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**THE ADVANCEMENT OF EUROPEAN UNION
COMPETENCE IN HIGHER EDUCATION THROUGH
INTERNAL POLICIES AND INTERGOVERNMENTAL
TOOLS: THE BOLOGNA PROCESS**

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Per i sogni grandi, per quelli infranti, per i treni presi al volo e per quelli
troppo ponderati, per i pochi stupendi successi e per i costanti errori.

Per la paura e per il coraggio, per la famiglia e per l'amore.

Il mio grande traguardo, un mio grande Amore.

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INTRODUCTION

The present thesis analyzes the harmonization of different systems and models of higher education consequently to the series of intergovernmental meetings of higher education Ministers known as the Bologna Process. The research focuses on the series of intergovernmental conferences which began in 1999 and which affected tertiary education, analyzing the legal framework in which countries operated to create a globalized higher education. A special focus will be placed on the European Union's (EU) role, the creation of a European Higher Education Area (EHEA) and the use of higher education policy as a tool for the EU's influence in foreign policy.

The era of globalization requires higher education to expand and adapt to the growing needs of a globalized society. The shift towards a global integration, interaction between countries, entities, people, economies, and societies calls for integration and interaction in the field of education as well. Global economies ask for a basin of knowledge that is no longer confined within a single educational system or a single societal structure, but instead seek a wider, comprehensive range of knowledge and competences. In order to respond to said shift, governments recognized the need to address the demand for knowledge and skills in an international context, comparing methods and sharing information. From the debate around shifting economies and industrial transformations, higher education emerged as the central kingpin, fundamental tool of competitiveness, development, and innovation.

Within the context of global powers and global economies, the European Union configures itself at the forefront of international leadership. The EU recognized the importance of education at a very early stage and has dedicated copious amounts of resources to the development of educational policies and projects throughout the years. While the Bologna Process is configured as an intergovernmental process outside of the Union's sphere of control, the research set out in this thesis demonstrates how the EU plays a prominent role in the international higher education context through leadership within the Process, policies within its confines, and advancement of competences in relation to higher education within its Member States.

CHAPTER I: THE NORMATIVE CONTEXT AROUND THE LAW OF INTERNATIONAL ORGANIZATIONS AND HIGHER EDUCATION IN A GLOBAL PERSPECTIVE

1. OVERVIEW OF THE LAW OF INTERNATIONAL ORGANIZATIONS AS A DERIVATIVE OF INTERNATIONAL LAW

Within the international system, recognized entities retaining legal ownership are states, endowed with sovereignty and ultimate decision-making power, and supranational or international organizations which own an international legal personality. These entities are defined as subjects of international law and are thereby governed by the complex set of rules and principles which regulate the conduct and institutional relations between the subjects of the international community. The international legal order is composed of subjects which retain equal sovereignty, entailing a recognition of absolute equality in respect of their existence and sovereignty under the *par in parem non habet imperium* principle.¹ International law comes into being and is constituted by virtue of norms that are given by the sovereign states themselves, i.e., there is no single subject, there is no hierarchically superior subject who imposes respect for the rules of conduct of international law. It is the members themselves who impose certain norms on themselves and must implement them, respect them, and execute them. There is no organ capable of protecting the respect of norms of international law, making it challenging to reconstruct normative frameworks of intergovernmental conferences which are not governed by specific international organizations. In the international legal system, each individual member of the international community is fully entitled to act personally for the protection of their own interests. When international organizations (IOs) enter a legal collaboration with States, the picture in turn becomes more challenging because IOs hold and exercise shares of sovereignty by State's concessions but are for the most part neither autonomous nor independent in the exercise of the powers attributed to them. It is states that have ultimate sovereign power, the organizations are not independent or

¹ The *par in parem non habet imperium* principle translates as "equal parties have no sovereignty over each other" and is configured as a general principle of international law. Usually, this principle is most covered as the basis for discussions concerning theories of State immunity. In the case discussed above, the principle serves as the foundation of intergovernmental agreements where no Member can exercise decision-making power over the next. It can be argued that this principle, though paramount for state sovereignty, is an obstacle to detailing such intergovernmental agreements because it allows room for contrasting points of view, which translate into vague and imprecise regulations.

autonomous. It seems correct to consider sovereign states as the primary subject of international law, as the original subject, instead IOs are considered a secondary subject or an originated subject of international law, insofar as they are created by sovereign states through an international act which is usually an international treaty. In this regard, the European Union figures as a particularly unique IO.

1.1 THE DICHOTOMY OF HARD V. SOFT LAW IN THE CLASSIFICATION OF IOs AND THEIR LEGAL ACTS

International organizations are configured within the context of international law and international subjectivity, within a complex legislative system of sources. International organizations, international agreements, and international conferences produce considerable amounts of acts of secondary law within a wide spectrum of sources, of contents, of scope, and of legal effects. The different nature of legal acts of the international community has required the development of a doctrine for classification, as it has posed and continues to pose challenges to the juridical community; even names of legal acts must undergo a classification, since it is possible for legal acts to have the same name but completely different applicability measures. The criteria to define and classify acts of international organizations begins by removing them from the context of general international law, although the law of international organizations adds little to what international law already provides; the most important difference resides in the fact that, while international law is an expression of state sovereignty, the law of international organizations is a derivative of conferred powers, of attribution of competence by sovereign states. International organizations can therefore produce institutional unilateral acts as defined in each IO's constituent instruments, which can at times be implicit. Resulting effects of acts of international organizations can either be confined within the organization itself or can have applicability outside the confines of the organization, producing external effects.² The nature of international acts of IOs can be distinguished between binding and non-binding acts, yet the nature of applicability varies from one organization to the next, from one type of act to the next. The most commonly used criteria for classifying acts of an

² Mainly, external applicability of acts of an international organization can happen within the Member States of the organization, yet there have been exceptions. Thus, in practice, there may be exceptions.

IO, because of indefinite legislative criteria with few indications, is practice, which renders the process of classification additionally elusive and indistinct. In the law of international organizations, practice is paramount.

For the purpose of the research in question, it seems necessary to underline the different types of law, namely the dichotomy between hard and soft law. In general terms, hard law defines binding legal instruments, while soft law defines instruments which do not have binding direct effect upon the parties. Specifically, international subjects acquire rights and obligations under hard law, for example treaties, international agreements, and international customary law.³ In contrast, soft law is made up of rules typically issued by international organizations or by sovereign states through intergovernmental agreements or negotiations. Soft law sees its birth in the second half of the twentieth century, specifically in the 1970s, when the need emerged to constitute legal instruments outside of international treaties. The concept of soft law is rather nuanced, denoting a plethora of regulatory tools ranging from self-regulatory codes adopted by single companies or organizations to deontological codes, to collections of rules and principles in international law. Such sources of law can originate from different cradles, yet their purpose is quite homogeneously recognized as the creation of political commitments whose compliance is left to the will of the parties, outside of the principle of *pacta sunt servanda*.⁴ In the absence of direct effect, the guarantee of compliance with soft law rests on the fact that the resulting provisions coincide with the will of the subject which issued them and with the will of the subjects it holds authority over. These norms do not give rise to subjective legal situations that can be directly protected by the courts; this does not mean that the judge cannot indirectly take them into account. In other cases, the norms issued can be defined as soft law insofar as they limit themselves to establishing principles of a general nature, leaving recipients with more or less ample margins of autonomy in choosing how to implement the norms themselves. The European Union has envisioned different soft law instruments, such as guidelines or resolutions; moreover, the Bologna Process can be considered to issue instruments of soft law.

³ The constituent treaties of the European Union constitute hard law for European Member States.

⁴ *Pacta sunt servanda* derives from the Latin phrase meaning literally “the pacts must be observed”, and refers to the binding effect of legal agreements, specifically tools of hard law such as treaties. It is configured as a fundamental and universally recognized principle of general international law.

2. THE UNIQUE NORMATIVE FRAMEWORK OF THE EUROPEAN UNION AS A *SUI GENERIS* SUPRANATIONAL ORGANIZATION

Within the law of international organizations, the European Union is a singular example due to its complex legal system, which provides for a list of acts and the declinations of their characteristics. The EU is a singular supranational organization, built thanks to an allocation of powers from Member States to European institutional level, granting them a functional autonomy, defined in its constituent treaties, the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The general objectives of the Union can be summarized in five precise results in the areas of employment, innovation, education, social integration and energy/climate.

2.1 AN ANALYSIS OF EU COMPETENCES AND SOURCES OF LAW TO IDENTIFY THE SCOPE OF INTERVENTION IN HIGHER EDUCATION

Taking a step back, it seems relevant to analyze the European Union's structure in order to argue around the legal nature of its actions, particularly the modes of allocation of power to the Union. In particular, art. 5 TEU sets out the principles determining EU power and its limits, all of which are paramount in any research surrounding EU involvement and competence: "the limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principle of subsidiarity and proportionality". The former, the principle of conferral, serves to define the legitimacy of EU competences: the 27 EU Member States have willingly conferred upon the Union a series of powers and competences, voluntarily renouncing part of their sovereignty and allocating such powers to the Union. Because of its relevance, such principle is mentioned various times throughout the Treaty on the EU, reinforcing the idea that the Union only has such powers as have been conferred upon it, and all other power it may use to act outside of said competences is to be considered *ultra vires*.⁵ The only exceptions to this rule are seen in art. 352 TFEU, denominated the "flexibility clause",

⁵ The principle of conferral is enshrined in art. 1 TEU, yet it is also mentioned in art. 4 and 5 when discussing Union competences. Art. 1 TEU reads: "By this Treaty, the High Contracting Parties establish among themselves a European Union hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common".

which allows for EU action outside the scope of its competences only in the absence of a more specific legal basis and in order to attain an objective of the Union.⁶ The limits to EU power are also defined in relation to the Union's institutions, delineated in art. 13 TFEU with the similar logic of limited power.⁷ As mentioned above, the competences of the Union are described in the TFEU within articles 3, 4 and 6.⁸ In addition to the principle of conferral, the principle of subsidiarity defines the cases in which the EU should act, strictly within the competences conferred upon the Union and simply in relation to shared competences. The principle of subsidiarity answers the question of when it is necessary and appropriate for the EU to adopt a legal instrument.⁹

⁶ Art. 352 TFEU recites: "(1) If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. (2) Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article. (3) Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation. (4) This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph of the Treaty on European Union".

⁷ Art. 13(1-2) TFEU recites: "(1) The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions. [...] (2) Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation".

⁸ Art. 3 TFEU describes EU exclusive competences, areas in which the EU alone has the power to legislate and adopt binding acts, based on the principle of conferral. The areas include: "customs union; the establishing of competition rules necessary for the functioning of the internal market; monetary policy for euro area countries; conservation of marine biological resources under the common fisheries policy; common commercial policy; conclusion of international agreements under certain conditions". Art. 4 TFEU describes EU shared competences with Member States, where MS participate in the legislative process and in the adoption of legally binding acts. The areas include: "internal market, social policy for aspects specifically described in the Treaty; economic, social, and territorial cohesion; agriculture and fisheries, except conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; area of freedom, security, and justice; shared safety concerns in public health matters, limited to the aspects defined in the Treaty; research, technological development, and space; development cooperation and humanitarian aid". It is worthy of note that research is a shared competence, whereas education is not. Art. 6 TFEU describes supporting competences, in which the EU can only intervene to support, coordinate, or complement MS action. The areas include: "protection and improvement of human health; industry; culture; tourism; education, vocational training, youth, and sport; civil protection; administrative cooperation".

⁹ The principle of subsidiarity is outlined in art. 5(2) TEU, as follows: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only

In fact, the EU is called to act legitimately only if lower levels of government cannot appropriately accomplish their objectives, which can instead be better achieved at EU level, authorizing the expansion of EU competence when necessary and restricting it when no longer warranted. The logic behind the principle is of policy nature as opposed to normative. Further still, the principle of proportionality is defined in art. 5(4) TEU and art. 52(1) of the EU Charter of Fundamental Rights, concerning the regulation of the way in which the EU exercises its powers.¹⁰ The last two principles are crucial to outline the Union's ability to act, since they are either an instrument for claiming ability for the EU institutions or for retaining competence from the Member States. Overall, the three principles aid the determination of the balance of power between the Union itself and its Member States, between public authority and individual citizens, and between supranational and national levels of governance. In addition to defining EU competence, these principles provide for intricate debate around the circumstances for the exercise of power.

Moreover, EU law has primacy over national law, meaning national legislation must always comply with that of the Union in order to be effective and binding within the national context. Community law also has direct effect on Member States, in the case of binding legislation as is later described in art. 288 TFEU, meaning it can be nationally applied even in situations where there is no existing national law in place on the pertaining subject. The hierarchy of European law is divided into primary and secondary law, in which the Treaties constitute the primary sources of law, which cannot be amended or annulled, whereas secondary law constitutes the bulk of legal acts and includes all acts adopted by EU institutions through the decision-making process defined in the Treaties. The acts adopted by the EU are defined by art. 288 of the Treaty on the Functioning of the European Union, which includes

if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol".

¹⁰ Art. 5(4) TEU recites: "Under the principle of proportionality, the content and form of the Union shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality". Art. 52(1) EU Charter recites: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others".

both binding and non-binding instruments.¹¹ It appears clear that acts deriving from European institutions in conformity with art. 288 TFEU are limited in scope by the competences of the Union as defined within the same Treaty. For the purpose of this research, it is worth mentioning that Regulations are the strongest adoptable act at EU level, constituting a directly applicable provision, whereas Recommendations are soft law instruments which have no binding effect upon their parties. In turn, Directives are binding acts, yet they are binding only in their objectives, leaving Member States the relative freedom towards the achievement of such objectives. Thus, the hierarchy of EU norms goes as follows: the constituent Treaties, meaning the Treaty on the European Union, the Treaty on the Functioning of the European Union, and the EU Charter of Fundamental Rights; secondary law, including international agreements, regulations, directives, decisions, and recommendations; and lastly soft law, made up of non-binding acts such as guidelines or resolutions.

