spaces:



**Diagram 3**

**A Model of a Value Chain Network in Education and Training**

To make the model work it has to be stated that

—the number of credits for identical learning outcomes has to be the same

- independent of a specific target group;
- it has to be found out whether the legal workload per year has to be differentiated according to age groups. It can be imagined that according to «stages» a different number of credits is foreseen, e.g. schools (primary level 800 hours, secondary level 1,200 hours, vocational training 1,600 and therefore 30, 45 and 60 credits respectively per year);
- however that in principal identical learning outcomes have been allocated the same number of credits.

Thus it becomes evident that a credit system has to be more than a documentation of the workload: it has to flexibly and permanently act

and react to changing structures and contents, in other words a credit system has to enable what is being asked from learning organisations, a permanent change.

In this way credits become similar to a currency as they

- are a unit of account,
- are generally accepted,
- transfer transparency,
- keep the value,
- are easy to transfer,
- can be divided.

In analogy to a currency system credits are a requirement for a division of learning, **the** key element of life-long learning. Credits can be recognised for alternative pathways in the sense of «accreditation of prior learning», represent a defined value (a certain number of certain credits result in respective and generally recognised degrees) and are also a means of saving in the sense of accumulating value. Because of the agreement to allocate credits to the notional working time, they form a unit of account, which lead to the acquisition of defined competences if the learning of respective modules is completed successfully.

What can you do with the credits received? Basically you can «spend» or «save» them. Spending will have priority if immediate needs have to be covered, such as swapping for a paper qualification so that it is possible to apply for a particular job. Saving in this context means to accumulate with the specific intention to barter the credits later for something «huge», a degree or certificate, for example. But there are other reasons, too, such as having no direct intention yet and keeping them accumulating in a safe place or just having fun in saving and find out later what to do with the amount. However, the necessary action to be taken is the transfer to a learning account.

A credit system therefore is the key requirement of «universities beyond borders». It is geared towards

- learners,
- values,
- competences,
- employability.

The credit mirrors the learner's workload necessary to achieve a result defined as learning outcomes —expressed in competences— of a learning area. It only reflects what the learner has achieved (learning outcomes); it does not state **how** the learner performed (grade). The common denominator of learning is the workload and outcomes.

From this it can be concluded that ECTS as a transfer and accumulation system is unintentionally basically designed as a currency system. All aspects related to a currency system are therefore valid for ECTS as well. This relates e.g. to issues such as «purchasing power» of the outcomes, conversion of achievements at institutional, national and international level, fluctuations of values and formal, non-formal and informal achievements.

### **How to knock down borders**

There is only one way to go: The definition of learning outcomes has to be expressed in credits indicating the notional workload by levels in terms of absolute and relative values. Full-time learning may serve as a reference point for determining workload. Learning is a culture and if this culture should develop a shift of paradigm is essential. The shift has to be towards the learner who wants to be able to achieve his objectives which may be related to employment, family, fun e.g. The learner is learning outcome oriented, is flexible and open and normally has a need to learn.

Therefore universities beyond borders will **not**

- focus on the institutional viewpoint,
- create a new formalism,
- create various credit systems,

**but establish** a framework which is

- flexible according to the learner's needs,
- informative in terms of learning outcomes,
- oriented towards full-time learning as reference,
- not prescriptive.

Learning develops at any time, it is a culture beyond any borders, and universities should keep this in mind to be acceptable for their stakeholders and sustainable as regards their programmes if these are feasible and suitable to their environment and not solely to themselves.



# Knowledge and Competences for a New World: European Universities in the 21st Century

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## 1. Introduction

The aim of this article is to provide an overview of some of the significant changes in progress in the world of European Higher Education, giving particular attention to the historical context, to the extraordinary processes now under way and to some of the possible long term prospects and challenges which may derive from them.

On the basis of events of the last decade of the 20th century, we have entered the new millennium in a situation in rapid movement. The beginnings by contrast seem slow. Looking back towards the 1950s it is surprising how processes which today seems obvious and widely desired gained momentum only slowly. This is true for the European Union itself. Notwithstanding the widespread understanding of the need for European unification which emerged from the second world war, actual changes —not only institutional, but also political in the broadest sense and of mentality— after seemingly slow beginnings now appear to be in a phase of rapid realisation, and very basic strategic decisions, such as the form that the European Constitution should have, must now be taken.

In Higher Education a similar situation pertains: slow beginnings, exponential change in recent years and now, strategic decisions to be taken. There are some differences. It is fair to say that in the case of

Higher Education the time scale has been even more compressed, and hence the explosion of initiatives and new understanding even more dramatic—and the urgency of choices even greater—. In the case of Higher Education, the pro-activeness of the European Commission and more recently of the European University Association, as well as of many member states, has been essential in producing a scenario in which coordinated action can take place; but equally essential is the support and input from many committed and, now, experienced people and institutions in all European countries. An architecture, a methodology and a philosophy for enhancing European Higher Education through mobility, transparency, comparability and compatibility of structures and results—the creation of premises for pan-European cooperation and convergence— have been created.

In European Higher Education the most obvious challenge and the highest objective is to succeed in dealing with the difference between the various national educational systems, or rather to use them to the greatest advantage without weakening what is positive in each system and without abolishing the remarkable qualities of the whole by eliminating the diversity of its parts. Some of the difficulties encountered are those we find in implementing the Union itself. The very strength of the differences between institutions, traditions, languages and economies which makes it worthwhile to create a new kind of European polity, makes it challenging to find common paths. In the same way in education it is necessary to preserve and to enhance the specificity and the diversity of each national system, of each tradition, and at the same time put the different systems into direct and synergic communication. In the interests of students, of society, of culture.

Universities are a unique body of institutions, thought by some to be the most striking example of «European» continuity. Europe has provided a model for institutions of higher education which are present in most of the world today. Although as we know them universities carry a strong imprint of national states, and although they have faraway ancestors in the classical world and connections with the culture of churches and courts, indisputably their most evident direct and common roots are to be found in the Middle Ages and in the revival or continuation of studies—in law, philosophy, theology, medicine and arts—in the flourishing cities of Europe. Specifically, Europe's oldest universities are built on corporate models, based either on the collective organisation of students or that of students and teachers. «Collegiate» self-government, through councils, bodies and elected officers and dignitaries (e.g. the Rector) is one of the basic characteristics of Universities. From the Middle Ages on, naturally, teachers and students have often looked for and found support and



legitimation —with some strings attached— from outside powers, cities, emperors, kings, bishops and popes. At their origin, though, universities were precisely «corporations» of persons whose primary activity and interest was knowledge, its conservation, its transmission and its further extension and elaboration. These «roots» may be remembered as we investigate how, given those roots, the great tree of the University world may continue to grow and to fruit.

Of course the events of the following centuries, not least the 20th, have left their strong mark on institutions and higher education systems. Universities have at times had important public functions, they have preserved and promoted national languages and literatures, they have propagated specific schools of thought (not all of them glorious), they have been the seat of new and valuable directions of research —and at times they have opposed them—. It would be nearsighted to deny the importance of their ancient and common origin; just as it would be impossible to deny that they have often diverged. Here we wish to stretch our visual capacities to the maximum and to imagine scenarios, both positive and negative, for the future century, on the basis of what we can see looking both behind and ahead of us.

It is not uncommon to read that the «modern university» dates from the time of Galileo or Newton, with the application of the scientific method, or from that of Humboldt, based on the idea of the essential unity of all knowledge. In a longer perspective, it is well to remember that what is considered to constitute «science» changes in time; and the methodologies at the forefront of the exploration of the unknown develop along novel paths. The science of the future will be related to the science of today but it will not be identical; the same can be said of the societal needs to which Universities need to respond.

Medieval universities were at the forefront of the culture of the time, although they in no way were the only place where learning and research took place. The same has been true in more recent centuries. Today, of course, no one can guarantee that in the future Universities will continue to constitute the central point in higher education and research. Whether they do so or not depends to a relevant degree on the choices which they themselves and their beneficiaries, sponsors and stakeholders will make today and in the immediate future.

Here we hypothesise, on the basis of some important indications, and of our personal experience as University teachers and participants in several key projects, that European universities will indeed display the collective wisdom and foresightfulness which will allow them to utilise the remarkable opportunities for innovating, broadening and increasing the effectiveness of their service to the societies which in last analysis

support them, in the context of increasing pan-European expansion and collaboration.

## 2. **Gathering Momentum and Defining Issues**

Is it possible to define a specifically European style of Higher Education? When we speak of a Europe of Knowledge or a European Higher Education Space, are we using catchwords, describing reality—something that exists or can exist—or simply expressing our hopes for the future? Possibly a little of each. At present, however, it is exciting to see that reality and realistic potentialities prevail. There is a quite broad agreement on some key points. Other points are and will for a time be objects of even heated debate, as is natural.

There is little doubt that European Universities at present are in a phase of necessary transformation. Few are unaware that our young people and older ones too have an increasing need for specialised knowledge, and at the same time, in a rapidly changing society, that they need flexibility and capacity to learn continuously during their working life. People of all ages may desire access to higher education to satisfy their professional, cultural and ethical needs. Some general exigencies are felt Europe-wide, as teachers and employers experience the difficulties of finding young people capable of writing effectively or communicating orally in their own or other languages. Students interested in the scientific or technological professions seem to be too few for the needs of society; there are today in Europe many unemployed and many who decide to seek job security and professional satisfactions in other continents.

The role of Universities is changing. Once they were expected to introduce to the world of research an elite few: students who had already received a full preparatory formation from the secondary schools, and in many cases had direct contact through their parents or other mentors with the professional world. Indeed, as we have seen, universities represented the corporative interests of «students» and, often, of «teachers» as well. Today the situation is different, and Universities have a recognised, central role in educating or in offering learning opportunities to both the young and the less young on account of societies as a whole. In Europe in general Universities require and hence must obtain the support of the citizenry, which in last analysis, to a greater or lesser extent, supports them. Not only. Universities are called upon to use their status as—largely—publicly financed bodies dedicated to the conservation, transmission and elaboration of knowledge to plan ahead

and be ready to respond in a positive, foresightful way to societal needs. Already today they are called upon to create teaching/learning environments where not only subject specific knowledge and techniques but also general competences, including but not limited to communications skills, can be gained. The capabilities for example of learning and creativity in developing new knowledge and insights, cannot perhaps be taught, but they can be encouraged by judicious approaches to teaching and learning.

Such phenomena and needs are not limited of course to Europe. Similar concerns and awareness of the urgency of transformation are common to Universities in many countries. What is specific to Europe is the opportunity to provide certain kinds of answers to the problems at hand and the realisation that answers can be formulated in a way that is European. Built on common foundations, but diverging significantly over the centuries, European Universities —like European countries— have developed their own ways of doing things, their own academic traditions, their cultural and linguistic horizons, their hierarchies of subjects, their bureaucratic rules. The experience of European cooperation makes it ever clearer how deep —even surprisingly deep— these differences are. Those who have only the experience of one European system are astounded to find that each of the tens of national university systems that participate in European programmes has its individual history and typology, often very different from that of its neighbours. What are the constitutional, the legal and the administrative structure of each country? What is its culture? They will certainly influence deeply the structure of the university and the principles on which it is run. The specificity of each system is not normally clear to those who govern and who work in the University system. They themselves are the product, culturally and intellectually, of their national system. They will discover what their system's specific characteristics are only when they come into direct and positive contact with the systems of other countries.

The differences run through every aspect of University organisation. What is the place of each discipline in the general map of knowledge? How are Faculties and Departments divided? How are curricula organised? What are the names of the different degrees? How is teaching organised? How is assessment done? How are grades given? The experience of cooperation shows us a panorama of stupefying variety, although, when placed in historical context, each variant has its identifiable justifications and causes.

In some cases disciplines which appear to be the same in each country actually have different scientific roots and are associated with

different broad groups of disciplines. Geography, for example, in some countries or institutions is part of humanistic studies; in others it is associated with the natural or with the applied sciences. In some cases disciplines are divided in different ways. For example, in different countries the chronological limits of such general divisions of history as ancient, medieval, modern or contemporary vary considerably. To those educated in one country, concepts of what constitutes an appropriate study programme for a Geography degree, or how Modernity or Antiquity should be distinguished, seem self evident, although they are in fact the product of particular cultural and political developments. When students or researchers enter into contact with different national traditions they come to understand the general mechanisms through which such basic ideas are formed and institutionalised and are able to approach them critically.

The diversity of European Higher Education institutions is not limited to national divisions. There are also many typologies: private and public, large and small, ancient and new, which give variety and strength to the European panorama. As ECTS counsellors we have had the possibility of visiting many institutions large and small all over Europe. It is fair to say that everywhere—in large and ancient universities, in small new institutions, in recently formed regional polytechnics—we have seen dynamic, motivated people at work and have been impressed by the vitality of research and teaching. Once again, such variety of institutional typologies and such vitality is not limited to Europe. What is specifically European is the fact that policies can be formulated through networks that involve institutions of many kinds, hence providing solutions valid for a variety of situations.

Such strong differentiation could mean a total impossibility for communication. It could also mean a lack of recognition of the strengths of each or of certain systems. This is, in effect, a risk which we must guard against. There is the possibility that a particular institutional typology or the educational system of one or a few specific countries within or outside of Europe might become the model that all tend to adhere to. This is a danger to be avoided at all costs. The alternate path is to preserve diversity—academic, linguistic and cultural—with the rich heuristic contribution it makes, setting up certain agreed upon guideposts so that the different systems can communicate with each other and describe themselves and their activities, in an understandable way, to each other. If the European Higher Education Area or the Europe of Knowledge is able to do this, as it would appear from the experiences we will describe below, then the possibility that European universities can develop their full potential for preserving, transmitting and extending

knowledge exists. If on the other hand, they decide to adhere or are forced to adhere to a single model, their long-term contribution will be, in our view, much more limited.

What kind of guideposts are intended? First of all, a common degree structure, a common credit system, standard tools for describing the teaching/learning opportunities and certifying learner's achievements. These very basic guideposts have been designed and tested and are being implemented. Further guideposts are also being developed: reference points and learning outcomes are being elaborated, by academics in consultation with students and employers, for each broad disciplinary area, not in a prescriptive way, but in order to construct common terms of reference as a basis for comparability, description and innovation. The credit system, known as the European Credit Transfer System (ECTS) —although used today in many countries for all students and not just for transfer (national or international) students— distinguishes itself from other credit systems in that it constitutes a measure of student workload measured in time. This is coherent with the idea that the student —rather than the institution or the professors— must be placed at the centre of the teaching/learning process. Specifically it means that institutions in designing curricula must accept the constraint of using in the best and most effective and efficient way possible the students' time in order to ensure that the student can achieve the desired knowledge and competences in the time available. This does not absolve the students of their responsibility in the teaching/learning process, but it requires universities to design realistic programmes, and, if necessary, new teaching/learning strategies.

A further vital factor in European Higher Education is the collective, university-driven nature of innovation. Because of the multinational multicultural nature of the university community and because of the challenges of European integration, the development process is not based on simple attempts to imitate the most prestigious institutions, but on the participatory elaboration projects and criteria appropriate for increasing overall quality. A prime example is the Tuning Project, in which more than one hundred universities collaborated in creating, testing and proposing more generally a methodology for setting up and perfecting the necessary guidelines and reference points for ensuring transparency, compatibility and allowing convergence; another is the thematic networks, large voluntary networks of universities, supported in their efforts by the European Commission, to develop understanding of the needs and requirements for innovation in broad disciplinary or multidisciplinary areas. Such developments constitute both the premises and the results of the «Bologna Process».

### **3. The Experience of Collective Debate, Elaboration and Achievement: The «Bologna Process»**

The word «process» which we use to describe a series of changes and interactions leading up to and following the Agreement signed in Bologna in 1999, certainly implies a chronological sequence of events, with its dynamic and incremental character. It can also be approached—as we wish to do here—in conceptual terms, identifying the spirit and atmosphere that prevailed at each stage of its development. To exemplify, let us consider in this way four significant steps or phases in the Bologna process.

Although the Bologna Process officially began in the late 1990s, it is quite clear that the conditions that made it possible had already been created in the previous decade. This can be considered the first stage in the process—the stage of cooperation—. In 1987 the European Commission launched the Erasmus programme to promote cooperation among EU higher education institutions. They were encouraged to make agreements for exchanging students for a limited period of time (a semester or a year) and giving them full recognition for studies done abroad. At the same time the European Credit Transfer System (ECTS) was developed as a pilot project, in order to facilitate academic recognition. Teachers were also encouraged to visit institutions in other European countries, in order to teach, monitor their students abroad and develop joint curricula with colleagues in those institutions. With candidate countries coming gradually into the Erasmus programme, cooperation extended well beyond EU borders and made all participants aware that Europe was not limited to the member states, but had to be defined in much broader terms. Thematic networks were also developed from the mid-1990s later stage, to make possible coordination of efforts within various subject areas and to develop Europe-wide fora for discussion.

Institutions participated in these activities on a voluntary basis. Especially at the beginning they relied mostly on the initiative and goodwill of individuals (teachers and administrators) who made the first contacts, developed personal relations and established solid networks of institutions. Student and teacher exchanges were carried out through regular meetings and correspondence, diversity was faced with curiosity and problems were solved through mutual confidence. In those years the people involved learned to cooperate with colleagues from other countries, other cultures, other educational systems—often using other languages—and found that cooperation was a stimulating exercise, a reward in itself.

The following phase can be considered that of convergence. While the management of EU-driven educational programmes was gradually moving from individual professors to the central administration of educational institutions, thus making policymakers more aware of the prospects of European cooperation and encouraging Universities to make some administrative changes to accommodate and promote the growing experience of international mobility, some governments began to show interest in the development of an open European higher education area and agreed to adopt national policies intended to achieve this goal in a reasonable period of time. This was the second stage in the process —the stage of convergence—.

The first joint declaration was signed by the ministers of education of France, Italy, Germany and the United Kingdom at the Sorbonne on May 25, 1998, eleven years after the beginning of the Erasmus programme. The main convergence principles were already there. First of all, it was pointed out that Europe is not only an economic union, it is also, perhaps more importantly, a construction which builds on the necessity/possibility of transfer, communication and elaboration of knowledge. Secondly the diversity of existing educational systems, not as a defect but as an opportunity, was acknowledged. Last, there was a formal expression of willingness to further cooperation and promote mobility in higher education by harmonising the architecture of the European higher education system. This meant moving towards a common frame of reference based on two main cycles and towards the use of a common credit system based on the European Credit Transfer System.

A little more than a year later (June 19, 1999) the ministers of education of 29 European countries (15 EU countries, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovak Republic, Slovenia, Swiss Confederation) gathered in Bologna to express their support of the common goal of establishing a European Higher Education Area and to refine the details. In clear terms they committed themselves to coordinating policies to reach a number of specific objectives by the year 2010. On that occasion a follow-up structure was also organised to monitor progress, to coordinate activities and to organise further meetings. The European Commission, originally confined to an observer role became a full member of the follow-up group, offering a valuable contribution of experience in European educational programmes and contributing to the funding of several activities within the process.

Two years later 32 ministers of education (Croatia, Cyprus and Turkey had joined in the meantime) met in Prague to reaffirm the main goal of establishing a European Higher Education Area, and to

emphasise the need to make this area more attractive not only to students from Europe but also from other parts of the world.

As expressed in their final communiqué, they agreed to confirm and expand the six specific objectives set out in the previous Bologna Declaration:

1. *Adoption of a system of easily readable and comparable degrees also through the implementation of the Diploma Supplement:*

The goal was to improve the international transparency and academic recognition of qualifications. The Diploma Supplement —based on the model developed by the European Commission, the Council of Europe and Unesco— provides a description of the nature, level, context, content and status of the studies that were pursued and successfully completed by the holder of the qualification.

In the Prague communiqué ministers «strongly encouraged universities and other higher education institutions to take full advantage of existing national legislation and European tools aimed at facilitating academic and professional recognition of course units, degrees and other awards, so that citizens can effectively use their qualifications, competencies and skills throughout the European Higher Education Area».

2. *Adoption of a system essentially based on two main cycles:*

According to the Bologna Declaration, «Access to the second cycle shall require successful completion of first cycle studies, lasting a minimum of three years. The degree awarded after the first cycle shall also be relevant to the European labour market as an appropriate level of qualification».

The Prague communiqué adds that «Programmes leading to a degree may, and indeed should, have different orientations and various profiles in order to accommodate a diversity of individual, academic and labour market needs.»

3. *Establishment of a system of credits —such as in the ECTS system— as a proper means of promoting the most widespread student mobility:*

The Bologna Declaration specified that «Credits could also be acquired in non-higher education contexts, including lifelong learning provided they are recognised by receiving universities concerned».

The Prague communiqué further recommends the use of «a credit system such as the ECTS or one that is ECTS-compatible, providing both transferability and accumulation functions». This recommendation was backed by a feasibility study already made



by the European Commission for the transformation of ECTS from a European Credit Transfer System to a European Credit Transfer and Accumulation System.

4. *Promotion of mobility by overcoming obstacles to the effective exercise of free movement:*

The Bologna Declaration specified that this means «—for students, access to study and training opportunities and to related services; for teachers, researchers and administrative staff, recognition and valorisation of periods spent in a European context..., without prejudicing their statutory rights».

The Prague communiqué confirms the intent of removing obstacles to mobility and takes note of progress made.

5. *Promotion of European cooperation in Quality Assurance with a view to developing comparable criteria and methodologies:*

In taking up this point, which in the Bologna Declaration is simply enunciated, the Prague communiqué emphasises «the vital role that QA. systems play in ensuring high quality standards and facilitating the comparability of qualifications throughout Europe». Ministers recommend «closer cooperation between recognition and quality assurance networks»..., «mutual trust in and acceptance of national QA. systems» and «collaboration among institutions, national agencies and ENQA (European Network of Quality Assurance) in establishing a common framework of reference and to disseminate best practice». These recommendations show full awareness of the national nature of QA. systems and understanding of the delicate balance between internal improvement functions and external accountability functions of QA. systems in institutions

6. *Promotion of the necessary European dimensions in higher education:*

The Bologna Declaration stated that this should be done «particularly with regard to curricular development, inter-institutional cooperation, mobility schemes and integrated programmes of study, training and research».

The Prague communiqué recommends an increase in «the development of modules, courses and curricula at all levels with “European” content, orientation or organisation...offered in partnership by institutions from different countries and leading to a recognised joint degree.»

The experience gained in the Erasmus programme with joint curriculum development at various levels can be very useful for achieving this objective.

In addition, the Prague communiqué underlined four further points:

7. *Lifelong Learning:*

Lifelong Learning was introduced «as an essential element of the European Higher Education Area». The document states clearly that «in the future Europe, built upon a knowledge-based society and economy, LLL strategies are necessary to face the challenges of competitiveness and the use of new technologies, and to improve social cohesion, equal opportunities and the quality of life».

8. *Higher Education Institutions and students:*

Both collaboration and a «proactive role» of higher education institutions and students were considered essential for the creation of a «compatible and efficient, yet diversified and adaptable European Higher Education Area».

9. *Promoting the Attractiveness of European Higher Education:*

Higher education and research are seen as an important aspect of Europe's «international attractiveness and competitiveness». Implementing various aspects of the Bologna process, tending towards the readability, comparability and quality of European degrees worldwide, provides the means for achieving this general objective.

10. *Continued follow-up.*

Work was to continue at all levels to develop the Bologna process; the following meeting was to take place in Berlin in the second half of 2003; a preparatory group and a follow-up group were set up to ensure continuity.

In between the Bologna and Prague meetings (March 2001), when the Bologna process was already definitely under way, the two European organisations of Rectors' Conferences, while merging into the European University Association, invited European universities to meet in Salamanca to discuss developments, reach a common position and provide their inputs to the ministers meeting in Prague. In the documents developed as a response to the initiative of the ministers, the European universities:

- Expressed their support to the European Higher Education Area.
- Showed their willingness to take an active role in the process.
- Reaffirmed the principles of: institutional autonomy and responsibility; education as a public good and a service to society; the crucial role of research; the value of diversity.
- Expressed their concern with quality as a necessary precondition for mutual confidence, relevance to the labour market, mobility

and comparability of qualifications, attractiveness of the European Higher Education Area.

- Asked governments for the necessary support to enable them to engage in the changes required by the process.

This responsible attitude started a positive interaction with the governments, that gave more prominence to the role of higher education institutions in the process. While in the Bologna Declaration the Universities were expected to «respond promptly and positively and to contribute actively to the success of the endeavour», in the Prague Communiqué «the involvement of Universities and other Higher Education Institutions [...] as competent, active and constructive partners in the establishment and shaping of a European Higher Education Area is needed and welcomed».

Of course, if the new architecture had remained on paper only, we would not be discussing it in detail here. In fact, the general process —of which Sorbonne Declaration, the Bologna Agreement, the Prague communiqué are milestones— gave rise and continues to give rise to actual changes in educational structures. The experience of cooperation and convergence as a formal process triggered a number of structural reforms touching most European countries. In some cases they have affected the entire educational system; in others they have had so far more limited consequences. In some cases the reforms have been introduced drastically, while in others a more gradual approach has been adopted. In all cases, however, this trend has fostered a new dialogue between ministries and higher education institutions as well as lively debate at the institutional level.

The recent University Law passed in Italy (1999) is an example of a comprehensive, radical reform of an educational system along European lines. The traditional Italian long study programmes have been changed into a two-tier system based on a first degree and a second degree; an ECTS-based credit accumulation system has been adopted on a national level; and the awarding of the Diploma Supplement, which should make it easier to understand national diplomas, has been made mandatory for all institutions. Moreover, substantial financial incentives have been made available to universities to develop integrated programmes with European partner institutions and to promote student mobility. The reform, implemented as of the academic year 2001-2002, has also expanded the curricular autonomy of institutions, and allowed them to be more creative in redesigning their curricula within the new European framework. Undoubtedly, Italy's prompt adherence to the Bologna process was due to various causes, including the widespread recognition

that its existing university system needed reconsideration and thorough transformation, not only to make it more responsive to current needs within the country itself, but also in order to make it less strikingly different in structure with respect to other European university systems. European principles have, therefore, been accepted and implemented, though not without hesitations and difficulty, as the starting point for a long term process of wide ranging change, new curricular design and innovation.

In other countries, new legislation in the Bologna context provides for voluntary development of two-tier degrees, either replacing the old one-tier ones (as in Austria) or parallel to them (as in Germany), with new curricula designed in ECTS credits. In both cases the process seems to be gaining momentum. In addition to these more visible changes, several countries have taken action —often through recommendations of their national Rectors' conferences— to strengthen their existing two-tier systems (Finland, France and The Netherlands), to adopt an ECTS-based credit system (the Flemish community of Belgium, Hungary, Ireland and Portugal), to introduce the Diploma Supplement, or to implement a quality assurance/accreditation system. Accordingly, it seems that most higher education institutions in Europe are currently undergoing some sort of structural, curricular or organisational change, with varying degrees of the involvement/consensus of academics, administrators and students, and with more or less adequate human/financial resources for the achievement of their goals

#### **4. Moving Forward**

While change is taking place in individual countries and institutions, the question frequently arises whether this transformation, although inspired by the same basic principles, is actually being implemented in a coherent way. Are jointly conceived ideas being interpreted in the same way or are they filtered through deeply embedded national and institutional cultures? Is it realistic to expect that they should be interpreted in the same way?

In an attempt to answer these questions, let us consider the case of the first cycle of study provided by the Bologna Declaration. The document states that this cycle should last a minimum of three years (180 credits) and that the degree awarded should also be relevant to the labour market. While there seems to be a general trend towards a 3-year duration, relevance to the labour market is not always interpreted in the same way. Guy Haug and Christian Tauch (2001) report that more

professional oriented degrees offered by certain institutions in certain disciplines coexist with more academic or scientific degrees offered by other institutions or in other disciplines, the general orientation being «not that first degrees should be just a preparation for particular well-defined professions, but rather that certain dimensions required for nearly all future professional activities (transversal skills) should receive due attention». This shows, on the one hand, that certain types of institutions and certain disciplines in certain educational systems tend to apply the same principle in different ways; and, on the other hand, that a common denominator can always be found if the principle is redefined in broader terms that take the diversity of institutions and disciplines into account.

Another example is the adoption of ECTS-based credit systems by most European countries. The system provides for 60 credits per year, to be allocated to course units on the basis of the student workload required. While the 60 credits per year are easily implemented in all countries concerned, the allocation of credits in some countries/institutions/disciplines is still affected by other factors, such as the role played by teaching hours or the tendency to focus more on learning outcomes than on workload. Widespread awareness of these differences in the implementation of the basic principle in various countries/institutions/disciplines might lead to a more comprehensive model of credits that takes into account not only workload but also learning outcomes and teaching/learning methods, or it may lead to the recommendation that credits based purely on workload be accompanied by indications of other parameters, such as level and type.

In any case there is a need for long term coordination among European institutions in the various disciplines. After a common framework has been sketched by the ministries, it is now urgent for European institutions and academics in different subject areas to analyse the changes taking place in their individual countries and to compare interpretation and implementation trends, in order to redefine or reorient together common principles whenever divergent interpretations and tendencies emerge. This can be done either in thematic networks or in pilot projects like «Tuning Educational Structures in Europe» or in other European organisations and groups where representatives of institutions—or simply committed academics and administrators—work together to construct a common European educational system.

Though it might seem that we are back to where we started in the late 1980s, back to institutions, disciplines and individuals, the context is now totally different. Over the past years, in addition to the European Commission, other actors at the highest academic and administrative

levels have become deeply involved in the development of a European higher education area and have contributed to creating a well-structured common framework: national governments, national and European Rectors' conferences, European students' associations, academic authorities and senior administrators of European institutions, and many academics in all subject areas. Clear formulation of the common objectives and the development of useful instruments have created a common framework that has triggered change in all systems. Now there is sufficient critical mass to help groups of academics and administrators from different countries coordinate efforts taking place at the national level. These people now know that it is now possible to move ahead towards what has become a widely shared vision. They have a patrimony of reciprocal knowledge and, most of all, they have learned how to cooperate.

## **5. Our Vision of the Future**

In the context we have described there is now a high degree of awareness of the stakes involved, common guidelines have been set up or at least sketched in, and the practice of pan-European cooperation and mutual trust has been largely established. Key projects are moving forward and governments are aware that legislative and normative input is needed to ensure that each country is able to interact successfully in the on-going process.

In our view, the map of the European Higher Education Area is beginning to become clear. There are visions, proposals and strategies that conflict with ours, but we are confident that what we describe here is not utopia, but a practical, reasonable, efficient way of using to advantage and developing the immense resources, human and material, of our European Universities.