To summarize, the European process began in 1950 after the Schuman Declaration, which set out the intent of peaceful cooperation to end the scourge of war and promote prosperity amongst the people of Europe. Throughout the second half of the twentieth century, the European Community evolved rapidly, changing forms of cooperation and modes of decision-making processes. Throughout this research, mention to European treaties, particularly the EU's founding treaties, will refer to the Treaty on the Functioning of the European Union and the Treaty on the European Union. Among the main principles of the European Union is the principle of conferral, namely the principle by which each Member State is sovereign and, precisely, confers upon the Union a set of specific powers; sets of powers held by the Union and its institutions can be categorized into exclusive competences of the Union, shared competences between the EU and its Member States, and supporting competences, where the EU plays a residual role in supporting Member States if necessary or acting through coordination and complementation of Member State's powers. Education falls under the third category, meaning the European Member States do not exert legally binding powers in this field. The EU is governed by a plurality of structures, specifically there are seven institutions

¹¹ Art. 288 TFEU defines four types of acts which can be set forth by the Union and their respective modes of application: regulations, directives, decisions, and recommendations. "To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. Recommendations and opinions shall have no binding force".

which act within a system of checks and balances, three of which are object of this research: the Council, the Commission, and the Parliament, based on the founding treaties which have defined the issues to be addressed on which Member States have transferred powers to the EU institutions. In general terms, education is not included within the transferred powers, but has been affected indirectly through other measures in spheres of the EU's shared or exclusive competence; for example, the unification of the labor market or the strengthening of the European research area require that European Member States adopt common strategies for important aspects of their education and training systems. Precisely because of the national competencies for the design of education systems, the Bologna Process does not fit into actions brought forward by the EU, but stands as an intergovernmental agreement and also includes countries outside the EU. The European Higher Education Area (EHEA), the consolidation of which is the objective of the Process, is much broader than the Union.¹²

2.2 FUNDAMENTAL FREEDOMS IN THE EU: THE RELEVANCE OF FREEDOM OF MOVEMENT AS A DRIVER FOR DEVELOPMENT AND GROWTH IN THE INTERNAL MARKET

The emergence and development of international law has led to the recognition of an abundance of human rights as instruments of hard law. In particular, freedom of movement is the right of every individual to move freely within a country, as well as to leave it and return to it. Globally, it is guaranteed by the 1948 Universal Declaration of Human Rights under art. 13; in the European Union, freedom of movement is guaranteed under art. 3 of the Treaty on the European Union.¹³ Because the free movement of persons encounters limitations in practice, for example under principles of nationality in illegal immigrants or under principles of law for prisoners, the European Union developed the principle of free movement by guaranteeing specificity within, for example, the free movement of workers. In fact, among the

¹² In the terminology, the term Higher Education includes, in many countries, not only the universities, but also that dual channel with a more directly professionalizing character to which, as already mentioned, this research work refers.

¹³ Art. 13 of the Universal Declaration of Human Rights states as follows: "(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country". Art. 3 TEU will be discussed further on in the paragraph.

essential pillars of European integration, freedom of movement stands at the top, including freedom of movement of persons, services, goods, and capital, dating to the beginning of the European process and which has led to a concrete reality for millions of people exercising their rights under EU law. The basis for free movement of persons resides in art. 3(2) TEU, which states that “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. The same freedom is also mentioned in articles 21, 26, 45, and 49 TFEU around freedom of movement of workers and freedom of establishment and has been mentioned in a series of EU provisions.¹⁴ The original purpose for a

¹⁴ Art. 21 TFEU: “(1) Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. (2) If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. (3) For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament”. Art. 26 TFEU: “(1) The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties. (2) The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties. (3) The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned”. Art. 45 TFEU: “(1) Freedom of movement for workers shall be secured within the Union. (2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. (3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission. (4) The provisions of this Article shall not apply to employment in the public service”. Art. 49 TFEU: “Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital”. In 1968, the Council set out Regulation 1612/68 surrounding free movement of workers. In the 1990s, several directives were issued around the legal mechanism for free movement of

strong promotion of freedom of movement was aimed at creating and growing the internal market, and has extended its aims within the general meaning of integration as Community competences and interests have changed and expanded over the course of the last sixty years of European integration. It was initially conceived by the founding Treaties as the free movement of economic operators for the purpose of providing employment within the Member States; following the Schengen Agreement of 1985 and the Maastricht Treaty, which introduced the concept of European citizenship, this principle has taken on a broader value, including the more general right for European citizens to reside and move throughout the territory of the EU. The free movement of persons implies the abolition of any discrimination between workers of the Member States based on nationality, as regards employment, remuneration and any other conditions of work, including the right to respond to job offers, to move freely for this purpose within the territory of the Member States, to take up residence in a Member State in order to work there and to remain there after having been employed. The free movement of persons also implies the prohibition of restrictions on the freedom of establishment in the territory of another State for the purpose of opening agencies, branches, subsidiaries, setting up companies and firms, as well as pursuing activities without pay; in this context, policies on the mutual recognition of diplomas and degrees are included. The only exceptions to this freedom allowed by the Treaties are those justified by reasons of public order, public security, and public health.

3. AN OUTLINE OF EDUCATION AND TRAINING AND THE SECTORAL SHIFT THROUGH A GLOBALIZED PERSPECTIVE

The term “higher education” refers to post-secondary schooling, therefore it defines third-level or tertiary education in the cases in which the process leads to a degree. Higher education discussed in this research refers to formal education, meaning educational programs which are officially recognized, and often institutionalized, within a country’s educational system. The process includes university, college, and polytechnical schooling which offer formal degrees beyond secondary education; vocational training and lifelong learning are also mentioned in the research, for the purpose of

persons, growing out of the definition of economically active persons, for example including families of workers. They include: Directive 90/364/CE, Directive 90/365/CE, Directive 93/96/CE. The latest and most permanent legal development stands in Directive 2004/38/EC, which refers to the rights of citizens of the Union and their family members to move and reside freely within the territory of EU Member States.

analyzing and understanding legislative action by the European Union and Member countries to the Bologna Process. Educational systems have been rooted in tradition while adapting to society's needs as they came forward. What constitutes the unique situation occurring at the turn of the 21st century is the global society stealing the spotlight from national cultures which had until then dictated requirements for education. Following this realization, in 1999, several European countries called upon their Ministers for higher education and entrusted them to draw up an agreement with the aim to create an open system of education with a straightforward recognition procedure. The intention was to make European higher education more compatible and comparable, more competitive and attractive, both for European citizens and for students and scholars from other continents.¹⁵

Education and training are words with complex, multifaceted meaning. In the new millennium, they have acquired the position of guiding category of the 21st century, on which the investment of much knowledge has progressively and necessarily become strong, but also of the collective, social, economic, and individual imagination. Education represents a theme, as well as a principle of hope for a conceivable and realizable future. From human sciences to economics, from politics to engineering, it is now identified as a point of reference, alongside other epochal categories such as complexity, globalization, worldliness, diversity, in order to live fully and consciously in the 21st century. Training represents the proprium of pedagogical research, understood as the philosophy of the formation of man, according to a psychological meaning, but also in a social and anthropological key. The sciences of education (psychology, sociology, philosophy, anthropology, linguistics), coordinated by pedagogy, deal with the act of training and its realization in various relationships, interpersonal, communicative, social, in relation to that constellation of values to which pedagogy itself refers: the freedom of the individual, the right to training for all subjects, respect for the dignity of the person, the development of a cognitive democracy and active citizenship, the emancipation of all peoples, the planetary dissemination of knowledge and skills. The changes brought forth in the 21st century are unprecedented, connected with the power of science-technology and the inexorability of globalization; certain goals, skills and knowledge may no longer be suitable tomorrow. These changes require new *formae mentis* and new formative processes. Therefore, education and training is the most organic and adequate category to think about the postmodern condition that

¹⁵ CROSIER AND PARVEVA (2013), *The Bologna Process: Its impact in Europe and Beyond*.

characterizes our time. Through the reflection of human sciences and the role and tribute of education and training, what arises is the possibility to reach a more adequate articulation with respect to the density and richness that society must maintain in order to safeguard the centrality of an individual's education and training. Ironically, training has become increasingly unstable, in post-modernity, even more in crisis, increasingly articulated and disjointed, making the idea of educating a training generation lose the character of a compact, fixed, and harmonious structure, to make it take on a new face, unprecedented, marked by the dynamic and problematic infrastructure of the training process, rather than the goal of the form. Current pedagogical research has not erased the concepts of education and instruction, but has refined them by looking at a lexical change relative to training itself. A twisting of meaning with respect to both the ideological perspective and the economic-social perspective.¹⁶ In this way, it becomes possible to grasp education as a historically significant cultural knot, currently central and acquiring an ever-growing crucial role.

The English term education, which incorporates the Latin root *educere*,¹⁷ as well as being used internationally, could be the most appropriate term in the bilingualism that should be used in the European Union, for example, as descriptive of a progression in the acquisition of knowledge. On the other hand, training is understood as the continuation in the development of skills and competences in the academic and higher education spheres, and in that of competences to be acquired or improved for entry or re-entry into the labor market, intended as knowledge, attitudes, motivations, flexibility, propensities, especially those needed to meet the demands expressed by the work context. It is first and foremost possible to observe that, despite the heterogeneity of the structures that produced them, there is a strong convergence on the contents. In particular, the European Union has taken

¹⁶ The former, the ideological perspective, has looked at education as a device for the shaping of the subject individual. The economic-social perspective instead has insisted on the technical-professional skills of the working subject.

¹⁷ *Educere* or *ex ducere*, in Latin etymology comes from the words *ex*, "out from", and *ducere*, "to guide". The literal meaning is to guide someone or something out, make it possible for something which is inside to emerge. In Ancient Roman culture, to educate a child encompassed the meaning of nurturing, feeding, training. Education is not the nineteenth-century style of teaching that molds and shapes: education draws from the person what is authentic and proper to develop. More properly, the educated person is the one who knows the value of things in his own life, the one who is able to express himself with regard to this value and not according to externally imposed laws, but according to moral and cultural laws that with education have begun to breathe, springing from the depths of the person, expressions of the child who matures in knowing the world, expressions of the adolescent who begins to come to terms with himself and with others, expressions of the man capable of learning and asserting.

positive note of the contribution that the Bologna Process can give it in order to achieve its goals.

Higher education has quickly developed worldwide, indicating an increase in the demand for skills among workers in production industries in order to satisfy the requirements of a developing knowledge economy. Higher education is typically provided through, but not limited to, universities; such institutions can be diversified among their programs, funding, providers, and clients. To obtain the same level of qualification, courses may vary in their duration, for example, creating barriers to the recognition of degrees and diplomas across national borders in terms of content and quality, limiting movement of students and higher education staff, which the previous paragraphs have shown to be against all globalization objectives. In this regard, the Bologna Process is an attempt to create a unified structure through which degree recognition becomes a tool instead of a barrier towards the promotion of movement of persons. In fact, as will be explained further on, reports on the Bologna Process' implementation have mostly found successes in the establishment of qualification frameworks and increasing mobility, the most obvious of which is the introduction of the three-cycle degree structure in most institutions and programs. Today, the Bologna Process stands out as a monumental change that generated a chain reaction of national-level reforms in higher education, promoting transparency and trust across higher education systems which have in turn promoted competitiveness and attractiveness of European higher education. It can be argued that, as a critical determinant in national competitiveness and modernization, higher education resides at the core of the worldwide shift towards the knowledge economy, thus the Bologna Process can be said to be Europe's response to the growing developments in society, offering a framework within which it becomes possible to understand the interactions between institutional levels, both from national and supranational points of view. (Crosier)

3.1 THE ENGAGEMENT OF HIGHER EDUCATION IN THE INTERNATIONAL CONTEXT OF THE GLOBAL SOCIAL AND DIGITAL TRANSITIONS. AN INTER-GOVERNMENTAL VIEW PLACING HIGHER EDUCATION AS A DRIVER OF DEVELOPMENT

The extraordinary structural transformation of the world economy in recent decades stems from two important revolutions on international scale:

the first concerns the World Trade Agreement of 2000, which saw China's entry into global markets, initiating a profound reorganization of production on a global scale; on the other hand, the already mentioned digital revolution, that of the Internet, which connects millions of people continuously, opening up space to a market of services never seen before. At the turn of the 21st century, digitalization made a further substantial leap with the passage of mobile communication technologies to the next generations (2, 3, 4, and 5G), characterized by common standards, and therefore by an even greater interconnection. The opening of markets and standardization of digital networks in turn opened the era of globalization, which from the economic point of view starts the new century with a phase of impetuous growth, but also of financial euphoria that inevitably led to the first great crisis within the globalization context at the end of the first decade of the century, overwhelming all countries of the world; it is precisely in the deepest crises that the conditions for the most radical transformations are prepared. This is also demonstrated by the important shift that is taking place in the face of the pandemic, the digital, social, and ecological transitions that characterize the recovery and resilience programs of each country looking to grow in the face of a pandemic crisis that has blocked global development in many ways. In the current millennium, the web market prevails, generating platforms that become the central hubs of the world market of exchanges; at international level, a profound structural change is emerging that has paved the way for an economy based on the digitalization of production and exchanges. After the crisis of 2008, the world has been overwhelmed by a profound structural change that has reshaped the whole society, bringing out new needs and new ways of production, to the point of speaking of a new industrial revolution to indicate the character of pervasiveness with respect to everyday life, a revolution based on the acquisition, accumulation, and processing of data, which we ourselves produce and exchange continuously, generating new needs and new markets. In this phase, the relationships of force among enterprises change, the power of the web giants asserts itself, and the divergences between the regions of old and new industrialization increase. In this phase, the need for new competencies, new skills, new critical capabilities to understand these extraordinary processes of reorganization of the economy and society emerges strongly, and at the same time, new ways of organizing educational processes, not only for children but also for adults, who must equip themselves with conceptual and operational tools to meet the demands of complexity that the new world imposes. At the same time, such new competences and skills arise contemporarily for all countries facing the need to create them, leaving leaders the task of identifying these skills and competences as well as setting out plans and programs to

achieve them on a global scale. Clearly, a mission with global repercussions in response to needs arising across the world, in turn requires an international cooperation which brings together world leaders in different forms. In the age of lifelong learning, in the time of disenchantment and of constant shifts between ages, genders, cultural models, social roles, what emerges is a phenomenon of dispersion that can translate into the possibility to expand and integrate education across the board. Education and training play a key role in transforming the European Union into a world-class knowledge-based society and economy.

3.2 HIGHER EDUCATION IN THE EUROPEAN UNION: STRATEGIES IN EDUCATION AND TRAINING

The integration of Community and national action in the field of higher education, a decisive sector in the world, is a key factor in the success of the European Union. Therefore, it is part of this general strategy, in which inter-institutional collaboration plays a fundamental role. Europe needs to attract a larger cross-section of society to higher education, including disadvantaged and vulnerable groups, and to mobilize all the necessary resources to meet this challenge; in many Member States it is also essential to reduce drop-out rates in higher education. But tertiary education cannot alone respond to this development of aspirations and achievements: success will also come from policies aimed at improving previous educational outcomes and reducing dropout rates. European youth policies translated into programs such as Erasmus, aimed at increasing knowledge of European culture and strengthening integration among younger generations because of the latter's unique dimension as an audience experiencing globalization firsthand, implying the digital age, youth unemployment, and even the recent pandemic, with important psychological, educational, and social effects whose evolution cannot yet be quantified. In fact, youth are active in asking European institutions to reconsider and strengthen policies aimed at them in order to provide appropriate responses to the new challenges they are foreseen to face.

The most recent completed strategy, Europe 2020 is concretized, for the education and training sector, with the strategy Education and Training (ET 2020), which defines the strategic framework for European cooperation in the field of education and training up until 2020. The framework addresses, in particular, the following four strategic objectives: make lifelong learning

and mobility a reality; improve the quality and effectiveness of education and training; promote equity, social cohesion and active citizenship; encourage creativity and innovation, including entrepreneurship, at all levels of education and training. The European Commission had proposed the Europe 2020 strategy, succeeding the strategy approved in Lisbon and having proposed a project for the European social market economy for this decade following Lisbon, based on three closely interconnected priority objectives that are mutually reinforcing. Among these, the modernization of the European university system derived from the concern that the economic crisis had caused a difficult context for employment, in which higher education represented an intelligent choice in contributing to Europe's prosperity. Europe perceived how its role was no longer leading in the global race towards knowledge and talent, while the investment of emerging economies in higher education was rising and continues to rise. With regard to the social dimension of higher education, the starting point was the bitter realization that there are still too many deserving people who do not participate in higher education for social, cultural, or economic reasons or because of insufficient support and guidance systems. While it is obvious that the problems cannot be solved by education and training alone, the European Ministers affirmed that it is essential in both economic and social terms to equip people with the skills and competences that Europe needs, including thorough efforts to ensure greater equity in access to and participation in higher education and its completion. In fact, the European Commission organically integrates interventions related to the Bologna Process into its own initiatives; among the latter, it appears worthwhile to mention UMultirank, a classification and information system which, unlike the rankings available up to now, judges the levels reached by universities and other institutions by looking not only at the scientific dimension, but in multidimensional terms.¹⁸

The global economic crisis has highlighted structural weaknesses with serious consequences for millions of people. The rate of youth unemployment exceeds 20% throughout the EU and is over 50% in some Member States. However, the global crisis is not the only cause of unemployment, inadequate education and lack of qualifications also contribute to the phenomenon: the cost of literacy, in developed countries alone, amounts to more than €500 billion a year. In the EU, around 20% of

¹⁸ The ranking includes about 1,600 universities (out of a total of more than 18,000) around the world and highlights the strengths and unique characteristics of each of these universities. A peculiarity of U-Multirank is the elasticity of the ranking. By activating certain filters that correspond to the main needs of each individual student, a different ranking is obtained each time.

young people do not reach the minimum level of skills in reading, mathematics and science; six million drop out of school at the end of lower secondary education, if not earlier. It is not hard to imagine the impact of this deficit of skills: a recent survey found that only one in two low-skilled adults is employed, while the unemployment rate for adults with high levels of qualifications is significantly higher; the obvious conclusion states that acquiring skills is the safest solution. Many employers are looking for qualified employees, yet one in three have difficulty finding people with the appropriate level of qualifications. This is especially true in most innovative fields such as engineering, science and technology, where there are thousands of vacancies. The failure of employers to match demand for skills with supply by job seekers is referred to as the skills gap, and it is one of the most serious problems facing European countries in education and training, raising the demand for bridges in order to close this gap.

3.3 EUROPEAN YOUTH STRATEGY: A PERSPECTIVE ON INCLUSIVE CITIZENSHIP EDUCATION

The European Youth Dialogue is a tool consisting of a consultation process designed to involve youth in decision-making processes that affect them closely, as well as to ensure their participation in the development of youth policies and strategies; it can be considered one of the most effective ways of questioning youth expectations of Europe and collecting their needs as citizens of the European community. It is therefore a tool utilized to identify and analyze a number of issues considered to be priorities by young generations, conceived in the form of a forum as an open and constructive exchange of ideas and opinions between young people, youth organizations, experts, politicians, academics, and other civil stakeholders with the aim of producing reflections and consultations on the priorities concerning youth in Europe in order to ensure enhanced cooperation in this field and engaging young people in decision-making processes and implementation of the youth strategy. The youth strategy aims precisely to make young people increasingly involved in social and civil life by providing essential resources to enable newer generations to take part in democratic life, both at national and European level. The prevailing areas of intervention have been grouped in the macro-areas: mobilize, connect, and empower, all tied to the same objectives set out by programs such as Erasmus, all reflecting the importance of freedom of movement and

social inclusion. The thematic priority approach of discussion within the Youth Dialogue is defined by the guidelines set out by the Ministers for Youth or Education in the European Council, the same people who sit in the inter-governmental meetings of the Bologna Process.

The European Youth Strategy, currently programmed for the period from 2019 to 2027, provides the framework for cooperation of youth-led policies at European level for the given period of time. In order to implement European cooperation in the field of youth policy, the strategy employs various tools, such as mutual learning activities, planners of future national activities, dialogue with young people, the strategy plan and evidence-based tools. The implementation of programs and the use of European funds are the concrete tools made available by the European institutions for the implementation of the European strategy, such as Erasmus, European Solidarity Corps, Structural and Investment Funds, Horizon Europe (previously Horizon 2020), Creative Europe. The point of reference for young people and contact of the European Commission is the European Union Youth Coordinator, whose task is to strengthen cross-sectoral cooperation and develop the exchange of knowledge on youth issues within the services of the European Commission. A series of services and information platforms are the tools, through which young people can access the opportunities offered by EU programs. Strengthening skills, knowledge and culture for young people entails managing to increase innovation, competitiveness and resilience. The European Union's priorities therefore focus on the key role of youth, culture and education policies as drivers for promoting a stronger Europe, pursuing the commitment for a more competitive, attractive, and inclusive Union.

A perspective of intercultural education arises from the observation that people live and interact in an increasingly globalized world. Today, cultural horizons are opening up to an ever-increasing diversity and to the comparison between models and languages: curiosity towards the other and the recognition of differences sow the seeds of an intercultural sensitivity. If this can be seen at an international level, it is even more so in the framework of European action in education: it can be affirmed that intercultural pedagogy is a founding element that aims to encourage a sense of belonging and citizenship at a European level. European strategies and policies in the field of education are relevant to the research in question because of the demonstration of European interest in education, highlighting the inclusive approach of EU bodies towards education, highlighting the importance given to the educational sphere at EU level, and highlighting the broader EU objectives

which are pursued through education. In fact, among the objectives of the strategy are high quality education, mutual recognition of diplomas and periods of learning abroad in order to facilitate mobility, strengthening EU external relations, and fostering innovation and employment growth.

CHAPTER II: AN INTERGOVERNMENTAL APPROACH TO HOMOGENIZE HIGHER EDUCATION: THE BOLOGNA PROCESS

Born in 1999 through the Bologna Declaration, the Bologna Process features as an intergovernmental process of convergence of educational policies with the aim to create a shared framework of higher education. The intergovernmental element enables Members of the Process to act outside the structure of international organizations, for example the European Union, entailing freedom from the legislative powers of the Union or any other international agreement. For this reason, the Bologna Process is configured as a unique intergovernmental process with unique consequences, raising significant doubts about its application and role in international law. The Bologna Process resembles a transaction in smoke-filled rooms and inhibits its efficient execution due to its voluntary character and lack of coordination. The idea of converging higher education systems was born in Paris in 1998, through the Sorbonne Declaration signed by four European Ministers of Education and has throughout the years extended to include 49 participating countries, outspreading EU borders. The opening statement of the Bologna Declaration takes note of the important role of education for the creation of an innovative, integrated, and far-reaching Europe.

“The European process, thanks to the extraordinary achievements of the last few years, has become an increasingly concrete and relevant reality for the Union and its citizens. Enlargement prospects together with deepening relations with other European countries, provide even wider dimensions to that reality. Meanwhile, we are witnessing a growing awareness in large parts of the political and academic world and in public opinion of the need to establish a more complete and far-reaching Europe, in particular building upon and strengthening its intellectual, cultural, social and scientific and technological dimensions. A Europe of Knowledge is now widely recognized as an irreplaceable factor for social and human growth and as an indispensable component to consolidate and enrich the European citizenship, capable of giving its citizens the necessary competences to face the challenges of the new millennium, together with an awareness of shared values and belonging to a common social and cultural space”.

A legal eye is not necessary to notice how the Declaration refers to “the Union and its citizens”, even though the document lies outside the EU framework. It can be argued that the Bologna Declaration and the subsequent documents partaking in the Process are no more than soft law instruments declaring Member’s intent to collaborate and coordinate policies within their own national frameworks. This chapter will reflect on the question of whether

the Bologna Process constitutes an international regime and analyze the declarations and communiqués that have characterized the Process so far.

1. REGIME THEORY APPLIED TO THE ANALYSIS OF THE BOLOGNA PROCESS AS AN INTERNATIONAL REGIME

Regimes can be defined as forms of governance within an institutional and ideological configuration. Stephen Krasner defines international regimes as “sets of principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice”.¹⁹ It can therefore be argued that an international regime is a political system involving a collection of rules of conventions regulating legal activity in a given sector. International regimes differ from international agreements, treaties, or organizations in the sense that they are perceived as structures put in place to facilitate communication and cooperation between different States and IOs. Regimes exist as subcategories of institutions, answering under statutes, administrative bodies, legal tools as opposed to binding treaties or conventions. In this context, within an international legal system, can the Bologna Process be defined as an international regime in the framework of higher education?

The idea of an international regime, as defined above, has been the basis for the creation of international organizations. By analyzing regime theory, it is possible to notice the importance of the existence of a single leader within the regime who is able, by virtue of its position of privilege and power, to promote international cooperation. Solid leadership and international governance are therefore necessary for the proper functioning of an international regime. In the case of the Bologna Process, the analysis of declarations and communiqués which follows in this chapter and the competences of the European Union in matters of education which are discussed in Chapter III of this research portray the growing leadership of the EU in this role. The Bologna Process can certainly be defined as a system of international coordination, born from a collaboration strictly between states. However, in time the European Union secured a prominent part within the process, rendering its role

¹⁹ KRASNER (1983), *International Regimes*.

especially interesting within the framework of international law. If international regimes can be synonymous with institutions creating structures of interstate action and permanent communication which function in a single area of interest with a foreign policy scope, it can be argued that the Bologna Process is configured as an international regime. However, such classification does not entail legal competence or juridical legitimation.

The regime theory that supports the notion of the Bologna Process as an international regime derives from the fact that states adopt or are influenced by an external policy deliberately established, accompanied by the development and promotion of the activities of pan-European organizations and institutions. Accepting Krasner's definition of international regimes as having the broadest acceptance in the academic community, the derived concept for the purpose of this research is that regimes are the tools through which trusting international relations are formalized. Thus, the birth of a new international regime involves the reform of the political reality in a specific sector, in this case higher education, and the establishment and development of an international institutional framework.²⁰ The creation of the Bologna Process stems from the recognition that compatibility among systems of higher education could not be initiated from the simple foundation of a common basis, but must rely on the mutual trust needed for the formation of a recognized international regime. For this reason, the Process originated from the 1998 Sorbonne Declaration, but sees its basis in the Convention on the Recognition of Qualifications concerning Higher Education in the European Region signed in Lisbon in 1997. In spite of Bologna's lack of legislative powers, it is configured as a regime in that it influences the international community, having established higher education as a public good with clear behavioral norms which have been approved by sovereign States and IOs alike.

2. BEFORE BOLOGNA: THE LISBON RECOGNITION CONVENTION AND THE SORBONNE DECLARATION SETTING THE GROUNDS FOR THE PROCESS

Although the Bologna Process is the epitome of intergovernmental cooperation in the field of higher education, it was born after several discussions around the topic. Precisely because higher education has often been

²⁰ For further reference on the theory behind the creation of an international regime, please see "The Bologna Process: an international higher education regime", by Hila Zahavi and Yoav Friedman published in the *European Journal of Higher Education*, January 2019.

recognized as a fundamental driver of development, it has been at the center of the academic debate regarding innovation, integration, and cooperation in the international arena.

2.1 LISBON RECOGNITION CONVENTION, 1997: “CONVENTION ON THE RECOGNITION OF QUALIFICATIONS CONCERNING HIGHER EDUCATION IN THE EUROPEAN REGION”

The Lisbon Recognition Convention of 1997 was born from the idea of a joint Council of Europe (CoE) and UNESCO agreement within the framework of the Council of Europe and the arising need at the end of the twentieth century to provide a cultural cohesion agenda. In fact, it defines the basic terms of higher education and the competence of acknowledgement bodies, it sets out the fundamental principles for qualification evaluation and their enabling of access to higher education. Because of its legal nature, the Convention has been signed and ratified by 55 countries, consequently implemented into national legislation. The basic principles set out in Lisbon include: recognition of qualifications; principles of non-discrimination; equivalence of qualifications between systems; access to higher education or use of academic titles to access professional fields in another country; issuing Diploma Supplements; assessment of institutions or programs; assessment of individual competences; mutual recognition. The Lisbon Convention derives from UNESCO and the Council of Europe’s previous fragmented attempts to cooperate in the field of recognition of qualifications.²¹ The Convention is open to a vast number of States, and while it can be seen as a positive aspect, it is possible to argue that the Convention implies the assumption that higher education systems are equivalent, which is not necessarily true. The measures deriving from the Convention are to be attributed primarily to the states partaking in the Council of Europe and in the UNESCO Europe Region, yet the preamble manifests the

²¹ The Lisbon Convention of 1997 has its basis in the following conventions covering academic recognition: European Convention on the Equivalence of Diplomas leading to Admission to Universities (1953, ETS no. 15) and its Protocol (1964, ETS no. 49); European Convention on the Equivalence of Periods of University Study (1965, ETS no. 21); European Convention on the Academic Recognition of University Qualifications (1959, ETS no. 32); Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the European Region (1979); European Convention on the General Equivalence of Periods of University Study (1990, ETS no. 138).

need to consider a broader international context, generating reasonable doubt to its regional nature.

The category which falls under the agreement relates to the recognition of qualifications which grant access to higher education and permit study periods abroad and degrees achieved at the end of a university-level course, based on the idea that recognition is an essential tool through which to foster mobility among the higher education community and promote the values inherent to education itself. For the purpose of its application, the Convention specifies a series of definitions, such as the terms for “access”, “admission”, “assessment”, “higher education” as well as “higher education institutions” and “higher education program”, “qualification”, and “period of study”.²² In order to spread the application of the Convention, transparency of procedures and motivations behind decisions became key elements, establishing legal foundations of loyal cooperation that enabled consistent relations between competent national authorities and different higher education institutions. Recognition of educational qualifications that provide access to university-level courses of study is based on rules that combine the requirements of the home state with those of the host state. First and foremost, an evaluation takes place around the rules of the education system of the state of origin, meaning the qualification must be evaluated in terms of its suitability for access to higher education in the country in which it was obtained; such recognition establishes the principle of mutual trust between the parties to the Convention. It naturally implicates that, if the qualification in question grants access only to a certain type of study in the country of origin, the same limitation should be assessed by the hosting country, or if additional examinations are required for access to certain study programs in the country of origin, these examinations should also be taken for access to the equivalent course in the host country. Hosting countries may refuse to apply the principle of mutual trust if there are “substantial and demonstrable differences” between the two national education systems concerning requirements for access.

²² See Convention on the Recognition of Qualifications Concerning Higher Education in the European Region, Section I.