We believe that within a few years all European countries, including EU member states, EFTA countries, candidate countries and potential future candidates, first of all Turkey which will enter Socrates programmes in January 2004, and the South Eastern European states of ex-Yugoslavia, will have compatible and comparable degree systems, based on three cycles. The first cycle, usually lasting three years, will be designed to give both generic and subject specific competences appropriate for permitting either employment or access, immediate or at a future date, to further education. The second cycle will normally last two years, although in some specific circumstances it is possible that there may be some shorter degrees. There will be an explicit research

component in the learning required for the second cycle degree. The second cycle degree will give full professional competences suitable for the professional world and will permit access to the third cycle (today's PhD or research doctorate) for those preparing for a high level research or academic career. A large percentage of young people receiving their secondary school degree will accede to and complete first cycle studies. A relevant part will complete the second cycle; fewer, but still perhaps 10% of each cohort, will gain the highest academic degree.

Individuals will also enter and exit higher education programmes at different times in their lives; they may receive a degree, or follow single course units of programmes with a view to updating and increasing their knowledge and competences, for professional or personal reasons. All will be able to choose the curricula or courses that they wish to take and which will be useful for them on the basis of full information provided according to the ECTS course catalogue model. At completion of their studies all will be provided standard Diploma Supplement. The Diploma Supplement will include standard transcripts on the ECTS model. Universities and other higher education institutions will have set up their curricula and course units using ECTS tools, distributing students' time in an optimal way in order to reach the specified learning outcomes, defined in terms of generic and subject specific knowledge and skills.

These and other requirements will be checked and perfected thanks to internal quality assurance procedures. European Quality Assurance mechanisms will also be implemented on the basis of criteria, both subject specific and general, developed by the Universities themselves in a pan-European context. Quality Assurance will be carried out by bodies possessing ample experience and understanding of national differences.

Prospective students will be able to «shop» knowledgeably. European and non-European citizens will be able to access the information necessary for an informed choice from a single European University site. They will find links to clear descriptions of all the courses and the curricula offered. The curricula will be described, in terms understood by all, of organisation, workload and outcome. The single course units will be described, in terms understood by all, as to contents, bibliography, teaching/learning approach, assessment method and criteria, workload necessary for successful completion. Students will be encouraged to consider adding European value to their studies by going to another European country to enrol in a programme of particular excellence in their area of interest. Many will enrol in European Joint Degrees, in which the course of study will specifically provide for periods abroad in other institutions joined in consortia, or where professors and students from other institutions will join them at their home institution, bringing the

richness of other approaches, other specialisations, other knowledge and insights. Students will be used to studying alongside students from other European and non-European countries. Whether they themselves are mobile or not, they will have the multinational, multilingual, multicultural experience of being European.

Thus learners will be equipped—in way without equal in past human history—to understand the world around them from a multitude of points of view. They will be equipped for an innovative and creative professional life. They will be able to see problems and solutions on a European and on a world scale—not because they will live in a homogeneous «globalised» world, but because the experience of European diversity will give them the measure of human differences and practice in cooperative interaction—. And, let us not forget, these «students», these «learners» will be the European citizens of tomorrow. They are our children and grandchildren. They are ourselves. They are the real resource of Europe, in which we must invest today ... not only financially, but also using to the hilt our resources of culture, knowledge, foresight, information and imagination.

## 6. A «European Geography of Excellence»

In our vision, European and non-European students will *not* be presented with a geography of Higher Education based exclusively on competition for students and their resources between a few very famous Universities and myriad of average and below average educational institutions. They will live in a continent in which cooperation and networking are part and parcel of their heritage and of their day-to-day experience. The geography of excellence in Europe will be such that no single peak will emerge without the support of the mountain range around it. This does not mean that Universities will abandon the search for excellence in the areas in which they have greatest potential. Rather, it means that in European terms, excellence will be something different, and ... more excellent. Each University, each higher educational Institution, will have its areas of excellence. True excellence will only be achieved when students and teacher/researchers are systematically exposed to a multiplicity of viewpoints; when their course of study, in a conscious and explicit way, gives them expertise and knowledge of ways of considering their discipline, their subject matter, in different countries.

There are today proposals in Europe for limiting research funding to a few «centres of excellence» and imagining that there will be many «teaching institutions», where research is not present, or at least is not



funded, planned or encouraged. In our view such a plan would fundamentally vitiate and weaken a European strategy of excellence such as we have outlined above. Several prime documents (the conclusions of the Graz conference of the EUA, the findings of Tuning I) support the idea that a close connection with research, on the part of learners and teachers at all levels, is necessary if real learning is to take place. Creating a «geography» of excellence in Europe formed of snow-caps towering above (thanks to research funding) a dark and infertile plain would mean an epochal defeat of an educational system based on access, merit and diversity. In our opinion, the future geography of excellence in European research should not be an imitation of what may be thought to be a «successful» USA model, but rather to ask each European institution to single out and designate and enhance its areas of particular strength or those in which because of the needs of its immediate hinterland or area, strength must be acquired. Research, including «basic» or fundamental research, must be encouraged in all areas, although it is reasonable to support particularly some strategic areas of strength in each institution, in each country, in each disciplinary area.

The «competitiveness» and «attractiveness» of European Higher Education will not come from trying to imitate other more or less successful models, or from modelling its image on schemes proposed and defended by single countries, but through the collective, choral, effort of creating, implementing and presenting in a clear fashion its own model. To do otherwise would mean negating the strength of multinational, multilingual, multicultural cooperation and to become a poor—ultimately unsuccessful—imitation of others. There will be snow-caps, but the Europe of Higher Education should be a continent of fertile rolling hills and sunlit plains as well.

## 7. Further Problems and Challenges

Many of the problems we can foresee or which we already experience have been mentioned above. It will be necessary to clarify and agreeing upon many particular aspects of the general guideposts if the entire process is to move ahead without becoming chaotic or divisive.

If the model we propose, in which all European institutions of higher education are called upon to act cooperatively in designing and using common guidelines, in developing and communicating their specific strengths, not only singularly but also in broad complementary networks, all participants must be able to contribute without huge inequalities. The objective lack of funds, linked to the even more worrying general

budgetary problems particularly in countries of Eastern and Central Europe, make full participation in creating the «European Geography of Excellence» problematic. Already it places at risk a patrimony of knowledge, forcing in some cases professors to take a variety of jobs to survive, to the detriment of their research and the transmission of their expertise to new generations. These problems must be addressed.

In the richer member states also it is often hard to follow the fine line between vital and unnecessary public spending. Here too Universities have the responsibility of ensuring that they explain why public funds are needed and show that they are used to the best advantage.

In our model, we presume that the national cultural, scientific, institutional and linguistic specificity will be preserved, to the benefit of the whole. It is obvious that a series of changes will take place as convergence progresses; one of the most difficult issues in the longer period may prove to be that of linguistic diversity/uniformity. Although the use, the defence and the heuristic value of each language, each literature, each cultural tradition is high on most priority lists, including ours, problems emerge. From the Tuning project we have learned that, contrary to what would seem to be European common sense, relatively few students and relatively few employers consider very important knowledge of foreign languages. Perhaps we can find consolation in the fact that perhaps not all European youth, but certainly a consistent vanguard, including Erasmus students, takes for granted the usefulness/necessity of knowing other European languages. On the other hand, the pressure of English as a lingua franca is very strong; small countries or countries of which the language is not widely studied abroad are increasingly offering courses taught in English, both to attract foreign students and to prepare their own students for work and study in a prevalently English speaking environment, rather than in a multilingual situation. Even in large, non-English speaking countries, scientific and technical subjects may be taught in English, once again both to attract foreign students and to give experience to local students in working and studying in English. Is this trend irreversible? Can more effective and simpler ways of teaching/learning foreign languages foster multilingualism?

Will European Universities be able to deal effectively with these and other problems? Will they be able to continue their cooperation in more incisive ways? Will they find strength in their national and typological diversities, or will these prove divisive?

We posit that the future we have described is possible. Clearly European Universities must do everything they can to make clear to governments and to citizens that higher education Institutions constitute

a vital long-term resource for society: a patrimony which must not be dispersed, which can and will transform itself with intelligence and foresight, in order to constitute the basis for a real Europe of Knowledge. Universities deserve public support but of course they must demonstrate it. They by their nature are not abstract examples of perfection, but rather living working organisms based on discussion, debate, and collective decision, arguably the best way to deal with issues in the real world: not an automatic guarantee of success, but nonetheless, a good basis for collective action.

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# Quality Assurance in the European Higher Education Area

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**Contents:** HIGHER EDUCATION IN THE PROCESS OF EUROPEAN INTEGRATION.—BOLOGNA.—THE EMERGENCE OF QUALITY ASSURANCE IN HIGHER EDUCATION.—STRENGTHS AND WEAKNESSES OF QUALITY ASSURANCE SYSTEMS IN HIGHER EDUCATION.—THE EXPANSION OF ACCREDITATION.—VARIATION IN EUROPEAN DEFINITIONS OF QUALITY.—VARIATION IN FUNCTIONS AND METHODOLOGIES OF QUALITY ASSURANCE.—INSTITUTIONAL, NATIONAL AND EUROPEAN LEVELS OF QUALITY ASSURANCE.—TOWARDS EUROPEAN CONVERGENCE IN QUALITY ASSURANCE.—OUTLOOKS.

## Higher education in the process of European integration

Until 1998, the process of European integration has not provoked many changes in the higher education system. Of course, the programmes of the European Commission such as ERASMUS, SOCRATES, LEONARDO, TEMPUS and others have shaped the way in which internationalisation has been defined in many European universities. What was common to these programmes was their voluntaristic nature, which necessitated a big deal of enthusiasm, devotion and pioneering work. This energy, born out of good will and conviction, characterised internationalisation in many European universities in the past two decades. This disregarded however that these European mobility and cooperation projects in fact were a kind of substitute for the absence of real competencies in educational policy at European level. European nation-states always have opposed the transfer of significant competencies in the field of educational policy towards supra-national levels. The European Union does not have important competencies in higher education policy —limited to two articles in the Amsterdam Treaty— and has been forced to develop a «European dimension» in higher education by means of mobility and co-operation programmes.

These programmes are very important instruments in shaping a common European approach to higher education, but thus far did only have a marginal impact on higher education structures, degree systems, curricula, etc.

In the meantime, important steps have been taken in the process of European integration, convergence and harmonisation in other areas. The creation of the internal market in 1992 and the introduction of the Euro in 2002 signify important milestones in the process of European integration. One could say that education gradually became «out of phase» with other social policy areas. An internal labour market has been achieved which has increased the mobility of skilled labour, but our qualifications remain purely national. This results in endless bureaucratic problems for those individuals and families moving around in Europe and desperately seeking to get their credentials recognised so that they have access to the professions in the country they are moving in. We cannot pretend that in the light of the progress realised with respect to the mobility of professional labour the higher education community—and I include institutions as well as policy-makers—did a very good job in the field of international recognition of qualifications. This despite the considerable efforts of many, the valuable work of the NARIC (National Academic Recognition Information Centres)-network and the achievement of the Lisbon Convention. The national control over degrees and diplomas still severely restricts the equivalence in contents and skills of our graduates, even when we give access to these graduates to their profession in all European countries.

Modern higher education systems and institutions are to a large degree products of the nation-state and have been instruments of the national states to homogenise their populations, create citizenship and nationalistic loyalties and to build their national elites. Education is linked to powerful political sentiments in the field of national culture, language, social emancipation, etc., foundations that cannot be changed overnight without the risk of losing public trust in education and its institutions. Especially in strong nation-states these legacies, complemented in recent decades by the rise of the welfare state and the massification of higher education participation, cannot be exchanged easily for a still vague international allegiance and citizenship. One must even point to opposite tendencies of decentralisation and regionalisation of educational policy competencies, the development of closer links of universities to their immediate environment, local community and nearby stakeholders, and the growth of institutional autonomy which implies a transfer of educational competencies to the institutional level.

The consequences of all this must not surprise the higher education community: the European Union tries to realise the internal market of skilled labour via the professional side, not the educational side, thereby sometimes decreasing significantly the autonomy of countries and institutions over curricula, lengths of study and degrees. What is striking is that universities and national policy-makers defend the institutional autonomy and national sovereignty of degrees and curricula, but that the same universities —or better: academics and disciplines linked to organised professions— accept without much protest professional regulations that make inroads into this autonomy and erode the academic foundations of curricula in exchange for professional ones.

Convergence in European higher education is a slow, painstaking but necessary process. We should recall Jean Monnet's saying when looking back at the first decades of European integration that if he had to do it all over again, he would start with education. Contrary to other policy areas, it is not possible to create a single market or a common currency in higher education by taking simple political decisions. However, it is time to take some crucial strategic decisions which will guide future educational policies and which lead to structural transformations of our higher education systems. This precisely seems to be the underlying political relevance of the Sorbonne and Bologna declarations.

## **Bologna**

Given this background one has to be surprised by the dynamic nature of the Bologna Declaration —signed almost three years ago— and the Bologna Process. Implementation of the declaration into national legislation is very uneven in the signatory countries, but the overall direction is clear and progress is substantial. The explanation for the apparent success of the Bologna process lies, besides the relevance of its programmatic agenda, also in the voluntaristic nature of the process, the support from the European universities' and students' associations and, especially, the fact that the nation-states still are in control of it. Although the Bologna process is not driven from real grassroots level in institutions, faculties and departments, one still can see it as a kind of bottom-up process from the perspective of national policy-makers. This signifies that we can expect that the impact of the nation-states on the convergence process will remain very powerful. In the light of this, we should not be over-optimistic regarding the outcomes of the Bologna-process. A common degree structure based on the undergraduate/postgraduate model,

a flexible credit-transfer and accumulation system, a European approach in quality assurance, these are ambitious objectives.

However, there still is a lot of confusion about the real significance and the actual implications of these objectives. Some see the «European space of higher education» as a fully integrated, harmonised system with automatic mobility of students, portability of credits and trans-nationally recognised qualifications. In this perspective, curricula are highly comparable and mutually compatible, adapted to the needs of the internationally organised professions and the European professional regulations, leaving not much room for institutional autonomy. Some expect the establishment of a European qualifications framework, existing not only of a common degree structure, general learning outcomes descriptors for each of the degrees and quality benchmarks, but also of clear references to the specific curricular contents and competences to be realised in various disciplines. Without doubt, some professional associations and social partners, but also some students' representatives embrace such views on a standardised European qualifications framework. In their view this should give more guarantees to the stakeholders —the state, the labour market and the professions—, but would also enhance mobility because of the exchangeability and transferability of credits and curricula. In the same perspective, some see in quality assurance and accreditation the instruments for setting the standards of quality and level of programmes, also incorporating the imposition of core curricula and a prescribed set of subjects.

The vivid discussions on the bachelor/master-degree architecture in many European countries and institutions show that this perspective is not embraced by everyone and even sometimes heavily opposed. Uniformity and standardisation may be solutions for other social policy fields, but to higher education, they are not the answers needed. One can say that from the very start of the Sorbonne-Bologna process, the ambiguity on its ultimate goals was considerable, leaving room to divergent positions and interpretations. In European politics, diversity often is a buzz-word without much substance, but in the field of higher education policy it has to have a real significance, precisely because of the mentioned close links with national, cultural, religious and other realities.

We are at a moment in the Bologna process —and perhaps that explains the slight hesitation in the process that we witness today—in which a balance has to be found between the harmonising ambitions of the Bologna Declaration and the call for diversity and autonomy. Harmonisation may not be the right word; convergence seems a much more appropriate concept to express the needs of the European higher



education space. The perspective has to be that in Europe we converge progressively on essential aspects such as the degree structure, quality descriptors of these degrees and a credit system, but that we leave ample room for diversity and autonomy on numerous other fields, especially curricula.

### **The emergence of quality assurance in higher education**

Undoubtedly, quality has been the central concept and one of the major focuses of policy-making of institutions and governments in the field of European higher education in the nineties. With varying intensity, pace, thoroughness and success, most countries have established systems and procedures of quality assurance in higher education, comparable to those in industry or government created a number of years before. After more than twenty years of development of quality assurance in higher education, we can say that the ambitions of some decades ago in general have been achieved. Traditional, informal academic self-regulation, which for centuries was held to be sufficient in guaranteeing quality, has been replaced by explicit, formal quality assurance mechanisms and related reporting and external accountability procedures.

There are a number of interrelated factors that can be referred to in order to explain the importance and strengths of the quality assurance movement of the past decades. First, there are the concerns for a potential decline of academic standards against the background of massification in higher education. Second, key stakeholders, especially businesses, professional bodies and employers organisations, lost some confidence in the traditional academic quality management capacities. In their view the ability of higher education institutions to match quantitatively and qualitatively the output of institutions with the needs of modern workplaces and labour markets in an increasingly competitive and globalising economy, was not guaranteed. Third, budget restrictions and fiscal crises led to stagnating or declining government funding per student and a pressure to increase efficiency in public expenditure. Fourth, institutions were expected to meet the demands of an increasingly «evaluative state» for greater public accountability. Fifth, also the higher education environment itself became more competitive with the erosion of traditional student recruitment practices, growing mobility of students, increased mobility of professionals and academics, the pressure of private institutions, etc. In this context, the notion of quality becomes a distinguishing labelling tool with potentially powerful

effects. One can expect that the international higher education market will become more competitive and more diversified in the future, and that (perceived) quality will become the decisive criterion for students, employers, etc. in taking decisions in an increasingly complex market. In some parts of Europe specific considerations add up to these factors. It is clear for example that in Eastern Europe the development of quality assurance and accreditation schemes has to be seen as a response from the state to the increasingly complex situation caused by the establishment of numerous private higher education institutions.

The establishment of quality assurance policies and mechanisms in many countries took place in a political and governmental environment characterised by a changing relationship between the state and the institutional field. Deregulation, increasing institutional autonomy, devolution of authority, a shifting balance between state- and market-oriented elements in the steering of higher education systems, and a growing weight of output-related, performance-based factors in steering and sometimes also financing, were the decisive features of that changing relationship. In general, there was an exchange between deregulation and institutional autonomy on the one hand and quality assurance, accountability and output-control on the other hand. The state and the institutions in most countries both saw this exchange as advantageous.

In conclusion, in the establishment of quality assurance systems external drivers probably were more important than internal demands. Higher education accepted and developed quality assurance schemes because institutions favoured the trade-off with autonomy. In addition, they preferred the internal quality improvement functions of these schemes much more than their external accountability functions.

### **Strengths and weaknesses of quality assurance systems in higher education**

Looking back after more than twenty years of quality assurance in European higher education, it is not perfectly clear what the general outcomes and results are. There is enough evidence to assert that overall results are positive. In many institutions quality assurance schemes have provoked a push in the quality of programmes and processes and in the conscience of the importance of quality. The high level of trust that higher education enjoys from the general public —if not always from the political system—, testifies that fears of diminishing public confidence in the context of massification have been averted by developing formal quality assurance systems. Although they do not yet produce levels of

transparency that some observers seem to regard as necessary in a more market-oriented system—a need that in some countries is satisfied by different kinds of rankings—, formal quality assurance systems produce sufficient guarantees that overall quality levels are adequately monitored and defective programme or institutions are corrected or removed from the system. How much these rankings are based on or related to existing quality assurance procedures is a question with no clear answer. They seem to follow parallel tracks.

However, in many cases the introduction of quality assurance schemes was not mirrored by a development of a real internal quality culture within the institutions. The informal internal academic quality control systems prevalent in the age of elite universities is vanishing and, in many cases, they have not yet been replaced by strong internal systems adapted to the new realities and environments. In many institutions there still is a relatively high tolerance for defective quality. It still seems the case that quality assurance is perceived as an externally imposed phenomenon, reluctantly accepted by academia who experience it as a loss of professional autonomy and academic freedom. There are indications that in the power game on quality between the three communities involved, namely the higher education institutions, the quality assurance agencies and the state and other stakeholders, there is less and less room for consensus.

In current debates on quality assurance in higher education, a number of criticisms are voiced that seem to indicate that the issue of quality again is at a kind of turning-point. The drawbacks and weaknesses of present-day quality assurance arrangements in higher education most commonly mentioned, can be summarised in the following way:

- Issues of cost, bureaucratic overload and various other ways in which quality assurance imposes a burden on higher education institutions and programmes. Especially higher education institutions themselves increasingly make a case of the high burden quality assurance arrangements impose on their internal functioning and resources. Quality fatigue and resistance to increased burdens heavily influence the contemporary stance of institutions towards quality assurance. There is a need for light quality assurance procedures with a minimal cost and the smallest possible impact on institutions' autonomy, but with still a high efficiency.
- Critical questions regarding the benchmarking of standards, the self-referential nature of peer-review methods, the independent nature of review processes, the opportunities left to window-dressing and

deceptive practices on the side of institutions, and the critical nature of quality statements resulting from quality assessments. These questions have in common that they express reservations about the external trustworthiness of quality assurance arrangements and their ability to fulfil the public and political demands for transparency and accountability.

- Issues resulting from the rather vague connection between institutional quality and its regulatory consequences (in funding for example). In most countries external quality assurance and accreditation is not explicitly linked to public regulation, although many contemporary policy discourses see quality as the main regulatory criterion in future higher education systems.
- Observations about the conservative nature of quality assurance systems, imposing particular models, certain canonised curricula and contents and established delivery modes. Quality assurance systems are criticised for having a homogenising impact on the higher education system, for not taking into account increasing diversity in higher education institutions, curricula and delivery modes, such as distance education, and for jeopardising innovation.

Looking at the weight and emotional load of debates on the issue, it seems that the balanced agreement on the basis of which the quality assurance development could take off, is increasingly challenged.

### **The expansion of accreditation**

Accreditation is a particular form of quality assurance that has gained more and more attention as a possible answer to some —certainly not all— of these criticisms and refutations. More specifically, the elements mentioned in the second and third bullet point above, are addressed by those favouring the introduction of accreditation

To fully understand the expansion of the accreditation model, reference has to be made to the changing social context. Factors and developments in the social environment of higher education that are of critical importance in this regard include: the growth of the knowledge society urging policy-makers to attach a more vital role to the higher education system and its outcomes; the impact of internationalisation, various forms of transnational higher education, globalisation in general; the increasing penetration of market factors and characteristics in the higher education system. These and other developments radically affect higher education systems throughout the world: institutions have to adapt

their operations to new demands, addressing especially lifelong learning opportunities, vocational and professional qualifications and short courses; leaving behind the hegemony of egalitarian approaches dominant in the era of massification, higher education systems become much more competitive and market-like; a process of increasing diversification of higher education institutions, practices, delivery modes, etc. is drastically changing the face of higher education hitherto dominated by fairly traditional brick-and-mortar universities; new developments, labelled under the umbrella-concept of «borderless education», including for-profit providers and corporate learning provision, are competing and fundamentally challenging higher education systems.

In this changing environment, governments and external stakeholders, including students and their families, are looking for policy instruments that enhance the transparency of the higher education system, first of all by guaranteeing that in any case basic quality standards are met, and secondly by providing devices to check differential quality features among competing providers. Accreditation thus is expected to fulfil the following needs, demands and ambitions:

- To guarantee that certain agreed basic quality standards are met and, thus, to ascertain that programmes and degrees—for example new bachelors' and masters' type qualifications in the context of the Bologna process in Europe—correspond to generally accepted basic quality descriptors, thus assuring their international recognition.
- To sharpen quality assurance arrangements: by making them more independent, by focusing on more absolute and externally benchmarked standards, by making them result in clearer statements.
- To allow international benchmarking of standards and criteria, and thus of programmes and degrees, allowing them to function in a context of student mobility, credit transfer and accumulation, and transnational delivery.
- To strengthen the capacities of quality assurance arrangements to inform the students and the general public and demonstrate the accountability of higher education institutions.
- To make possible to link quality statements to other forms of regulation, including funding, financial aid to students, recognition of institutions, programmes or qualifications, entry to professional practice, etc.

The spread of accreditation and accreditation-like practices thus is part of a contemporary process of renewal and revitalisation of quality assurance arrangements. Despite convergences, there are still a lot of differences between various national accreditation systems. Accreditation

doesn't mean the same thing in Europe as in, for example, the United States, Japan or Argentina, but there certainly are some common characteristics.

Some observers don't find the case for accreditation convincing. Pioneers from the European quality assurance community feel that there is no need for checking basic quality in well developed higher education systems, that fixed «standards» are not very appropriate in an increasingly complex system, that accreditation at minimal quality standards has no advantages for the 90% or so of programmes or institutions that will pass accreditation, and that the quality improvement function will be jeopardised by a stronger emphasis on the external functions of quality assurance systems. Some institutional leaders dislike the additional burden of accreditation systems and consider them to be a violation of their institution's autonomy. Academics sometimes see accreditation as a manifestation of distrust in their academic quality and sovereignty.

In current debates and developments in the field of quality assurance in higher education apparently two contrasting things are happening: on the one hand an increasing stress on basic standards and external accountability, on the other hand a renewed emphasis on institutional autonomy and diversity. In fact, these two concerns do not necessarily have to be in conflict with one another. Perhaps it has become an illusion to assume that in the present-day context the two functions of quality improvement and accountability can be served by one and the same quality assurance model. In a context of increasing competitiveness and diversification, the needs of higher education and the demands of the external society both can be met by separate systems of independent accreditation, safeguarding basic quality standards, on the one hand, and internal quality improvement schemes within institutions or inter-institutionally, respecting autonomy and diversity, on the other.

### **Variation in European definitions of quality**

There are important differences among countries in their approaches to quality and quality assurance. The first element responsible for variation in quality assurance systems is the definition of the notion of quality itself. Of course, the definition of the concept of quality has important strategic consequences as it defines the purposes and contents of quality assurance mechanisms, the actors and stakeholders involved and the role of quality in public steering of the higher education system. It is clear that various definitions are used simultaneously. This leads to a great deal of confusion and ambivalence. Relative weights of definitions

in policies and in institutional quality assurance frameworks are often responsible for a lack of international understanding in this field. Despite the widespread use of the term, a more or less agreed definition has not yet materialised.

A very common association is that between quality and «level of difficulty» of a programme for example. Among many higher education leaders, there is a strong reasoning to identify quality with the «level» of curricula and course contents, with «level» usually defined as the degree of complexity and weight of the content involved in the curriculum and the seriousness of student testing involved. The notion of quality then is very close to distinctiveness, exclusivity and excellence. Only the best possible standards of excellence are seen as determining the quality concept. We can call this approach the «excellence standards» approach. Regarding indicators, it leads to the somehow strange consequence that a programme is seen as of better quality the lower the number of successful students is. Also, it drives institutions to selective intake procedures in order to uphold their «quality level».

Partly as a reaction to this conservative and elitist notion of quality, seen as inappropriate to a context of mass higher education in a rapidly changing society, a notion of quality has been developed in the quality assurance community that usually is labelled as the «fitness for purpose» approach. Today this is the most widely used definition. It relates quality to the purposes and objectives of an institution or a programme and brings quality assurance procedures to check and to improve the degree to which the actual operation of the institution or programme helps to realise those objectives. The focus is on the processes at work in an institution or programme and their relative efficiency to realise the stated objectives. Therefore it is sometimes also labelled as the «value for money» approach, because of its concentration on the effective use of input and context indicators by the processes involved. Stressing the change realised by the processes—for example, teaching and learning processes—between input and output, also the label «value-added»-approach is used. The prevalence of this notion in the quality assurance movement of the eighties and the nineties in many parts of the world has stimulated the attention to explicit objectives and process characteristics as quality indicators. The «fitness for purpose» approach has a great attractiveness because of its ability to cope with increasing diversity and change in higher education systems and its concern to achieve objectives with the most effective use of resources. It also led to a growing interest in the process characteristics of institutions and programmes and their complexity. Finally, it is closely linked to an improvement oriented approach of quality assurance. Quality assessment could provide the

critical insights and recommendations to improve the processes at work in institutions and programmes and to induce a more optimal use of resources.

However, the hegemony of the «fitness for purpose» approach seems to come to an end. Its focus on the institution's or programme's own objectives is sometimes considered to imply a lack of concern for minimal standards and external expectations. If the focus is on the fitness of processes to the objectives defined by the programme itself in a sovereign way, then there is no check of the «fitness of the purpose» itself to external objectives and expectations. Two alternative approaches, that despite their different origins seem to have a lot in common, are threatening the hegemony of the «fitness for purpose» approach. The first is closely linked to the emergence of accreditation. In many parts of the world, governments increasingly feel that the relativistic concern with the degree of realisation by institutions or programmes of self-defined purposes has given way to a neglect of «standards» in higher education. The feeling, although not often empirically supported, of a decline of standards is a very powerful policy ideology and has driven governments and other stakeholders such as employers' organisations to induce new forms of regulation. In an increasingly diverse social context and higher education system, accreditation is seen as a mechanism to protect minimal quality safeguards, called «standards», in order to reassure the political world and the wider society that anyhow basic quality requirements will be met. Against the relativistic stance of the «fitness for purpose» approach, a more absolutist definition of quality as the obligation to meet these basic quality standards is put forward. Furthermore, the assurance that basic quality is guaranteed has to be provided by agencies independent from the higher education institutions themselves, so that social trust can be secured. We can call this approach, closely related to accreditation, the «basic standards» approach.

A second approach that criticises the hegemonic «fitness for purpose» approach is the «consumer satisfaction» approach. In the context of the growing importance of market forces in higher education, a notion of quality is emerging that stresses the importance of the expectations of direct and indirect consumers, namely students, families, employers, other stakeholders and society at large. Quality then becomes synonymous with the ability of an institution or programme to satisfy the demands of these «customers». The «fitness for purpose» approach is criticised for encouraging inward-looking attitudes in institutions and to neglect the legitimate expectations of the outside world. In contrast, the «consumer satisfaction» approach aspires to force institutions and programmes to look more to these external demands. It is intrinsically linked to other



forms of market regulation in higher education. In contrast to the «basic standards» approach it is less absolutist, but has a relativistic stance towards the external expectations of consumers and other stakeholders.

Each of these four different approaches to quality and quality assurance involves its own definition of the notion of quality and leads to a distinct use of standards and indicators. Hence, it is not possible to give a coherent, abstract definition of quality. Definitions of academic quality are oscillating between the various dimensions of the model. The 80s and early 90s saw a movement from «excellence» to «fitness for purpose». The late 90s witnessed a correction to this, first to the «basic standards» approach and next to more «consumer satisfaction» oriented approaches. In the near future, we can expect a resurgence of the «excellence standards» approach as institutions try to distinguish themselves from their competitors and ranking practices become more widespread. Probably, the oscillating movement between relative and absolute perspectives, between internally oriented and outward looking approaches, between rather basic and more advanced notions of quality is something quite perpetual.

### **Variation in functions and methodologies of quality assurance**

A second important dimension of international variation in quality assurance mechanisms concerns the purposes or functions of the quality assurance system. In general, four purposes can be distinguished: improvement of teaching and learning; public accountability; client information and market transparency; and steering of the higher education system in resources and planning. Each of these functions demands a specific focus, which influences the architecture and methodology of the quality assurance mechanism and processes. It is not certain that a specific approach, which serves well a specific function, also is the appropriate one for contributing to another function. The focus of the first function is on the internal institutional level itself, whereas the second, the third and the fourth function are centred on the external responsibilities of the institutions in relation to the government, stakeholders, the wider community and the public. Also the variability on this dimension is responsible for a great deal of international confusion.

The third important dimension of the variability of quality assurance mechanisms in higher education concerns the methodology used. There is considerable variation in methodologies in international systems of quality assurance, but in most cases quality assurance models use similar key

methodologies for the evaluation of programmes or institutions. (1) In many countries, quality assurance is based on a kind of self-evaluation. Self-analyses are a widely used methodology because of their cost-effectiveness and, more importantly, because of the high degree of ownership and acceptance by the academic community itself. Especially when the quality assurance process has to result in improvement of the internal care for education, self-evaluation by the academics themselves is a very crucial step in the whole process. (2) Peer review by outside experts, often combined with one or more site visits is a powerful external complement to the internal self-evaluation. Its strength is that it stimulates the internal process by confronting it with outside views. In some cases, external review also is used as a method to introduce some kind of comparison or even benchmarking with surrounding institutions. (3) In many countries both internal and external reviews are complemented by statistical information and performance indicators, produced by the institutions themselves, external agencies or resulting from surveys of students and graduates. In some countries, this methodology is even further developed into real student testing by the implementation of specific comparative student assessment initiatives. (4) A quality audit typically is a methodology used in countries where the institutions themselves control the quality assurance process. The audit then is a meta-review of the functioning of the quality control mechanisms itself and often is the responsibility of the governmental level.

Of course, quality assurance mechanisms and procedures differ on other important dimensions. Important dimensions of international variation are: the responsible agency or unit; the voluntary or compulsory nature of participation; the focus on research or teaching or a combination of both; the focus on the review of programmes, disciplines or institutions themselves; the way and target-audiences of reporting (confidential, public, including ranking, etc.); the range of follow-up activities; the decision-making processes affected by the results of quality assurance (e.g. performance funding, accreditation), etc.

Certainly, there is no such thing as a coherent and integrated European model of quality assurance in higher education. Also in continental Western Europe there is considerable variation in the way quality assurance in higher education has developed and is functioning. One must not forget that the policy environments in which higher education institutions are operating in Western European countries are very different, with important dissimilarities concerning the recruitment and statutory position of academics, the openness of access and the possibilities to select students or not, the management systems and cultures at department, faculty and institutional levels, etc. Also the educational attributes of the

various higher education systems diverge in important matters such as the length and structure of studies, the degree structures, the credit systems, the teaching and educational delivery modes, etc. The quality of education delivered and the features of quality assurance models are conditioned by the financial constraints and possibilities of institutions and the accountabilities towards the various sources of funding and finance. Finally, although mostly quality assurance practices are determined by national legislation, there can be an important amount of divergence on the institutional level within countries.

### **Institutional, national and European levels of quality assurance**

Tensions and shifts between the internal and external functions, the improvement or transparency oriented dimensions, the relativistic or standards related approaches, and the national and international aspects of quality assurance have fuelled important debates and developments in present-day quality assurance and accreditation systems. In too many instances, these tensions and shifts are seen as mutually exclusive, as conflicting poles. However, it is better to see them as complementary, serving different purposes on various levels of the quality assurance configuration. We can use the image of a quality assurance edifice with several levels. The structure of the quality assurance building is gradually differentiating into several layers or levels, each with specific characteristics and functions and, of course, addressing various standards and indicators, but with links (elevators) between one another. Not all countries have quality assurance systems that comprise all levels, but for the sake of the conceptual argument all relevant levels are distinguished here.

The first and most basic level is that of internal quality assurance arrangements within an institution. All quality assurance systems ultimately depend on the existence of effective arrangements within institutions, preferably supported by a well-developed quality culture as an integrated system of quality-supportive attitudes and arrangements. The scope of standards and indicators addressed at this level, is very broad, covering all relevant quality aspects over which an institution has control. Indeed, the concept of «total quality management» is governing internal quality assurance practices in many institutions, covering all relevant factors and processes in the production of high quality output. The function dominant at this level clearly is that of quality improvement. The time-perspective is that of continuity. The ownership of quality arrangements is clearly institutional.

The second level is that of national external quality assurance schemes. There are many models of external quality assurance arrangements, but most are characterised by a mixed ownership of the state and the higher education sector, and by the combination of quality improvement and external accountability and transparency functions. Internal institutional quality assurance arrangements feed in into the external quality assurance level by means of the self-assessment reports, prevalent in most schemes, and by the fact that most external quality assurance schemes also review the functioning of internal arrangements. The scope of quality aspects addressed at this level often still is very broad, but there is no need that it still is totally covering all quality aspects. Most external quality assurance arrangements are periodic, with external reviews every five to ten years.

The next level is that of national accreditation. Not many countries make a distinction in their system between national external quality assurance and accreditation, but some do and from a conceptual perspective it is interesting to distinguish them. Compared to external quality assurance, accreditation is still narrower in function and focus. The main functions of accreditation are externally oriented, guaranteeing minimal quality standards and enhancing transparency and accountability. Ownership usually is external to the higher education sector, with independent or state-run accreditation agencies being the dominant model. The scope of quality aspects that fall in the focus of accreditation usually still is smaller than that in the case of external quality assurance. In any case, there are very good reasons to include less quality standards and indicators in accreditation than in external quality assurance. Given its main functions, accreditation has to focus on those standards and indicators that are essential to make relevant statements for those functions. In countries where external quality reviews and accreditation are distinguished, the results of the first feed in into the accreditation procedures, but at the same time selecting those quality aspects that are seen as essential to take decisions related to the standards covered by accreditation.

Above national accreditation systems, supranational schemes of accreditation can be imagined. These can take many different forms: real international systems of accreditation, meta-accreditation or recognition of existing national systems, regional integration of national systems via mutual recognition agreements or in the framework of free trade agreements, etc. In most cases, these supranational schemes will be build on top of existing national ones and will not substitute them. Via bilateral or multilateral recognition of national schemes and their outputs, national quality assurance systems will feed in into supranational ones. Again, the scope of supranational schemes can be less broad than that of national

arrangements, covering only those quality aspects that are relevant for the international objectives, such as international recognition of qualifications, students and graduate mobility, credit-transfer, etc.

This multi-level approach illustrates that international or European convergence should not be opposed because of the fears for loss of institutional autonomy or national diversity. National and institutional levels still can have their relevance, even within a process of convergence on the European level.

### **Towards European convergence in quality assurance**

Within the European context and the emerging so-called «European higher education area», there is powerful mutual influence and exchange of ideas and practices, reinforced by developments within the European Union, European inter-institutional networks, such as the EUA, and professional networks within the quality assurance field as ENQA (European Network of Quality Assurance). The need for more convergence of quality assurance arrangements and systems is particularly clear in the context of the Bologna Process, of course. From the Bologna Declaration in 1999 onwards, over the Prague Communiqué in 2001 and probably also in the Berlin ministerial meeting in 2003, a more integrated European approach to quality assurance and accreditation is seen as necessary to complete the process of convergence towards a «European higher education area». However, also in this favourable environment progress is slow. Conceptual divergence, differences in arrangements and systems, national prerogatives over issues of substance, fears for a centralised European quality bureaucracy and the sensitive nature of quality hinder rapid convergence in this matter. Nevertheless, many see progress in a European approach in quality assurance and accreditation as a necessary condition for success in the general Bologna process.

Current developments in the direction of more European convergence in quality assurance and accreditation include: 1) approaches trying to achieve more convergence between national quality assurance systems by stimulating international or regional cooperation, and to empower them to deal more effectively with new forms and providers in higher education; 2) strategies to promote mutual recognition among national quality assurance systems; 3) the establishment of systems of international meta-accreditation or «recognition» of national quality assurance systems on the basis of agreed standards of good practice; and 4) attempts to arrive at genuine international forms of quality assurance or accreditation. In

practice however, progress in this field is slow and hesitating, because many quality assurance agencies prefer to stay close to their national policy-making environments from which they derive their political legitimacy and to acknowledge the particular social and cultural context in which they developed. Many also distrust the establishment of too distant forms of authority and power.

## **Outlooks**

One can assert that quality assurance and accreditation have not yet been among the fields of remarkable progress in the Bologna Process. Yet, today there are clear signs of potential progress. The Trends III report, published before the recent Graz Convention points at several signs of remarkable advancement. Recent surveys acknowledge the softening of tensions, differences and antagonisms. By indicating that almost the half of institutions replying to the Trends III questionnaire would favour a European accreditation scheme, the report seems to suggest that there is a possible basis for decisive steps towards convergence but that the resistance is situated on the level of national decision makers and quality assurances agencies themselves and much less on the level of higher education institutions.

In the middle of 2003, in the months before the Berlin ministerial summer, a number of signs seem to indicate that we can expect some real progress in this field. The European Commission has published a progress report on European cooperation in quality assurance five years after the Recommendation of 1998. ENQA has published a statement on its future role and activities, strengthening its role as a motor of convergence. The EUA has just put a proposal on the table for a «Quality Committee for Europe», a platform to stimulate European cooperation and convergence in quality assurance. The Tuning project has included quality assurance in its scope for the second year of the project. So, prospects are positive.

# Research and Scholarship - Determining Features of the European University in the 21st Century

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## 1. The changing context of the European University

### 1.1. *The process of European integration*

#### THE BOLOGNA PROCESS AND THE CREATION OF THE EUROPEAN HIGHER EDUCATION AREA

For almost 30 years higher education has been at the forefront of European integration in education. The launch of the ERASMUS Programme in 1987 was an important turning point and the movement has accelerated once again over the last five years, driven forward by the Bologna Process, an intergovernmental initiative that by the end of September 2003<sup>1</sup> will encompass more than 35 European countries. The common objective of creating a European Higher Education Area (EHEA) by 2010 is proving to be a formidable lever for change and reform both at the level of the sector as a whole and for individual institutions. Until now the Bologna Process has concentrated principally on introducing a

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<sup>1</sup> Depends upon the decision of the Ministers of Education meeting in Berlin on 18/19 September to discuss the future development of the Bologna Process.

more transparent structure of first and second cycle degrees across Europe, and supporting the widespread use of ECTS as a European credit system. However, it is to be expected that in the future more attention will be paid to the importance of the third cycle of studies, namely doctoral programmes, and more generally to establishing the link to parallel efforts at Europeanisation, this time undertaken within the European Union framework, to create a European Research Area (ERA), also by 2010, by intensifying coordination and promoting integration of the Union's hitherto often fragmented research efforts.

#### THE LISBON STRATEGY, THE EUROPEAN RESEARCH AREA AND THE «3% OBJECTIVE»

The creation of the ERA is set very firmly in the context of the so-called «Lisbon strategy» agreed by the Heads of Government in Lisbon in March 2000 «to make Europe the most competitive and dynamic knowledge-base economy in the world by 2010»<sup>2</sup>. In addition to promoting the ERA the Heads of Government also underlined the importance of adapting European education and training systems to the needs of the knowledge society/economy. Meeting in Barcelona two years later, they set the further objective of increasing the average research investment level from the present 1.9%<sup>3</sup> of GDP to 3% by 2010, of which 2/3 should be funded by the private sector<sup>4</sup>. Since then it has been estimated that in terms of human resources, this means that Europe will need about 1.2 million additional research personnel, including 700,000 additional researchers<sup>5</sup> if this goal is to be met.

It is in the context of these optimistic and ambitious policy goals for Europe that European universities have to find their way at the beginning of the 21<sup>st</sup> century.

### 1.2. *The process of globalization*

The Lisbon strategy with its emphasis on education and training and on research and development reflects a European response to the unsettling

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<sup>2</sup> Presidency Conclusions, Lisbon European Council, 23/24 March 2000, Point 5.

<sup>3</sup> Main Science and Technology Indicators, OECD, Volume 2003/1, Table 02.

<sup>4</sup> Presidency Conclusions, Barcelona European Council, 15/16 March 2002 and Communication from the Commission, 11.09.2002 «More Research for Europe - Towards 3% of GDP» COM(2002)499.

<sup>5</sup> Communication from the Commission «Investing in Research: an action plan for Europe» COM(2003).



context of globalization. It is an attempt to position Europe in the world, and recognition that the knowledge economy means that investment in education and research becomes more important than ever before. Moreover, this ambitious European policy framework demonstrates that the complex phenomenon of globalization is leading to a partial shift in the balance of policy making and action away from the purely institutional and national levels that were predominant in the past to the European and the global arenas.

This process also has consequences for the way in which universities function. It is throwing up new challenges and raising fundamental questions in terms of their mission and methods, and has increased awareness of the need to continue to strengthen institutional governance and management to be able to cope with these challenges. As institutions universities need to continue to work within the still ever present national framework while also taking account of action at European level in the Bologna Process and intensifying the international collaboration that has always been natural and important to them, especially in research. Important contributors to national and regional development, to-day universities increasingly have to position themselves locally, regionally, nationally and in a European and international context, the choices they make influencing their activities, their governance and their organizational culture.

Moreover, universities are called upon to respond to the intensification of competition and the market pressures induced by globalization while not forgetting their public character and their social responsibility. They must demonstrate increased responsiveness to market demands from students in search of training which will increase their employability and they are under pressure to concentrate more resources on research oriented towards innovation and the exploitation and commercialization of research results; they must be accountable to society and more open to the world. Thus we see that while increased importance is being accorded to education and research by our Heads of Government, public funding for higher education is increasingly under threat. Universities are expected to do more and more but they are also being pushed moer and more into the competitive arena.

## **2. The European university in the 21st century**

At the 2<sup>nd</sup> Convention of European Higher Education Institutions held in Graz in May 2003<sup>6</sup> Europe's universities fully endorsed their role in the

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<sup>6</sup> The Graz Declaration: «Forward from Berlin: the Role of Universities», EUA, July 2003.

development of the European knowledge society, stating as a precondition the existence of a strong research capacity and the strengthening of research based education in universities across the continent.

The Graz Declaration also attempts to define a specific European approach to the global challenges we are facing, based upon a set of core values: equity and access, research and scholarship in all disciplines as an integral part of higher education, a European approach to quality and cultural and linguistic diversity as a strength from which maximum benefit must be drawn. On this basis universities feel able to advocate a central position in the development of European society through their role in the creation, transmission, dissemination of knowledge vital for social and economic welfare locally, regionally and internationally.

Both the results of the Graz discussions as well as the analysis of the responses made to questionnaires on the development of the Bologna Process and the implementation of the European Higher Education Area sent to 1800 higher education institutions in over 30 countries by the European University Association (EUA)<sup>7</sup> demonstrate that Europe's universities accept the need to respond to a multitude of often conflicting demands. Indeed, one of the great challenges for higher education systems and individual universities in Europe in the years to come will be to manage to balance different imperatives, and to succeed in making a contribution to economic development and innovation while promoting social cohesion and access, co-operation and solidarity, to address the challenges of global competitiveness and excellence while fostering the development of a stronger civil society across Europe.

Thus universities have themselves accepted the multiplication of their roles and seek to play a fundamental role in further developing Europe and in responding to the needs of society. One could summarise their mission as encompassing four main functions, namely (i) educating ever larger numbers of young and not so young people across Europe for active citizenship and employment (ii) creating, transmitting and disseminating knowledge, fostering economic growth and regional development (iii) building links with all types of stakeholders and thus proving service to society and (iv) ensuring the training of young researchers and preserving the commitment to teaching and research across Europe<sup>8</sup>.

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<sup>7</sup> TRENDS 2003: Moving Towards the European Higher Education Area, Sybille Reichert and Christian Tauch, EUA, 2003.

<sup>8</sup> The Role of the Universities in Shaping the Future of Europe, EUA statement to the European Convention, January 2003.

The recent Communication of the Commission on «the Role of the Universities in the Europe of Knowledge» also underlines the key role the universities have to play in underpinning European development, reiterating in its concluding phrase that «if it is to achieve its ambition of being the world's most competitive and dynamic knowledge based economy, Europe simply must have a first class university system —with universities recognized internationally as the best in the various fields of activities and areas in which they are involved—<sup>9</sup>.

In its response to the many fundamental questions posed in this document, as well as in the Graz Declaration cited above, the EUA singles out research, and the need to strengthen the research function of Europe's universities as being of particular importance in ensuring that our universities can play their full role in the Europe of Knowledge.»<sup>10</sup>

### 3. Research in Europe's universities

#### 3.1. *Research as an integral part of higher education*

One of the defining characteristics of European universities<sup>11</sup> is that teaching and research are interdependent and that universities actively maintaining and promoting this integral link in their day-to-day activities are to be found all over Europe. Research activities underpin high quality teaching and enhance knowledge transmission and transfer as well as being the motor for international co-operation, cross-sector collaboration, and involvement in local / regional / national problem-solving action. This means that universities have a particularly important role to play in building Europe and it gives them a unique role in supporting sustainable economic and social development across the continent. It takes on particular importance in the context of enlargement and in terms of relations with universities in the wider Europe, as can be seen by the rapid extension of the Bologna Process to over 35 European countries.

Europe's universities have a long and unique tradition of providing a culture of scientific and critical thinking. They have a quasi monopoly in awarding doctoral degrees. They are responsible for training

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<sup>9</sup> COM(2003)58 final, conclusion.

<sup>10</sup> EUA Statement on the Role of the Universities in the Europe of Knowledge, EUA, May 2003.

<sup>11</sup> The term «university» is used to refer to institutions with full power to award doctoral degrees.

young researchers not only for academia but also both for the public and the private sectors. Developments in research influence and transform the training of young researchers, and the capacities needed by future generations of researchers. The «intellectual buzz» in universities created by the interaction of generations and disciplines cannot be matched by even the most high quality pure research institutions working in isolation.

This means that while it is clear that increased differentiation of mission will be necessary in order to fulfil the different tasks Europe's universities have accepted to carry out, there are also clear limits to be set. The integral link between teaching and research is at the heart of the European university: teaching is defined, supported and underpinned by the essential link to research. Conversely, research benefits from teaching and constant exchange between the generations. Of course, not all universities can carry out top level research across all disciplines, but the goal has to be to increase the number of universities that are excellent in what they choose to do, and not to concentrate more resources on an increasingly limited number of research intensive institutions.

It is equally important for universities to ensure that their graduates at all levels have been exposed to a research environment and to research-based training, and introduced to research methodology. In response to different government initiatives to concentrate teaching in teaching-only universities, it is of the utmost importance that universities continue make a clear case for the research-led teaching and learning they provide.

### *3.2. The changing nature of research in the university*

The more «traditional» research mission of the university in respect of fundamental research has gradually been expanded to include not only the production but also the transfer and dissemination of knowledge and its exploitation in the innovation process... all functions expected of the university as part of its contribution to the development of the European knowledge society and economy.

Research is also more than scientific and technical research, more than «big science» with immediate spin off potential. The social sciences and humanities, by helping us to understand the processes at work in the transition to a knowledge based economy, and in harnessing and exploiting an exponentially increasing quantity of information and knowledge, plays at least as important a role in contributing to our well being as «big science». Not least in view of the forthcoming enlargement of the European Union, and in the interests of the quality of life of all citizens,

it will be crucial to understand and manage this process which will require a substantial research effort around the issues of sustainable economic and social development.

In the «The New Production of Knowledge»<sup>12</sup> Gibbons et al argue that higher education is moving from Mode 1 knowledge production which means essentially disciplinary research in an academic setting to Mode 2 knowledge production that is increasingly a socially distributed process, takes place at an increased number of sites, is inter-disciplinary in nature and carried out by teams working on «real» problems, thus drawing many actors into the process. For universities this manifests itself in the emergence of a growing number of networks, partnerships and alliances that are of growing importance in profiling and positioning the university in an ever more competitive environment.

Specifically, in terms of research, Gibbons argues<sup>13</sup> that in Mode 2 knowledge production «the once clear demarcation between universities producing new knowledge via basic research for the benefit of society, government research laboratories and industrial research and development, is breaking down; there is movement between categories and across boundaries...the result is a changing relationship between society and science, much more interaction between the producers and users» which «can be seen in the increasing awareness in universities of the importance not only of continuing to develop their more traditional basic research skills, but of fostering dialogue with society at different levels, encouraging involvement of stakeholders, making a contribution to local and regional development etc.»

Finally, in terms of the diversity of research, and taking account of the great variety of universities across Europe, it is perhaps relevant to refer to the work of Boyer<sup>14</sup> on different forms of scholarship of higher education. He suggested that universities needed «new forms of scholarship». In addition to the traditional research model of discovery which exists in all disciplines, he referred to the need for the scholarship of integration that would make connections combining understandings across different disciplines, for the scholarship of application which is about bringing scholarship to bear on real problems through addressing consequential individuals and institutions, and finally for the scholarship of teaching that would not only contribute to knowledge but transform and extend it.

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<sup>12</sup> GIBBONS M., LIMOGES C., NOWOTNY H., SCHWARTZMAN S., SCOTT P. and TROW M., 1994, *The New Production of Knowledge*, Sage, London.

<sup>13</sup> Michael GIBBONS, *Engagement as a Core value in Mode 2 Society*, ACU consultation document, 2002.

<sup>14</sup> Ernest BOYER, *Scholarship Revisited*, Carnegie Foundation, 1990.

### 3.3. *A university system for Europe characterized by excellence in diversity*

#### DIVERSITY OF RESEARCH FUNDING STRUCTURES ACROSS EUROPE

The role of the university in the research system within each country and the extent to which research is carried out within the universities or within large public research structures differs quite considerably across Europe. In some countries such as the United Kingdom or Sweden most research is carried out in universities supported via Research Council funding allocated directly to university based research teams. In others, such as France or Germany, a large proportion of public research is carried out in large science organizations such as CNRS or the Max Planck Society. However, in both cases, and this seems to be a general development, one can observe an increase in the proportion of funding allocated to programmes and projects in line with national and/or European economic and social priorities.

As far as the countries of Central and Eastern Europe are concerned, there have been major upheavals in their science systems since 1989. At this time the Academies of Science were responsible for a large proportion of the research being carried out. In most countries the Academies have been restructured, doctorate awarding powers returned to/concentrated in the universities and Research Funding Councils established. In some countries the Academies of Science have retained their own research institutes, in others the Academies have developed into learned societies and the research capacity of the universities developed. However, this transition is still underway, and one phenomenon observed in many countries has been the creation of new, advanced teaching and research institutions, often in the form of institutes of advanced studies outside the universities, specifically to support the development of research in the social sciences and the humanities which was particularly in need of reform post-1989.

#### EXCELLENCE AND THE DIVERSITY OF RESEARCH MISSION

There is much debate at present across Europe about the need to concentrate support to research in a few selected locations in order to stimulate excellence and increase Europe's competitiveness as a whole. Hence the new funding instruments in the Sixth Framework Programme, the networks of excellence and the integrated programmes with their emphasis on scale and critical mass. However, from a university perspective, and in terms of the development of Europe as a whole, it

seems even more important to maximize the use of the geographically widely distributed resource «university» in such a way as to make the most of this potential. The goal should surely be to ensure that as large a number of institutions as possible have the opportunity to develop and deliver excellence in the context of their own particular and diverse missions whether this be at local, regional, national or international level, whether this is done through fundamental research in a spread of disciplines, or a few, carefully selected priority areas, or by privileging applied research and technology transfer activities in a specific, often regional context.

There is much to be done. Analysis of the results of the Fifth Framework Programme<sup>15</sup> clearly shows the considerable concentration of activity in North/Northwest Europe hitherto. All the more reason for making a concerted effort to harness the potential of Europe's universities, in particular to stimulate local and regional development. This will require considerable support to R&D activities and encouragement to intensify networking between institutions in different locations based upon similar interests, missions, and complementary strengths. But as Michael Gibbons has said «In a globalizing world the demand for expertise is recurrent and growing and the numbers of the possible combinations of participants are, indeed, endless. This creates a very large field of opportunities for each university. To identify suitable partners with whom to collaborate is, or should be, amongst the most important decisions that any university takes.»<sup>16</sup> At European level we need to raise awareness of these possibilities and provide concrete support.

### 3.4. *The training of researchers*

One area where universities have an ever more important role to play is in the training of young researchers. The importance of providing high quality doctoral training for a knowledge economy that needs «researchers» in all sorts of areas and at all sorts of levels is evident. At the same time, in the framework of the Bologna Process, ensuring the quality of research training is increasingly being seen as a means of increasing the attractiveness and the competitiveness of European higher education. If one bears in mind the figure of 700.000 additional researchers needed to

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<sup>15</sup> Participations françaises et internationales au PCRDT, La lettre OST, 2002, n.° 24.

<sup>16</sup> *The Idea of Engagement: Universities in Society*, BJARNASON S. and COLDSTREAM, P. (eds), Association of Commonwealth Universities, 2003.

meet the 3% target (which does not include those researchers who will be retiring and thus moving out of the system in the next five years), then attracting more young people to take up science, and follow careers in research, and ensuring that adequate research training is provided moves even higher up the agenda.

Leaving aside the question of the need to attract additional numbers of young people into scientific careers<sup>17</sup>, increasing attention is being paid to research training both in the context of the Bologna Process and of the European Research Area. When the Ministers of Higher Education look into the next phase of the Bologna Process in September 2003 it is likely that they will integrate doctoral programmes as the third cycle in the Bologna Process thus ensuring the link between the European Research and Higher Education Areas. The importance of research training has been underlined in the Commission Communication on the *«The role of the Universities in the Europe of Knowledge»*, and in addition, on 18 July 2003 the Commission adopted a further Communication entitled *«Researchers in the European Research Area: one Profession, Multiple Careers»*<sup>18</sup>.

Universities will increasingly need to face up to the challenge of training young researchers for a wider variety of careers than in the past, in other words also for careers outside the traditional academic market, for example in companies, non-profit public or private organisations, private and public independent research centres, etc. This in turn will mean looking carefully at the structure of training offered to young researchers and considering ways in which such training might be reviewed and possibly better structured for example, through looking at optimal arrangements to ensure the correct mentoring of doctoral students. Furthermore, if they have not already done so, universities should be encouraged to look more closely at the organization of doctoral schools able to transmit not only disciplinary expertise but also core competencies and other employment enhancing skills to groups of young researchers often from different scientific backgrounds and countries. There are several initiatives of this kind already in place in a number of European countries (e.g. *«écoles doctorales»* in France or the *«Graduiertenkollegs»* in Germany, not to mention other examples in the Nordic countries, the Netherlands and the UK).

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<sup>17</sup> Already included as an objective in the *«Objectives Report»* adopted by the European Council meeting in Stockholm, 23/24 march 2001.

<sup>18</sup> Communication from the Commission to the Council and the European Parliament *«Researchers in the European Research Area: one profession, multiple careers»*, COM(2003) XXXX.



Linked to this is the key question of mobility as an integral part of research training, and the importance of promoting networking between universities at doctoral and post-doctoral level. This would also facilitate the development of joint doctoral programmes across national and sectoral borders (ie including industrial partners and/or placements) involving European networks of doctoral programmes in the same way as this has been developed at master level in recent years.

There is also a set of very difficult issues that needs to be tackled in relation to the status and the financing of doctoral candidates which differ considerably from country to country across Europe. Are they students, junior staff members or researchers? What does this mean in terms of career planning and in terms of social security rights and benefits? If we want to encourage more young people to take up scientific careers these issues are of paramount importance. They are also relevant to the situation of post-doctoral researchers who are often employed on short term contracts of different kinds. Of similar importance is the question of the recognition of doctoral degrees in the broader employment context.

### 3.5. *Researcher Careers in Europe*

The issues raised concerning the status of doctoral candidates and the recognition of doctoral degrees on the labour market are important when considering the development of careers for researchers in Europe. Once again, if Europe wants to make research careers more attractive and increase the number of researchers then this means not only creating more favourable training conditions but also more attractive working conditions for researchers at European level.

In most systems this means first and foremost taking account of the fact that researchers are very often at the same time university teachers when devising career development paths. There is also a need for more mobility not only between countries but also between sectors, i.e. between academia, private and public research and industry. At the moment, there are, for example, huge differences in recruitment methods by sector and between countries and in employment and working conditions for researchers<sup>19</sup>, not to mention problems with assessing and recognising prior experience and achievements, either in different sectors

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<sup>19</sup> J. ENDERS «Employment and Working Conditions of Academic Staff in Europe» in *GEW, Materialien und Dokumente*, Hochschule und Forschung, 2001.

or countries. At a time when many countries are revising their higher education legislation it would seem to be the moment to enable the opening up of public sector positions across Europe to facilitate international recruitments, where this has not been possible hitherto, and to encourage universities to publish vacancies internationally. An interesting example of cooperation in this respect has been developed between the United Kingdom and the Netherlands<sup>20</sup>. Encouraging more mobility in this way would, however, most certainly highlight a series of issues concerning the transfer of social security and pension rights which have already been addressed in specific Commission documents<sup>21</sup>, but where further action is needed.

In terms of career development, while fixed-term contracts provide flexibility, the lack of employment prospects in academia, following upon a long training period requiring considerable personal commitment, is not conducive to increasing the number of young people entering science. There is, therefore, a need to think seriously about developing alternative models, both in academia and allowing researchers to move more easily across different sectors.

### 3.6. *The Gender Perspective in Research*

Gender aspects and ensuring gender equality in research careers are increasingly under discussion across Europe. Particular concerns are being expressed about the under-representation of women in research and development, and about the complex reasons for this<sup>22</sup>. Increasing the number of women in science will thus be critical in reaching the 3% objective to which reference has been made above. A report of the Helsinki Group on Women and Science has shown that at present women account for some 30% of public sector researchers and 15% in industrial research<sup>23</sup>.

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<sup>20</sup> The Dutch universities have now begun to advertise their vacant positions regularly on the UK website [www.jobs.ac.uk](http://www.jobs.ac.uk).

<sup>21</sup> Communication from the Commission to the Council and the European Parliament of 20.06.2001: A Mobility Strategy for the European Research Area, COM(2001)331 and Commission staff working paper: First Implementation Report on «A Mobility Strategy for the ERA», SEC(2003)16.

<sup>22</sup> Third European Report on Science and Technology Indicators, EUR 20025 (2003), p 249; Deutsche Universitätszeitung, 8/2003, pp 11/12, data from the Kompetenzzentrum Frauen in Wissenschaft und Forschung (CEWS), Bonn.

<sup>23</sup> National Policies on Women and Science in Europe — a report of the Helsinki Group on Women and Science, June 2002, ISBN 92-894-3579-8 and Women in Industrial Research— A Wake up call for European Industry, January 2003, ISBN 92-894-4400-2.

The proportion of women reaching senior positions is also an issue, as the number of women tends to decrease with the level of seniority. Not surprisingly problems are often related to the fact that scientific careers are seen as being in conflict with family life, something which still tends to be perceived as a woman's problem. Problems with mobility also occur frequently with insufficient attention being paid to the inclusion of dual career possibilities in recruitment and mobility schemes.

#### **4. Looking forward - what needs to be done?**

We have seen that there are major changes taking place in society which are affecting the higher education and research communities in Europe. European and also global developments are impacting more and more on our lives and have to be considered alongside the local and national environment. Changes in the way knowledge is produced and distributed are making it essential to rethink the mission of the university and its role in the transition towards a knowledge based society, not to mention a knowledge based economy in Europe. Our Heads of State have underlined the importance of research and development, education and training in making Europe more competitive and also in consolidating the European social model; the crucial role universities as institutions can play in this change process through their multiple mission covering the production, transmission, dissemination and exploitation of knowledge is beginning to be recognised.