2.2 SORBONNE DECLARATION, 1998: “JOINT DECLARATION ON HARMONIZATION OF THE ARCHITECTURE OF THE EUROPEAN HIGHER EDUCATION SYSTEM”

For the first time, at the 800th anniversary of the Sorbonne University in Paris, the Ministers in charge of Education for France, Germany, Italy, and the United Kingdom agreed on the idea that the European process was in need of strengthening intellectual, cultural, technical, and social integration. What can be defined as a knowledge economy began to play a role at the forefront of European priorities. The anniversary of one of the oldest universities in Europe brought about the reflection upon the historic relevance of education, of its role within Europe’s development over the centuries as a catalyst for growth, integration, and the dissemination of knowledge. The Ministers contemplated the tradition of mobility which had characterized European intellectuals for centuries and the lack of recognition of titles or possibilities to study abroad, which created bureaucratic boundaries to movement of students and therefore created boundaries to the propagation and proliferation of knowledge. For the first time, governments noted the direction of changes in the education and labor markets, recognizing the need to converge on a higher education system where students are “given the best opportunities to seek and find their own area of excellence”.²³ The idea arose for an open European area for higher learning and the beneficial ramifications in light of an ever-closer integration and cooperation process. A conclusion of the academic debate in Paris developed the idea that “international recognition and attractive potential of our systems are directly related to their external and internal readabilities. A system, in which two main cycles, undergraduate and graduate, should be recognized for international comparison and equivalence”; the basis of the Bologna Process which would characterize an impulse of higher education systems across Europe for the following twenty years and counting. The role of European Credit Transfer and Accumulation System (ECTS), and the role of semesters stood out as original and flexible modes to allow validation and recognition of students’ diverse programs, allowing for comparability of different backgrounds within the context of international recognition and diversification of professionals within the European labor market. Focus was placed on student mobility and harmonization of systems of higher education, whereas programs were precious reagents for diversity.

²³ Sorbonne Joint Declaration, 1998.

“Undergraduates should have access to a diversity of programs, including the opportunities for multidisciplinary studies, development of a proficiency in languages and the ability to use new information technologies.

International recognition of the first cycle degree as an appropriate level of qualification is important for the success of this endeavor, in which we wish to make our higher education schemes clear to all.

In the graduate cycle there would be a choice between a shorter master’s degree and a longer doctor’s degree, with possibilities to transfer from one to the other. In both graduate degrees, appropriate emphasis would be placed on research and autonomous work.

At both undergraduate and graduate level, students would be encouraged to spend at least one semester in universities outside their country. At the same time, more teaching and research staff should be working in European countries other than their own. The fast-growing support of the European Union, for the mobility of students and teachers should be employed to the full”.

As can be deduced, certain reasonings had been evolving and buzzing through the academic community, involving conferences of European rectors, University presidents, groups of experts and academics, especially following the Lisbon Recognition Convention 1997. In fact, the Convention set significant grounds towards the mutual recognition of higher education degrees for professional purposes, yet it remained a concern of individual governments to validate and recognize the respective degrees and aid the promotion of agreements between universities. The word “harmonization”, used in the title of the Declaration, is also used to describe the idea behind the framework concept.

3. ANALYSIS OF SOFT LAW INSTRUMENTS DERIVING FROM MINISTERIAL MEETINGS FROM 1999 TO 2020

The following paragraphs analyze the intergovernmental tools part of the Bologna Process, beginning from its founding Declaration and continuing with communiqués and further declarations signed at each Ministerial Conference throughout the Process. The aim of the research in this sense is to observe the evolution of the process, its impact, its legal legitimacy and relevance, as well as the growing leadership of the European Union as an outside member.

3.1 BOLOGNA DECLARATION, 1999: “JOINT DECLARATION OF THE EUROPEAN MINISTERS OF EDUCATION”

A year after the Sorbonne Declaration, European Ministers of Education reconvened in Bologna to concretize the ideas developed in Paris, which had gained further interest and relevance in the academic debate. Deliberation also moved past the academic dimension, reaching the political sphere and the overall public opinion, discussing Europe’s growing need to be more open, extensive, and influential in cultural and social domains outside of its borders.

“A Europe of knowledge is now widely recognized as an irreplaceable factor for social and human growth and as an indispensable component to consolidate and enrich the European citizenship, capable of giving its citizens the necessary competences to face the challenges of the new millennium, together with an awareness of shared values and belonging to a common social and cultural space. The importance of education and educational cooperation in the development and strengthening of stable, peaceful, and democratic societies is universally acknowledged as paramount”.

The Parisian discussion emphasized the pivotal role played by universities in the advancement and evolvement of the European identity and cultural component, entailing education’s influence on the overall development of the Community. The highlight of the Bologna Declaration is governments’ commitment to the creation of a European Area of Higher Education (EAHE), with particular reference to “the fundamental principles laid down in the Bologna Magna Charta Universitatum of 1988”, granting the individuality and autonomy of universities in order to “ensure that higher education and research systems continuously adapt to changing needs, society’s demands and advances in scientific knowledge”. The pursuit of improved compatibility and equivalence among higher education institutions demanded continued impetus and drive towards its full achievement, requiring quantitative and measurable progress through specific actions in light of the system’s international competitiveness. Indeed, the attractiveness of Europe’s culture was to be considered a measure of assessment for the continent’s buoyancy and efficiency. In order to attract a global audience, the Ministers for Education set out a series of objectives recounted below.

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

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

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

Promotion of mobility by overcoming obstacles to the effective exercise of free movement with particular attention to: for students, access to study and training opportunities and to related services; for teachers, researchers and administrative staff, recognition and valorisation of periods spent in a European context researching, teaching and training, without prejudicing their statutory rights.

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

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

Following the signature of the Declaration, Ministers agreed upon the necessity to reconvene periodically to assess the Community’s evolving needs, which they did in Prague two years later.

3.2 PRAGUE COMMUNIQUÉ, MAY 2001

In Prague, 32 Ministers reaffirmed their priorities in matters of higher education and met to evaluate the state of the art and set guidelines and priorities for the development of the process, in particular the concrete establishment of the EHEA, which would occur over the course of the first decade of the 21st century. On this occasion, the role of the European Commission was debated as a possible strengthening factor accompanied by the necessity for a lifelong learning perspective to the educational dimension. Furthering the discussions in Bologna, Ministers reaffirmed the idea of an EHEA as prerequisite for improving the attractiveness and competitiveness of higher education institutions by promoting the notion that higher education should be viewed as a public good and a public duty, of which students are full members and integral participants of the community. The Prague Communiqué emphasized the priorities discussed in Paris and Bologna and enhanced actions within

consolidated objectives, namely adoption of a system based on two main cycles, the establishment of a system of credits, the promotion of mobility, cooperation in quality assurance and furthered the idea of a European dimension of higher education.

“Adoption of a system of easily readable and comparable degrees — 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. Ministers called upon existing organisations and networks such as NARIC and ENIC to promote, at institutional, national and European level, simple, efficient and fair recognition reflecting the underlying diversity of qualifications.

Adoption of a system essentially based on two main cycles — Ministers noted with satisfaction that the objective of a degree structure based on two main cycles, articulating higher education in undergraduate and graduate studies, has been tackled and discussed. Some countries have already adopted this structure and several others are considering it with great interest. It is important to note that in many countries bachelor’s and master’s degrees, or comparable two cycle degrees, can be obtained at universities as well as at other higher education institutions. 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 as concluded at the Helsinki seminar on bachelor level degrees (February 2001).

Establishment of a system of credits — Ministers emphasized that for greater flexibility in learning and qualification processes the adoption of common cornerstones of qualifications, supported by a credit system such as the ECTS or one that is ECTS-compatible, providing both transferability and accumulation functions, is necessary. Together with mutually recognized quality assurance systems such arrangements will facilitate students’ access to the European labour market and enhance the compatibility, attractiveness and competitiveness of European higher education. The generalized use of such a credit system and of the Diploma Supplement will foster progress in this direction.

Promotion of mobility — Ministers reaffirmed that the objective of improving the mobility of students, teachers, researchers and administrative staff as set out in the Bologna Declaration is of the utmost importance. Therefore, they confirmed their commitment to pursue the removal of all obstacles to the free movement of students, teachers, researchers and administrative staff and emphasized the social dimension of mobility. They took note of the possibilities for mobility offered by the European Community programmes and the progress achieved in this field, e.g. in launching the Mobility Action Plan endorsed by the European Council in Nice in 2000.

Promotion of European cooperation in quality assurance — Ministers recognized the vital role that quality assurance systems play in ensuring high quality standards and in facilitating the comparability of qualifications throughout Europe. They also encouraged closer cooperation between

recognition and quality assurance networks. They emphasized the necessity of close European cooperation and mutual trust in and acceptance of national quality assurance systems. Further they encouraged universities and other higher education institutions to disseminate examples of best practice and to design scenarios for mutual acceptance of evaluation and accreditation/certification mechanisms. Ministers called upon the universities and other higher education institutions, national agencies and the European Network of Quality Assurance in Higher Education (ENQA), in cooperation with corresponding bodies from countries which are not members of ENQA, to collaborate in establishing a common framework of reference and to disseminate best practice.

Promotion of the European dimensions in higher education — In order to further strengthen the important European dimensions of higher education and graduate employability Ministers called upon the higher education sector to increase the development of modules, courses and curricula at all levels with "European" content, orientation or organisation. This concerns particularly modules, courses and degree curricula offered in partnership by institutions from different countries and leading to a recognized joint degree”.

In addition to the abovementioned points, the Prague meeting produced three further arguments: lifelong learning, higher education institutions and students, promoting the attractiveness of the EHEA.

“Lifelong learning is an essential element of the European Higher Education Area. In the future Europe, built upon a knowledge-based society and economy, lifelong learning 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.

Higher education institutions and students — Ministers stressed that the involvement of universities and other higher education institutions and of students as competent, active and constructive partners in the establishment and shaping of a European Higher Education Area is needed and welcomed. The institutions have demonstrated the importance they attach to the creation of a compatible and efficient, yet diversified and adaptable European Higher Education Area. Ministers also pointed out that quality is the basic underlying condition for trust, relevance, mobility, compatibility and attractiveness in the European Higher Education Area. Ministers expressed their appreciation of the contributions toward developing study programmes combining academic quality with relevance to lasting employability and called for a continued proactive role of higher education institutions. Ministers affirmed that students should participate in and influence the organisation and content of education at universities and other higher education institutions. Ministers also reaffirmed the need, recalled by students, to take account of the social dimension in the Bologna process.

Promoting the attractiveness of the European Higher Education Area — Ministers agreed on the importance of enhancing attractiveness of European higher education to students from Europe and other parts of the world. The readability and comparability of European higher education degrees world-

wide should be enhanced by the development of a common framework of qualifications, as well as by coherent quality assurance and accreditation/certification mechanisms and by increased information efforts. Ministers particularly stressed that the quality of higher education and research is and should be an important determinant of Europe's international attractiveness and competitiveness. Ministers agreed that more attention should be paid to the benefit of a European Higher Education Area with institutions and programmes with different profiles. They called for increased collaboration between the European countries concerning the possible implications and perspectives of transnational education".

Once again, Ministers committed to the process and expressed their will to reconvene, to expand meetings to broaden the spectrum of participating countries, accepting applications from Croatia, Cyprus, and Turkey.

3.3 BERLIN COMMUNIQUÉ, SEPTEMBER 2003: "REALIZING THE EUROPEAN HIGHER EDUCATION AREA"

Throughout the two years between Prague and Berlin, the process continued among considerations concerning the need to structure a preparatory group and follow-up one. In Berlin, the Ministers "reaffirm the importance of the social dimension of the Bologna Process. The need to increase competitiveness must be balanced with the objective of improving the social characteristics of the European Higher Education Area, aiming at strengthening social cohesion and reducing social and gender inequalities both at national and at European level. In that context, Ministers reaffirm their position that higher education is a public good and a public responsibility. They emphasise that in international academic cooperation and exchanges, academic values should prevail", retracing deliberations expressed by the European Council to become "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". Circumstantially, both the European Council and the European Commission had expressed their will to back the enactment of the Bologna Process. Such support entailed a cooperative relationship between the EHEA and the European Research Area (ERA), accordingly consolidating the basis for the aforementioned knowledge economy and promoting the will to cultivate a European cultural identity and diversity. The Berlin Communiqué drew from the numerous measures launched

in Prague, improving comparability and compatibility, increasing transparency in higher education systems, and fostering the quality of higher education at institutional and state level. Progress advanced in all previously set out objectives, particularly in quality assurance and degree structure.

“The quality of higher education has proven to be at the heart of the setting up of a European Higher Education Area. Ministers commit themselves to supporting further development of quality assurance at institutional, national and European level. They stress the need to develop mutually shared criteria and methodologies on quality assurance. They also stress that consistent with the principle of institutional autonomy, the primary responsibility for quality assurance in higher education lies with each institution itself and this provides the basis for real accountability of the academic system within the national quality framework. Therefore, they agree that by 2005 national quality assurance systems should include: a definition of the responsibilities of the bodies and institutions involved; evaluation of programmes or institutions, including internal assessment, external review, participation of students and the publication of results; a system of accreditation, certification or comparable procedures; international participation, co-operation and networking.

At the European level, Ministers call upon ENQA through its members, in co-operation with the EUA, EURASHE and ESIB, to develop an agreed set of standards, procedures and guidelines on quality assurance, to explore ways of ensuring an adequate peer review system for quality assurance and/or accreditation agencies or bodies, and to report back through the Follow-up Group to Ministers in 2005. Due account will be taken of the expertise of other quality assurance associations and networks.

Ministers are pleased to note that, following their commitment in the Bologna Declaration to the two-cycle system, a comprehensive restructuring of the European landscape of higher education is now under way. All Ministers commit themselves to having started the implementation of the two cycle system by 2005. Ministers underline the importance of consolidating the progress made, and of improving understanding and acceptance of the new qualifications through reinforcing dialogue within institutions and between institutions and employers. 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. Within such frameworks, degrees should have different defined outcomes. First and second cycle degrees should have different orientations and various profiles in order to accommodate a diversity of individual, academic and labour market needs. First cycle degrees should give access, in the sense of the Lisbon Recognition Convention, to second cycle programmes. Second cycle degrees should give access to doctoral studies. Ministers invite the Follow-up Group to explore whether and how shorter higher education may be linked to the first cycle of a qualifications framework for the European Higher Education Area”.

Other aspects emphasized in Berlin were once again the promotion of mobility, regarding students, teachers, and administrative staff, and the establishment of the ECTS methods which increasingly gained ground as a basis for national systems. As for degree recognition, Ministers urged the ratification of the Lisbon Convention for all countries part of the Bologna Process, setting out the objective that “every student graduating as from 2005 should receive the Diploma Supplement automatically and free of charge” and appealed institutions and employers to “make full use of the Diploma Supplement, so as to take advantage of the improved transparency and flexibility of the higher education degree systems, for fostering employability and facilitating academic recognition for further studies”. Moreover, in regards to the promotion of European higher education and of its attractiveness, Ministers reiterate the compulsion to reinforce the EHEA’s openness and attractiveness and advanced proposals towards transnational student exchanges and joint degree programs in order for students to reach maximum potential in terms of European identity, citizenship and employability. The last contribution made to previous objectives relates to the echo of prior commitments to align national policies towards the creation of a concrete reality of lifelong learning.