Now it is up to the universities to demonstrate that as institutions they are up to the challenges ahead and able to make the major contribution to the future development of our society that is required of them. Research in all its diversity will play a more and more crucial role in this process, for if in a knowledge based economy research is considered to be a product, we have seen that in a knowledge based society knowledge needs to be distributed to everyone, and this means especially to the younger generations, and dialogue with stakeholders intensified. The university needs to be able to make an active contribution to this process. In addition to being able to push forward the frontiers of knowledge in, across and between the disciplines as it has always done, the university to-day must address major societal issues and concerns, engage with companies and industry in order to support innovation and the exploitation of knowledge, and provide society with a continuous pool of independent and highly trained experts. This requires action to be taken by the universities themselves, by national governments and at European level.

#### 4.1. *At institutional level*

Universities are expected to do more and more at a time of at best stagnating public funding. The external context is changing rapidly and requires constant adaptation to new circumstances. As institutions they are required to be both more competitive and to respond to multiple societal demands as well as to develop meaningful collaborative relationships with different partners. They therefore need to be more open and responsive as institutions, and also able to function efficiently. They need to strengthen their capacity for strategic reform which in turn requires leadership, ever more attention to quality and strategic management.

This is particularly true with regard to research where the ever increasing pressure to improve European competitiveness has put research at the centre of attention of many different stakeholders. The process of priority-setting in research requires strategic choice and decision making, bearing in mind the need for a more diversified external funding strategy and the accountability and performance assessment requirements often linked to increased autonomy. In developing their research potential universities also have to identify appropriate partners/strategic networking arrangements in terms of their own goals, as well as to create stimulating research environments to attract the best researchers, ensure human resource and career development for researchers and research managers and also be concerned with improving links to society and raising awareness of the importance and relevance of research.

In addition to the central role of university leadership in orienting research activities through a research strategy, there remains much to be done in respect of the management of research activities. At central level this means developing and implementing strategies to deal a whole series of issues related, for example, to the funding and costing of research activities, to Intellectual Property Rights, and more generally to entrepreneurship at the university, and finally to the development of assessment and outcome measurement tools and processes.

#### 4.2. *At European level: Articulating the European Higher Education Area (EHEA) and the European Research Area (ERA)*

At European level universities presently have to work within different policy frameworks for teaching and research, the intergovernmental Bologna Process for the developing EHEA and the EU policy framework

that supports the ERA. The results of the TRENDS III<sup>24</sup> survey confirmed that universities need to look at change and development in relation to their overall mission, and that the Bologna reforms, for example, cannot be separated off from a more general reflection on future mission and strategic goals. There is also a growing understanding at European level that the EHEA and the ERA are complementary processes with similar objectives and constitute two pillars of a Europe of knowledge. Looking for synergies between the two processes, it becomes clear that the natural link is provided by the universities through their key role in, and responsibility for research training and promoting the mobility of young researchers.

Although research training is recognised as a part of higher education in the Bologna Process, the focus of the process so far has been on the «two main cycles». The European Research Area (ERA), on the other hand, has focused on co-operation and mobility opportunities needed for researchers and has not incorporated the importance of structured teaching and learning processes prior to doctoral and at doctoral and postdoctoral level.

#### IN THE BOLOGNA PROCESS: FROM TWO TO THREE CYCLES OF HIGHER EDUCATION

New two-tier structured degrees are rapidly being introduced across Europe. They are increasingly being defined in terms of credits and levels and learning outcomes, and there is more and more focus on the design and reform of curricula. These changes, especially the broad debate on the content and structure of master programmes, will necessarily have an impact upon doctoral studies, and it therefore makes sense to link reflection on all three cycles. This means looking closely at issues of curriculum structure and content, and at the link between teaching/knowledge transmission and research training and activity at each level, including the Bachelor level, even although it is clear that the interface between master and doctoral level will require particular attention.

Aware of the need to promote closer links between the EHEA and the ERA, and of the importance of research as an integral part of higher education across Europe, it is more than likely that as of September 2003 the Bologna Process will reach beyond the present focus on two main cycles of higher education to include the doctoral level as the third cycle.

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<sup>24</sup> TRENDS 2003 Moving Towards the European Higher Education Area, Sybille Reichert and Christian Tauch, EUA, 2003.

The key issues in the Bologna context will certainly be linked to the importance of research and research training in maintaining and improving the quality of higher education and in enhancing the competitiveness of European higher education more generally. Another important question at European level will be that of increasing mobility at the doctoral and postdoctoral levels, and encouraging universities to increase their cooperation in doctoral studies and the training of young researchers.

#### IN THE EUROPEAN RESEARCH AREA: TOWARDS THE 3% OBJECTIVE THROUGH ATTRACTING MORE AND BETTER TRAINED RESEARCHERS

The ERA concept was developed alongside the existing framework programmes in order to overcome structural weaknesses in terms of fragmented science and technology policies across Europe, promote greater «integration» of Europe's research efforts and capacities, and more coordination leading towards shared objectives, expertise and resources. It was followed almost immediately by the agreement on the need to increase the average research investment level across Europe to 3% by 2010, and the calculation that Europe will need 700,000 additional researchers if this goal is to be met.

It remains a challenge for universities to participate in the EU Framework Programmes, and all the more so in the 6<sup>th</sup> Framework Programme, given the limited number of objectives, and the introduction of new instruments intended to facilitate knowledge transfer through large *Integrated Projects* and to reinforce scientific excellence in specific areas through *Networks of Excellence* demonstrating the requisite critical mass. However, the importance now being attached to the question of human resources, high quality training for young researchers, and to rethinking research careers, puts the universities centre stage also in terms of research. The training of young researchers, after all, constitutes their core business. This is underlined by the fact that the recent Communication on the «Role of the Universities in the Europe of Knowledge» —the first time that the importance of universities, as institutions, has been recognized at European level— was prepared and launched jointly by the European Commissioners for Research and for Education, Philippe Busquin, Viviane Reding. A joint follow-up to this Communication is also envisaged.

From a university perspective it is to be hoped that this cooperation will be intensified, and thus encourage coherence in higher education and research policies not only at European level and in the framework of the Bologna Process, but also at national level. One could envisage more synergies also in terms of links between programmes such as ERASMUS and Marie Curie mobility actions and more concerted efforts to reduce

the still existing barriers to mobility which make it difficult especially for established scientists to be mobile within Europe.

#### 4.3. *Joint Action: more networking and more mobility for young researchers*

The geographical spread of universities throughout Europe provides the potential for networking based upon common interests and complementary strengths which can take many forms leading, for example, to the development of new (joint) doctorate degrees, research projects and collaboration with local/regional and European partners in industry and academia alike. Universities need to think about action in this area and reflect in terms of their own mission and objectives on optimal partnerships and strategic links.

Reflection is also needed at institutional level on how more interuniversity cooperation and networking, and at what level, can contribute to optimising research potential, and thus to the pursuit of excellence and the improvement of academic quality in all universities across the continent. At European level thought should be given to how more targeted support for such actions could be provided. For the training of researchers at doctoral and postdoctoral level, in addition to transmitting specific research and other horizontal skills, should also include an element of mobility through international research experience. It would therefore make sense to facilitate more cross-border cooperation and mobility and focus attention on identifying the different possibilities of working together, and particularly on how to optimise this cooperation and networking at doctorate and post-doctorate level. It should also include reference to career prospects and the development of career paths for young scientists. Any new initiatives also need to consider an element of financial support to encourage young doctorates and post-doctorates to keep working in science in Europe.

## 5. **Conclusions**

Universities as institutions now find themselves as never before at the very heart of the debate on the transition to a Europe of Knowledge. Their mission has evolved in recent years to include, in addition to their traditional research and teaching functions, service to society and increasing stakeholder involvement. Above all, however, it is their research mission that has expanded and diversified to include the transfer and dissemination of knowledge and its exploitation in the innovation

process and more project work carried out with a variety of different partners. As it becomes clear that Europe also needs to train more highly skilled workers, the quasi-monopoly of the universities in training young researchers enhances their importance even more. However, it also increases their responsibility for ensuring the high quality and the appropriateness of the training provided. In a Europe in which the diversity of mission of universities is, and will continue to grow, it is up to each institution to reflect on its priorities, and to seek partnerships and alliances based on its particular needs and strengths.

Collectively, Europe's universities can also make a major contribution to the equitable and sustainable development of the continent. While it is self evident that we need to support excellence, particularly in the research field, at European level it is critical to reflect on the different meaning of excellence in different contexts, and on how best to support the development of excellence. We need the «networks of excellence» which the 6<sup>th</sup> Framework Programme seeks to support, bringing together as they do very best research networks at international level. However, the needs of the knowledge society and the knowledge economy are diverse, and if Europe as a whole is to develop, we need to harness the diverse research potential of a much larger number of European universities. This means encouraging the development of networks of universities working in partnerships that correspond to their strengths and their needs and that will enhance their particular profile. We need to nurture and support the development of excellence in this way, whether this be at local, regional or international level, in fundamental research or in response to specific demands linked to the transfer and dissemination of knowledge in a specific context, or to ensure the constant supply of a high quality trained young people wherever they are needed across the continent. To respond to all of these demands Europe's universities need to actively maintain the integral link between teaching and research which is at the heart of the mission of the European university.



# **Jurisprudencia**



# Crónica de la Jurisprudencia del Tribunal de Justicia de las Comunidades Europeas

Carlos Gimeno Verdejo<sup>1</sup>

Administrador de la Comisión Europea-DG Comercio

María Isabel Rofes i Pujol<sup>2</sup>

Letrado del Tribunal de Justicia de las Comunidades Europeas

## La sentencia *Altmark*<sup>3</sup>. Ayudas de Estado y régimen comunitario aplicable a la financiación de los servicios públicos

Mediante esta sentencia, muy esperada en los ámbitos comunitario y nacional por los círculos políticos y jurídicos, el Tribunal de Justicia clarifica su doctrina sobre la financiación de los servicios de interés general y pone su granito de arena en el debate en torno a la cuestión del trato que deba darse en el marco de la Unión Europea a dichos servicios.

Más concretamente, en la sentencia *Altmark* el Tribunal de Justicia da respuesta a una cuestión prejudicial relativa a la interpretación de los artículos 73 (política de transporte)<sup>4</sup> y 87 CE (ayudas de Estado)<sup>5</sup>, así como del Reglamento 1191/69 sobre obligaciones inherentes a la noción de servicio público en el sector de los transportes por ferrocarril, por carretera

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<sup>1</sup> Las opiniones expresadas por el autor son estrictamente personales y en ningún caso vinculantes para la Institución en la que presta sus servicios.

<sup>2</sup> Las opiniones expresadas por la autora son estrictamente personales y en ningún caso vinculantes para la Institución en la que presta sus servicios.

<sup>3</sup> Sentencia de 24 de julio de 2003, *Altmark Trans GmbH, Regierungspräsidium Magdeburg / Nahverkehrsgesellschaft Altmark GmbH* (C-280/00 P, Rec. p. I-0000).

<sup>4</sup> Sobre esta política, véase el comentario a los artículos 70 a 80 CE de MONGIN, B. en *Commentaire article par article des traités UE et CE*, Helbing & Lichtenhahn, Bruylant, Dalloz, Bâle 2000, p. 607 y s.

<sup>5</sup> Sobre la jurisprudencia y la práctica decisional de la Comisión en general en materia de ayudas de Estado, véanse entre otros, KEPPELNE, J.P.: *Guide pratique des aides d'Etat en droit communautaire*, Bruylant, Bruxelles, 1999, así como el comentario a los artículos 87 a 89 CE de LEHMAN, H. en *Commentaire article par article des traités UE et CE*, Helbing & Lichtenhahn, Bruylant, Dalloz, Bâle 2000, p. 791 y s., y la publicación de la Comisión Europea *Derecho de la Competencia en las Comunidades Europeas, Volumen II B, Explicación de las reglas aplicables a las ayudas de Estado*.

y por vías férrea<sup>6</sup>, que le había planteado el *Bundesverwaltungsgericht*. Esta cuestión se había suscitado en el marco de un litigio relativo a la concesión, por el Gobierno de la Región de Magdeburgo, de licencias de servicios regulares de transporte por autocar en *el Lankreis Stendal* en Alemania a *Altmark Trans* y de subvenciones públicas para la ejecución de dichos servicios. En dicho litigio, precisa el Tribunal de Justicia, únicamente se discutía la concesión de las licencias en la medida en que la beneficiaria necesitaba subvenciones públicas para ejecutar las obligaciones de servicio público derivadas de dichas licencias, y por tanto el objeto del litigio era esencialmente la legalidad de las subvenciones públicas recibidas por *Altmark Trans*. En dicho litigio, tras haber comprobado que el pago de las subvenciones públicas no era contrario al Derecho nacional alemán, el órgano remitente se había planteado la compatibilidad de dichas subvenciones con el Derecho comunitario.

En su planteamiento del análisis de compatibilidad, el órgano jurisdiccional remitente había subdividido su cuestión en tres partes, relativas respectivamente a la interpretación del artículo 87 CE, del artículo 73 CE y del Reglamento 1191/69.

El Tribunal de Justicia comienza su razonamiento recordando que las principales disposiciones del Tratado que regulan las subvenciones públicas son las relativas a las ayudas de Estado, a saber, los artículos 87 y siguientes del Tratado y que el artículo 73 del Tratado establece, en el ámbito del transporte, una excepción a las normas generales aplicables a las ayudas de Estado, previendo que las ayudas que respondan a las necesidades de coordinación de los transportes o que correspondan al reembolso de determinadas obligaciones inherentes a la noción de servicio público son compatibles con el Tratado. Y señala que el Consejo adoptó el Reglamento 1191/69 sobre la base de los artículos 75 del Tratado CE (actualmente artículo 71 CE, tras su modificación) y 94 del Tratado CE (actualmente artículo 89 CE), basándose así, por consiguiente, tanto en las disposiciones del Tratado relativas a la política común de transportes como en las relativas a las ayudas de Estado. Por ello, estima el Tribunal, debe dilucidarse, en primer lugar, si el Reglamento 1191/69 es aplicable a los servicios de transporte controvertidos en el litigio principal. Efectivamente, únicamente en caso de respuesta

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<sup>6</sup> Reglamento (CEE) n.º 1191/69 del Consejo, de 26 de junio de 1969, relativo a la acción de los Estados miembros en materia de obligaciones inherentes a la noción de servicio público en el sector de los transportes por ferrocarril, por carretera y por vía férrea (*DOCE* L 156, p. 1; EE 08/01, p. 131) en su versión modificada por el Reglamento (CEE) n.º 1893/91 del Consejo, de 20 de junio de 1991 (*DOCE* L 169, p. 1).

negativa deberá examinarse la aplicación de las disposiciones generales del Tratado relativas a las ayudas de Estado a las subvenciones controvertidas.

Hechas estas observaciones preliminares, el Tribunal se adentra en el examen de la tercera parte de la cuestión prejudicial, mediante la cual el órgano remitente deseaba saber, en esencia si el Reglamento 1191/69, y en particular su artículo 1, apartado 1, párrafo segundo, puede interpretarse en el sentido de que permite a un Estado miembro excluir del ámbito de aplicación de este Reglamento la explotación de servicios regulares de transporte urbano, de cercanías o regional que dependen necesariamente de las subvenciones públicas y limitar su aplicación a aquellos casos en que, de otro modo, no sea posible garantizar la prestación de un servicio de transporte suficiente. Tras examinar en detalle el contenido de dicho Reglamento, el Tribunal de Justicia llega a la conclusión de que la respuesta debe ser positiva siempre que, no obstante, se respete debidamente el principio de seguridad jurídica.

Por lo que respecta a los hechos objeto de litigio, el Tribunal de Justicia parece albergar serias dudas sobre el respeto de dicho principio por parte del legislador alemán al hacer uso de la facultad de establecer excepciones previstas en el artículo 1, apartado 1, párrafo segundo, del Reglamento 1191/69. Sin embargo, se abstiene de formular una conclusión definitiva al respecto y deja la valoración al órgano remitente.

Tal proceder responde posiblemente a la voluntad del Tribunal de dar una respuesta a la cuestión candente de la calificación como ayuda de Estado de las compensaciones financieras por obligaciones de servicio público. En efecto, de haber llegado él mismo a la conclusión de que en el asunto principal no se había respetado el principio de la seguridad jurídica, habría debido examinar también él mismo, tal y como sugiere hacer al órgano remitente, si las licencias controvertidas se habían adjudicado de conformidad con el Reglamento 1191/69 y, en caso afirmativo, comprobar si las subvenciones de que se trataba se habían concedido conforme a éste. Si dichas licencias y subvenciones no hubiesen cumplido las condiciones establecidas en dicho Reglamento, el Tribunal hubiese debido concluir que eran incompatibles con el Derecho comunitario, sin que hubiera sido necesario examinarlas a la luz de las disposiciones del Tratado. Al dejar que sea el órgano remitente el que valore si se ha respetado o no el principio de seguridad jurídica, el Tribunal se ve «obligado» a analizar la primera parte de la cuestión prejudicial, relativa la calificación como ayuda de Estado de la compensación financiera de servicio público, para la eventualidad de que el órgano remitente concluyese, no obstante todas las dudas al respecto, que el principio de seguridad jurídica no había sido violado.

La voluntad del Tribunal de Justicia de pronunciarse sobre la cuestión de la calificación como ayuda de Estado de las compensaciones por obligación de servicio público es aún más patente si se tiene en cuenta que el órgano remitente daba por hecho en su cuestión de que se trataba de una ayuda de Estado y sólo se interesaba por la cuestión de la afectación del comercio entre los Estados miembros. En efecto, mediante la primera parte de su cuestión, el *Bundesverwaltungsgericht* deseaba saber, en esencia, únicamente si las subvenciones concedidas para compensar el déficit de un servicio público de transporte urbano, de cercanías o regional están comprendidas en cualquier caso en el artículo 92, apartado 1, del Tratado, o si, debido al carácter local o regional de los servicios de transporte prestados y, en su caso, a la importancia del ámbito de actividad de que se trate, tales subvenciones no afectan a los intercambios comerciales entre Estados miembros.

El Tribunal, tras recordar que para que exista ayuda deben cumplirse todos los requisitos previstos en el artículo 87 CE<sup>7</sup> (intervención del Estado o mediante fondos estatales, afectación posible de los intercambios entre los Estados miembros, ventaja conferida a su beneficiario y falseamiento de la competencia), empieza por examinar el segundo de ellos, ciñéndose así a la cuestión que se le planteaba. Al respecto, señala, en primer lugar, que en modo alguno cabe excluir que una subvención pública concedida a una empresa que presta únicamente servicios de transporte local o regional y que no presta servicios de transporte fuera de su Estado de origen puedan, a pesar de ello, tener una incidencia en los intercambios entre los Estados miembros. Efectivamente, precisa el Tribunal, cuando un Estado miembro concede una subvención pública a una empresa, la prestación de servicios de transporte por parte de esta empresa puede mantenerse o aumentar, con la consecuencia de que disminuyen con ello las posibilidades de las empresas establecidas en otros Estados miembros de prestar sus servicios de transporte en el mercado de dicho Estado miembro<sup>8</sup>. Además, añade el Tribunal de Justicia, la Comunicación de la Comisión, de 6 de marzo de 1996, relativa a las ayudas *de minimis*<sup>9</sup>, no se aplica al sector del transporte, como se desprende de su párrafo cuarto. Asimismo, el Reglamento (CE) n. 69/2001 de la Comisión,

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<sup>7</sup> Véanse las sentencias de 21 de marzo de 1990, Bélgica/Comisión, denominada «Tubemeuse» (C-142/87, Rec. p. I-959), de 14 de septiembre de 1994, España/Comisión (C-278/92 a C-280/92, Rec. p. I-4103) y de 16 de mayo de 2002, Francia/Comisión (C-482/99, Rec. p. I-4397).

<sup>8</sup> Véanse, en este sentido, las sentencias de 13 de julio de 1988, Francia/Comisión (102/87, Rec. p. 4067), de 21 de marzo de 1991, Italia/Comisión (C-305/89, Rec. p. I-1603) y España/Comisión, antes citada.

<sup>9</sup> DOCE C 68, p. 9.

de 12 de enero de 2001, relativo a la aplicación de los artículos 87 y 88 del Tratado CE a las ayudas *de minimis*<sup>10</sup>, tampoco se aplica a este sector de conformidad con su tercer considerando y su artículo 1, letra a). Por último, termina el Tribunal de Justicia, no existe un umbral o porcentaje por debajo del cual pueda considerarse que los intercambios entre Estados miembros no se ven afectados, ya que la cuantía relativamente reducida de una ayuda o el tamaño relativamente modesto de la empresa beneficiaria no excluyen *a priori* la posibilidad de que se vean afectados los intercambios entre Estados miembros<sup>11</sup>. Por ello, concluye, el Tribunal, el segundo requisito para la aplicación del artículo 87, apartado 1, del Tratado, según el cual la ayuda debe poder afectar a los intercambios entre Estados miembros, no depende del carácter local o regional de los servicios de transporte prestados ni de la importancia del ámbito de actividad de que se trate.

No obstante, el Tribunal de Justicia no se para ahí, sino que va a examinar si en las controvertidas compensaciones financieras por una obligación de servicio público se cumplía el tercer requisito para la calificación como ayuda, esto es, la existencia de una ventaja concedida a la empresa beneficiaria.

Este exceso de celo por parte del Tribunal de Justicia puede comprenderse en la medida en que la solución jurisprudencial a esta cuestión no era la misma que prevalecía en el momento en que el órgano jurisdiccional remitente se había dirigido al Tribunal. En efecto, tras una primera serie de sentencias<sup>12</sup> en las que el juez comunitario había considerado que las compensaciones de servicio público debían ser consideradas como ayudas de Estado que debían ser notificadas a la Comisión para que ésta pudiese examinar su compatibilidad en particular con el artículo 86.2 CE (disposición relativa a los servicios de interés general)<sup>13</sup>, el 22 de noviembre de 2001 el Tribunal de Justicia, en su sentencia *Ferring*<sup>14</sup> había

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<sup>10</sup> *DOCE* L 10, p. 30.

<sup>11</sup> Véanse las sentencias *Tubemeuse*, apartado 43, y *España/Comisión*, apartado 42, antes citadas.

<sup>12</sup> Véanse las sentencias de 27 de enero de 1997, *FFSA* (T-106/95, Rec. II-229), de 10 de mayo de 2000, *SIC* (T-46/97, Rec. p. II-2125) y de 22 de junio de 2000, *CELF* (C-332/98, Rec. p. I-4833).

<sup>13</sup> En virtud de esta disposición «las empresas encargadas de la gestión de servicios de interés económico general o que tengan el carácter de monopolio fiscal quedarán sometidas a las normas del presente Tratado, en especial a las normas sobre competencia, *en la medida en que la aplicación de dichas normas no impida, de hecho o de derecho, el cumplimiento de la misión específica a ellas confiada*. El desarrollo de los intercambios no deberá quedar afectado en forma tal que sea contraria al interés de la Comunidad».

<sup>14</sup> C-53/00, Rec. p. I-9067.

concluido por el contrario que dichas compensaciones no podían ser consideradas como ayudas en la medida en que no sobrepasasen el nivel de los costes netos reales derivados de la obligación de servicio público.

De hecho, y aunque el Abogado General Sr. Léger había tenido en cuenta la sentencia *Ferring* en sus conclusiones de 19 de marzo de 2002, el Tribunal de Justicia, mediante auto de 18 de junio de 2002, había acordado la reapertura de la fase oral del procedimiento para ofrecer a las partes en el litigio principal, a los Estados miembros, a la Comisión y al Consejo la posibilidad de formular sus observaciones sobre las posibles consecuencias de dicha sentencia para la respuesta a la cuestión prejudicial planteada en el asunto Altmark, y el Abogado General había tenido que formular unas segundas conclusiones específicas sobre esta cuestión con fecha de 14 de enero de 2003.

A todo ello ha de añadirse que la sentencia *Ferring* en sí misma no estaba exenta de polémica. El Abogado General Léger, ya en sus conclusiones de marzo de 2002, había invitado al Tribunal de Justicia a no aplicarla por considerar que ponía en entredicho la estructura y la economía de las disposiciones del Tratado en materia de ayudas de Estado, y a juzgar que se estaba en presencia de ayudas de Estado. Su argumentación, subdividida en tres partes, se resumía del siguiente modo:

- En primer lugar, la motivación de la sentencia *Ferring* confundía dos cuestiones jurídicamente distintas: la de la cualificación de la medida como ayuda de Estado y la de la justificación de la medida. La jurisprudencia anterior, teniendo en cuenta el objetivo general del artículo 87 (prevenir que los intercambios entre Estados miembros sean afectados por ventajas consentidas por las autoridades públicas que falseen o amenacen con falsear la competencia), había indicado claramente que el artículo 87, apartado 1, CE consagraba una noción objetiva de ayuda de Estado en función de sus efectos y no de sus causas u objetivos. Dichos objetivos sólo podían tomarse en consideración en un estadio ulterior del análisis a efectos de verificar si la medida estatal estaba justificada en virtud de alguna de las disposiciones derogatorias del Tratado. Sin embargo, en la sentencia *Ferring*, el Tribunal en su análisis del concepto de ayuda a la luz del artículo 87, apartado 1, había examinado conjuntamente la calificación y la justificación.
- En segundo lugar, la sentencia *Ferring* privaba al artículo 86, apartado 2, de gran parte de su utilidad. Dicha disposición tiene por objetivo conciliar el interés de los Estados miembros en utilizar ciertas empresas como instrumento de su política económica, fiscal o social con el interés comunitario en que se respeten las re-



- glas de competencia y se preserve la integridad del mercado único. Sin embargo, según se desprendía de la sentencia *Ferring*, si la ventaja es inferior o igual a los costes de las obligaciones de servicio público, no existe ayuda de Estado, y si ésta es superior a dichos costes, existe una ayuda que no puede en ningún caso considerarse como necesaria para permitir a los operadores cumplir con su misión particular de servicio público. Esto significaría que el artículo 86, apartado 2, no será aplicable en la primera hipótesis, puesto que la medida no está prohibida por el artículo 87, apartado 1, pero tampoco en el segundo caso, dado que la parte de la ayuda que sobrepasa los costes de las obligaciones de servicio público no entra en el ámbito de aplicación de esta derogación<sup>15</sup>.
- En tercer y último lugar, el razonamiento de la sentencia *Ferring* sustraía las medidas de financiación de los servicios públicos al control de la Comisión. Las medidas que compensen el coste de las obligaciones de servicio público no están sometidas a la obligación de notificación prevista por el artículo 93, tercer párrafo, por no constituir ayudas de Estado. Por el mismo motivo, las medidas existentes ya no están sometidas al examen permanente de la Comisión, organizado por el artículo 93, párrafos primero y segundo. Además, estas medidas escapan del control instaurado por el artículo 90, párrafo tercero, puesto que no entran en el ámbito de aplicación de las reglas de Tratado en materia de competencia.

Ahondando más en la crítica, se ha indicado que partiendo de la sentencia *Ferring*, cualquier autoridad nacional puede ser llamada a verificar la proporcionalidad de la compensación al mismo tiempo que la Comisión y que diferentes autoridades nacionales, tanto al interior de un Estado miembro, como de diferentes Estados miembros pueden aplicar distintos criterios para calcular la proporcionalidad de la compensación. En efecto, ya en la determinación de los costes adicionales de un servicio de interés general distintos enfoques pueden ser dados a cuestiones tales

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<sup>15</sup> El Abogado General profundizando en su examen estimaba que el régimen instaurado por la sentencia *Ferring* se caracterizaba por una gran flexibilidad con respecto al control previsto por el artículo 86, apartado 2, CE, ya que el mismo no permite verificar si las obligaciones impuestas a las empresas presentan un nexo suficiente con el objeto del servicio de interés general y si éstas tiene por objetivo de contribuir directamente a satisfacer dicho interés y tampoco permite garantizar que dichas obligaciones sean específicas a la empresa en cuestión y definidas de modo suficientemente preciso. Añadía también que la sentencia *Ferring* no imponía ninguna condición relativa a la incidencia sobre los intercambios entre Estados miembros, una condición importante por cuanto puede conducir a negar el beneficio de la aplicación del artículo 86, apartado 2, primera frase, por aplicación de la segunda frase del mismo.

como saber si la cuantificación de los costes adicionales debe hacerse sobre la base de los costes marginales del suministro del servicio de interés general combinados con otros servicios suministrados por la misma empresa o si el coste adicional debe limitarse al coste específico del suministro del servicio de interés general. Otra cuestión susceptible de recibir diferentes respuestas es el trato a dar a los costes de infraestructuras que se usan a la vez para el servicio público y para otros servicios. Igualmente, en la determinación de la cantidad de compensación permitida puede haber distintos enfoques en cuanto a cómo contabilizar las economías de escala y de alcance, o las ventajas indirectas que puedan derivarse de la concesión de una misión de servicio de interés general como pueda ser la reputación o la ubicuidad. La crítica pone de relieve que empresas en diferentes Estados pueden ser compensadas sobre la base de diferentes criterios económicos por servicios de interés general esencialmente idénticos, creándose así una distorsión de la competencia. Además se suscita la cuestión de saber si la Comisión es competente para fijar los criterios económicos sobre los que deba calcularse la compensación, ya que el artículo 86 no se aplica a la compensación de los servicios de interés general<sup>16</sup>.

La controversia en torno a la doctrina establecida por la sentencia *Ferring* también dejó su impronta en el examen de otros asuntos sometidos al Tribunal de Justicia. Así, el Abogado General Sr. Jacobs, en sus conclusiones de 30 de abril de 2002 en el asunto *GEMO*<sup>17</sup> y la Abogada General Sra. Stix-Hackl de 7 de noviembre de 2002 en los asuntos *Enirisorse*<sup>18</sup> invitaban igualmente al Tribunal de Justicia a corregir su doctrina.

En particular, el Abogado General Sr. Jacobs le sugería adoptar una solución *quid pro quo*, según la cual debería distinguirse entre los supuestos en que existe una relación directa y manifiesta entre la financiación estatal y las obligaciones de servicio público claramente definidas y aquellos casos en que la relación no es directa o las obligaciones no están claramente definidas. Para el primer supuesto preconizaba que no se considerase la existencia de una ayuda mientras que para el segundo existiría una ayuda sujeta al control de la Comisión.

El Abogado General Sr. Léger, en sus segundas conclusiones sobre el asunto *Altmark* de 14 de enero de 2003, estima que la solución *quid pro*

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<sup>16</sup> Véase GRESPAN, D: «An example of the application of State aid rules in the utilities sector in Italy», *Competition Policy Newsletter*, Comisión Europea, Octubre 2002, n.º 3, p. 22.

<sup>17</sup> C-126/01.

<sup>18</sup> C-34 a C-38/01.

*quo* presenta inconvenientes considerables, ya que modifica sustancialmente la noción de ayuda, hasta entonces basada en los efectos de la medida considerada, y no garantiza un grado suficiente de seguridad jurídica. A juicio del Abogado General Sr. Léger, con arreglo a esta solución, el concepto de ayuda no se define en función de los efectos<sup>19</sup>, sino en función de criterios de carácter puramente formal o procedimental y supone que una misma medida pueda calificarse de ayuda o de «no ayuda» dependiendo de que exista un contrato (de servicio público) o un texto (que defina las obligaciones de servicio público) siendo así que sus efectos sobre la competencia serán idénticos. Por lo que se refiere a la seguridad jurídica, observa que el criterio principal relativo a la relación directa y manifiesta entre la financiación y las obligaciones de servicio público se define de una manera vaga e imprecisa y no ofrece una solución satisfactoria ni para las instancias políticas europeas ni para el propio Tribunal de Justicia que tendrá que ir precisando caso por caso. Otra solución descartada por el Abogado General Sr. Léger es la del criterio del inversor privado en una economía de mercado, que algunos de las participantes en la reapertura del procedimiento oral habían invocado. Para ello, indica, basta tener en cuenta que los supuestos en los que el Estado adquiere bienes o servicios por cuenta propia y en los que se comporta como un operador privado con ánimo de lucro, no pueden ser comparados con aquellos en los que adquiere servicios que se ponen directamente a disposición de la colectividad, actuando entonces como poder público. El análisis efectuado en estas segundas conclusiones le lleva una vez más a confirmar sus conclusiones anteriores sobre la existencia de una ayuda de Estado.

Otro elemento que no podía pasar desapercibido para el Tribunal de Justicia era el debate que se estaba desarrollando sobre el plano político en torno al régimen en su conjunto, y no sólo limitado a la financiación, de los servicios de interés general en Derecho comunitario. De hecho, el Abogado General Sr. Léger, tanto en sus primeras como en sus segundas conclusiones se hace eco de dicho debate. En efecto, el Consejo y el

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<sup>19</sup> Véanse las sentencias de 2 de julio de 1974, Italia / Comisión (173/73, Rec. p. 709) y de 26 de septiembre de 1996, Francia / Comisión (C-241/94, Rec. p. I-4551). El Abogado General Sr. Léger recuerda que los demás elementos de la medida, como puedan ser la forma en que se concede la ayuda, el estatuto jurídico de la medida en derecho nacional, el hecho de que la medida se inscriba en un régimen de ayudas, las causas de la medida, los objetivos de la medida o la intención de las autoridades públicas y de la empresa beneficiaria, carecen de pertinencia en la fase de determinación de la existencia de una ayuda por no tener repercusiones sobre la competencia. Véanse las sentencias de 14 de noviembre de 1984, Intermills / Comisión (323/82, Rec. p. 3809), de 30 de abril de 1998, Cityflyer Express / Comisión (T-16/96, Rec. p. II-757) y de 12 de diciembre de 2002, Bélgica / Comisión (C-5/01, Rec. p. I-0000).

Parlamento habían solicitado a la Comisión que estudiase la eventualidad de una directiva marco sobre los servicios de interés general, de líneas directrices en materia de ayudas a empresas encargadas de la gestión de servicios de interés económico general y/o de un reglamento de exención para las mismas. La Comisión había respondido que comenzaría por establecer un marco comunitario, pero que podría adoptar un reglamento de exención en la medida que estuviera justificado. Sin embargo, la incertidumbre jurisprudencial creada por la sentencia *Ferring* había terminado por ralentizar estos trabajos, así como los relativos al marco general de los servicios de interés general, actualmente limitados al lanzamiento de una consulta a través de un Libro Verde<sup>20</sup>.

En este contexto, el Tribunal de Justicia aprovecha la ocasión brindada por el asunto *Altmark* para clarificar la cuestión de principio relativa a la aplicación de la normativa de ayudas a las compensaciones de servicio público. Al hacerlo, confirma la orientación de la sentencia *Ferring*, según la cual en principio la compensación de una obligación de servicio público no constituye una ayuda, aunque la matiza. Para ello opta por la solución *quid pro quo* sugerida por el Abogado General Sr. Jacobs en el asunto *GEMO*, aunque añadiendo a la misma una serie de condiciones encaminadas a limitar la posibilidad de abuso. El conjunto de condiciones fijadas por el Tribunal para que a tal compensación no se le aplique, en un caso concreto, la calificación de ayuda de Estado, es el siguiente:

- En primer lugar, la empresa beneficiaria debe estar efectivamente encargada de la ejecución de obligaciones de servicio público y éstas deben estar claramente definidas.

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<sup>20</sup> Véanse, en particular, las conclusiones de la Presidencia del Consejo Europeo de Niza, celebrado los días 7, 8 y 9 de diciembre de 2000, punto 47; las conclusiones de la Presidencia del Consejo Europeo de Laeken, celebrado los días 14 y 15 de diciembre de 2001, punto 26; las conclusiones de la Presidencia del Consejo Europeo de Barcelona, celebrado los días 15 y 16 de marzo de 2002, punto 42; las conclusiones de la Presidencia del Consejo Europeo de Sevilla, celebrado los días 21 y 22 de junio de 2002, punto 54; la comunicación de la Comisión sobre los servicios de interés general en Europa (DO 2001, C 17, p.4); el informe de la Comisión, de 17 de octubre de 2001, al Consejo Europeo de Laeken sobre los servicios de interés general [COM(2001) 598 final]; la comunicación de la Comisión sobre la aplicación de las normas en materia de ayudas estatales a los servicios públicos de radiodifusión (DO 2001, C 320, p. 5); el informe de la Comisión, de 16 de junio de 2002, sobre el estado de los trabajos relativos a las directrices sobre las ayudas estatales relacionadas con los servicios de interés económico general [COM(2002) 280 final], el informe de la Comisión, de 27 de noviembre de 2002, sobre el estado de los trabajos relativos a las directrices sobre las ayudas estatales relacionadas con los servicios de interés económico general [COM(2002) 636 final], y el Libro Verde de la Comisión sobre los Servicios de Interés General de 21 de mayo de 2003 [COM(2003) 270 final].

- En segundo lugar, los parámetros para el cálculo de la compensación deben establecerse previamente de forma objetiva y transparente, para evitar que ésta confiera una ventaja económica que pueda favorecer a la empresa beneficiaria respecto a las empresas competidoras. Así, constituye una intervención financiera incluida en el concepto de ayuda de Estado la compensación por parte de un Estado miembro de las pérdidas sufridas por una empresa sin que se hayan establecido previamente los parámetros de tal compensación, cuando, *a posteriori*, se comprueba que la explotación de determinados servicios en el marco de la ejecución de obligaciones de servicio público no ha sido económicamente viable.
- En tercer lugar, la compensación no puede superar el nivel necesario para cubrir total o parcialmente los gastos ocasionados por la ejecución de las obligaciones de servicio público, teniendo en cuenta los ingresos correspondientes y un beneficio razonable por la ejecución de estas obligaciones.
- En cuarto lugar, cuando la elección de la empresa encargada de ejecutar obligaciones de servicio público, en un caso concreto, no se haya realizado en el marco de un procedimiento de contratación pública que permita seleccionar al candidato capaz de prestar estos servicios originando el menor coste para la colectividad, el nivel de la compensación necesaria debe calcularse sobre la base de un análisis de los costes que una empresa media, bien gestionada y adecuadamente equipada para poder satisfacer las exigencias de servicio público requeridas, habría soportado para ejecutar estas obligaciones, teniendo en cuenta los ingresos correspondientes y un beneficio razonable por la ejecución de estas obligaciones.

A la vista de las primeras reacciones<sup>21</sup> a la sentencia, la solución ofrecida por el Tribunal de Justicia parecía contentar a todos. La Comisión estimaba que el Tribunal había definido un marco preciso que permitirá evitar las distorsiones de la competencia por lo que respecta a las compensaciones. Por su parte, la Confederación europea de empresas públicas (CEEP) consideraba que se trataba de una sentencia importante puesto que los cuatro criterios definidos por el Tribunal les convenían, y en particular el cuarto, puesto que el mismo reconocía que la selección de las empresas para efectuar misiones de servicio público puede hacerse

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<sup>21</sup> Agencia Europa n.º 8511 de 25 de julio de 2003, p. 6.

al margen de la normativa de contratación pública europea, cuyos procedimientos son muy complicados para los pequeños municipios.

Lo cierto es que las condiciones requeridas por el Tribunal de Justicia son muy restrictivas y que dos de ellas, la segunda y la cuarta, constituyen una novedad en la jurisprudencia. Tratándose de la segunda, cabe observar que de modo general los parámetros para el cálculo de las compensaciones han venido siendo fijados *ex post* y por tanto la mayoría de los regímenes de compensación existentes no cumplirían con este requisito. Por lo que respecta a la cuarta, cabe observar igualmente el escaso peso histórico de la contratación pública en la selección de los operadores de servicio público, por lo que la presunción de cumplimiento de esta condición será raramente aplicable. En la mayoría de los casos habrá que aplicar el criterio establecido por el Tribunal para los supuestos en los que la selección se hace a través de procedimientos diferentes del de contratación pública, a saber, el hecho de que la compensación no sobrepase los costes que una empresa media, bien gestionada y adecuadamente equipada habría encontrado para ofrecer el mismo servicio. Este standard es más estricto que el hasta entonces aplicable, que era el de los costes reales con independencia de la calidad de la gestión.

Puede pensarse razonablemente que existen numerosos mecanismos de financiación de servicios públicos en Europa que son susceptibles de afectar los intercambios intracomunitarios y cuyas modalidades no responden a las estrictas condiciones indicadas por el Tribunal de Justicia. Desde un punto de vista jurídico todos estos mecanismos deberían haber sido y deberán ser notificados a la Comisión para que ésta pueda examinar su compatibilidad con las reglas de Tratado.

Al respecto cabe observar que, mientras la sentencia *Ferring* no permitía que se tuviese en cuenta el artículo 86, apartado 2, sobre los servicios de interés general<sup>22</sup>, la sentencia *Altmark* no se pronuncia explícitamente sobre la cuestión. Sin embargo, parece deducirse implícitamente de la misma que aquellas medidas que deben ser consideradas como ayudas por no cumplir con alguna de las cuatro condiciones, podrían ser declaradas compatibles con el Tratado si las condiciones, menos estrictas, del artículo 86, apartado 2, CE aparecen reunidas. En efecto, el Tribunal de Justicia, al responder a la segunda parte de la cuestión prejudicial, señala que si las subvenciones no están sujetas al artículo 87 no hay necesidad de invocar la excepción del artículo 73 CE en materia de transportes. A contrario y por extensión, esta afirmación deja entrever la posibilidad de

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<sup>22</sup> Véanse *supra* las diversas críticas emitidas sobre dicha sentencia.

que, si las subvenciones son calificadas como ayudas de Estado, cabe efectuar el examen de una eventual justificación en virtud de alguna de las excepciones previstas en el Tratado.

Para aquellos casos en los que pueda vislumbrarse el cúmulo de las cuatro condiciones será todavía difícil pronunciarse con absoluta certeza jurídica, puesto que el Tribunal no se ha adentrado en el cálculo concreto de los distintos costes que hayan de tenerse en cuenta<sup>23</sup>. Salvo que las instancias políticas decidan, una vez conocidos los resultados del Libro Verde, dar una respuesta definitiva a todas las cuestiones pendientes, habrá que esperar nuevas sentencias del Tribunal para que éstas se vayan clarificando. Oportunidades no le van a faltar, dado el previsible aumento de las notificaciones y de las quejas a la Comisión una vez conocida la sentencia *Altmark*.

(CGV)

### **La sentencia *Schmidberger*<sup>24</sup>. Obstáculos a la libre circulación de mercancías como consecuencia del bloqueo de ejes de carreteras debido a una manifestación**

En esta sentencia, el Tribunal de Justicia recuerda la necesidad de respetar un justo equilibrio entre el ejercicio de libertades fundamentales tales como el derecho de manifestación y el de reunión y la libertad de movimientos de mercancías consagrada por el artículo 28 CE<sup>25</sup>. Lo hace al responder a una serie de cuestiones prejudiciales, cuestiones que se habían suscitado en el marco de un litigio acerca de la autorización concedida tácitamente por las autoridades austríacas a una asociación con fines esencialmente medioambientales para organizar una concentración en la autopista del *Brenner* que tuvo como efecto el bloqueo total de la circulación por ésta durante casi treinta horas.

El Tribunal de Justicia señala en primer lugar que la libre circulación de mercancías constituye uno de los principios fundamentales de la Comunidad y que debe eliminarse toda restricción al respecto entre los Estados miembros. Y puntualiza que, cuando uno de éstos se abstiene de

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<sup>23</sup> Véanse *supra* las críticas emitidas al respecto sobre la sentencia *Ferring*.

<sup>24</sup> Sentencia de 12 de junio de 2003, Eugen Schmidberger / República Austriaca (C-112/00 P, Rec. p. I-0000).

<sup>25</sup> Sobre esta libertad, véase el comentario a los artículos 28 a 30 CE de GIMENO VERDEJO, C. en *Commentaire article par article des traités UE et CE*, Helbing & Lichtenhahn, Bruylant, Dalloz, Bâle 2000, p. 270 y s.

adoptar las medidas adecuadas para hacer frente a obstáculos a los intercambios intracomunitarios, aun cuando no sean actos propios sino que se derivan de acciones imputables a particulares, puede ser considerado responsable como ocurrió con Francia en 1997<sup>26</sup>. Cabe recordar que en aquella ocasión Francia había sido condenada por incumplimiento al haber tolerado sus autoridades repetidos actos violentos cometidos contra camiones y productos españoles por parte de particulares y de movimientos reivindicativos de agricultores franceses.

El Tribunal de Justicia destaca que en el caso concreto dicha obligación es tanto más esencial por cuanto está en cuestión una ruta de especial importancia, como es la autopista del *Brenner*, que constituye una de las principales vías de comunicación entre la Europa septentrional y el norte de Italia. En consecuencia, el hecho de que Austria no prohibiera una concentración que bloqueó durante cerca de treinta horas dicha autopista, precisa el Tribunal, puede restringir el comercio intracomunitario de mercancías en el interior de la Unión y es, en principio, incompatible con el Derecho comunitario a menos que exista una justificación objetiva de este hecho.

Para verificar si es posible justificar dicho obstáculo a la libre circulación, en opinión del Tribunal de Justicia, procede tomar en consideración el objetivo perseguido por las autoridades nacionales en el momento de la autorización: en este caso, el del respeto de los derechos fundamentales de los manifestantes en materia de libertad de expresión y de libertad de reunión, garantizados por la Constitución austríaca y por el Convenio Europeo de los Derechos del Hombre (CEDH) cuyo respeto garantiza el Tribunal de Justicia de las Comunidades Europeas. A este respecto, recuerda que, según reiterada jurisprudencia, los derechos fundamentales forman parte de los principios generales del Derecho cuyo respeto garantiza el Tribunal de Justicia y que, para ello, éste se inspira en las tradiciones constitucionales comunes de los Estados miembros así como en las indicaciones proporcionadas por los instrumentos internacionales relativos a la protección de los derechos humanos con los que los Estados miembros han cooperado o a los que se han adherido, entre los que el CEDH reviste un significado particular<sup>27</sup>. Y subraya a continuación que los principios elaborados por dicha jurisprudencia han sido

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<sup>26</sup> Véase la sentencia de 9 de diciembre de 1997, Comisión / Francia (C-265/95, Rec. p. I-6959), comentada en la crónica publicada en el número 19 de esta Revista.

<sup>27</sup> Véanse, en especial, las sentencias de 18 de junio de 1991, ERT (C-260/89, Rec. p. I-2925), de 6 de marzo de 2001, Connolly/Comisión (C-274/99 P, Rec. p. I-1611), y de 22 de octubre de 2002, Roquette Frères (C-94/00, Rec. p. I-9011).



reafirmados en la exposición de motivos del Acta Unica Europea y posteriormente en el artículo F, apartado 2, del Tratado de la Unión Europea, según la cual «la Unión respetará los derechos fundamentales tal y como se garantizan en el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales firmado en Roma el 4 de noviembre de 1950, y tal y como resultan de las tradiciones constitucionales comunes a los Estados miembros como principios generales del Derecho comunitario». De ello se deduce, afirma el Tribunal, que no pueden admitirse en la Comunidad medidas incompatibles con el respeto de los derechos humanos reconocidos de esta manera<sup>28</sup>. Por tanto, destaca el tribunal de Justicia, al imponerse el respeto de los derechos fundamentales tanto a la Comunidad como a sus Estados miembros, la protección de tales derechos constituye un interés legítimo que puede justificar, en principio, una restricción a las obligaciones impuestas por el Derecho comunitario, incluso en virtud de una libertad fundamental garantizada por el Tratado como la libre circulación de mercancías. También recuerda que, conforme a reiterada jurisprudencia, desde el momento en que una situación nacional está comprendida en el ámbito de aplicación del Derecho comunitario, como ocurre en el asunto principal, el Tribunal de Justicia, cuando conoce de un asunto planteado con carácter prejudicial, debe proporcionar a los órganos jurisdiccionales nacionales todos los elementos de interpretación necesarios para la apreciación de la conformidad de dicha situación con los derechos fundamentales cuya observancia garantiza el Tribunal de Justicia, tal como están expresados, en particular, en el CEDH<sup>29</sup>.

El Tribunal de Justicia considera necesario, en tal situación, ponderar los intereses en juego —protección de la libertad de expresión y de reunión por un lado y respeto de la libre circulación de mercancías, por otro— y determinar, habida cuenta de las circunstancias concretas sujetas a su examen, si se ha observado un justo equilibrio entre dichos intereses. En efecto, señala el Tribunal, aunque la libre circulación de mercancías constituye uno de los principios fundamentales en el sistema del Tratado, en determinadas circunstancias puede ser objeto de restricciones por las razones enumeradas en el artículo 30 CE o en concepto de exigencias imperativas de interés general reconocidas conforme a reiterada jurisprudencia del Tribunal de Justicia desde la sentencia «Cassis de Dijon»<sup>30</sup>.

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<sup>28</sup> Véanse, en particular, las sentencias ERT, antes citada, y de 29 de mayo de 1997, Kremzow (C-299/95, Rec. p. I-2629).

<sup>29</sup> Véase, en este sentido, en particular, la sentencia de 30 de septiembre de 1987, Demirel (12/86, Rec. p. 3719).

<sup>30</sup> Sentencia de 20 de febrero de 1979, Rewe-Zentral (120/78, Rec. p. 649).

Por otro lado, el Tribunal reconoce también que, si bien los derechos fundamentales controvertidos en el asunto principal están expresamente reconocidos por el CEDH y constituyen fundamentos esenciales de una sociedad democrática, del propio texto del apartado 2 de los artículos 10 y 11 de dicho Convenio resulta sin embargo que las libertades de expresión y de reunión pueden ser también objeto de determinadas limitaciones justificadas por objetivos de interés general, en la medida en que dichas excepciones estén previstas por la ley, respondan a una o más finalidades legítimas con arreglo a dichas disposiciones y sean necesarias en una sociedad democrática, es decir, justificadas por una necesidad social imperiosa y, en particular, proporcionadas a la finalidad legítima perseguida<sup>31</sup>. Por tanto, prosigue el Tribunal de Justicia, los derechos a la libertad de expresión y a la libertad de reunión pacífica garantizados por el CEDH tampoco constituyen —contrariamente a otros derechos fundamentales reconocidos por el mismo Convenio, como el derecho de toda persona a la vida o la prohibición de la tortura y del trato inhumano o degradante, que no toleran ninguna restricción— prerrogativas absolutas, sino que deben considerarse según su función en la sociedad.

Por lo que se refiere a la ponderación de los intereses en juego, el Tribunal reconoce a la autoridad competente una amplia facultad de apreciación. No obstante, cabe siempre verificar si las restricciones impuestas a los intercambios intracomunitarios son proporcionadas a la finalidad legítima perseguida, a saber la protección de los derechos fundamentales.

El Tribunal de Justicia precisa que la situación no era comparable en absoluto con la que fue objeto de la sentencia por incumplimiento dictada por el Tribunal de Justicia contra Francia en 1997. Muy al contrario, indica el Tribunal, los manifestantes habían ejercido pacíficamente y de forma legal su derecho de expresión y de reunión, habían tenido el cuidado de advertir a los automovilistas de ambos lados de la frontera en tiempo útil y sólo habían bloqueado el acceso de una única ruta, en una única ocasión y solamente durante un tiempo limitado lo que había permitido a las autoridades austríacas informar a su vez y adoptar medidas de acompañamiento para limitar al máximo las alteraciones de la circulación rodada (por ejemplo, mediante el establecimiento de rutas alternativas).

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<sup>31</sup> Véanse, en este sentido, las sentencias de 26 de junio de 1997, *Familiapress* (C-368/95, Rec. p. I-3689, apartado 26) y de 11 de julio de 2002, *Carpenter* (C-60/00, Rec. p. I-6279, apartado 42), así como TEDH, sentencia *Steel* y otros contra Reino Unido, de 23 de septiembre de 1998, *Recueil des arrêts et décisions* 1998-VII, § 101).

La autoridad nacional, habida cuenta de la amplia facultad de apreciación que se le ha de reconocer en la materia, había podido, pues, según el Tribunal, considerar razonablemente que el objetivo legítimamente perseguido por la concentración no podía alcanzarse mediante medidas menos restrictivas de los intercambios intracomunitarios.

El Tribunal de Justicia declara, por tanto, que la autorización de dicha concentración observó un justo equilibrio entre la salvaguarda de los derechos fundamentales de los manifestantes y de las exigencias de la libre circulación de mercancías. En consecuencia, estima que no cabe reprochar a las autoridades austríacas el haber incurrido en una violación del Derecho comunitario que pueda generar la responsabilidad del Estado miembro afectado.

Tal y como se ha señalado<sup>32</sup>, la sentencia confirma la pertinencia del denominado Reglamento «Fresas»<sup>33</sup> y aporta precisiones constructivas para la evaluación de los diferentes supuestos que entran en el ámbito de aplicación de este Reglamento, cuyo objetivo era el de dar una respuesta comunitaria a los bloqueos de las redes de transporte<sup>34</sup>.

La sentencia deja sin embargo para ulteriores ocasiones la respuesta a cuestiones muy interesantes ligadas a las condiciones necesarias para exigir la responsabilidad de un Estado miembro en caso de incumplimiento por omisión. En efecto, el órgano jurisdiccional remitente le había solicitado en particular ciertas precisiones sobre la cuestión de si y, en su caso, en qué medida, en circunstancias como las del asunto del que conocía, la violación del Derecho comunitario —suponiendo que quede demostrada— revestía un carácter suficientemente manifiesto y grave para generar la responsabilidad del Estado miembro de que se trate. Asimismo, también le había preguntado sobre la naturaleza y la prueba del daño que se ha de indemnizar. Como esta serie de cuestiones sólo necesitaba ser examinada en el supuesto de que se respondiese afirmativamente a la cuestión relativa a la violación del Derecho comunitario, y tal no fue el caso, el Tribunal no tuvo que dar respuesta a las mismas.

(CGV)

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<sup>32</sup> Véase JAQUET, C.: «Manifestations visant à bloquer un axe routier» en *Single Market News*, n.º 32, julio 2003, p. 10.

<sup>33</sup> Reglamento (CE) n.º 2679/98 del Consejo de 7 de diciembre de 1998 relativo al funcionamiento del mercado interior por lo que se refiere a la libre circulación de mercancías entre los Estados miembros (DOCE L 337, p. 8).

<sup>34</sup> Véase al respecto GIMENO VERDEJO, C.: «La réponse communautaire aux blocages des réseaux de transports: application et perspectives d'avenir du Règlement n.º 2679/98 en vue de la protection du marché intérieur» en *Cahiers de Droit Européen*, 2002, n.º 1-2, p. 45.

## **El desplazamiento de los asegurados en los regímenes nacionales de seguro de enfermedad de prestaciones en especie a los demás Estados miembros en busca de asistencia médica ambulatoria: la sentencia de 13 de mayo de 2003, Müller-Fauré<sup>35</sup>**

En octubre de 1999, el Centrale Raad van Beroep de los Países Bajos planteó, con arreglo al artículo 234 CE, tres cuestiones prejudiciales sobre la interpretación de los artículos 59 del Tratado CE (actualmente artículo 49 CE, tras su modificación) y 60 del Tratado CE (actualmente artículo 50 CE). Las dudas interpretativas se suscitaron en el marco de dos litigios de los que conocía dicho órgano jurisdiccional en los que dos aseguradas, la Sra. Müller-Fauré y la Sra. Van Riet, se enfrentaban a sus cajas de enfermedad, que les habían denegado el reintegro de los gastos médicos incurridos en Alemania, la primera, y en Bélgica, la segunda.

El régimen general del seguro de enfermedad en los Países Bajos era el mismo que el que había examinado el Tribunal de Justicia en la sentencia *Smits y Peerbooms*<sup>36</sup>. Se trata de un sistema de prestaciones en especie en virtud del cual los asegurados no reciben el reintegro del coste de los cuidados médicos, sino la asistencia que necesitan de forma gratuita. El sistema funciona sobre la base de conciertos celebrados entre las cajas de enfermedad y los prestadores de la asistencia sanitaria. Para ser atendido, el asegurado debe dirigirse a la persona o entidad con la que la caja de enfermedad a la que pertenece haya establecido un concierto. No obstante, la caja de enfermedad puede autorizar al asegurado para que se dirija a otra persona o institución de los Países Bajos con objeto de ejercer su derecho, si fuese necesario para su asistencia médica. Además, la caja puede conceder autorización a un asegurado para dirigirse a personas o instituciones fuera de los Países Bajos con el fin de ejercer su derecho a asistencia, en aquellos casos en los que se haya comprobado que es necesario para su tratamiento médico. Si se da este supuesto, la caja de enfermedad cubre íntegramente el coste de la asistencia. La autorización debe ser concedida con carácter previo, salvo casos de urgencia. A la hora de examinar si el tratamiento en el extranjero resulta necesario desde un punto de vista médico, las cajas toman en cuenta, en la práctica, los métodos de tratamiento disponibles en los Países Bajos y comprueban si se puede dispensar en tiempo oportuno un tratamiento adecuado en su territorio.

La Sra. Müller-Fauré recibió en Alemania, aprovechando que pasaba allí sus vacaciones, un tratamiento odontológico consistente en la inserción

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<sup>35</sup> Asunto C-385/99, pendiente de publicación en la Recopilación.

<sup>36</sup> Sentencia de 12 de julio de 2001 (C-157/99, Rec. p. I-5473).

de seis coronas y de una prótesis fija en el maxilar superior. La asistencia fue dispensada entre el 20 de octubre y el 18 de noviembre de 1994, en la consulta del especialista. Al volver de sus vacaciones solicitó a su caja de enfermedad el reembolso del tratamiento por un importe global de 7.444,59 marcos<sup>37</sup>, que le fue denegado debido a que los asegurados sólo pueden recibir los cuidados en sí mismos y no la devolución de los gastos ocasionados, salvo en circunstancias excepcionales, que no concurrían en su caso.

La interesada recurrió esta decisión. En primera instancia, los tribunales dieron la razón a la caja de enfermedad, al apreciar que no concurría situación excepcional alguna que justificara el reembolso de los gastos teniendo en cuenta, en particular, la duración del tratamiento, que se había prolongado varias semanas, así como su entidad.

Al interrogar al Tribunal de Justicia, el Centrale Raad van Beroep señaló, por un lado, que sólo una reducida parte de los cuidados dispensados a la Sra. Müller-Fauré quedaba cubierta por el seguro de enfermedad y, por otro, que la interesada acudió voluntariamente a un dentista establecido en Alemania mientras pasaba allí sus vacaciones, debido a la desconfianza que albergaba hacia los dentistas neerlandeses. Según su propia jurisprudencia, tales circunstancias no pueden justificar, a la luz de la legislación nacional, el reembolso de un tratamiento médico recibido en el extranjero sin autorización de la caja aseguradora.

El otro litigio concernía a la Sra. Van Riet que sufría, desde 1985, dolores en la muñeca derecha. El 5 de abril de 1993, su médico de cabecera solicitó a la caja de enfermedad la autorización para que se le realizara una artroscopia en un hospital de Bélgica, donde dicha prestación podía llevarse a cabo en un plazo mucho más breve que en los Países Bajos. La caja la denegó a principios de julio debido a que la intervención también se podía hacer en el país. Mientras tanto la artroscopia ya había tenido lugar y, a continuación, se procedió a un acortamiento del cúbito para aliviar el dolor de la paciente. La preparación, la ejecución y el seguimiento de las operaciones tuvieron lugar en Bélgica, tanto en el hospital como de manera ambulatoria. La caja de enfermedad se negó a reembolsar su coste, que ascendía a 93.782 BEF<sup>38</sup>, debido a que no había habido urgencia ni necesidad médica que justificara que fuera tratada en Bélgica, puesto que en los Países Bajos se disponía de los tratamientos médicos adecuados en un plazo razonable. En primera instancia se desestimó por infundado el recurso interpuesto por la interesada.

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<sup>37</sup> 3.806,35 euros.

<sup>38</sup> 2.324,79 euros

El Centrale Raad van Beroep, que conoce de la apelación, indicó que, aunque la práctica totalidad de la asistencia prestada a la Sra. Van Riet está cubierta por el seguro de enfermedad, le fue dispensada en el extranjero sin autorización previa y sin que se demostrara que la paciente no podía razonablemente esperar, por razones médicas o por otros motivos, a que la caja aseguradora se pronunciara sobre su solicitud; y que el plazo de seis meses de espera en los Países Bajos para proceder a la artroscopia no era irrazonable. Consideraba, además, que ninguna de las interesadas cumplía los requisitos para que les fuera de aplicación el artículo 22, apartado 1, letra a), del Reglamento n.º 1408/71<sup>39</sup>, debido a que su estado de salud no exigía la prestación inmediata de asistencia durante su estancia fuera del país y a que no se había demostrado, como exige el artículo 22, apartados 1, letra c), y 2, párrafo segundo, que la asistencia que precisaban no pudiera, en su situación, ser dispensada en los Países Bajos en el plazo normalmente necesario, circunstancia que habría obligado a las cajas de enfermedad a conceder las autorizaciones para seguir el tratamiento en otro Estado miembro.