As mentioned above, Berlin provided a forum for a stronger coordination between the Process and EU institutions, providing the conditions for progress within the Bologna framework.

“Conscious of the need to promote closer links between the EHEA and the ERA in a Europe of Knowledge, and of the importance of research as an integral part of higher education across Europe, Ministers consider it necessary to go beyond the present focus on two main cycles of higher education to include the doctoral level as the third cycle in the Bologna Process. They emphasise the importance of research and research training and the promotion of interdisciplinarity in maintaining and improving the quality of higher education and in enhancing the competitiveness of European higher education more generally. Ministers call for increased mobility at the doctoral and postdoctoral levels and encourage the institutions concerned to increase their co-operation in doctoral studies and the training of young researchers. Ministers will make the necessary effort to make European Higher Education Institutions an even more attractive and efficient partner. Therefore Ministers ask Higher Education Institutions to increase the role and relevance of research to technological, social and cultural evolution and to the needs of society”.

Such measures call on national governments and European authorities to provide significant assistance, including financial resources and suitable policy choices. Additionally, the Ministers call on national governments and the follow-up group to assess progress over the advancement of the Process

and draft reports around the implementation of said measures around quality assurance, degree recognition, and two-cycle degree system. The established Bologna Follow-up Group (BFUG) is entrusted with preparation for subsequent meetings by chosen representatives for each member of the Process with the consultation provided by the European Commission, the Council of Europe, the EUA, EURASHE, ESIB and UNESCO.

3.4 BERGEN COMMUNIQUÉ, MAY 2005: “THE EUROPEAN HIGHER EDUCATION AREA – ACHIEVING THE GOALS”

“We, Ministers responsible for higher education in the participating countries of the Bologna Process, have met for a mid-term review and for setting goals and priorities towards 2010. At this conference, we have welcomed Armenia, Azerbaijan, Georgia, Moldova and Ukraine as new participating countries in the Bologna Process. We all share the common understanding of the principles, objectives and commitments of the Process as expressed in the Bologna Declaration and in the subsequent communiqués from the Ministerial Conferences in Prague and Berlin. We confirm our commitment to coordinating our policies through the Bologna Process to establish the European Higher Education Area (EHEA) by 2010, and we commit ourselves to assisting the new participating countries to implement the goals of the Process”.

The Bergen Communiqué stresses the critical role of higher education institutions, their staff and their students, and acknowledges that the optimization of the impact of structural changes to curricula, and thus the guarantee of innovative teaching and learning processes, takes time. The assessment by the BFUG established in Berlin issued a report showing significant development in the three priorities set out (quality assurance, degree recognition, and degree system), and recognizes that progress among members must be consistent, calling for further expertise to be shared at institutional and governmental level in order to build capacity. In regards to the degree system:

“We note with satisfaction that the two-cycle degree system is being implemented on a large scale, with more than half of the students being enrolled in it in most countries. However, there are still some obstacles to access between cycles. [...] We adopt the overarching framework for qualifications in the EHEA, comprising three cycles (including, within national contexts, the possibility of intermediate qualifications), generic descriptors for each cycle based on learning outcomes and competences, and credit ranges in the first and second cycles. We commit ourselves to elaborating national frameworks for qualifications compatible with the overarching framework for qualifications in the EHEA by 2010, and to having started work on this by 2007. We ask the

Follow-up Group to report on the implementation and further development of the overarching framework. We underline the importance of ensuring complementarity between the overarching framework for the EHEA and the proposed broader framework for qualifications for lifelong learning encompassing general education as well as vocational education and training as now being developed within the European Union as well as among participating countries. We ask the European Commission fully to consult all parties to the Bologna Process as work progresses”.

In regards to quality assurance, Bergen commends cooperation and underlines the advancements made by most participating countries since Berlin yet calls for greater action towards the envelopment of students and university staff. Bergen incites higher education institutions to pursue efforts to improve the quality of their operations via the methodical implementation of internal procedures and directly linking them to external quality assurance.

“We adopt the standards and guidelines for quality assurance in the European Higher Education Area as proposed by ENQA. We commit ourselves to introducing the proposed model for peer review of quality assurance agencies on a national basis, while respecting the commonly accepted guidelines and criteria. We welcome the principle of a European register of quality assurance agencies based on national review. We ask that the practicalities of implementation be further developed by ENQA in cooperation with EUA, EURASHE and ESIB with a report back to us through the Follow-up Group. We underline the importance of cooperation between nationally recognised agencies with a view to enhancing the mutual recognition of accreditation or quality assurance decisions”.

As for degree recognition and periods of study abroad, the Ministers continue to urge countries to ratify and apply the Lisbon Convention and commit to the application of its principles and “incorporating them in national legislation as appropriate”. What emerges from this statement is that legislative capacity is left up to single states, while the communiqués deriving from the Bologna Process serve as guidelines and encouragements meant to boost national legislation. Action surrounding the Process and the BFUG provides national governments and institutions the tools to enhance the quality of the procedures linked to international degree recognition, and Ministers express their will to “work with higher education institutions and others to improve recognition of prior learning including, where possible, non-formal and informal learning for access to, and as elements in, higher education programmes”.

Along the lines of the coordination between higher education and research, as described in previous conferences, the 2005 meeting stresses the importance of further increasing the relevance of research in buttressing

higher education for social and societal economic and cultural growth. Ministers emphasize that attempts to implement structural reforms and improve the quality of education should not undermine attempts towards fostering research and innovation. Therefore, they stress the need of research and training for the maintenance and enhancement of EHEA quality and competitiveness, as well as boosting its appeal, recognizing the need to strengthen synergies between the higher education sector and other research sectors in individual members, and between EHEA and the European Research Area, in order for better outcomes to be achieved.

“To achieve these objectives, doctoral level qualifications need to be fully aligned with the EHEA overarching framework for qualifications using the outcomes-based approach. The core component of doctoral training is the advancement of knowledge through original research. Considering the need for structured doctoral programmes and the need for transparent supervision and assessment, we note that the normal workload of the third cycle in most countries would correspond to 3-4 years full time. We urge universities to ensure that their doctoral programmes promote interdisciplinary training and the development of transferable skills, thus meeting the needs of the wider employment market. We need to achieve an overall increase in the numbers of doctoral candidates taking up research careers within the EHEA. We consider participants in third cycle programmes both as students and as early stage researchers. We charge the Bologna Follow-up Group with inviting the European University Association, together with other interested partners, to prepare a report under the responsibility of the Follow-up Group on the further development of the basic principles for doctoral programmes, to be presented to Ministers in 2007. Overregulation of doctoral programmes must be avoided”.

Once again, Ministers committed to the social dimension of attractiveness and competitiveness of the EHEA, as well as reiterating the importance of mobility and cooperation beyond European borders.

3.5 LONDON COMMUNIQUÉ, MAY 2007: “TOWARDS THE EHEA: RESPONDING TO CHALLENGES IN A GLOBALIZED WORLD”

In the two years between the conference in Bergen and the one in London, the BFUG was charged with the responsibility to expand on assessment and inventory procedures based on a methodology appropriate to implement the objectives of quality assurance, degree recognition, and mobility. In particular, the BFUG was to monitor “implementation of the standards and guidelines for quality assurance as proposed in the European Association for

Quality Assurance in Higher Education (ENQA) report; implementation of the national frameworks for qualifications; the awarding and recognition of joint degrees, including at the doctorate level; creating opportunities for flexible learning paths in higher education, including procedures for the recognition of prior learning”. The new element at the forefront of the stock-taking was the social factor, predicted to be a priority for all future assessments. London welcomed a new member to the Process as Montenegro joined and contributed to the discussion. The 2007 Communiqué claimed great improvements towards the establishment of the EHEA, which is described as based on institutional autonomy, academic freedom, equal opportunity, and democratic values and which strives towards the enhancement of mobility, employability, attractiveness, and competitiveness. Ministers recognized the space for further growth needed to make the EHEA competitive and able to respond to challenges posed by growing globalization, and they again underline the responsibility to implement the Bologna reforms through the dedication of its members, urging them to share best practices and support partnerships. The commitment towards enhancing the higher education systems’ compatibility and comparability is reiterated once again, all the while respecting diversity and cultural tradition. Ministers re-word and emphasize the significant effect that higher education institutions play towards the shaping of society, based on their traditions and role in determining and conveying the values on which said societies are formed “as centers of learning, research, creativity, and knowledge transfer”, expressing the will to aid institutions in the fulfillment of their purposes, including “preparing students for life as active citizens in a democratic society; preparing students for their future careers and enabling their personal development, creating and maintaining a broad and advanced knowledge base, and stimulating research and innovation”. The Communiqué thus emphasizes the necessity of varied, properly financed, independent, and accountable strong higher education institutions, encouraging non-discrimination and equal access principles across EHEA and expressing dedication to respecting these values and ensuring that non-discrimination is encountered between students or employees.

Worthy of note is the mention to mobility, qualification frameworks and quality assurance, which mention cooperation not only among members of the process, but personally configure the competent Ministers to cooperate within their own governments with competent authorities.

“Some progress has been made since 1999, but many challenges remain. Among the obstacles to mobility, issues relating to immigration, recognition, insufficient financial incentives and inflexible pension arrangements feature

prominently. We recognise the responsibility of individual Governments to facilitate the delivery of visas, residence and work permits, as appropriate. Where these measures are outside our competence as Ministers for Higher Education, we undertake to work within our respective Governments for decisive progress in this area. At national level, we will work to implement fully the agreed recognition tools and procedures and consider ways of further incentivising mobility for both staff and students. This includes encouraging a significant increase in the number of joint programmes and the creation of flexible curricula, as well as urging our institutions to take greater responsibility for staff and student mobility, more equitably balanced between countries across the EHEA. [...]

Qualifications frameworks are important instruments in achieving comparability and transparency within the EHEA and facilitating the movement of learners within, as well as between, higher education systems. They should also help [higher education institutions] to develop modules and study programmes based on learning outcomes and credits, and improve the recognition of qualifications as well as all forms of prior learning. We note that some initial progress has been made towards the implementation of national qualifications frameworks, but that much more effort is required. We commit ourselves to fully implementing such national qualifications frameworks, certified against the overarching Framework for Qualifications of the EHEA, by 2010. Recognising that this is a challenging task, we ask the Council of Europe to support the sharing of experience in the elaboration of national qualifications frameworks. We emphasise that qualification frameworks should be designed so as to encourage greater mobility of students and teachers and improve employability. We are satisfied that national qualifications frameworks compatible with the overarching Framework for Qualifications of the EHEA will also be compatible with the proposal from the European Commission on a European Qualifications Framework for Lifelong Learning. We see the overarching Framework for Qualifications of the EHEA, which we agreed in Bergen, as a central element of the promotion of European higher education in a global context. [...]

The Standards and Guidelines for Quality Assurance in the EHEA adopted in Bergen (ESG) have been a powerful driver of change in relation to quality assurance. All countries have started to implement them and some have made substantial progress. External quality assurance in particular is much better developed than before. The extent of student involvement at all levels has increased since 2005, although improvement is still necessary. Since the main responsibility for quality lies with HEIs, they should continue to develop their systems of quality assurance. We acknowledge the progress made with regard to mutual recognition of accreditation and quality assurance decisions, and encourage continued international cooperation amongst quality assurance agencies. The first European Quality Assurance Forum, jointly organised by EUA, ENQA, EURASHE and ESIB (the E4 Group) in 2006 provided an opportunity to discuss European developments in quality assurance. We encourage the four organisations to continue to organise European Quality Assurance Fora on an annual basis, to facilitate the sharing of good practice and

ensure that quality in the EHEA continues to improve. We thank the E4 Group for responding to our request to further develop the practicalities of setting up a Register of European Higher Education Quality Assurance Agencies. The purpose of the register is to allow all stakeholders and the general public open access to objective information about trustworthy quality assurance agencies that are working in line with the ESG. It will therefore enhance confidence in higher education in the EHEA and beyond, and facilitate the mutual recognition of quality assurance and accreditation decisions. We welcome the establishment of a register by the E4 group, working in partnership, based on their proposed operational model. The register will be voluntary, self-financing, independent and transparent. Applications for inclusion on the register should be evaluated on the basis of substantial compliance with the ESG, evidenced through an independent review process endorsed by national authorities, where this endorsement is required by those authorities. We ask the E4 group to report progress to us regularly through BFUG, and to ensure that after two years of operation, the register is evaluated externally, taking account of the views of all stakeholders”.

The London Communiqué notices how Bologna reforms have generated great attention globally and have encouraged discussions on a number of topics between European and international partners and recognizes how the partnership-based collaboration, mutual trust, and knowledge at the heart of the process gained international ground. In this scenario, the Ministers pledge to adopt the “European Higher Education Area in a Global Setting”, bringing forth core policy areas such as: “improving information on, and promoting the attractiveness and competitiveness of the EHEA; strengthening cooperation based on partnership; intensifying policy dialogue; and improving recognition”. Once again, responsibility seems to rely within national governments and national policies, with the inter-ministerial conferences acting as meetings in which to debate on guidelines for individual action. If anything, the nearing of the process to the timeline in which to fully establish the EHEA simply emphasized the will of countries to continue the process of reforms which began in Bologna and endorse their pledge to fostering cooperation in higher education.

3.6 LEUVEN AND LOUVAIN-LA-NEUVE, APRIL 2009: “THE BOLOGNA PROCESS 2020 – THE EUROPEAN HIGHER EDUCATION AREA IN THE NEW DECADE”

In Benelux, the number of participating countries to the Process reached 46 countries, which have been more or less stable since then. The

combination of the nearing of the 2010 objective and the ongoing global economic crisis, the 2009 meeting reserved itself the right to ascertain the Process' priorities for the following ten years, reflecting upon the progress made in the first decade since the Bologna Declaration, upon the challenges faced, global technological developments, and the mutating goals of members. Examples can be noted in challenges relating to the increased speed of technological advancements and how they bring forth the need to adapt teaching methods to promote competences students will need in a changing labor market, or how the financial crisis requires efforts towards economic recovery and innovation. In the 2009 meeting, Ministers also recapped the policies implemented in national governments since Bologna, emphasizing their maintained validity on one hand, and the work yet to be done to achieve all the objectives on the other. In Leuven and Louvain-la-Neuve, prominence was given to quality and striving for excellence, particularly within the social dimension, employability, and again lifelong learning and mobility. Coherently with the Process until this point, the Communiqué continues to mention the differing characteristics among members' higher education institutions, traditions, and cultures, stressing the richness brought about the European identity through such diversifying populations; in this context, it mentions equitable access to education and urges countries to advance change in higher education and complement it with other levels of schooling. In this document, as for those which preceded it, wording is vague and leaves little to the enforceable jurisdictional dimension.

“Access into higher education should be widened by fostering the potential of students from underrepresented groups and by providing adequate conditions for the completion of their studies. This involves improving the learning environment, removing all barriers to study, and creating the appropriate economic conditions for students to be able to benefit from the study opportunities at all levels. Each participating country will set measurable targets for widening overall participation and increasing participation of underrepresented groups in higher education, to be reached by the end of the next decade. Efforts to achieve equity in higher education should be complemented by actions in other parts of the educational system”.

Lifelong learning is once again mentioned as a public obligation, extending government's responsibility to act towards qualifications, competences, and the creation of flexible learning paths. In more detail with respect to previous meetings, lifelong learning practices are addressed as needing “strong partnerships between public authorities, higher education institutions, students, employers, and employees”, broadening the list of participants without defining their designated roles, referring to the European Universities'

Charter on Lifelong Learning, developed by the European University Association. It further states that:

“The development of national qualifications frameworks is an important step towards the implementation of lifelong learning. We aim at having them implemented and prepared for self-certification against the overarching Qualifications Framework for the European Higher Education Area by 2012. This will require continued coordination at the level of the EHEA and with the European Qualifications Framework for Lifelong Learning. Within national contexts, intermediate qualifications within the first cycle can be a means of widening access to higher education”.

As indistinctive wording continues to characterize the concept of lifelong learning, it does so towards employability as well, deliberating on the well discussed issues of the labor market’s demand for increasingly high technical and social competences and transversal skills which require higher education to advance its teaching capacity in order to prepare students with the skills and competences they need to face professional advancement. In this context as well, Ministers state the need for “close cooperation between governments, higher education institutions, social partners and students” towards the effective achievement of employability goals. The Communiqué includes a newfound mention of student-centered learning, expanding on previous content by mentioning curricular reforms. For the first time, the Communiqué also dedicates two clauses to international openness, previously mentioned as in passing and now gaining ground.

“We reassert the importance of the teaching mission of higher education institutions and the necessity for ongoing curricular reform geared toward the development of learning outcomes. Student-centered learning requires empowering individual learners, new approaches to teaching and learning, effective support and guidance structures and a curriculum focused more clearly on the learner in all three cycles. Curricular reform will thus be an ongoing process leading to high quality, flexible and more individually tailored education paths. Academics, in close cooperation with student and employer representatives, will continue to develop learning outcomes and international reference points for a growing number of subject areas. We ask the higher education institutions to pay particular attention to improving the teaching quality of their study programmes at all levels. This should be a priority in the further implementation of the European Standards and Guidelines for quality assurance [...]

We call upon European higher education institutions to further internationalize their activities and to engage in global collaboration for sustainable development. The attractiveness and openness of European higher education will be highlighted by joint European actions. Competition on a global scale will be complemented by enhanced policy dialogue and cooperation based on

partnership with other regions of the world, in particular through the organization of Bologna Policy Fora, involving a variety of stakeholders.

Transnational education should be governed by the European Standards and Guidelines for quality assurance as applicable within the European Higher Education Area and be in line with the UNESCO/OECD Guidelines for Quality Provision in Cross Border Higher Education”.

Legislatively speaking, the Bologna Process appears as a guideline for policy discussion or at most a policy tool, yet its reliance on documents drafted by other bodies shows a successful cooperation amongst institutions in the national and international realms. Interestingly, clauses pertaining to mobility reach deeper meaning in two ways: the first consists in setting the objective that by 2020, “at least 20% of those graduating in the European Higher Education Area should have had a study or training period abroad”, the second calls specifically for adequate infrastructure, visa, and work permit regulations. Whereas the question of the provisions’ enforcement measures remains in place, the Benelux meeting showed progress in the specificity of discussion and agreement among member countries. Another example of increased detail, although conceptually rather than practically, can be found in the document’s twenty-first clause, which mentions data collection as a means to assist in progress monitoring towards the achievement of the objectives pertaining to “the social dimension, employability and mobility agendas, as well as in other policy areas, and will serve as a basis for both stocktaking and benchmarking”. Mention is subsequently made to multidimensional transparency tools in use through existing initiatives with the aim to establish methods for more specific information on EHEA institutions to enhance the transparency of their diversity efforts, to be developed in close cooperation with key stakeholders and to be directly connected with the ideals of the Process. Moreover, the only structural difference seen fit to make at the time was that of establishing the co-chairing of future Bologna meetings by the country holding the EU presidency and a non-EU country, marking a stronger involvement of the European Union and perhaps entailing a greater relevance in a supranational legislative order. The BFUG remained the competent authority in preparing work plans for the subsequent meetings, as well as for the coordination of monitoring processes and identification of indicators and assessment methods.

3.7 BUDAPEST-VIENNA DECLARATION ON THE EHEA, MARCH 2010

The 2010 meeting took place in both Budapest and Vienna and produced a Declaration as the launch of the EHEA, after eleven years from the first mention of a common area of higher education. The Declaration stands as a report of intents, asserting once again countries' will to cooperate and their commitment to the implementation of objectives agreed upon in previous meetings. Little to no detail is explained, as acknowledgements of efforts and measures compose the thirteen clauses of the document, ended by a few repetitions of cooperation processes and responsibility endeavors.

3.8 BUCHAREST COMMUNIQUÉ, APRIL 2012: “MAKING THE MOST OF OUR POTENTIAL: CONSOLIDATING THE EUROPEAN HIGHER EDUCATION AREA”

In contrast to the 2010 Declaration, the Bucharest Communiqué details the Process' priorities for 2012 to 2015, listing a number of actions to be undertaken at national level and with relevant stakeholders, as well as assessing progress and objectives of the EHEA, taking stock particularly on strengthening mobility, quality assurance, employability, and widening access. The global financial and economic crisis first mentioned in the Leuven/Louvain-La-Neuve Communiqué continued to take a heavy toll on the economies involved in the Bologna Process, and once again it takes the stage as an important preamble for the Bucharest Communiqué, influencing the idea of further investments in higher education as a means to combat the crisis and its “damaging societal effects”, specifically in regards to employability and adequate funding for education. In fact, allusion is made to public funding and the countries' commitment to ensure high levels of public investment as an investment in the building and sustainable development of knowledge societies. The document praises evolutions in comparability and compatibility of higher education structures across the EHEA, applauding advancements of quality assurance systems, mobility opportunities, degree recognitions and their growing trust relationships. Contextually, the document expresses the need to further efforts to consolidate the EHEA and build on the mentioned accomplishments.

Legally, the only proposed measure is yet again the coordination and coherency between national policies, particularly in relation to the three-cycle system, ECTS methods, diploma supplements, quality assurance and quality framework implementation. In regards to quality assurance, the 2010

Communiqué furthers countries' commitment to actively involve with stakeholders, acknowledging the ENQA, ESU, EUA, E4 group of the EURASHE and their work concerning the European Standard Guidelines for Quality Assurance, which soon after underwent a revision and improvement in their transparency, applicability and purpose, as well as the use of the European Quality Assurance Register for Higher Education (EQAR).

“We will revise the ESG to improve their clarity, applicability and usefulness, including their scope. The revision will be based upon an initial proposal to be prepared by the E4 in cooperation with Education International, BUSINESSEUROPE and the European Quality Assurance Register for Higher Education (EQAR), which will be submitted to the Bologna Follow-Up Group. We welcome the external evaluation of EQAR and we encourage quality assurance agencies to apply for registration. We will allow EQAR-registered agencies to perform their activities across the EHEA, while complying with national requirements. In particular, we will aim to recognise quality assurance decisions of EQAR-registered agencies on joint and double degree programmes”.

Relating to employability and higher education's relationship with research, the document recalls the Salzburg II recommendations and the European Commission “Report of Mapping Exercise on Doctoral Training in Europe — Towards a common approach”, which can be noted as a demonstration of Bologna's influence on its actors, but mostly as evidence of a growing EU involvement and authority in the Process. Education must provide and guarantee a closer relationship of interconnectedness across all levels of research, teaching, and learning; curricula must reflect the main objectives in both consolidated and emerging fields of research, underpinning research's role in supporting learning and education. Emphasis is placed upon the role of doctoral candidates in the improvement of transparency, employability, and mobility, hence the collaboration between the EHEA and the ERA and the paramount role of implementing learning outcomes, the ECTS system, the Diploma Supplement and degree recognition; mention is made of the levels in the European Qualification Framework, adding specificity to previous provisions and drawing upon enforceable EU action.

“We welcome the progress in developing qualifications frameworks; they improve transparency and will enable higher education systems to be more open and flexible. We acknowledge that realising the full benefits of qualifications frameworks can in practice be more challenging than developing the structures. The development of qualifications frameworks must continue so that they become an everyday reality for students, staff and employers. Meanwhile, some countries face challenges in finalising national frameworks and in self-certifying compatibility with the framework of qualifications of the EHEA (QF-

EHEA) by the end of 2012. These countries need to redouble their efforts and to take advantage of the support and experience of others in order to achieve this goal.

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

Among more specific engagements, the priorities set out in Bucharest towards 2015 continue to draw upon the EQAR, urging national governments to develop and grow compliance with available tools.

"At the national level, together with the relevant stakeholders, and especially with higher education institutions, we will: [...] Allow EQAR-registered quality assurance agencies to perform their activities across the EHEA, while complying with national requirements; work to enhance employability, lifelong learning, problem-solving and entrepreneurial skills through improved cooperation with employers, especially in the development of programmes; ensure that qualification frameworks, ECTS and Diploma Supplement implementation is based on learning outcomes; invite countries that cannot finalize the implementation of national qualification frameworks compatible with QF-EHEA by the end of 2012 to redouble their efforts and submit a revised roadmap for this task; implement the recommendations of the strategy 'mobility for better learning' and work towards full portability of national grants and loans across the EHEA; review national legislation to fully comply with the Lisbon Recognition Convention and promote the use of the EAR-manual to advance recognition practices.

At the European level, in preparation of the Ministerial Conference in 2015 and together with relevant stakeholders, we will: ask Eurostat, Eurydice and Eurostudent to monitor progress in the implementation of the Bologna Process reforms and the strategy "Mobility for better learning"; develop a system of voluntary peer learning and reviewing by 2013 in countries which request it and initiate a pilot project to promote peer learning on the social dimension of higher education; develop a proposal for a revised version of the ESG for adoption;

[...] coordinate the work of ensuring that qualifications frameworks work in practice, emphasising their link to learning outcomes and explore how the QF-EHEA could take account of short cycle qualifications in national contexts; [...] develop EHEA guidelines for transparency policies and continue to monitor current and developing transparency tools”.

3.9 YEREVAN COMMUNIQUÉ, MAY 2015

The Ministerial meeting in Yerevan produced a document in which the preamble, as its preceding communiqués, described the Bologna Process and the EHEA and their consequences and intent in higher education, although the 2015 Communiqué interestingly notes that “implementation of the structural reforms is uneven and the tools are sometimes used incorrectly or in bureaucratic and superficial way”, recognizing a challenge to implementation which had been avoided before and the need to provide the collaboration process with fresh incentives. Goals are repeated yet again, and yet with slightly different wording. They include: “enhancing the quality and relevance of learning and teaching; fostering the employability of graduates throughout their working lives; making our systems more inclusive; implementing agreed structural reforms”. Again, mentioned is made to policy measures adopted, including the revised ESG and ECTS, and European Approach for Quality Assurance of Joint Programs. The Yerevan meeting produced a list of commitments, which appear as having a sharper focus than its predecessors, as follows:

“to include short cycle qualifications in the overarching framework of qualifications for the European Higher Education Area (QF-EHEA), based on the Dublin descriptors for short cycle qualifications and quality assured according to the ESG, so as to make provision for the recognition of short cycle qualifications in their own systems, also where these do not comprise such qualifications; [...] to review national legislations with a view to fully complying with the Lisbon Recognition Convention, reporting to the Bologna Secretariat by the end of 2016, and asking the Convention Committee, in cooperation with the ENIC and NARIC Networks, to prepare an analysis of the reports by the end of 2017, taking due account of the monitoring of the Convention carried out by the Convention Committee; [...] to review national qualifications frameworks, with a view to ensuring that learning paths within the framework provide adequately for the recognition of prior learning; to establish a group of volunteering countries and organizations with a view to facilitating professional recognition; to promote staff mobility taking into account the guidelines from the Working group on mobility and internationalization; to promote the portability of grants and loans taking into

account the guidelines from the Working group on mobility and internationalization; to make our higher education more socially inclusive by implementing the EHEA social dimension strategy; to ensure that qualifications from other EHEA countries are automatically recognized at the same level as relevant domestic qualifications; to enable our higher education institutions to use a suitable EQAR registered agency for their external quality assurance process, respecting the national arrangements for the decision making on QA outcomes”.

3.10 PARIS COMMUNIQUÉ, MAY 2018

Twenty years since the signing of the Sorbonne Declaration, the Ministers of the Bologna Process met once again in Paris to celebrate their achievements towards building the EHEA and to strengthen their commitment to the Process. In manifesting their pride on the accomplishment of a unique higher education order, the Communiqué specifies that the results have affected the policy realm at European level and individual education systems at national level. Recognizing the existence of challenges in national spheres, the Process reiterates a strong commitment to the promotion and protection of EHEA values through “intensified political dialogue and cooperation”. The shared trials countries were facing in 2018 shifted to the political rather than financial field, as populism, radicalization, and extremism came to the fore in political and social debate; higher education was viewed as a paramount tool to combat such challenges correspondingly, promoting integration, social responsibility, cohesion and inclusion, employment, and development. The priorities mentioned in the document are “unlocking the full potential of the EHEA: taking implementation forward; innovation in learning and teaching; beyond 2020: a more ambitious EHEA”, and measures adopted in Paris include: “structured peer support approach for the implementation of the three Bologna key commitments; Belarus strategy for 2018-2020; short cycle qualifications as a stand-alone qualification level within the overarching QF-EHEA; revised Diploma Supplement, with a recommendation for its adoption in identical form in the respective frameworks of the Lisbon Recognition Convention and Europass”. The latter mentions the European student card, a EU measure pilot at the time, expressing the idea that it could be included within the broader scope of the EHEA as a tool to facilitate mobility; once more, the prominent role of EU involvement is highlighted. For the first time, the Erasmus+ program is indicated as an aiding tool in fostering and increasing cooperation, with obvious allusion to mobility but also to the promotion of European values.

In order to forward application of the Process, the BFUG continued to be entrusted with the implementation, coordination, and monitoring of measures such as the peer support approach, with reference to the establishment of the Bologna Implementation Coordination Group. The European Learning and Teaching Forum was also launched the year prior to the Paris meeting by the EUA, demonstrating the significance and prospective of collaboration in the spheres of education and training, definitely beneficial to higher education. Since the mention of technological advancements in Leuven 2009, digitalization is referred to for the first time, though recalling the concepts of technology and digitalization's role in endorsing educational transformation and innovation. The European Union is also indicated in the advancement of the Process as a pivotal actor within the ensuing priorities of the EHEA.