No obstante, el órgano jurisdiccional neerlandés tenía dudas sobre la compatibilidad de las decisiones de denegación de reembolso con los artículos 49 CE y 50 CE, habida cuenta de la jurisprudencia reciente del Tribunal de Justicia<sup>40</sup>. En su opinión, la normativa nacional no impide, por sí misma, a los asegurados dirigirse a un prestador de servicios establecido en otro Estado miembro, pero exige como requisito previo que las cajas de seguro de enfermedad a las que pertenecen hayan celebrado un concierto con dicho prestador, lo que normalmente no sucede. Cuando no existe tal concierto, el reembolso de los gastos efectuados en otro Estado miembro está supeditado a una autorización previa, que sólo se concede si el tratamiento lo exige, circunstancia que, por regla general, concurre únicamente cuando los prestadores de asistencia concertados no pueden ofrecer todos los cuidados adecuados. Esta obligación de obtener una autorización previa juega, por lo tanto, en favor de los prestadores de asistencia médica concertados —que son casi siempre neerlandeses— en perjuicio de los prestadores de asistencia de otros Estados miembros. En caso de que se admitiera que la exigencia de autorización previa obstaculiza la

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<sup>39</sup> Reglamento (CEE) n.º 1408/71 del Consejo, de 14 de junio de 1971, relativo a la aplicación de los regímenes de seguridad social a los trabajadores por cuenta ajena, los trabajadores por cuenta propia y a los miembros de sus familias que se desplazan dentro de la Comunidad, en su versión modificada y actualizada por el Reglamento (CE) n.º 118/97 del Consejo, de 2 de diciembre de 1996 (DO 1997, L 28, p. 1).

<sup>40</sup> Sentencias de 28 de abril de 1998, Decker (C-120/95, Rec. p. I-1831) y Kohll (C-158/96, Rec. p. I-1931).

libre prestación de servicios, el Centrale Raad van Beroep preguntaba si estaba justificada<sup>41</sup>.

Quería saber, en primer lugar, si los artículos 49 CE y 50 CE se oponen a una legislación nacional que supedita la cobertura de la asistencia dispensada en otro Estado miembro por una persona o un establecimiento con los que la caja de enfermedad a la que está afiliado el asegurado no ha celebrado ningún concierto a la obtención de una autorización previa; en segundo lugar, si dicha normativa, que tiene efectos restrictivos sobre la libre prestación de servicios, puede estar justificada por las propias particularidades del régimen nacional del seguro de enfermedad, que no garantiza el reembolso de los gastos efectuados, sino esencialmente prestaciones en especie, y se basa en un sistema de concertación destinado tanto a asegurar la calidad de la asistencia como a racionalizar sus costes; por último, si el hecho de que la asistencia de que se trate sea prestada total o parcialmente en un establecimiento hospitalario puede tener una incidencia a este respecto.

El 12 de julio de 2001, fecha en la que el Tribunal de Justicia dictó sentencia en el asunto *Smits y Peerbooms*<sup>42</sup>, la Secretaría envió una carta al órgano jurisdiccional remitente preguntándole si, a la luz de las respuestas dadas en esa decisión, deseaba mantener su petición prejudicial. El 25 de octubre de 2001 comunicó que no deseaba retirarlas, en la medida en que dicha sentencia no se refiere específicamente a las características del régimen del seguro de enfermedad neerlandés, que es un régimen de prestaciones en especie de naturaleza convencional, instando, además, al Tribunal de Justicia a que precisara el alcance del apartado 103 de la sentencia y, en concreto, qué ha de entenderse por «en tiempo oportuno» y, en particular, si la apreciación de dicho requisito debe efectuarse desde un punto de vista estrictamente médico, con independencia del tiempo que haya que esperar para recibir el tratamiento solicitado.

A continuación, la Secretaría del Tribunal de Justicia invitó a las partes en los litigios principales, a los Estados miembros y a la Comisión a

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<sup>41</sup> El órgano jurisdiccional remitente destacaba las características del régimen del seguro de enfermedad neerlandés, caracterizado por conceder, esencialmente, prestaciones en especie, por oposición a los regímenes denominados de restitución. Las cajas de enfermedad alegaban que el equilibrio financiero del sistema podría verse amenazado si los asegurados tuvieran la posibilidad de que se les reembolsara, sin autorización previa, la asistencia recibida en otro Estado miembro. Se hacía referencia a las medidas nacionales adoptadas para racionalizar los costes de la asistencia hospitalaria, en particular las disposiciones de la Ley en materia de planificación y de organización de la asistencia, y las que limitan el reembolso a la asistencia dispensada por establecimientos hospitalarios autorizados.

<sup>42</sup> C-157/99, Rec. p. I-5473.

que presentaran sus eventuales observaciones sobre las consecuencias que procedía extraer de la sentencia Smits y Peerbooms, antes citada, habida cuenta de las cuestiones planteadas por el Centrale Raad van Beroep, lo que hicieron en escritos complementarios y en la vista que se celebró el 10 de septiembre de 2002.

La respuesta a la primera pregunta se deducía sin dificultad de la jurisprudencia reciente el Tribunal de Justicia: las actividades médicas están comprendidas en el ámbito de aplicación del artículo 50 CE, sin que quepa distinguir entre la asistencia dispensada en un marco hospitalario o de manera ambulatoria<sup>43</sup>; el hecho de que la normativa aplicable esté comprendida en el ámbito de la seguridad social y, más en particular, prevea, en materia de seguro de enfermedad, una intervención en especie, en lugar de un reembolso, no puede sustraer los tratamientos médicos de que se trata al ámbito de aplicación de la libre prestación de servicios garantizada por el Tratado CE<sup>44</sup>, teniendo en cuenta que los tratamientos dispensados en el extranjero a la Sra. Müller-Fauré y a la Sra. Van Riet dieron lugar a una retribución directa por el paciente bien del médico o bien del establecimiento en el que se prestó la asistencia.

Se trataba, a continuación, de examinar si la normativa neerlandesa impone restricciones a la libre prestación de servicios, en la medida en que supedita la cobertura del coste de la asistencia prestada en un Estado miembro distinto de aquel en el que está establecida la caja de enfermedad a la que pertenece el asegurado, por una persona o un establecimiento con el que no ha celebrado concierto, a la obtención de una autorización previa. Esta incógnita también había sido despejada por el Tribunal de Justicia en 2001<sup>45</sup>, cuando decidió que, si bien es cierto que la normativa no priva a los asegurados de la posibilidad de acudir a un prestador de servicios establecido en el extranjero, no es menos cierto que supedita el reintegro de los gastos a la obtención de una autorización previa, que sólo puede concederse en la medida en que la asistencia, sea o no de naturaleza hospitalaria, responda a una necesidad médica. Dado que, en la práctica, esta exigencia sólo se cumple cuando no se puede obtener un tratamiento adecuado en tiempo oportuno por parte de los médicos o los establecimientos hospitalarios concertados por el Estado miembro de afiliación, puede, por su misma naturaleza, limitar considerablemente los supuestos en los que se concederá<sup>46</sup>.

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<sup>43</sup> Sentencia Smits y Peerbooms, antes citada, apartado 53.

<sup>44</sup> Sentencia Smits y Peerbooms, antes citada, apartados 54 y 55.

<sup>45</sup> Sentencia Smits y Peerbooms, antes citada, apartado 62.

<sup>46</sup> Sentencia Smits y Peerbooms, antes citada, apartado 64.



Se alegó en el procedimiento que las cajas de enfermedad neerlandesas tienen la posibilidad de establecer conciertos con establecimientos hospitalarios situados fuera de los Países Bajos, en cuyo caso no se requiere autorización previa alguna para que la asistencia dispensada en dichos establecimientos quede cubierta. El Tribunal de Justicia observó, no obstante, que, excepto en el caso de los centros hospitalarios situados en las regiones fronterizas de los Países Bajos, parece ilusorio imaginar que un número importante de clínicas de los Estados miembros llegue a concertarse alguna vez con las cajas de enfermedad neerlandesas, puesto que sus perspectivas de recibir pacientes pertenecientes a esas cajas son aleatorias y limitadas<sup>47</sup>.

En estas condiciones, tal y como había interpretado ya el Tribunal de Justicia<sup>48</sup>, procedía declarar que una normativa nacional como la neerlandesa disuade, e incluso impide, a los beneficiarios de la seguridad social de dirigirse a los prestadores de servicios médicos establecidos en Estados miembros distintos del de afiliación y constituye, tanto para los asegurados como para los prestadores, un obstáculo a la libre prestación de servicios.

Quedaba por ver si ese obstáculo estaba justificado.

Las razones invocadas para justificar la exigencia de una autorización previa al objeto de acogerse al seguro de enfermedad para prestaciones dispensadas en el extranjero, ya sea en el marco hospitalario o fuera de él, estaban relacionadas, en primer lugar, con la protección de la salud pública, en la medida en que el sistema de concertación está destinado a garantizar un servicio médico y hospitalario de calidad, equilibrado y accesible a todos; en segundo lugar, con el equilibrio financiero de la seguridad social, en la medida en que dicho sistema permite también a las autoridades gestoras controlar los gastos ajustándolos a las necesidades planificadas, conforme a prioridades preestablecidas, y, por último, con las características esenciales del régimen del seguro de enfermedad en los Países Bajos, que garantiza prestaciones en especie. El su sentencia, el Tribunal de Justicia examinó estos tres grupos de razones por separado.

Por lo que al riesgo de menoscabo de la protección de la salud pública se refiere, se desprende de la jurisprudencia que el objetivo de mantener un servicio médico y hospitalario de calidad, equilibrado y accesible a todos, puede estar comprendido en una de las excepciones previstas en el artículo 46 CE, ya que contribuye a la consecución de un elevado grado

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<sup>47</sup> Sentencia Smits y Peerbooms, antes citada, apartados 65 y 66.

<sup>48</sup> Sentencia Smits y Peerbooms, antes citada, apartado 69.

de protección de la salud<sup>49</sup>. Esta norma del Tratado permite, en particular, a los Estados miembros restringir la libre prestación de servicios médicos y hospitalarios, en la medida en que el mantenimiento de una capacidad de asistencia o de una competencia médica en el territorio nacional es esencial para la salud pública, e incluso para la supervivencia de su población<sup>50</sup>.

No obstante, según jurisprudencia reiterada, debe garantizarse, en caso de justificación basada en una excepción prevista por el Tratado, así como, por lo demás, en una razón imperiosa de interés general, que las medidas adoptadas no excedan de lo que sea objetivamente necesario a dichos efectos y que el resultado no pueda obtenerse mediante normas menos coercitivas<sup>51</sup>.

Por lo que al riesgo de perjuicio grave para el equilibrio financiero del sistema de seguridad social se refiere, el Tribunal de Justicia recordó que, de acuerdo con su jurisprudencia, los objetivos de carácter meramente económico no pueden justificar un obstáculo al principio fundamental de la libre prestación de servicios<sup>52</sup>. Sin embargo, en la medida en que podría tener consecuencias sobre el nivel global de protección de la salud pública, un riesgo de perjuicio grave para el equilibrio financiero del sistema de seguridad social puede también constituir, en sí mismo, una razón imperiosa de interés general capaz de justificar un obstáculo de dicha naturaleza<sup>53</sup>.

Ni que decir tiene que la cobertura de un tratamiento aislado, dispensado en el extranjero nunca puede tener consecuencias significativas sobre la financiación del sistema de seguridad social. El Tribunal de Justicia adoptó, pues, un enfoque global de las consecuencias de la libre prestación de servicios en materia de salud, señalando que, a veces, puede resultar difícil establecer la distinción entre prestaciones hospitalarias y prestaciones no hospitalarias. En particular, determinadas prestaciones dispensadas en el ámbito hospitalario, pero que pueden igualmente ser efectuadas por un facultativo en su consulta o en un centro médico, podrían, desde este punto de vista, ser asimiladas a las prestaciones no hospitalarias.

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<sup>49</sup> Sentencias antes citadas Kohll, apartado 50, y Smits y Peerbooms, apartado 73.

<sup>50</sup> Sentencias antes citadas Kohll, apartado 51, y Smits y Peerbooms, apartado 74.

<sup>51</sup> Sentencias de 4 de diciembre de 1986, Comisión/Alemania (205/84, Rec. p. 3755), apartados 27 y 29; de 26 de febrero de 1991, Comisión/Italia (C-180/89, Rec. p. I-709), apartados 17 y 18; de 20 de mayo de 1992, Ramrath (C-106/91, Rec. p. I-3351), apartados 30 y 31, y Smits y Peerbooms, antes citada, apartado 75.

<sup>52</sup> Sentencias de 5 de junio de 1997, SETTG (C-398/95, Rec. p. I-3091), apartado 23, y Kohll, antes citada, apartado 41.

<sup>53</sup> Sentencias antes citadas Kohll, apartado 41, y Smits y Peerbooms, apartado 72.

Respecto a las prestaciones hospitalarias como las dispensadas a la Sra. Van Riet en Bélgica, el Tribunal de Justicia reiteró las consideraciones que ya había hecho en los apartados 76 a 80 de la sentencia Smits y Peerbooms: el número de infraestructuras hospitalarias, su reparto geográfico, su organización y el equipamiento de que disponen, o la clase de servicios médicos que pueden ofrecer, deben poder planificarse; la planificación responde, por regla general, a diversas preocupaciones como son, por una parte, garantizar en el territorio nacional un acceso suficiente y permanente a una gama equilibrada de prestaciones hospitalarias de calidad y, por otra parte, lograr un control de los gastos y evitar, en la medida de lo posible, cualquier derroche de medios financieros, técnicos y humanos, derroche que resultaría aún más perjudicial en la medida en que el sector de la asistencia hospitalaria genera costes considerables y debe responder a necesidades crecientes, mientras que los medios financieros destinados a la asistencia sanitaria no son ilimitados, cualquiera que sea el modo de financiación.

Por estas razones, el Tribunal de Justicia reiteró, en esta sentencia, que el requisito de sujetar a autorización previa la cobertura financiera por parte del sistema nacional de seguridad social de la asistencia hospitalaria dispensada en un Estado miembro distinto del de afiliación resulta una medida a la vez necesaria y razonable. En efecto, si los asegurados pudiesen acudir libremente y en cualquier circunstancia a establecimientos hospitalarios con los que las cajas de enfermedad no han establecido ningún concierto, tanto si se trata de establecimientos situados en los Países Bajos como en otro Estado miembro, cualquier esfuerzo de planificación efectuado a través del sistema de concertación con el fin de contribuir a garantizar una oferta de asistencia hospitalaria racionalizada, estable, equilibrada y accesible, resultaría inmediatamente comprometido<sup>54</sup>.

Sin embargo, aunque el derecho comunitario no se opone en principio a un sistema de autorización previa para esta categoría de prestaciones, es necesario, que los requisitos para su concesión se justifiquen a la luz de las razones imperiosas conocidas y que cumplan con el requisito de proporcionalidad.

El Tribunal de Justicia recordó, a continuación, su conocida jurisprudencia de acuerdo con la que un régimen de autorización administrativa previa no puede legitimar un comportamiento discrecional de las autoridades nacionales que prive de eficacia a las disposiciones comunitarias y,

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<sup>54</sup> Sentencia Smits y Peerbooms, antes citada, apartado 81.

en particular, a las relativas a una libertad fundamental como la de prestar servicios sanitarios<sup>55</sup>.

Por consiguiente, para que un sistema de autorización administrativa previa esté justificado aun cuando introduzca una excepción a una libertad fundamental, debe basarse en criterios objetivos, no discriminatorios y conocidos de antemano, de forma que queden establecidos los límites del ejercicio de la facultad de apreciación de las autoridades nacionales, con el fin de que ésta no pueda utilizarse de manera arbitraria. Un sistema de autorización administrativa previa de ese tipo debe también basarse en un procedimiento suficientemente accesible y adecuado para garantizar a los interesados que sus solicitudes sean tramitadas en un plazo razonable y con objetividad e imparcialidad, debiendo, además, poder recurrir judicialmente contra las eventuales denegaciones de autorización.

En los litigios iniciados por las Müller-Fauré y Van Riet se discutía sobre si había habido necesidad médica de que se sometieran a los tratamientos en Alemania y en Bélgica, respectivamente, y no en los Países Bajos, requisito que se aplica, en principio, indistintamente tanto si la solicitud de autorización se refiere a un tratamiento que se haya de seguir en un establecimiento situado en los Países Bajos con el que la caja de enfermedad del asegurado no haya celebrado un concierto como en un establecimiento situado en otro Estado miembro.

Ahora bien, para la asistencia hospitalaria dispensada fuera de los Países Bajos, el requisito relativo al carácter necesario del tratamiento se interpreta, en la práctica, de manera que su realización sólo se autoriza cuando no se puede dispensar, en el país, un tratamiento adecuado en tiempo oportuno<sup>56</sup>.

Tal y como había indicado el Tribunal de Justicia en el apartado 103 de la sentencia Smits y Peerbooms, el requisito relativo al carácter necesario del tratamiento previsto por la normativa neerlandesa puede estar justificado a la vista del artículo 49 CE, siempre que se interprete en el sentido de que la autorización para someterse a cuidados médicos en otro Estado miembro sólo puede ser denegada por este motivo cuando un tratamiento idéntico o que presenta el mismo grado de eficacia para el paciente pueda conseguirse en tiempo oportuno acudiendo a un establecimiento con

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<sup>55</sup> Sentencias de 23 de febrero de 1995, Bordessa y otros (asuntos acumulados C-358/93 y C-416/93, Rec. p. I-361), apartado 25; de 14 de diciembre de 1995, Sanz de Lera y otros (asuntos acumulados C-163/94, C-165/94 y C-250/94, Rec. p. I-4821), apartados 23 a 28, y de 20 de febrero de 2001, Analir y otros (C-205/99, Rec. p. I-1271), apartado 37.

<sup>56</sup> Por su parte, el Gobierno neerlandés difería de esta precisión efectuada por el órgano jurisdiccional nacional, precisando que la autorización debe ser denegada únicamente cuando la asistencia exigida por el estado del asegurado pueda ser ofrecida por prestadores concertados.

el que la caja de enfermedad del asegurado haya celebrado un concierto. Para apreciar si se da esta circunstancia, las autoridades nacionales tienen la obligación de tomar en consideración todos los rasgos que caracterizan cada caso concreto, teniendo en cuenta debidamente no sólo la situación médica del paciente en el momento en que se solicita la autorización y, en su caso, el grado del dolor o la naturaleza de su minusvalía, que podría, por ejemplo, hacer imposible o excesivamente difícil el ejercicio de una actividad profesional, sino también sus antecedentes.

El Tribunal de Justicia también había precisado, en los apartados 105 y 106 de la sentencia Smits y Peerbooms, que, interpretado de esta manera, el requisito relativo al carácter necesario del tratamiento puede permitir mantener en el territorio nacional una oferta suficiente, equilibrada y permanente de asistencia hospitalaria de calidad, así como garantizar la estabilidad financiera del sistema del seguro de enfermedad; y que, si muchos asegurados decidieran recurrir a la asistencia de otros Estados miembros, aun cuando los establecimientos hospitalarios que hayan celebrado un concierto con la caja de enfermedad de la que dependen ofrezcan tratamientos adecuados, idénticos o equivalentes, este flujo de pacientes podría poner en peligro tanto el principio mismo de la concertación como, en consecuencia, todos los esfuerzos de planificación y de racionalización efectuados en dicho sector vital para evitar el fenómeno del exceso de capacidad hospitalaria, del desequilibrio en la oferta de asistencia médica hospitalaria, de derroche y de deterioro, tanto logísticos como financieros.

No obstante, la denegación de la autorización previa que no esté motivada por el temor de derroche o de deterioro, como consecuencia del exceso de capacidad en los hospitales, sino exclusivamente por una razón basada en la existencia de listas de espera en el territorio nacional para recibir el tratamiento hospitalario, sin tomar en consideración las circunstancias concretas que caracterizan la situación médica del paciente, no puede constituir un obstáculo válidamente justificado a la libre prestación de servicios, ya que dicho plazo de espera no resulta necesario, independientemente de consideraciones de naturaleza puramente económica que no pueden, en cuanto tales, justificar un obstáculo al principio fundamental de la libre prestación de servicios, para garantizar la protección de la salud pública. Por el contrario, un plazo de espera demasiado largo o anormal podría restringir la accesibilidad a un conjunto equilibrado de tratamientos hospitalarios de calidad.

En lo que se refiere a las prestaciones médicas no hospitalarias, tales como las dispensadas a la Sra. Müller-Fauré y, en parte, a la Sra. Van Riet, el Tribunal de Justicia consideró que ni las cajas de enfermedad demandadas en los litigios principales ni el Gobierno neerlandés habían

aportado datos que apoyaran la afirmación según la cual la libertad concedida a los asegurados para acudir, sin autorización previa, al extranjero para ser atendidos por un prestador no concertado, es susceptible de perjudicar gravemente el equilibrio financiero del sistema de seguridad social neerlandés.

Después de reconocer que la supresión del requisito de la concertación para prestaciones dispensadas en el extranjero afecta a los medios de control de los gastos de asistencia sanitaria del Estado miembro de afiliación, el Tribunal de Justicia apreció que la supresión de la exigencia de autorización previa para las prestaciones ambulatorias difícilmente va a provocar, debido a las barreras lingüísticas, a la distancia geográfica, a los gastos de estancia en el extranjero y a la falta de información sobre la naturaleza de la asistencia que allí se dispensa, desplazamientos transfronterizos de pacientes de tal entidad como para perturbar gravemente el equilibrio financiero del sistema de seguridad social neerlandés y para amenazar el nivel global de protección de la salud pública.

Con ánimo de reforzar su interpretación, el Tribunal de Justicia añadió que la asistencia se dispensa generalmente cerca del lugar de residencia del paciente, en un entorno cultural que le resulta familiar y le permite establecer con el médico que le atiende relaciones de confianza. Salvo en los casos de urgencia, los desplazamientos de pacientes al extranjero tienen lugar, fundamentalmente, en las regiones fronterizas o para el tratamiento de patologías específicas. Además, precisamente en tales regiones o para dichas patologías las cajas de enfermedad neerlandesas tenderán a establecer un sistema de concertación con médicos extranjeros. Se trata de una serie de circunstancias susceptible de limitar el eventual impacto financiero sobre el sistema neerlandés de seguro de enfermedad, de la supresión de la exigencia de autorización previa por lo que respecta a la asistencia dispensada en la consulta del facultativo extranjero.

El Tribunal de Justicia hizo una última e importante precisión a este respecto: corresponde únicamente a los Estados miembros determinar el alcance de la cobertura de enfermedad de que disfrutan los asegurados, de manera que, cuando éstos acuden sin autorización previa a un Estado miembro distinto de aquel en el que está establecida la caja de enfermedad a la que están afiliados para recibir asistencia, sólo pueden aspirar a la cobertura de los cuidados recibidos dentro de los límites de la cobertura garantizada por el régimen del seguro de enfermedad del Estado miembro de afiliación.

Es de destacar que algunos Gobiernos, como el neerlandés, el español y el noruego, habían alegado la libertad de que gozan los Estados miembros para establecer el sistema de seguridad social que deseen, sosteniendo que, de no exigirse la autorización previa, los asegurados po-

drían dirigirse libremente a prestadores de asistencia no concertados, de forma que quedaría amenazada la existencia del régimen neerlandés de prestaciones en especie, cuyo funcionamiento depende esencialmente del sistema de concertación. Sin contar con que las autoridades neerlandesas estarían obligadas a introducir en su forma de organización del acceso a la asistencia mecanismos de reembolso, en la medida en que, en lugar de recibir prestaciones sanitarias gratuitas en el territorio nacional, los asegurados deberían anticipar las cantidades necesarias para el pago de las prestaciones que hubieran recibido y esperar algún tiempo antes de obtener su reintegro. De esta manera, los Estados miembros se verían abocados a renunciar a los principios y al sistema de su régimen del seguro de enfermedad.

El Tribunal de Justicia reiteró su conocida jurisprudencia de acuerdo con la que el derecho comunitario no restringe la competencia de los Estados miembros para organizar sus sistemas de seguridad social<sup>57</sup>. Dado que no existe una armonización a escala comunitaria, corresponde a la legislación de cada Estado miembro determinar los requisitos que confieren derecho a las prestaciones en materia de seguridad social<sup>58</sup>. No obstante, en el ejercicio de dicha competencia, los Estados miembros deben respetar el derecho comunitario<sup>59</sup>.

A este respecto el Tribunal de Justicia formuló dos observaciones previas: por un lado, la realización de las libertades fundamentales garantizadas por el Tratado obliga inevitablemente a los Estados miembros a introducir adaptaciones en su sistema nacional de seguridad social, sin que pueda considerarse que ello menoscaba su competencia soberana en la materia. Basta referirse a las adaptaciones que han tenido que introducir en sus legislaciones en materia de seguridad social para ajustarse al Reglamento n.º 1408/71, en particular a los requisitos previstos en su artículo 69 en materia de pago de las prestaciones por desempleo a trabajadores residentes en el territorio de otros Estados miembros, cuando ningún régimen nacional garantizaba la concesión de tales asignaciones a desempleados inscritos en las oficinas de empleo de otro Estado miembro.

Por otro, los cuidados médicos no pierden su carácter de prestación de servicios por el hecho de que estén cubiertos por un servicio nacional

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<sup>57</sup> Sentencias de 7 de febrero de 1984, Duphar y otros (238/82, Rec. p. 523), apartado 16, y de 17 de junio de 1997, Sodemare y otros (C-70/95, Rec. p. I-3395), apartado 27.

<sup>58</sup> Sentencias de 24 de abril de 1980, Coonan (110/79, Rec. p. 1445), apartado 12; de 4 de octubre de 1991, Paraschi (C-349/87, Rec. p. I-4501), apartado 15, y de 30 de enero de 1997, Stöber y Piosa Pereira (asuntos acumulados C-4/95 y C-5/95, Rec. p. I-511), apartado 36.

<sup>59</sup> Sentencias antes citadas Decker, apartado 23, y Kohll, apartado 19.

de salud o por un régimen de prestaciones en especie. Como ya había interpretado con anterioridad, una prestación médica dispensada en un Estado miembro y pagada por el paciente no puede dejar de estar comprendida en el ámbito de aplicación de la libre prestación de servicios garantizada por el Tratado por el solo hecho de que el reembolso de la asistencia de que se trate se solicite al amparo de una legislación sobre el seguro de enfermedad de otro Estado miembro que prevé esencialmente una intervención en especie<sup>60</sup>. Precisamente la exigencia de una autorización previa para poder beneficiarse a continuación de la cobertura de dicha asistencia constituye el obstáculo a la libre prestación de servicios, es decir, a la posibilidad de que el paciente recurra al prestador médico que elija en un Estado miembro distinto del de afiliación. No procede, pues, desde el punto de vista de la libre prestación de servicios, establecer una distinción según que el paciente pague el importe de los gastos efectuados y solicite a continuación su reembolso o que la caja del seguro de enfermedad o el presupuesto nacional pague directamente al prestador.

Sólo quedaba ya por examinar si la supresión de la exigencia de una autorización previa concedida por las cajas de enfermedad para recibir asistencia sanitaria ambulatoria, dispensada en un Estado miembro distinto del de afiliación, puede poner en entredicho las características esenciales del sistema de acceso a la asistencia sanitaria en los Países Bajos.

El Tribunal de Justicia encontró tres argumentos para rebatir que se tratara de una posibilidad real. En primer lugar, puntualizó que en el propio marco de la aplicación del Reglamento n.º 1408/71, los Estados miembros que han establecido un régimen de prestaciones en especie, o un sistema nacional de salud, ya han de prever mecanismos de reembolso a posteriori de la asistencia dispensada en otro Estado miembro. Así sucede, por ejemplo, en el caso en que no haya sido posible cumplimentar las formalidades exigidas durante la estancia del interesado en el Estado de afiliación<sup>61</sup> o cuando éste ha autorizado, conforme al artículo 22, apartado 1, letra c), del Reglamento n.º 1408/71, el acceso a la asistencia en el extranjero.

En segundo lugar, recordó que los asegurados que acuden sin autorización previa a otro Estado miembro para recibir un tratamiento sólo pueden aspirar a la cobertura de la asistencia recibida dentro de los límites

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<sup>60</sup> Sentencia Smits y Peerbooms, antes citada, apartado 55.

<sup>61</sup> Véase el artículo 34 del Reglamento (CEE) n.º 574/72 del Consejo, de 21 de marzo de 1972, por el que se establecen las modalidades de aplicación del Reglamento n.º 1408/71 (DO L 74, p. 1; EE 05/01, p. 156), modificado y actualizado por el Reglamento n.º 118/97 del Consejo, de 2 de diciembre de 1996 (DO 1997, L 28, p. 102).



de la cobertura garantizada por el régimen del seguro de enfermedad del Estado miembro de afiliación. En el caso de la Sra. Müller-Fauré, de los 3.806,35 euros que pagó al dentista en Alemania, su caja de enfermedad sólo cubriría, en cualquier caso, habida cuenta del alcance de la cobertura de seguro, 221,03 euros. De la misma manera, los requisitos para la concesión de las prestaciones siguen siendo aplicables en caso de asistencia dispensada en el extranjero, siempre y cuando no sean discriminatorios ni constituyan un obstáculo a la libre prestación de servicios. Así sucede, en particular, con la exigencia de la consulta previa a un médico de atención primaria antes de acudir a un médico especialista.

Puso de relieve, por último, que nada se opone a que el Estado miembro en el que existe un régimen de prestaciones en especie fije qué importes de reembolso pueden recibir los pacientes a los que se ha dispensado asistencia en el extranjero, siempre y cuando las cantidades se basen en criterios objetivos, no discriminatorios y transparentes.

Por estas tres razones, el Tribunal de Justicia llegó a la conclusión de que la supresión de la exigencia de autorización previa concedida por las cajas de enfermedad a sus asegurados para permitirles recibir asistencia sanitaria ambulatoria en un Estado miembro distinto del de afiliación, no es susceptible de menoscabar las características esenciales del régimen del seguro de enfermedad neerlandés.

Después de todas estas consideraciones, la respuesta concreta que el Tribunal de Justicia dio a las cuestiones planteadas por el Centrale Raad von Beroep de los Países Bajos fue la siguiente:

Los artículos 49 CE y 50 CE deben ser interpretados en el sentido de que no se oponen a una legislación como la de los Países Bajos que, por un lado, supedita la cobertura de la asistencia hospitalaria dispensada en un Estado miembro distinto de aquel en el que está establecida la caja de enfermedad a la que está afiliado el asegurado por un prestador con el que esta última no ha celebrado ningún concierto a la obtención de una autorización previa concedida por dicha caja y, por otro, supedita la concesión de esta autorización al requisito de que el tratamiento médico del asegurado lo exija. No obstante, la autorización sólo podrá denegarse, por este motivo, cuando un tratamiento idéntico o que presente el mismo grado de eficacia para el paciente pueda conseguirse en tiempo oportuno en un establecimiento con el que la caja haya celebrado un concierto.

Por el contrario, los artículos 49 CE y 50 CE se oponen a la misma legislación en la medida en que ésta supedita la cobertura de la asistencia ambulatoria dispensada en otro Estado miembro por una persona o un establecimiento con los que la caja de enfermedad a la que está afiliado el asegurado no ha celebrado ningún concierto a la obtención de

una autorización previa concedida por esta última, cuando la legislación de que se trata establece un régimen de prestaciones en especie en virtud del cual los asegurados no reciben el reintegro de los gastos ocasionados por la asistencia médica, sino la asistencia en sí misma, que es gratuita.

## Comentario

Se trata de una sentencia muy esperada por los medios especializados, que ha tardado años en llegar<sup>62</sup>, y que ha completado la línea jurisprudencial relativa a la aplicación del principio fundamental de la libre prestación de servicios a la atención sanitaria transfronteriza financiada por los regímenes nacionales de seguridad social, que se inició con el pronunciamiento de las sentencias Decker y Kohll, en abril de 1998, y que continuó con la decisión de julio de 2001, en el asunto Smits y Peerbooms.

El desplazamiento de pacientes cubiertos por un régimen de seguridad social de un Estado miembro a otro, para recibir la asistencia apropiada a su salud fue objeto de regulación por el derecho comunitario desde muy temprana fecha en el artículo 22 del Reglamento n.º 1408/71. Esta normativa tiene, sin embargo, aún hoy, un ámbito de aplicación personal limitado a los trabajadores por cuenta ajena y autónomos, que estén o hayan estado sometidos a la legislación de por lo menos uno de los Estados miembros y que sean nacionales de alguno de ellos<sup>63</sup>, a sus familiares y a sus supervivientes, estando excluidas de la consideración de legislación de seguridad social, las disposiciones convencionales, aunque hayan sido objeto de una decisión de los poderes públicos haciéndolas obligatorias o ampliando su campo de aplicación y las que rigen los regímenes especiales de trabajadores autónomos cuya creación se haya dejado a la iniciativa de los interesados o cuya aplicación se limite a una parte del territorio nacional.

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<sup>62</sup> Este retraso puede tener su explicación en el hecho de que las preguntas que debía responder el Tribunal de Justicia en este asunto, a petición del Centrale Raad von Beroep neerlandés, eran tan parecidas a las que había planteado el Arrondissementsrechtbank te Roermond, también de los Países Bajos, que había fundamento para pensar que, al ver las respuestas que se daban en la sentencia Smits y Peerbooms de julio de 2001, el primer órgano jurisdiccional retiraría las suyas. Esta retirada, sin embargo, no se produjo.

<sup>63</sup> El Reglamento (CE) n.º 859/2003 del Consejo, de 14 de mayo de 2003, amplió las disposiciones del Reglamento n.º 1408/71 y del Reglamento n.º 574/72 a los nacionales de terceros países que, debido únicamente a su nacionalidad, no estén cubiertos por las mismas.

El artículo 22, por una parte, facilita a todo trabajador cubierto por este Reglamento, cuyo estado requiera de modo inmediato prestaciones durante una estancia en el territorio de otro Estado miembro, que pueda obtenerlas en el lugar en el que se halle, con cargo a la institución de seguridad social de la que dependa. Por otra parte, contempla la posibilidad de que un paciente pueda ser autorizado por su caja de enfermedad para desplazarse a otro Estado miembro para recibir la asistencia sanitaria apropiada, corriendo los gastos por cuenta de la caja, sin que la autorización pueda ser denegada cuando la asistencia figure entre las prestaciones cubiertas en el Estado de afiliación y cuando, habida cuenta de la salud del paciente y de la evolución probable de la enfermedad, la asistencia que requiere no pueda serle dispensada en el plazo normalmente necesario para obtener el tratamiento en el Estado en el que reside.

Esta era, justamente, la legislación comunitaria en la que se basaban las cajas de enfermedad luxemburguesas para denegar el reembolso de los gastos médicos en los que habían incurrido el Sr. Decker y el Sr. Kohll, respectivamente, en Bélgica y en Alemania. Sin plantear abiertamente la compatibilidad del artículo 22 del Reglamento n.º 1408/71 con las normas del Tratado CE relativas al principio fundamental de la libre prestación de servicios, los tribunales luxemburgueses interrogaron al Tribunal de Justicia sobre la incidencia de los artículos 49 CE y 50 CE en una normativa nacional que denegaba el reembolso del coste de la asistencia sanitaria obtenida en el extranjero, sin que mediara autorización previa de la caja de enfermedad.

Al dictar sentencia en estos dos asuntos, el Tribunal de Justicia ya puso de relieve la característica que diferencia la aplicación del artículo 22 del Reglamento n.º 1408/71 de la de las disposiciones relativas a la libre prestación de servicios: si el asegurado se acoge a esa norma, a cambio del gravamen de obtener la autorización, disfruta de las prestaciones de asistencia sanitaria por cuenta de la institución de la que depende, con arreglo a las disposiciones de la legislación del lugar en el que sea atendido, sin gastos suplementarios; por el contrario, si se desplaza sin autorización, sólo podrá pretender a que se le reembolse lo mismo que habría recibido de haber sido atendido en el país, con independencia de lo que haya abonado.

El Tribunal de Justicia apreció que un tratamiento aplicado por un especialista en su consulta, contra retribución, debía considerarse un servicio en el sentido del artículo 50 CE y que una normativa que supedita a una autorización previa el reembolso de los gastos efectuados en otro Estado miembro, cuando los que se realizan en el país no están sujetos a autorización alguna, disuade a los beneficiarios de la seguridad social de

dirigirse a los prestadores de servicios médicos establecidos en otros Estados miembros y constituye tanto para unos como para otros un obstáculo a la libre prestación de servicios.

En esos dos asuntos, el Tribunal de Justicia no aceptó justificación alguna a ese obstáculo: el reembolso de los cuidados dispensados en otros Estados miembros con arreglo a los baremos del Estado de afiliación no tiene incidencia significativa sobre el equilibrio financiero del sistema de seguridad social. Además, a la vista de que los requisitos de acceso y de ejercicio de las actividades de médico y de dentista han sido objeto de varias directivas de armonización, debe reconocerse a esos profesionales establecidos en otros Estados miembros todas las garantías equivalentes a las concedidas a los que ejercen en el territorio nacional, a efectos de la libre prestación de servicios, por lo que la normativa no podía considerarse justificada por razones de salud pública.

Quedó claro, pues, que, por aplicación del principio de libre prestación de servicios, el beneficiario de un régimen de seguro de enfermedad de un Estado miembro que reembolsa las prestaciones podía desplazarse al territorio de cualquier otro para consultar a un médico y que, una vez pagada la factura, podía obtener de su caja de enfermedad el abono de la misma cantidad a la que habría tenido derecho de haber ido al médico en el Estado en el que está asegurado, sin que se le pudiera exigir, para ello, que se hubiera previsto, previamente, de una autorización. Pero, como puso de relieve el abogado general Sr. Ruiz-Jarabo en las conclusiones que presentó en el asunto *Smits y Peerbooms*, estas dos sentencias dejaron pendientes múltiples interrogantes, pues no resolvieron si esa jurisprudencia se aplicaba también a la asistencia sanitaria que se presta en los hospitales ni si su ámbito quedaba limitado a los sistemas de seguridad social que, como el luxemburgués, pagan por cuenta del paciente o le reembolsan, en todo o en parte, la asistencia hospitalaria y médica que recibe o si, por el contrario, se extendía a los sistemas que, como el neerlandés, se organizan para proporcionar a los asegurados asistencia sanitaria en especie.

Esto fue lo que resolvió el Tribunal de Justicia cuando al dictar sentencia en ese asunto, decidió, sin distinguir según que el régimen de seguro de enfermedad fuera de reembolso o concediera solamente prestaciones en especie, que, tratándose de los cuidados prodigados en un centro hospitalario, el obstáculo a una de las libertades fundamentales del Tratado, consistente en la exigencia de autorización previa de la caja de enfermedad para obtener asistencia sanitaria en otro Estado miembro, podía estar justificado por exigencias imperiosas de interés general, en particular, las de garantizar en el territorio nacional un acceso suficiente y permanente a una gama equilibrada de prestaciones hospitalarias de ca-

lidad y de lograr un control de los gastos, evitando cualquier derroche de medios financieros, técnicos y humanos<sup>64</sup>.

Después de la sentencia Smits y Peerbooms, sólo quedaba ya por dilucidar si el principio de libre prestación de servicios permitía a un sistema de seguro de enfermedad que sólo proporciona prestaciones en especie exigir a los beneficiarios que se proveyeran de una autorización previa para desplazarse a otro Estado miembro a fin de obtener asistencia médica en régimen ambulatorio. Y eso era, justamente, lo que el Centrale Raad von Beroep de los Países Bajos pidió al Tribunal de Justicia que hiciera en el asunto Müller-Fauré.

En las conclusiones que presentó en este asunto el 22 de octubre de 2002, el abogado general Sr. Ruiz-Jarabo, después de examinar en detalle las características del régimen de seguro de enfermedad obligatorio de los Países Bajos, consideró, sobre la base de numerosas y, a mi juicio, sólidas razones, que la exigencia de autorización previa al desplazamiento estaba justificada.

En su opinión, un régimen de seguro de enfermedad organizado estructuralmente para proporcionar sólo prestaciones en especie, bien proveyéndose de centros propios y de personal contratado como en España, bien, como en los Países Bajos, a través de la celebración de concertos con profesionales y centros sanitarios, pierde nitidez la diferencia entre los cuidados proporcionados por los facultativos en las consultas y los que se dan en el marco de una hospitalización.

En efecto, desde un punto de vista presupuestario, los regímenes de esas características tienen garantizada, por adelantado, la financiación de toda la asistencia sanitaria que precisen los asegurados a lo largo de un año en consultas externas de medicina general, de especialistas y de odontología, de suerte que las instituciones de seguridad social no deben, en principio, hacer frente a pagos suplementarios. En estas condiciones, el recurso de los enfermos a medios ajenos al sistema puede tener una incidencia significativa en su financiación, al suponer una carga

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<sup>64</sup> El Arrondissementsrechtbank te Roermond, que había suscitado las cuestiones prejudiciales en ese asunto, dictó sentencia sobre el fondo el 3 de octubre de 2001, apenas dos meses y medio después de la decisión del Tribunal de Justicia. Desestimó la demanda de la Sra. Smits por no estar demostrado ni clínica ni científicamente que el tratamiento por categorías y multidisciplinario, que se le había aplicado en Alemania, fuera mejor que los cuidados disponibles en los Países Bajos y porque la paciente habría podido ser atendida en su país por un centro concertado con su caja de enfermedad. La demanda del Sr. Peerbooms corrió la misma suerte, al apreciar el juez que la terapia intensiva especial mediante neuroestimulación no puede considerarse habitual en el medio profesional, porque no ha sido comprobada ni reconocida de manera suficiente por la ciencia médica internacional.

económica adicional en todos los casos, con la consecuencia de poner en peligro su equilibrio financiero.

Es evidente que si sólo son unos pocos pacientes al año los que se desplazan al extranjero para ir al médico es difícil demostrar que el reembolso de sus facturas va a tener una incidencia significativa en la gestión del presupuesto de las cajas de enfermedad. De hecho, la Comisión sostenía que no cabe hablar de riesgo de perjuicio grave para el equilibrio financiero del sistema de seguridad social porque, por razón de la barrera del idioma o de la dificultad del desplazamiento, a la hora de la verdad serían contados los pacientes que irían a otros Estados miembros para consultar a un médico.

El abogado general estuvo en desacuerdo con esta postura por varios motivos: en primer lugar, porque hay un número relativamente elevado de médicos que se beneficia de la libertad de establecimiento para ejercer en Estados distintos al de su nacionalidad y, si el paciente consulta a uno de ellos, la barrera idiomática deja de existir; en segundo lugar, porque las fronteras lingüísticas en Europa distan mucho de coincidir con las demarcaciones territoriales de los Estados y, en amplias zonas fronterizas, la población se expresa con frecuencia en el habla del país vecino<sup>65</sup>; en tercer lugar, porque la distancia tampoco es un factor disuasorio, en particular, a la vista del avance de las comunicaciones en Europa, de la tendencia a poseer una segunda residencia en otro Estado miembro, y de la facilidad y de la frecuencia con la que buena parte de la población viaja a otros países para pasar sus vacaciones; en cuarto lugar, porque el número de pacientes que, si tuvieran la seguridad de obtener el reembolso de las facturas, optarían por trasladarse a otro Estado miembro a fin de consultar a un especialista, a saber, aquellos que, disponiendo de medios suficientes para permitírselo, no quieran esperar un periodo más o menos largo para ser atendidos, podría resultar relativamente elevado; por último, porque el funcionamiento de un régimen de prestaciones en especie se caracteriza también por el importante papel que representa el médico generalista, que es el encargado de proporcionar a los pacientes la atención primaria, encaminándolos, cuando lo estime necesario, hacia el especialista competente, al que el enfermo no puede consultar libremente. Si los asegurados pudieran eludir ese paso previo y dirigirse por propia iniciativa a un especialista en otro Estado miembro, con obligación por parte de la caja de enfermedad de reembolsarles la factura, se perdería

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<sup>65</sup> Puso como ejemplo Bélgica y los Países Bajos; Luxemburgo y Alemania; Italia y Austria; Suecia y Finlandia; España y Portugal, además de países de identidad lingüística como Irlanda y el Reino Unido, y Austria y Alemania.

buena parte de la eficacia que aporta al sistema esta forma de controlar el consumo innecesario de prestaciones médicas y, en particular, de evitar que se llenen las consultas de los especialistas con pacientes que se auto-prescriben la visita sin saber siquiera la especialidad que debe tratar su dolencia. De esta manera, esta vertiente de la actuación del médico generalista, ideada para contener el gasto y para velar por la correcta asignación de los medios a las necesidades, cumple, dentro del circuito de las prestaciones concertadas, parecida función a la de la autorización previa de la caja para consultar a un facultativo no concertado.

El abogado general hizo valer también argumentos relativos a la viabilidad de un servicio médico amplio, equilibrado y accesible a todos en el territorio nacional: por una parte, el interés de los facultativos por firmar conciertos con la cajas de enfermedad está en relación directa con el número de pacientes que se les pueda aportar, por los que cobran las tarifas cada año. Si los asegurados, en lugar de acudir a la consulta de los médicos concertados, se dirigieran a los no concertados, en el país o en el extranjero, las cajas no podrían garantizar un número de asegurados por médico, por lo que existe el riesgo de que muchos de estos profesionales dejen de estar interesados en comprometerse a una determinada disponibilidad y a garantizar la calidad y el precio de los servicios, firmando conciertos con las cajas que gestionan el seguro obligatorio de enfermedad, pues preferirían atender a los pacientes privados, seguramente menos numerosos, pero de los que perciben honorarios más elevados. De esta manera, a pesar de los esfuerzos de planificación de las cajas en materia de oferta sanitaria, en medios personales y económicos, ya no se lograría garantizar el acceso estable y generalizado de los asegurados a las consultas, incluida una gama amplia de especialistas, a un coste soportable, con lo que la continuidad del régimen de prestaciones en especie, en su forma actual, se vería seriamente comprometida.

Por otra parte, es sabido que los regímenes de seguridad social de prestaciones en especie están aquejados por el problema de las listas de espera, originado por la desigualdad, cada vez más marcada, entre la demanda y la oferta de atención sanitaria, tanto en lo que se refiere a la admisión en los hospitales como a la consulta de los médicos. Ante tal situación, la autorización previa de las cajas para acudir a medios no concertados, tanto si se hallan en el país como si radican en el extranjero, es un mecanismo que les permite definir las prioridades para los distintos tratamientos, gestionar los recursos disponibles y garantizar, en la práctica, la asistencia sanitaria de acuerdo con las necesidades que se presentan en cada momento. Si los pacientes en lista de espera para ir al médico pudieran acudir libremente al mercado de servicios no concertados, con derecho al abono de la factura, quebraría por su base el principio fundamental de

igualdad entre los asegurados en el acceso a la asistencia sanitaria, en perjuicio de quienes, por falta de medios o por creer en la bondad del sistema, atienden su turno, con el resultado de que el régimen de seguro de enfermedad de prestaciones en especie perdería su esencia convirtiéndose, por la vía de hecho, en un régimen de reembolso.

Como se ha visto, la opinión del abogado general respecto a la justificación de la autorización previa para que los pacientes que pertenecen a un régimen de seguro de enfermedad de prestaciones en especie se desplacen al extranjero para ir al médico no fue seguida por el Tribunal de Justicia, que adoptó una interpretación, a primera vista, abierta, liberal, progresista y favorable a la abolición total de barreras a la libre prestación de servicios sanitarios.

Hay que preguntarse, sin embargo, cómo van a ejecutar esa sentencia las instituciones de seguridad social de los quince Estados miembros, la mayoría de los cuales se organizan para conceder prestaciones en especie y no para reembolsar lo que pagan los asegurados. Lo que no tiene sentido es que el Tribunal de Justicia siga repitiendo, como hasta ahora, que el derecho comunitario no restringe la competencia de los Estados miembros para organizar sus sistemas de seguridad social, porque esta afirmación ha dejado de ser cierta: los Estados miembros, que nunca han tenido la intención de armonizar sus legislaciones en ese ámbito y que se han limitado a coordinarlas mediante el Reglamento n.º 1408/71 a fin de cumplir las finalidades impuestas por el artículo 42 CE, deberán, como consecuencia de esta decisión, proceder a realizar los cambios necesarios en sus sistemas que les permitan reembolsar por lo menos una parte del coste de la atención sanitaria ambulatoria que sus asegurados se hayan procurado en otros Estados miembros.

(MIRP)



# Crónica



# Crónica comunitaria: la actualidad institucional y económica de España en el marco de la Unión Europea

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## Introducción

El nacimiento de la «Europa de los Veinticinco» ha entrado en su recta final con la firma del Tratado de Adhesión de los Diez Estados candidatos y la celebración de las diferentes votaciones en estos países.

Apenas restan unos meses para el histórico y difícil paso que afrontará el continente. Más de 75 millones de europeos se convertirán en ciudadanos comunitarios y, con más de 450 millones de habitantes, la Unión Europea se convertirá en el mayor Mercado Único del mundo, superando en más del 40% la dimensión del mercado norteamericano.

También ha sido presentada la propuesta de Constitución europea. Su redacción final dependerá de los acuerdos alcanzados en la Conferencia

Intergubernamental que, se convocará en Octubre y que darán lugar a la aprobación de la Carta Magna el 1 de Mayo de 2004, coincidiendo con la Ampliación de la UE a Veinticinco.

Este nuevo paso en la integración ha ayudado a superar una de las crisis internas más graves que ha sufrido la Unión a lo largo de su historia, derivada de los diferentes posicionamientos de los Estados miembros ante el conflicto con Irak. Y, también ha podido servir de acicate para que los Quince definan el «Concepto Estratégico» de la UE que, en palabras de Javier Solana, pasa por un reforzamiento de la capacidad militar de la Unión.

En este segundo semestre de 2003, Italia ha asumido la presidencia de la Unión de la mano de su primer ministro, el polémico Silvio Berlusconi. Los analistas ya vaticinan un semestre complejo e incierto, dada su peculiar personalidad y forma de entender la diplomacia. Implicado en una docena de procesos judiciales en su país, aún escandaliza en el país alpino y en toda Europa la recientemente aprobada ley italiana de inmunidad, que le protegerá hasta 2006, cuando finalice su mandato.

## I. El estado de la integración

### I.1. *La firma del Tratado de Adhesión*

El pasado 16 de Abril tuvo lugar la firma del Tratado de Adhesión de los Diez Estados candidatos (Polonia, Hungría, República Checa, Eslovaquia, Eslovenia, Estonia, Letonia, Lituania, Malta y Chipre), que formarán parte de la Unión Europea en Mayo de 2004.

La emblemática Acrópolis de Atenas se convirtió en el escenario del histórico acto, que otorgó a los Diez países candidatos el estatus de observadores dentro de la Unión, con derecho de participación pero sin voto en todas las reuniones y foros de las instituciones y organismos comunitarios, que se celebran desde entonces.

En medio de solemnes discursos de los dignatarios de los Veinticinco, la declaración conjunta señalaba que «hemos logrado algo único», y apuntaba la voluntad de todos ellos de «hacer de la Unión un auténtico lugar de libertad, seguridad y justicia».

«Nuestra Europa es la Europa de todos», concluía la declaración de los Jefes de Estado y de Gobierno, tras reafirmar su inquebrantable compromiso con los principios democráticos. Este ideal deberá ser «la piedra angular en que se sustente nuestra comunidad de valores, no solamente para los ciudadanos de hoy, sino también para nuestros hijos y los hijos de nuestros hijos».

El presidente de turno de la Unión, el griego Costa Simitis, declaró que compartir estos valores «abre una oportunidad para que Europa sea un ejemplo para todo el mundo».

Con las 5.000 páginas del Tratado de Adhesión se culminaron unas largas y complejas negociaciones que, efectivamente, abren la puerta a la quinta Ampliación de la Unión Europea. Su entrada en vigor el próximo 1 de Mayo de 2004 se producirá tras las respectivas ratificaciones en los Estados candidatos y Estados miembros. En los primeros, se han convocado consultas a los ciudadanos, y en los Estados miembros se ratificará el Tratado mediante votaciones parlamentarias.

Eneko Landaburu, Director General de la Ampliación de la Comisión Europea y principal responsable de las negociaciones por parte de la Unión Europea, reconoció, con motivo de la firma del Tratado, que durante el proceso negociador no se ha producido «el entusiasmo que merece la reunificación de Europa, por primera vez en su historia de manera pacífica», y que, por el contrario, «se ha llevado con cierta resignación».

En su opinión, la Ampliación es imparable porque es una obligación moral recibir a los países de la antigua órbita soviética. Y también porque es una respuesta a una necesidad política, ya que la Ampliación dará estabilidad a la UE y consolidará la democracia y los valores europeos. En el ámbito económico, Landaburu señaló que los temores españoles son infundados. «Puede producirse la deslocalización de alguna empresa, pero eso hay que aceptarlo porque es normal en una Economía de mercado».

Tras cuatro años de contactos, debates y negociaciones, el Director General se mostró «gratamente sorprendido por la seriedad y cultura de esta gente». Es por ello que alertaba contra el error de «desarrollar actitudes arrogantes hacia unos países que cuentan con muchos Premios Nobel y con artistas extraordinarios». Admitió que en algunos de los Estados candidatos se detectan problemas de corrupción, pero añadió que si no ingresaran en la UE «la situación sería peor y los riesgos para nosotros serían aún mayores». «De todos modos», advirtió, «estos países no tienen el monopolio de la corrupción». Y señaló, en este sentido, que «se han impuesto a sí mismos unas reformas profundas para modernizar sus países y sus Economías».

## *I.2. Las votaciones en los países candidatos sobre la adhesión a la UE*

Desde Marzo, un total de siete países candidatos han celebrado consultas a los ciudadanos en relación a su eventual Adhesión a la Unión Europea.

Los malteses fueron, efectivamente, los primeros que dieron su apoyo a la entrada de su país en la Unión el pasado 8 de Marzo. El estrecho

margen conseguido en esta pequeña isla del Mediterráneo, 54% votos favorables contra un 44% de rechazo, reflejó la fuerte oposición demostrada por el partido laborista durante toda la campaña previa al referéndum, al respecto de la Adhesión del país a la UE. Los laboristas son partidarios de mantener el estatus de neutralidad que ha convertido a Malta en la «Suiza del Mediterráneo» y es por ello que, tras conocer el resultado de la consulta, el líder de esta formación política, Alfred Sant, instó al primer ministro a que convocara elecciones generales, no descartando un nuevo referéndum en caso de victoria de su partido.

Los eslovenos fueron los siguientes ciudadanos europeos que mostraron su voluntad de integrarse en la Unión el 23 de Marzo. Un 89,5% de los que acudieron a las urnas se mostraron partidarios de dar tal paso, con lo que una amplia mayoría de los ciudadanos de esta antigua república de la extinta Yugoslavia mostraron su apoyo a la Adhesión.

Los húngaros se convirtieron, el pasado 12 de Abril, en los primeros centroeuropeos en aprobar su ingreso en la Unión. Con una participación muy reducida, inferior al 50% de los ocho millones de ciudadanos llamados a las urnas, el resultado reflejó la mayoritaria voluntad de los húngaros en favor de la integración (un 84% de los sufragios emitidos).

El referéndum celebrado en Lituania durante dos días, el 10 y 11 de Mayo, finalizó con un índice de participación suficiente y un resultado mayoritariamente favorable al «sí». El 60% de los dos millones y medio de electores participaron finalmente en la consulta y superaron el 50% mínimo necesario para que el plebiscito fuera válido. Y más del 70% de los lituanos que decidieron ejercer su derecho de voto se pronunciaron a favor de que su país forme parte de la Unión Europea, con lo que Lituania se convirtió en el primer país báltico de la extinta Unión Soviética en superar la convocatoria del referéndum.

El quinto país que convocó un referéndum sobre la Adhesión a la Unión fue Eslovaquia, los días 16 y 17 de Mayo. Los ciudadanos de esta república centroeuropea aprobaron su ingreso en la UE por una aplastante mayoría, 92%, aun cuando con una tasa de participación ciertamente reducida, un 52% (superaba también, en este caso, el umbral del 50% necesario para su validez).

Los polacos fueron los siguientes electores en aprobar su ingreso en la Unión, los pasados 7 y 8 de Junio. La participación alcanzó un 58,8%, la más alta desde los primeros comicios democráticos celebrados tras la caída del comunismo en 1989, y superó asimismo el 50% que exige la Constitución polaca para que el resultado del referéndum sea vinculante. Los votos favorables alcanzaron el 82%.

Por último, han sido los checos quienes, también por amplia mayoría, han aprobado el ingreso de su país en la Unión los días 13 y 14 de

Junio. Con una tasa de participación del 55,2%, la votación se saldó con un 77% de electores a favor de la integración.

El calendario de votaciones prevé la convocatoria de sendas consultas en Estonia y Letonia en Septiembre, los días 14 y 20 respectivamente.

La opinión de muchos analistas políticos apunta a que, hoy por hoy, en los Estados candidatos no se vive un gran fervor europeísta. En Europa central y oriental la integración en la Unión Europea se defiende más por conveniencia que por convicción. Es así como en la reciente crisis de Irak ha quedado demostrada la valoración de estos países sobre la protección estratégica de EEUU frente a posibles amenazas rusas y en defensa de su recién recuperada soberanía e identidad nacional.

Y, por otra parte, han pasado ya tres lustros desde la caída del muro de Berlín, un tiempo quizás excesivo que, también, ha dejado patente una cierta «cicatería» económica por parte de los Quince, ya que, finalmente, la Ampliación no les costará más del 0,15% de su PIB en los tres primeros años. Esta decisión puede considerarse un paso atrás en la política comunitaria de cohesión económica y social, eje fundamental de la integración. España, que también partía de una posición económica muy inferior a la de sus socios comunitarios en 1986, no «sufrió» estas limitaciones presupuestarias, lo que ha facilitado su gran progreso económico desde entonces.

### *1.3. El proyecto de Constitución Europea*

La Convención sobre el futuro de Europa, constituida en Febrero de 2002, concluyó sus trabajos el pasado 13 de Junio, cuando su presidente, Válerly Giscard d'Estaing, presentó públicamente, en Bruselas, el borrador de Constitución europea.

En las diversas intervenciones y declaraciones que se produjeron en este último pleno de la Convención, se hizo patente el apoyo firme, y casi unánime, por parte de los diferentes gobiernos, parlamentos y grupos políticos europeos, al proyecto de Constitución europea.

El acto sirvió también para que el presidente de la Convención recibiera el mandato formal de presentar el texto a los líderes comunitarios en el Consejo Europeo que debía celebrarse en Salónica el 20 de Junio.

Así fue como, en la ciudad griega, en un nuevo acto cargado de solemnidad, el documento que contenía el proyecto de la Constitución europea fue entregado por Giscard al presidente del Consejo Europeo, el primer ministro griego Costas Simitis.

Los Quince afirmaron que el texto es «una buena base para iniciar la Conferencia Intergubernamental (CIG)» ya que será éste el foro en el

que, a partir de Octubre, los Estados miembros deberán pactar los cambios a introducir en los Tratados constitutivos de la Unión.

Así, e independiente del resultado final de la Conferencia, el texto presentado marca un nuevo diseño de la construcción europea.

En esta particular «refundación» de la Unión destacan los siguientes cambios:

- La mayor relevancia de los gobiernos, a través de un Consejo Europeo que se convierte en una institución con capacidad para emitir actos jurídicos y no sólo declaraciones políticas; en el Consejo de Ministros destaca el Consejo de Asuntos Generales como único con competencias legislativas; se crea la figura de un «presidente» del Consejo Europeo, cuya función será, con un mandato de dos años y medio, coordinar las reuniones de los Jefes de Estado y de Gobierno además de representar a la Unión en el exterior.
- El mayor peso de los países más poblados y, en particular, de Alemania, puesto que las decisiones en el Consejo se adoptarán por una mayoría de Estados que representen el 60% de la población de la UE.
- El mayor protagonismo del Parlamento Europeo, a través de la mayor utilización del procedimiento de codecisión entre el Consejo y el Parlamento en la aprobación de la normativa comunitaria.
- La pérdida de protagonismo de la Comisión, que será el resultado de los planteamientos anteriores, y a pesar de que mantiene intacto su poder de iniciativa legislativa y aunque nuevas áreas se verán «comunitarizadas» (no podrán ser vetadas por un Estado miembro).

El borrador constitucional propone, asimismo, el reconocimiento de personalidad jurídica a la Unión Europea, la creación formal del «Eurogrupo», compuesto por los ministros de Finanzas de la Eurozona, y la dotación de fuerza jurídica a la Carta de Derechos fundamentales.

Uno de los aspectos clave de la nueva Constitución sería, según el texto presentado, el incremento de poder de Alemania. Con la admisión del peso directo de la demografía en el voto del Consejo de Ministros se rompe uno de los principios «sagrados» sobre los que fue fundado el proyecto comunitario: el equilibrio de poder entre Francia y Alemania. Aunque ya en Niza quedó mínimamente roto (una decisión podía ser vetada con la representación del 38% de la población), en este proyecto, Alemania consigue un poder proporcional a su mayor peso de su población y se supera, quizás, el estigma derivado de la segunda Guerra Mundial. Con el nuevo sistema, el voto de Berlín supondrá el 17% del total de la Unión



(en Niza suponía el 8,41%), a gran distancia de Reino Unido o Francia (12,3% respectivamente), y de Italia (12%).

En todo caso, el gobierno español dejó constancia inmediata de su «reserva fundamental» respecto al texto constitucional por su rechazo a sustituir el sistema de voto aprobado en el Tratado de Niza por este otro de doble mayoría de Estados y población. En opinión de la ministra de Exteriores, Ana de Palacio, este último es un sistema desequilibrado porque favorece a los cuatro Estados más poblados, de manera que éstos pasarían a gobernar «de facto» la UE.

Con los 27 votos conseguidos por España en Niza, el gobierno español podía lograr con facilidad minorías de bloqueo en el Consejo de Ministros, mientras que con el nuevo sistema le será casi imposible, porque 19 de los 27 países que formarán la Unión en 2007 tienen menos de 11 millones de habitantes. El peso de todos ellos será muy pequeño y difícilmente podrán sumar el 40% de la población, techo que será necesario para bloquear los pactos alcanzados por los países grandes.

A pesar de estas reservas y del camino aún pendiente, la sola existencia de un proyecto de Carta Magna constituye, en sí, un gran paso hacia la integración política del continente.