“The EHEA has proved its role as a unique framework for higher education cooperation in Europe. To develop the EHEA further, we will intensify cross-disciplinary and cross-border cooperation as well as develop an inclusive and innovative approach to learning and teaching. [...] We will foster and extend integrated transnational cooperation in higher education, research and innovation, for increased mobility of staff, students and researchers, and for more joint study programmes throughout the whole EHEA. We take note with interest of the recent EU initiative on ‘European Universities’ and we will encourage all our higher education institutions to work in such new settings. We call on the BFUG to establish interaction with the European Research Area and Innovation Committee (ERAC) by 2020 in order to develop synergies between the EHEA and the European Research Area (ERA). We commit to developing the role of higher education in securing a sustainable future for our planet and our societies and to finding ways in which we, as EHEA Ministers, can contribute to meeting the United Nations Sustainable Development Goals at global, European and national levels”.

3.11 ROME COMMUNIQUÉ, NOVEMBER 2020

The Rome Communiqué of 2020 is configured within the extraordinary context deriving from the infamous and unexpected Covid-19 pandemic. This background provided for a stronger renewal of intentions towards solidarity and integration, stressing interdependence and the “determination to provide inclusive quality higher education [in] fulfilling its full range of purposes also in times of crisis”. Digitalization takes the stage as the tool which allowed higher education (as well as almost any other element of society) to continue throughout Covid.

The 2020 meeting is the first to mention the basic legislative concept of the rule of law, stating “the EHEA of our vision will fully respect the fundamental values of higher education and democracy and the rule of law”. Although the citation of a legal elements seems a progressive development towards legitimizing Bologna as an enforceable process, rule of law is such a basic concept that it brings little change with its reference in the Rome Communiqué. In fact, subsequent phrases once again touch upon the need to implement the Process through national policies and national implementation of frameworks, although it provides three Annexes, the Statement on Academic Freedom, the Principles and Guidelines to Strengthen the Social Dimension of Higher Education in the EHEA, and Recommendations to National Authorities for the Enhancement of Higher Education Learning and Teaching in the EHEA. In the former, academic freedom is defined as “freedom of academic staff and students to engage in research, teaching, learning and communication in and with society without interference of reprisal”, reiterated the EHEA’s commitment to transparency. In addition, the Process adopted the UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education, and expressed their commitment to its ratification.

Towards 2030, Ministers draw from the United Nations’ Sustainable Development Goals (SDGs) to be achieved by 2030, which have been in place since 2015 but had been preceded by the similar Millennium Development Goals (MDGs) from 2000 to 2015. Although MDGs and SDGs have never had enforceable characteristics, they represent the expression of globally shared objectives, similar to how the Bologna Process harvests the collective goals of its participants. They also seem to draw from a European communication tradition and summarizing their goals in three “Is”: inclusive, innovative, and interconnected.

“Inclusive, because every learner will have equitable access to higher education and will be fully supported in completing their studies and training;

Innovative, because it will introduce new and better aligned learning, teaching and assessment methods and practices, closely linked to research;

Interconnected, because our shared frameworks and tools will continue to facilitate and enhance international cooperation and reform, exchange of knowledge and mobility of staff and students”.

The aforementioned Principles and Guidelines to Strengthen the Social Dimension of Higher Education in the EHEA were adopted to build

precisely the inclusive aspect of higher education, paired with actions within the sphere of digitalization and international governance, recognizing the significance of legislation in the protection of student rights and the commitment to the development of national systems through specialized measures and organizations, such as student ombudspersons as well as promoting collaboration with the European Network of Ombuds in Higher Education. On the other hand, the Recommendations to National Authorities for the Enhancement of Higher Education Learning and Teaching in the EHEA refer to the innovation principle previously discussed, emphasizing flexible, student centered learning paths concurrently with the BFUG responsibility to “explore how and to what extent [smaller units of learning], flexible units, including those leading to micro-credentials, can be defined, developed, implemented and recognized by our institutions using EHEA tools. [...] We commit to the development of open science and education to facilitate the exchange of knowledge and openly licensed materials that can be easily shared among higher education stakeholders”. The interconnected goal clearly refers to mobility, resuming the Leuven/Louvain-La-Neuve effort of a 20% target of students experiencing a period of studying abroad throughout their graduate studies. Interconnectedness also encompasses digitalization in regards to data exchange and joint digital approaches to further the founding Bologna goals of recognition, quality assurance, and mobility.

CHAPTER III: EUROPEAN UNION COMPETENCES IN HIGHER EDUCATION: CHARACTERISTICS, LEGITIMACY, AND STATE OF THE ART

Through the next chapter, research will analyze the European Union's role within the European dimension of higher education. The analysis questions whether the dedicated tools promoted by the EU within and beyond the Bologna Process to foster cooperation between Member States in order to stimulate the development of the knowledge economy confirm its leadership role within the international higher education regime. Among the main goals of the European Union is the will to spread the European identity to younger generations especially, through shared values in respect of different cultural identities.²⁴

The European dimension of education offers added value to the higher education provided in each individual Member State, as has been discussed repeatedly by Ministers competent for higher education in the inter-ministerial meetings belonging to the Bologna Process. In the European Union as well, investment in human capital is paramount and implies supporting the personal and professional growth of individual citizens, but it also concerns the dissemination of the Union's values themselves. Resembling the concept of European identity or European citizenship, which exist next to their respective national dimensions as an added value and not a substitution, so does the European dimension of education represent an added value to national dimensions. In November 2017, then President of the European Commission, Jean-Claude Juncker, emphasized the EU's strong focus on education by stating: "Education and culture are the key to the future – both for the individual as well as for our Union as a whole. It is how we turn circumstance into opportunity, how we turn mirrors into windows and how we give roots to what it means to be 'European', in all its diversity. [...] we must seize the opportunity and make sure education and culture are the drivers for job creation, economic growth, social fairness and ultimately unity".

1. THE BASIS FOR EU COMPETENCES IN EDUCATION AS DEFINED IN THE TREATIES

²⁴ The EU's motto is "United in diversity" in light of the many different cultural traditions unique to each Member State, yet which converge in a single multi-faceted European identity.

Despite the widespread belief that education is a fundamental driver for growth, that it is an essential tool in order to broadcast European values, that societies are increasingly developing into knowledge economies in which education plays a protagonist role, the European Union competences regarding education fall under art. 6 TFEU, describing those set of competences for which the Union has merely a supporting role. EU policies in the field of education are directed essentially at promoting and encouraging cooperation among Member States and among higher education institutions across Member countries, for example Erasmus+. However, the EU has gradually adopted legislation in the field of higher education, and jurisprudence of the European Court of Justice has contributed to create practice in favor of an EU policy of higher education. Furthermore, the Bologna Process itself has provided a forum towards the expansion of EU priorities in relation to higher education, creating a space in which the EU can bring forth its concerns in a space where decisions are made at national level, where technically it has no decision-making power. Because the EU has gradually gained a leadership position within the Bologna Process, it can be argued that the intergovernmental conferences have been serving as opportunities for the EU to further its objectives in a field where its competences are exclusively of support, coordination, and completion. It can further be argued that, through a variety of instruments and practice, including policymaking, policy coordination, case law, the Bologna forum, and the Erasmus+, the European Union's competence in the field of education has been gradually affirming itself as a Community competence. Within such plethora of instruments, the question arises of what the normative articulation is within European cooperation in higher education, both in relation to education as a fundamental tool to economic integration, and mainly in its role towards the promotion of a shared European identity. In fact, investment in human capital is embedded in higher education in order to support the personal and professional growth of individual European citizens, which in turn promotes the growth and values of the EU. Based on the idea that the European dimension of higher education integration contributes to guaranteeing the achievement of the objectives of European construction, education becomes a coveted competence which can be influenced most easily at EU level through recognition of academic and professional qualifications and through the freedom of movement.²⁵

²⁵ Since the establishment of the European Single Market in 1986, four freedoms have been legally guaranteed to all EU citizens. They are: freedom of movement of persons, goods, services, and capital. The freedom of movement of persons is also included in the EU constituent

Worthy of note is the analysis of EU competence in higher education and the European area designed accordingly through Community action and the measures taken in the framework of coordination of national policies. The juridical historical process leading to the definition of this area of competence stems from the study of its nature within the Maastricht Treaty and the extension of European action in the framework of the Bologna Process and the impetus received through the Lisbon Strategy. Taking into account the key role of education and training in the framework of the knowledge economy as the economic model to which the EU aspires, the strategy serves to attribute greater autonomy to the EU activity with respect to economic policies. In alignment with EU objectives, the European dimension of higher education is located as a key factor in the economic recovery after the 2008, 2012, and 2020 crises, as well as to its social and cultural function in the promotion of the EU values recognized in art. 2 TEU.²⁶ Furthermore, higher education partakes a role of paramount importance in the promotion of civil mobility across EU Member States, stimulating cultural and economic integration and boosting growth.²⁷ Consequently, recognition of titles is at the heart of a

treaties, specifically in art. 3 TEU and art. 45 TFEU. The Treaty on the European Union sets out the principles and objectives of the EU; art. 3(2) states that “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. Instead, the Treaty on the Functioning of the European Union provides the organizational and functional details, as expressed in the title; art. 45 TFEU falls under Part Three of the Treaty, discussing Union policies and internal actions, with particular regard to free movement of workers. It states: “(1) Freedom of movement for workers shall be secured within the Union. (2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. (3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission. (4) The provisions of this Article shall not apply to employment in the public service”.

²⁶ Art. 2 TEU, within the framework of the EU’s objectives as described above, states: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

²⁷ Access to study in a Member State other than the country of nationality is recognized as a fully acquired right, and any legitimate limitation must be conditional on respect for the principle of non-discrimination, including any indirect modalities, in addition to the requirements of justification and proportionality. In addition to the articles regarding freedom of movement in the EU constituent treaties, further legislation on the topic has been addressed through directives worth mentioning at this point of the research: Directive 2004/38/EC on the right of EU

sustainable, long-term insurance of mobility, insofar as it depends on the distribution of competences between Member States, based on a complex arrangement of competences which differ according to the scope of the recognition, particularly if there is a question of a professional or academic title. The normative regime around recognition is ambiguous but delineated, allowing for significant normative development. Higher education does not have a similar regime. This is due not only to the lack of such a legal basis, but particularly to the characteristic diversity of the national systems of higher education, which is the result of historical and cultural traditions, as well as political, economic, and social ones, which translate into a strong national identity of their own. This circumstance may well be seen as a possible obstacle to the shaping of a common European policy, but it can also, on the contrary, be appreciated as a form of common cultural enrichment. As previously observed, the realm of higher education has provided for a difficult legal materialization of approaches in legislative policies, leading to an almost exclusive repartition of competences to single States, leaving a function of impulse and incentive to the supranational nature of the EU. On this basis, it is deemed necessary to reference the activities set out by the Lisbon Convention, the Lisbon Strategy, and the Bologna Process as intermediate options between the strict Community model and the more conventional intergovernmental cooperation implemented through the Common Foreign and Security Policy (CFSP).²⁸ This trend towards policy coordination rather than

citizens and their families to move and reside freely within the EU, accompanied by the later Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement of workers.

²⁸ The Common Foreign and Security Policy (CFSP) of the European Union was first introduced by Title V of the Maastricht Treaty of 1992, as the TEU introduced the ‘three-pillar system’, with the CFSP as the second pillar, with the aim of preserving peace, strengthening international security, promoting international cooperation, and developing and consolidating democracy, the rule of law and respect for human rights and fundamental freedoms. The CFSP is now governed, following the revision of the Treaty on the European Union by the Lisbon Treaty of 2007, following the provisions concerning the external action of the EU in general. CFSP is based on the same principles and pursues the same general objectives as the EU’s external action (External Relations of the European Union) and concerns “all areas of foreign policy and all questions relating to the security of the Union, including the progressive framing of a common defense policy” which could lead, in the future, to a common defense of the EU (Common Security and Defense Policy of the European Union). The principles and general guidelines of the CFSP are established by the European Council, while the Council of the European Union is responsible for taking the decisions necessary to define and implement this policy. More specifically, the Council of the Union decides on the objectives, scope, means and conditions of implementation, as well as the duration, if any, of operational interventions; it may also adopt a Union position “on a particular matter of a geographical or thematic nature”. Unless otherwise provided for in the Treaty, all CFSP deliberations are adopted by unanimity, either by the European Council or by the Council of the Union. For further detail, please reference Title V of the TEU ‘General Provisions on the Union’s External Action and Specific

communitarization, which can be seen in different spheres, has become established as an influence exogenous to the subject itself but imposed in the definition of its nature.

1.1 EVOLUTION OF EU COMPETENCE IN EDUCATION: FROM THE TREATY OF ROME TO THE TREATY OF LISBON

The birth of the European Economic Community (EEC) was driven by the aim of the creation of a common market; the founding treaty made no reference to the creation of a common education policy, as it seemed outside the necessary logical sphere of influence, yet interestingly the Treaty of Rome explicitly mentioned the EEC's intention to develop quality education across Member States, promoting student and teacher mobility, disseminating knowledge of Member State languages, and supporting cooperation within and outside EEC borders.²⁹ Despite not being at the forefront of community competences, as the Treaty of Rome as well simply stated Community intentions without providing it with enforceable powers, education always received particular attention from Community institutions, mainly in the forms of promoting cooperation between Member States and by including specific provisions on education aimed at facilitating forms of social and professional

Provisions on the Common Foreign and Security Policy (CFSP)', articles 21-46 and Part 5 TFEU, articles 205-222, which cover the Union's external action.

²⁹ The Treaty of Rome, 1957, established the European Economic Community, which preceded the European Union. In Part III, Title VIII, Chapter III of the Treaty, art. 126 states: "(1) The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity. (2) Community action shall be aimed at: (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States; (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study; (c) promoting cooperation between educational establishments; (d) developing exchanges of information and experience on issues common to the education systems of the Member States; (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors; (f) encouraging the development of distance education. (3) The Community and the Member States shall foster co-operation with third countries and the competent international organizations in the sphere of education, in particular the Council of Europe. (4) In order to contribute to the achievement of the objectives referred to in this Article, the Council: (a) acting in accordance with the procedure referred to in Article 189b, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States; (b) acting by qualified majority on a proposal from the Commission, shall adopt recommendations". This article is now art. 149 TEU.

integration within the EEC. This logic justified the acts as being functional to the realization of the freedoms provided for in the constituent documents of the Community. Furthermore, the recognition of the “right to study” came about through the European Court of Justice (ECJ) jurisprudence, on the same terms as professional training, including education in the scope of the Treaties despite it not being mentioned with a specific legal basis.