Es, efectivamente, un proyecto de consenso, que no colma las aspiraciones de muchos, pero sí es el resultado de los arduos y complejos debates habidos entre diferentes posturas cruzadas: federalistas frente a defensores de los Estados-nación, países grandes frente a países pequeños, euroescépticos atlantistas frente a europeístas y, también, Estados pobres frente a Estados más prósperos.

«El texto», dijo Giscard con motivo de su presentación, «no es perfecto, pero sí inesperado», aludiendo a los momentos de crisis que ha atravesado la Convención a lo largo de sus quince meses de existencia. «Hemos trabajado como los padres fundadores de la construcción europea, con idealismo e innovación, pero con un realismo político que nos ha permitido concluir», añadió.

Aunque el proyecto consta de cuatro partes, es en la primera, compuesta por 59 artículos y dos protocolos, donde se recoge el «núcleo» de la Constitución: objetivos de la Unión, derechos de los ciudadanos, competencias exclusivas o compartidas de la UE, composición y cargos en las instituciones, fórmulas de votación, sistema para abandonar la Unión, etc. Jurídicamente, la Carta Magna fusionará los dos Tratados de Roma, constitutivos de la Comunidad Europea y la Comunidad Europea de la Energía Atómica, y el Tratado de la Unión Europea, en un único texto.

La ministra española de Asuntos Exteriores, Ana de Palacio, anunció el pasado 17 de Junio que el gobierno tiene intención de someter a refe-

réndum nacional el texto de la futura Constitución de la UE. Apuntó, asimismo, la conveniencia de que la consulta se realice coincidiendo con las elecciones al Parlamento Europeo, en Junio de 2004.

De Palacio precisó que, previsiblemente, el nuevo Tratado constitutivo se firmará en Mayo de 2004, coincidiendo con la entrada en vigor de la Ampliación al Este.

#### *I.4. Seguridad y defensa: primera misión de la Fuerza Europea de Reacción Rápida y propuesta de Alemania, Francia, Bélgica y Luxemburgo*

El responsable de la Política Exterior de la Unión Europea, Javier Solana, anunció, en Marzo, el relevo de las unidades de la OTAN que supervisan el mantenimiento de la paz en Macedonia por los efectivos de la Unión Europea.

Con esta transferencia de responsabilidades en el país balcánico, se hizo realidad la primera misión de paz con fines humanitarios asumida por la «Fuerza Europea de Reacción Rápida».

Pese a su gran valor simbólico, la misión de la UE en Macedonia, denominada «Armonía Aliada», tendrá escaso alcance militar. Las fuerzas comprometidas oscilan entre 300 y 400, y su labor consiste en vigilar fronteras, actuar como elemento disuasorio para acciones violentas de las facciones enfrentadas y apoyar a las autoridades de Skopje en materia de seguridad.

Los ministros de Defensa, reunidos en Mayo en Bruselas, tuvieron que reconocer que existe un importante retraso en cuanto al acopio de los recursos necesarios para conseguir que la Fuerza de Reacción europea acometa, con plenas garantías de éxito, las misiones que, en materia de mantenimiento de la paz, gestión de crisis y ayuda humanitaria, le han sido atribuidas.

El objetivo de este embrión de ejército europeo es contar con 60.000 efectivos perfectamente equipados y con capacidad de ser desplegados en un plazo máximo de dos meses. Las carencias se centran en capacidades de transporte estratégico, inteligencia espacial y telecomunicaciones.

Por otra parte, y al margen del desarrollo de la Fuerza de Reacción, también fue importante la propuesta lanzada por cuatro Estados miembros, Francia, Alemania, Bélgica y Luxemburgo, de crear una fuerza militar al margen de la OTAN, con el objetivo de dotar a Europa de un mayor peso en la toma de decisiones internacionales.

El pasado 29 de Abril, los cuatro Estados miembros que se opusieron a la intervención militar en Irak propusieron la puesta en marcha de una «Unión Europea de Seguridad y de Defensa» (UESD), entre los «Estados que deseen reforzar su cooperación en materia de defensa».

El compromiso que plantearon para la nueva estructura incluye la obligación de «ayudar y asistir a otro Estado en caso de riesgo», una circunstancia que, efectivamente, es equiparable a la cláusula de solidaridad y defensa prevista para los miembros de la OTAN.

Los promotores del acuerdo declararon que la iniciativa no debe suponer un enfrentamiento con la estructura de la OTAN. «El problema de la Alianza Atlántica no es que haya mucha América, sino que hay poca Europa, y esto es lo que ahora tratamos de solucionar» explicó el canciller Schröder. Los cuatro líderes señalaron la importancia de que la UE pueda expresarse con una sola voz y que demuestre plenamente su poder en la escena internacional, «algo que no será posible sin una Unión Europea de Seguridad y Defensa». Subrayaron, además, que la relación transatlántica sigue siendo una prioridad estratégica fundamental para Europa.

Los Estados que se incorporen a la UESD, además de la obligación de asistencia mutua, se comprometerán a buscar sistemáticamente la armonización y la cooperación en los ámbitos de seguridad y defensa y a desarrollar sus capacidades de defensa con inversiones en equipos militares.

Los cuatro Estados decidieron, así, la creación de la nueva estructura en Junio de 2004, con un mando europeo de transporte aéreo estratégico. También plantearon la creación de una capacidad europea de protección bacteriológica y química conjunta, para la protección de la población civil y las tropas en operaciones.

### *1.5. Reino Unido: retraso en la adopción del euro*

El ministro británico del Tesoro público, Gordon Brown, aseguró, el pasado 9 de Junio, ante la Cámara de los Comunes, que el Reino Unido todavía no cumple los requisitos necesarios para sustituir la libra esterlina por el euro.

Afirmó que el país no ha cumplido cuatro de los cinco criterios que él mismo había establecido en 1997 como condición para el ingreso en el euro. La única prueba que el ministro considera superada es la relativa a los servicios financieros; las restantes, relativas a la convergencia, la flexibilidad, las inversiones y el empleo, recibieron un «suspense».

Respecto a la convergencia, afirmó que «existen diferencias estructurales con la zona euro, algunas de las cuales son significativas, como la del mercado británico de la vivienda, más volátil y sensible a los cambios de los tipos de interés que en el continente». En cuanto a la flexibilidad, el ministro apuntó que las Economías comunitarias son todavía demasiado rígidas y poco liberalizadas, y que no se ha alcanzado una convergencia en este sentido.

En relación a las inversiones, Brown reconoció que la integración en el euro podría incrementar la entrada de capitales extranjeros en el país pero, en su opinión, esta mejoría estaría condicionada a alcanzar, previamente, una convergencia sostenible y duradera que, efectivamente, garantice «la cantidad y la calidad» de estas inversiones. Los servicios financieros sí han demostrado, en opinión del ministro, su competitividad tanto dentro como fuera de la zona euro, lo que significa que con la entrada en el euro, «la City» vería mejorada su posición internacional. Y, por último, respecto al quinto requisito, relativo al crecimiento, estabilidad y empleo, señaló que la integración tendría un efecto positivo en las exportaciones, lo que repercutiría favorablemente en el empleo. Sin embargo, la falta de una convergencia, sostenible y duradera, supondría que la estabilidad macroeconómica británica sería más difícil de mantener dentro de la Unión Monetaria.

En su discurso, Brown resumió que la decisión de no integrarse aún en el euro responde a los intereses económicos de la nación, y que si esta integración se realizase sin la suficiente preparación, las consecuencias podrían ser desastrosas, con un incremento del desempleo, recortes en los servicios públicos y el estancamiento del crecimiento económico.

Así, los tipos de interés británicos están fijados actualmente en un 3,75%, frente al 2% de la eurozona, y los analistas coinciden en señalar que un fuerte recorte de tipos dispararía los precios de la vivienda y el consumo, en uno de los países con mayor deuda privada de la UE y con un mercado hipotecario especialmente sensible a los cambios de los tipos de interés.

En todo caso, Brown se comprometió a emprender una serie de reformas estructurales que faciliten el ingreso del Reino Unido en la Unión Monetaria (incluida la reducción de la sensibilidad de las hipotecas a los tipos de interés) e, incluso, dejó la puerta abierta para la celebración de un referéndum al confirmar la publicación, en el próximo otoño, de un borrador legislativo que permitiría celebrar la consulta antes de las próximas elecciones generales, previstas para 2006.

El ministro anunció que, efectivamente, revisará de nuevo las condiciones económicas sobre la convergencia entre el Reino Unido y la zona euro en Marzo de 2004, cuando se presenten los nuevos presupuestos para el próximo ejercicio. Y si el análisis mostrara, efectivamente, un cumplimiento de los requisitos, se daría, entonces, el «aprobado» al ingreso en el euro y el gobierno podría convocar un referéndum, que ya contaría con la necesaria cobertura legal

Los analistas entendieron la declaración de Brown como la única conjunción posible entre la postura más temerosa del propio ministro

respecto a una entrada a destiempo en el euro y la firme creencia del primer ministro, Tony Blair, de que el destino del país es adoptar la divisa común y tener un papel relevante en Europa.

En una inusual conferencia de prensa común, celebrada al día siguiente de la comparecencia del ministro en la Cámara, Blair y Brown anunciaron la puesta en marcha de una campaña por todo el país, dirigida a vencer la oposición de la opinión pública británica ante la moneda común. De hecho, este rechazo es uno de los principales obstáculos para la adopción del euro, ya que los últimos datos señalan que un 70% de la población rechaza la moneda europea. «Hay que impulsar un fuerte consenso hacia Europa y derribar los mitos y prejuicios que existen, como el de quienes creen que para ser pro-británico es preciso ser anti-europeísta y que Europa implica perder identidad nacional» señalaron los dos líderes laboristas.

## II. La actualidad institucional de la Unión Europea

### II.1. *Los Consejos Europeos de la presidencia griega*

Durante el primer semestre de 2003 se celebraron cuatro Consejos Europeos. En Febrero y Marzo, los Jefes de Estado y de Gobierno se reunieron en Bruselas, y, posteriormente, en dos capitales griegas, Atenas y Salónica.

La primera reunión extraordinaria fue convocada por la presidencia griega el 17 de Febrero, con el fin de llegar a un acuerdo de mínimos sobre la crisis de Irak. Las divisiones de los Quince eran patentes, con las posiciones encontradas de Reino Unido y España por una parte, y de Francia y Alemania por otra.

Tanto Tony Blair como Jose María Aznar hicieron valer su posición de defensa del uso de la fuerza, mientras que el presidente francés, Jacques Chirac, y el canciller alemán Schröder rechazaban frontalmente el inicio de una guerra contra Irak sin haber agotado previamente todas las posibilidades diplomáticas.

Las presiones para conseguir una posición común eran, en todo caso, grandes ya que un fracaso en este ámbito abriría una profunda crisis en el seno de la Unión y minaría su objetivo de forjar una Política Exterior común y ganar influencia en el escenario internacional.

En su declaración final, los Quince se mostraron partidarios de utilizar la fuerza contra Irak «sólo como último recurso», y defendieron a las Naciones Unidas como el marco inequívoco para la resolución no sólo de la crisis de Irak, sino de todas las que pudieran suscitarse en el

futuro. Y también añadieron que «las inspecciones de la ONU no podían continuar indefinidamente sin una colaboración iraquí plena». El acuerdo alcanzado en estos términos resultó ser, efectivamente, un equilibrio demasiado precario.

En la cumbre del 21 de Marzo, los líderes comunitarios se comprometieron a impulsar el proceso de reformas lanzado tres años atrás, en la primavera de 2000, en el Consejo de Lisboa, y que deben encaminarse a conseguir la mejora de la competitividad y la productividad de la Economía europea, en el horizonte de 2010.

Según reconocieron entonces los Quince, este proceso se encontraba estancado desde hacía un año. A la crisis económica se sumaban las incertidumbres geopolíticas derivadas del conflicto con Irak, que estaban ejerciendo «una presión importante sobre las perspectivas a corto plazo y retrasando la recuperación». La novedad más relevante de la cumbre fue la propuesta de creación de un grupo de trabajo que, en el plazo de un año, deberá identificar las medidas «clave», necesarias para la reforma del mercado laboral en cada uno de los Estados miembros.

El Consejo Europeo también dio luz verde a la reforma del sistema de gobierno del Banco Central Europeo. El actual sistema de voto permanente se sustituirá por un voto rotatorio entre los gobernadores de los Bancos Centrales nacionales, una modalidad similar a la que siguen la Reserva Federal estadounidense y otras instituciones financieras internacionales.

Este nuevo sistema, propuesto por el presidente del BCE, Wim Duisenberg, pretende tomar decisiones «eficazmente» en una Unión Monetaria integrada hasta por 27 países en el futuro. Los gobernadores se dividirán en tres grupos, en función del PIB de su país y del peso del sector financiero en su Economía y, en total, dispondrán de quince votos, que se utilizarán de forma rotatoria.

Así, en una eurozona de veintisiete Estados, el primer grupo estará integrado por cinco países que dispondrán de cuatro votos. El segundo lo formarán catorce países, a los que corresponderán ocho votos y, por último, el tercer grupo lo integrarán ocho países, con una asignación de tres votos.

El nuevo sistema de gobierno se irá introduciendo conforme se vayan sumando nuevos países a la zona euro. Entre estos figuran, por un lado, los tres Estados miembros actuales que permanecen fuera de la Unión Monetaria (Dinamarca, Reino Unido y Suecia); por otro, los Diez candidatos que ingresarán en la UE en 2004 y que, como muy pronto, se integrarán en el euro a mediados de 2006; y, por último, los tres países que, en breve, podrían iniciar sus negociaciones de Adhesión (Rumania, Bulgaria y Turquía).

En todo caso, el sistema aprobado fue objeto de una fuerte crítica por parte del Parlamento Europeo, por su gran complejidad. Y quizás fue esa polémica la que llevó, tanto a la Comisión Europea como al Consejo de Ministros a afirmar que se trataba de una solución «temporal», que sí conseguía un acuerdo previo a la Ampliación pero que sin descartar un nuevo debate sobre la cuestión.

El Consejo Europeo del 16 de Abril se convirtió en el momento histórico de la firma del Tratado de Adhesión de los Diez Estados candidatos. En una ceremonia cargada de simbolismo, en la cuna de la democracia, y catorce años después de la caída del muro de Berlín, la Unión Europea dio la bienvenida oficial a Diez nuevos socios, procedentes en su mayoría del antiguo bloque comunista.

En medio de una dura crisis económica y de una profunda polémica interna, provocada por las disensiones en torno al conflicto de Irak, los Quince trataron de aprovechar la cumbre para restablecer sus lazos políticos e impulsar el proceso de integración en Europa.

Comenzaron, así, a limar sus fuertes diferencias y a superar una de las más graves crisis de la historia de la Unión. Tras la cumbre, los Estados miembros se ofrecieron a participar en la reconstrucción de Irak, con el deseo explícito de que Naciones Unidas jugara un papel central en este proceso.

La cuarta cumbre del semestre se celebró en Junio en Salónica. Fue éste el Consejo Europeo ordinario con el que Grecia daba por finalizada su presidencia semestral de la Unión.

Durante los días 19 y 20 de Junio, los líderes comunitarios recibieron la propuesta de Constitución europea elaborada por los miembros de la Convención sobre el futuro de Europa y trataron el relevo en la presidencia del Banco Central Europeo.

Además, a lo largo de la cumbre, los máximos líderes comunitarios acogieron favorablemente las recomendaciones planteadas por el Alto Representante de la Política Exterior de la UE, Javier Solana, para el establecimiento de una estrategia global en el ámbito de la Política Exterior y de Seguridad Común (PESC). Tanto los socios proatlantistas como los más críticos con la diplomacia estadounidense declararon que una Europa segura exige nuevas responsabilidades, y éstas obligan a conseguir una cobertura militar en el exterior.

El «Concepto Estratégico de la Unión» propuesto por Solana sienta las bases para que Europa se convierta en una entidad política autónoma en el mundo. Así, y según el planteamiento de «Mister PESC», la UE deberá aumentar tanto su capacidad civil, económica o comercial, como su capacidad militar. Deberá desarrollar su potencial en todos estos ámbitos, lo que le permitirá desplegar sus fuerzas militares allá donde exista una

crisis y protagonizar la defensa de la estabilidad en Europa y en el resto del mundo. En este plan, Solana prevé reforzar la colaboración de la UE con una serie de países, como Rusia, Japón, China, Canadá e India.

En la cumbre, los Quince quisieron dar por zanjada la brecha abierta en sus relaciones con EEUU, y acordaron, junto con los Diez países candidatos, que «la UE debe implicarse, en pie de igualdad con Washington, en la responsabilidad de la seguridad mundial frente a las principales amenazas que se plantean, las armas de destrucción masiva y el terrorismo».

Al día siguiente de la finalización del Consejo Europeo, el 21 de Junio, y en la misma ciudad de Salónica, tuvo lugar una cumbre que reunió a los Quince Estados miembros con los cinco países de los Balcanes occidentales (Serbia y Montenegro, Croacia, Albania, Bosnia-Herzegovina y Macedonia).

A su término, los Quince declararon «irreversible» la incorporación de los Balcanes a la UE. Y por ello, el presidente de la Comisión Europea, Romano Prodi, declaró que la séptima Ampliación ya está en marcha, aun cuando, efectivamente, la quinta todavía no se ha materializado y la sexta está por definir. Señaló, asimismo, que la cumbre demostraba que la incorporación de los Balcanes a la UE es un objetivo inseparable de la estabilidad y seguridad de la Unión. «Europa», dijo, «no estará completa hasta que los Balcanes estén dentro».

Los representantes de los Quince apuntaron que estas cinco repúblicas balcánicas, desgarradas tras casi una década de guerras, deberían abordar la reconstrucción de su integración regional y resolver los graves problemas que sufren de corrupción y delincuencia organizada, entre cuyas actividades destaca el tráfico de seres humanos.

## II.2. *Descubrimiento de escuchas telefónicas en el Consejo de Ministros y de irregularidades en Eurostat*

A lo largo del primer semestre de 2003 han trascendido a la opinión pública dos incidentes relacionados con las instituciones comunitarias: el descubrimiento de dispositivos de espionaje en la sede del Consejo de Ministros y las acusaciones de corrupción a los más altos responsables de la Oficina de Estadísticas de la Comisión Europea.

Así, una inspección rutinaria, realizada por un funcionario comunitario en Febrero, puso al descubierto la existencia de una red de escuchas telefónicas en las delegaciones de España, Alemania, Austria, Francia, Italia y Reino Unido en el edificio donde se reúne el Consejo de Ministros de la Unión Europea.

Este descubrimiento de dispositivos electrónicos en las líneas telefónicas de determinadas representaciones permanentes, confirmó, en pala-



bras del presidente del Consejo, el ministro griego de Asuntos Exteriores Giorgios Papandreu, la existencia de unas «intenciones hostiles» hacia la Unión. Aseguró Papandreu que, ante estos hechos, «se actuaría con la máxima transparencia, como es costumbre en todos los temas comunitarios».

El otro incidente han sido las acusaciones de fraude vertidas sobre la Oficina de Estadísticas de la Unión, Eurostat.

El comisario europeo de Economía y Finanzas, Pedro Solbes, responsable de esta Oficina, debió someterse el pasado 17 de Junio a una sesión de control ante la comisión de control presupuestario del Parlamento Europeo, tras el relevo en sus cargos, a petición propia, del director general de Eurostat, el francés Yves Franchet, y de uno de los altos funcionarios del servicio, Daniel Byk.

El escándalo gira en torno a las contrataciones concedidas por Eurostat a varias compañías y que, en algunos casos, alcanzaban los 50 millones de euros. También se ha denunciado la apertura de una cuenta bancaria que escapó al control comunitario y hacia la que podría haberse desviado cerca de un millón de euros. La auditoría interna de Eurostat ha revelado, en efecto, la existencia de ciertas operaciones sospechosas de los «Datashops» en Madrid, Bruselas y Luxemburgo. Estos «Data-shops» son las oficinas encargadas de la comercialización de los datos estadísticos de la UE en cada Estado miembro y, en su mayoría, están gestionadas por los Institutos de Estadística de cada país, excepto en los tres casos citados, en los que la gestión corre a cargo de sociedades privadas.

La Asamblea europea indaga ahora sobre las posibles responsabilidades políticas y apunta a la cúpula de la Comisión. «Nos parece innegable que el sistema no ha funcionado adecuadamente» admitió Solbes, ante unas acusaciones de consecuencias imprevisibles y que recuerdan la crisis vivida por la Comisión en 1999, cuando se vio abocada a dimitir.

El ejecutivo comunitario ya ha decidido crear un «gabinete de crisis» de alto nivel, para seguir la evolución política y judicial de la trama, mientras Solbes confía en poder «extraer conclusiones apropiadas» a mediados de Octubre.

### II.3. *Banco Central Europeo: relevo en la presidencia*

El cambio en la presidencia del Banco Central Europeo, BCE, quedó despejado a mediados de junio, cuando el virtual candidato, el francés Jean Claude Trichet, actual gobernador del Banco de Francia, quedó absuelto en el juicio sobre la supuesta manipulación de cuentas del Crédit Lyonnais a comienzos de los años noventa.

La Fiscalía francesa entendía que Trichet había ocultado la grave crisis de la entidad bancaria, entonces de titularidad estatal, durante su mandato como Director General del Tesoro, entre 1987 y 1993. La sombra de una condena, que finalmente no se ha producido, era el principal obstáculo que le impedía acceder a la presidencia del BCE.

Lo cierto es que gracias a su reputación de «banquero central» brillante y de político de primera fila, su prestigio profesional no llegó a deteriorarse y mantuvo todos los apoyos con que contaba para acceder a la presidencia de la autoridad monetaria europea.

En su calidad de gobernador del Banco de Francia, Trichet consiguió la independencia de la institución en 1994, y defendió una política económica y monetaria dirigida a sostener un franco fuerte. Su habilidad para ganarse la confianza de políticos de toda índole, sus dotes de comunicación y su elevada credibilidad han sido las cualidades que le han convertido en un candidato idóneo, especialmente respaldado por los gobiernos y por los mercados financieros europeos.

Así, y aunque no se prevén cambios sustanciales en la línea de actuación estratégica del BCE, todo parece indicar que el sucesor de Wim Duisenberg dotará de un nuevo talante al Banco, en la medida en que las decisiones del holandés han sido tachadas, en muchas ocasiones, de ser demasiado ortodoxas y poco transparentes.

Muchos analistas financieros ven a Trichet como un tecnócrata pragmático, buen comunicador y con un fuerte carisma, lo que, sin duda, le ayudará en la tarea de dotar al BCE de una mayor credibilidad. En particular, una mayor flexibilidad con el objetivo del 2% como techo de la inflación debería facilitar la toma de decisiones monetarias en favor de un mayor crecimiento económico y de la creación de empleo.

Esta defensa de la flexibilidad parece ser más importante en la actual coyuntura de desaceleración económica. La brusca apreciación del euro frente al dólar, que desde los mínimos de 2000 acumula un 42%, podría estar restando un punto porcentual de crecimiento al PIB europeo. Los analistas pronostican, en este sentido, nuevas decisiones del Banco Central Europeo de rebajar los tipos de interés en la eurozona.

La candidatura de Trichet fue confirmada en la cumbre de Salónica el pasado 20 de Junio sobre una propuesta del gobierno francés. A pesar de ello, su nombramiento formal se producirá, con toda seguridad, después del verano, tras una nueva reunión de los Jefes de Estado y de Gobierno de los Quince. El actual presidente del BCE ya había accedido en Abril a retrasar su retirada, prevista para el 9 de Julio, hasta que, finalmente, fuera nombrado su sustituto en el cargo.

### III. Cuestiones generales de la actualidad económica

#### III.1. *Unión Monetaria: la fortaleza del euro y la histórica reducción de los tipos de interés*

El euro alcanzó, el pasado 27 de Mayo, una cotización de 1,1933 dólares, la más alta de su historia, y también marcó un máximo histórico frente al yen, con un valor de 139,17.

Los expertos y, en particular, el vicepresidente del Banco Central Europeo, Lucas Papademos, justificaron la fuerte apreciación de la moneda europea por «la debilidad del dólar», circunstancia que achacan al déficit presupuestario y por cuenta corriente norteamericano y, también, al diferencial de los tipos de interés, que atrae capitales a Europa. También apuntan al cambio de denominación de reservas, de dólares a euros, realizado por algunos Bancos Centrales de Oriente Medio y Asia.

La carrera alcista del euro ha sido especialmente rápida. A finales de Mayo, la moneda única se había apreciado un 13% con respecto a su valor a comienzos de año. Desde el inicio de 2002 el ascenso acumulado llegaba al 32% y, comparando su valor con el mínimo histórico de 0,8272 marcado en Octubre de 2000, la apreciación acumulada del euro alcanzaba, en dos años y medio, un 42%.

En todo caso, y a pesar de que la fortaleza del euro favorece activamente el control de la inflación en la eurozona, la apreciación de la moneda única se ha convertido en una seria amenaza para muchas empresas europeas exportadoras, en la medida en que sus ventas al exterior pierden competitividad. Esta circunstancia es particularmente preocupante para Alemania, cuya Economía depende especialmente de sus exportaciones a mercados no incluidos en la eurozona.

Con la ralentización de las exportaciones europeas, las Economías más abiertas de los Doce han visto agravada la desaceleración de su actividad económica.

En esta coyuntura económica, con un reducido crecimiento económico, con una excesiva fortaleza del euro y, también, con un incipiente temor a que pudiera aparecer el fenómeno de la deflación en algunos países de la eurozona, el Banco Central Europeo tomó la esperada decisión de rebajar los tipos de interés. La medida, adoptada el 5 de Junio, supuso la fijación de los tipos en el 2%, el nivel más bajo registrado en Europa desde 1948.

El presidente de la autoridad monetaria, Wim Duisenberg, alertó sobre los riesgos del reducido crecimiento económico, con una previsión de crecimiento nulo para el segundo trimestre de 2003 y no superior al 0,4% en el tercer trimestre, según estimaciones de la Comisión Europea.

Es por ello que el holandés llegó a dejar la puerta abierta a nuevas rebajas que, efectivamente, podrían producirse tras el verano, si estos descensos en los tipos de interés pudieran resultar necesarios para reactivar la Economía de los Doce.

### III.2. *Sentencia del Tribunal Comunitario sobre las «acciones de oro» del gobierno español en empresas privatizadas*

El pasado 13 de Mayo, el Tribunal de Justicia de la UE condenó las «acciones de oro» creadas en 1995 por el gobierno español con el fin de mantener el control sobre las grandes empresas públicas privatizadas.

El Alto Tribunal afirmaba en su sentencia que ciertas cláusulas de blindaje establecidas en las acciones de Repsol, Telefónica y Endesa contravienen las disposiciones sobre libre circulación de capitales en el Mercado Unico y, por ello, deben ser derogadas. Las medidas dispuestas por el gobierno en estas acciones no son, a juicio del órgano jurisdiccional comunitario, proporcionadas al objetivo perseguido de servicio público y pueden desincentivar inversiones de otras sociedades.

La Corte reconoció que «no es posible ignorar la preocupación que puede justificar que los Estados miembros conserven cierta influencia en las empresas inicialmente públicas que se privaticen, cuando dichas empresas actúen en el ámbito de los servicios estratégicos o de interés general». Sin embargo, también puntualizó que dicha preocupación no puede explicar la imposición de autorizaciones previas de la Administración para acuerdos sobre disolución, escisión, fusión, enajenación, sustitución de objeto social, o cambios en el capital que limite la participación del Estado al 10% en las entidades privatizadas.

### III.3. *El cobro de multas transfronterizas*

El Consejo de Ministros de Justicia de los Quince alcanzó, el pasado 8 de Mayo, un acuerdo sobre el reconocimiento mutuo de las sanciones pecuniarias que superen los 70 euros.

Gracias a este acuerdo, el cobro de todas las sanciones impuestas como castigo de un delito o una falta administrativa, incluidas las multas de tráfico, podrá ser reclamado en todo el territorio de la Unión, sin ningún trámite intermedio. El país de residencia del sancionado no sólo ejecutará la resolución firme de pago como si la hubieran dictado sus tribunales o autoridades, sino que también ingresará el importe correspondiente. El Estado que ejecute la resolución se quedará, por tanto, con la recaudación, salvo que exista un acuerdo bilateral que prevea lo contrario.

La comunicación entre el Estado que impuso la sanción y el Estado de residencia del infractor desencadenará, de forma inmediata, el procedimiento de ejecución vigente en este segundo país, que podrá, por su parte, decidir la reducción de la cuantía de la multa al importe máximo previsto en su legislación para el tipo de delito o falta en cuestión.

Entre las infracciones contempladas en la ejecución transfronteriza de sanciones figuran el delito ecológico e informático, el blanqueo de dinero, la piratería industrial, el chantaje y el tráfico ilegal de drogas, armas y obras de arte, además de las infracciones de tráfico.

#### III.4. *La liberalización del tráfico ferroviario de mercancías*

El transporte de mercancías por ferrocarril en la UE deberá liberalizarse a partir de 2008, gracias a un acuerdo político alcanzado por los Quince el 28 de Marzo.

El denominado «segundo paquete ferroviario» aprobado por los ministros de Transportes de la Unión armoniza la legislación del sector y profundiza en su liberalización y apertura a la competencia, tras la entrada en vigor del «primer paquete ferroviario», el pasado 15 de Marzo, que establece la liberalización del transporte exclusivamente en la red transeuropea.

Según esta nueva iniciativa del Consejo, el tráfico internacional de mercancías fuera de esta red específica quedará liberalizado en 2006 mientras que el tráfico en el interior de cada país deberá abrirse a la competencia en 2008, como fecha límite.

La comisaria de Transportes y Energía, Loyola de Palacio, anunció su intención de realizar nuevas propuestas antes de que finalice el año y que cubrirán, presumiblemente, el tráfico internacional de pasajeros por ferrocarril.

Según Bruselas, la falta de competencia y la fragmentación del transporte de mercancías por ferrocarril suponen, para la Unión Europea, una «factura» anual del 1% de su PIB. La velocidad media de los trenes de mercancías apenas es de 18 kilómetros por hora, por lo que apenas el 8% de las mercancías que circulan en Europa lo hace por ferrocarril, frente al 40% en Estados Unidos. Las previsiones de la Comisión prevén, en este sentido, un crecimiento del 40% en el tráfico de mercancías por este medio hasta 2010.



## Zure egiteko guztiek badute gure laguntza

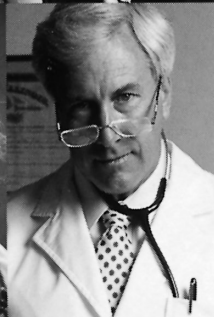
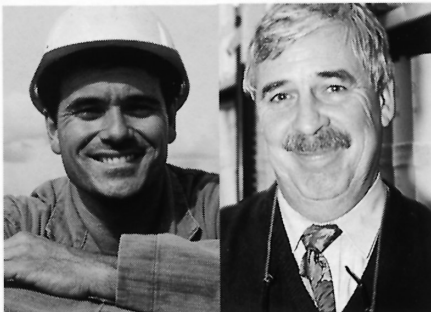
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