It could be argued that will of EU Member States to maintain the education realm within the context of art. 6 TFEU serves as an indication of their resistance to EU involvement in higher education and their desire to maintain independent sovereignty, although no such resistance was advanced in the drafting of measures for diploma recognition, mobility, or any initiative associated with such objectives. On the other hand, it could also be argued that the Union’s initial exclusion from the Bologna Process served as a reasonable justification to the “alleged educational competence creep”. Notwithstanding the validity of these arguments, it is important to emphasize the challenge of pursuing action around the same issues but from two distinct levels, both within and beyond the EU framework; in fact, the substance behind Bologna significantly overlaps with existing EU policy sectors. Such overlap in content may lead to double standards if lacking in coordination, stressing the relation between the European Union and the intergovernmental process. Reasoning around art. 6 TFEU, the Bologna Process cannot be approved as an EU measure, although through the Process the Community has advanced and broadened its competences more than what could have been foreseen. In addition, the Process’ methods of implementation cause debate due to European law and legislation, such as the dichotomy of hard and soft law. Under art. 149 TEU, the Union’s role in education is clearly that of “encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity”, defining its supporting role, limited to promoting collaboration between Member States. The reasoning behind art. 149 leaves little to the debate around legislative competences of the Union, explicitly excluding harmonization in the context of education.³⁰ However, from a

³⁰ Art. 114 TFEU concerns harmonization of laws across EU Member States, homogenizing laws internally to the Union. “(1) Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal

legislative point of view it is unclear whether the provisions deriving from the Bologna Process require harmonization, as the word was specifically excluded from the Bologna Declaration, despite it being present in the title of the Sorbonne Declaration which preceded the beginning of the Bologna Process.³¹ It can be argued that the Bologna Process implies harmonization through the creation of the EHEA and through the will of creating a common higher education system, yet the term harmonization is never used; it can be argued that harmonization is not entailed in the Process because curricula in each higher education system remains individual to each Member State, and all that is requested from the process is “structural comparability”. Furthermore, due to

market. (2) Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons. (3) The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective. (4) If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them. (5) Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them. (6) The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market. In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved. When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months. (7) When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure. (8) When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council. (9) By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article. (10) The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure”.

³¹ The Sorbonne Declaration was signed in 1998; the objectives set out in Paris paved the way for the Bologna Declaration to be signed a year later, in 1999, giving birth to the Process.

the external nature of the Bologna Process to the European Union, it cannot be qualified as a Community measure needing to be harmonized. (Garben, 2010)

1.2 ADVANCEMENT OF SUPRANATIONAL COMPETENCE THROUGH SECONDARY LEGISLATION

Education is *de facto* regulated in the framework of secondary legislation, since the late 1960s within the EEC, coherent with the objective of providing freedom of movement for workers; for one, recognition appeared essential. In 1968, the Council of the European Communities published Regulation 1612/68 on freedom of movement for workers within the Community, which specifically mentioned the right of workers to move freely across Member States and to receive vocational training in accordance with the principle of national equality;³² the Regulation also specifically addressed the right of workers' children to receive education under the same conditions as nationals of the host state.³³ Regulating education for workers' children was possible because it falls under a condition to enable free movement of workers, therefore it falls under the internal market sphere, thus constituting a Community competence. In 1977, the Council further regulated on education through Directive 77/486/EEC, titled Council Directive on the education of the children of migrant workers. At the same time, Member States affirmed the European dimension of education policy within their national frameworks, both through

³² Regulation 1612/68, art. 7: "(1) A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment; (2) He shall enjoy the same social and tax advantages as national workers. (3) He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres. (4) Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States".

³³ Regulation 1612/68, art. 12: "The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions".

the approval and implementation of Community acts, and also through forms of intergovernmental cooperation, creating an environment for the development of European action aimed at encouraging forms of support and coordination for the achievement of common goals. Thus, as transpires from the abovementioned measures, the Community method and forms of intergovernmental cooperation around education have been intertwined since the dawn of the European integration process and have coexisted since then in order to achieve common goals and using a range of regulatory instruments, as seemed most fit to carry out such objectives. In February 1976, the Ministers of Education from each Community Member State met with the Council and produced a Resolution comprising an action program in the field of education, with the aim of establishing programs of cooperation between Member States' educational system, with particular focus on the promotion of joint courses of study across higher education institutions.³⁴ The 1976 Resolution was the first occasion in which Ministers of Education at national level directly cooperated with the European Commission, in the meeting and in the subsequent implementation of the provisions decided upon; it was the first time in which education was discussed on an intergovernmental level. Furthermore, a number of sectoral directives on the recognition of qualifications were approved since then, especially in the area of health professions. The issuing of these directives also had an impact on the higher education sector, as higher education institutions were in need of coordination in order to guarantee the equivalence of the titles issued by institutes or universities. In 1988, the Council approved a directive on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration; in 1990, a further directive amplified legislation around the rights of residence for students.³⁵ The approval of such directives served as further confirmation of the great value that education progressively assumed within the European Community, as well as its firm connection to the more general Community objective of ensuring the free movement of citizens. Against this backdrop, the foundations for future collaborations at national and supranational level were set up, including the beginning of the roadmap to Erasmus. The birth of the Erasmus program, and its following evolution into Erasmus+, was distinctive in the of strengthening student mobility across the European Community and had inevitable impacts on areas of national competence in education, though it was based on shared competence principles such as mutual recognition. In 1985, the European Council met in Milan,

³⁴ For further reference, please see Resolution C/38/1/1976.

³⁵ For further reference, please see Directive 89/48/EEC and Directive 90/366/EEC.

Italy, expressing the project of a “People’s Europe” with measures aimed at “involving the citizens of Europe more determinedly in the construction of the Community”; a few years later, in 1987, the Erasmus program was first established.

In the described context, higher education can be configured within an EU policy field, as stated by the ECJ itself in its 1974 *Casagrande* judgement.³⁶ Moreover, against the background of a European integration process born from the will to create economic integration and a common market, the linkage between the educational and employment spheres becomes evident, naturally manifesting in the internal market legislation’s encompassing of educational matters. If an example can be seen in mobility, and therefore of resources of various nature, free movement of persons becomes a prerequisite for the integration of the internal market, which in turn requires a precondition of mobility in education as well. Because education remains a policy field within the European Union, the Community developed such field through diploma recognition and advanced its efforts through internal programs and the Bologna Process alike. The overlap between competences referring to the internal market and those concerning education constitutes a thin line and is debatable by reason, yet legislative measures state quite clearly their distinction. The Community’s involvement in the Bologna Process remained strictly policy-based, although it could be argued that its official adoption within the EU framework could have taken the shape of a legal measure, mirroring Bologna’s objectives of enhancing readability and compatibility of higher education qualifications. However, recognition of academic diplomas remains outside Union competence, whereas recognition of professional diplomas is considered to be a Community competence insofar as it falls under internal market competences, especially in the fields strictly related to public benefit, such as medicine or law; in affecting public interest, such professions can be justified within the legislative framework of the European union, where instead recognition of higher education qualifications still seem to stem from a political nature. It is precisely due to the thin line between the utility of professional and academic recognition that the EU founded its basis for the explicitness of degree recognition as a Community competence after the

³⁶ In the *Donato Casagrande v. Landeshauptstadt München*, the plaintiff accused the defendant of not granting his children rightful access to education on the grounds under art. 12 of Regulation 1612/68 on the Freedom of movement of workers. “Although educational and training policy is not as such included in the spheres which the Treaty has entrusted to the Community Institutions, it does not follow that the exercise of powers transferred to the Community is in some way limited if it is of such a nature as to affect the measures taken in the execution of a policy such as that of education and training”.

Maastricht Treaty. When pairing the overlap of higher education with internal market competences as well as with freedom of movement of persons, the European Union can quite easily claim competence in the field of higher education, although it has until now been restricted to policy, while the legal implications of such argument remain to be cleared. Grounds for legally giving the Union competence over higher education would need to favor the argument that the Bologna Process directly affects the internal market and free movement of persons, which can most straightforwardly be achieved through an ECJ judgement likely based on practice. Through the latter, the Court has certainly advanced students' right to freedom of movement, and it could be further argued that students require encouragement and assistance in the exercise of said right, allowing them to reap the benefits of their mobile education after having entered the labor force, creating positive consequences for the labor market and the overall development of production and the knowledge society. Despite the fact that the Bologna Process does indeed reorganize higher education systems across its Members, and thus across the EU's Member States, ECJ case law does not provide for implications which might suggest legislative impact on the educational policy field. However, the Bologna might configure itself as a directive or regulation concerning the internal market, falling under EU competence, specifically if it singularly concerns higher education and steers clear of primary and secondary education, which must be reserved to sovereign states. In fact, internal market competences gain justifiable relevance within the educational field only in the confluence of higher education in the market (Garben).

A further argument to sustain Community competence in the field of education stems from a horizontal distribution of power under the principle of subsidiarity and through the so-called "subsidiary conventions". Because competence concerning degree recognition, qualification, and mobility is shared between supranational and national level, therefore Member States are free to develop independent, unilateral, bilateral, and multilateral cooperation outside the European Union framework, the Community could intervene in Member State agreements where competence is shared. It can be argued that, through the expanded global nature of the Union, its effectiveness in pursuing goals with international repercussions is greater than that of Member States, legitimizing subsidiarity.³⁷ Furthermore, the idea behind the European Union

³⁷ Art. 5(3) TEU, describing the subsidiarity principle, states "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, [...] but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". There is no explicit reference to subsidiarity within the higher education sphere, yet art. 5 TEU may be interpreted to signify a greater effectiveness of higher

of common goals and cooperation could legitimize EU action when all Member States share a common objective, such as the EHEA, especially in the instance in which the objectives in question overlap with key supranational principles and competences such as the internal market. On the contrary, it can be argued that the intergovernmental nature of the Bologna Process resides outside the principle of subsidiarity. To support this claim, it is possible to argue that EU Member States cooperate individually amongst themselves in the Process, outside of a supranational framework which would entail joint Member State action. As the previous chapter outlines, communiqués stemming from the Bologna Process are instruments of soft law, as they are declarations of common intents and interests, similarly to various EU forms of legislation. The parties to the Process cooperate voluntarily, sharing best practices, objectives, mutual learning experiences, and peer review, similarly to the EU tool of the Open Method of Coordination (OMC). The OMC is also a soft law instrument, internal to the Union, complementary to the principle of harmonization in that it focuses on issues outside of the scope of art. 114 TFEU under the concept of cooperation.³⁸ The claim that the Bologna Process could be integrated into the OMC at European level could strengthen the subsidiarity question, although legitimation of such is debatable.

2. THE CONTRIBUTION OF JURISPRUDENCE IN THE SHIFT OF EUROPEAN COMPETENCE IN HIGHER EDUCATION: AN ANALYSIS OF CASE LAW EVOLUTION

In addition to the contribution towards the advancement of an EU competence in education due to policies and regulation, jurisprudence in the same period significantly expanded the definition of professional training, including within this context university courses that did not directly award a professional title, rendering judgements on higher education ambiguous and ever-more an international competence in name of the internal market.

education competence at supranational rather than national level, legitimizing EU legal action in this field. Furthermore, art. 5 does not specify if external intergovernmental cooperation falls under the action which “cannot be sufficiently achieved by Member States”. Interpretation of such principle can be brought to legitimize EU action in almost any field, yet it can be seen as a double-edged sword.

³⁸ The Open Method of Coordination has been mentioned within the scope of educational coordination in the 2000 Lisbon Summit.

2.1 GRAVIER V. CITY OF LIÈGE

The most famous case in this regard is the *Françoise Gravier v. City of Liège* case, in which the plaintiff, a French national, was asked to pay an enrolment fee only requested to foreign students when applying to the Académie Royale de Beux-Arts for a four-year higher education course in Liège, Belgium. Upon refusing to pay, Gravier was rejected by the Academy and her student visa was revoked. The subsequent ruling of the ECJ, interpretation allowed to guarantee the right of access to courses of study to citizens of other Member States on an equal footing with nationals, thus preventing the imposition of additional fiscal burdens for students coming from another country within the Community. The plaintiff argued that, since the fee was not required of Belgian nationals, the request of her to pay “constituted discrimination on grounds of nationality prohibited by article 7 of the Treaty and on the other hand a national of another Member State going to Belgium to study must be free to do so as a person to whom services are provided according to article 59 of the Treaty”.³⁹ The influence of case law in the gradual recognition of the Communitarian sphere of education law, interpreted only as the right to education, was based on the fundamental freedoms and the principle of non-discrimination. A particular grey area concerned the right to education and training of children of migrant workers who had to be guaranteed equal treatment as nationals on the basis of Regulation 1612/68 and the applicability of the right of free movement of persons related to the field of education. Through case law, jurisprudence found that education and training fell within the scope of the application of the Treaty, both in relation to hosting countries which received professionally trained individuals, and in relation to the position of natural and legal persons carrying out their activities in the field of education. Often, the ECJ held that rules on free movement of workers, the right of establishment, and the freedom to provide services could be applied to education, despite the resistance of States, which considered education as a purely national competence. The justifying grounds for such measures were that the Community covered a public function concerning the training of citizens and the transmission of national values and cultural traditions.

³⁹ For further reference, please see Case 293/83/ECJ.

2.2 LAWRIE-BLUM V. LAND BADEN-WÜRTTEMBERG

In the *Lawrie-Blum* case of 1986, the Court recognized that teaching activity carried out in return for remuneration is of economic importance and, therefore, falls within the scope of application of the Treaty; consequently, it held that the rules on the free movement of workers and the principle of non-discrimination on grounds of nationality were applicable to the case in question. The Court pointed out that the concept of worker could not be interpreted differently in each national legal system because it had a Community scope, defined in order to determine a fundamental freedom, and therefore had collective meaning across Member States. Deborah Lawrie-Blum was a British national which had completed the first stage in teacher training at the University of Freiburg, yet the State of Baden-Württemberg declined her entrance in the second level of training, since teachers are considered government workers in Germany and federal legislation specified that only German nationals may hold such offices. Lawrie-Blum moved the matter to the State Court on the premise that she was a worker and so allowed to work in any EEC state. Since she was a paid trainee at the time, the Landesgericht ruled that a trainee could not be considered a worker under art. 48(1) of the EEC Treaty, and furthermore stated that art. 48(4) of the Treaty provided for exemptions in regard to public servants. The case was then brought to the ECJ, which ruled that art. 48(1), describing the concept of worker, must be interpreted as broadly as possibly, including the concept of trainee; on the other hand, art. 48(4) must be interpreted as narrowly as possible, and only valid if enacted to ensure national interests. In fact, the Court held that the public or private nature of the employment contract was irrelevant for the purposes of applying art. 48(4) because teaching could not be included among the public jobs reserved for nationals since limitations on the exercise of a fundamental freedom must be interpreted restrictively. The activities which do not imply the exercise of public authority are excluded from the exemption provided in art. 48(4), including teaching.⁴⁰ Differently from the *Gravier* case, in which the Court ruled in favor of freedom of movement for students, the *Lawrie-Blum* case also provides for a broader interpretation of teaching, creating practice for future expansion of international competence.

⁴⁰ For further reference, please see Case 66/85/ECJ.

2.3 COMMISSION OF THE EUROPEAN COMMUNITY V. HELLENIC REPUBLIC

In 1988, the Commission brought a case against Greece, on the grounds that it had not fulfilled its obligations in regard to discrimination on the basis of nationality. Greek legislation reserved various activities connected with the establishment and management of training schools only to nationals. The ECJ reiterated, as in the *Lawrie-Blum* case, therefore strengthened by practice, that teaching activities do not imply the exercise of public authority, so that they do not fall within the scope of the derogation allowing certain public posts to be reserved for nationals. Regarding other activities relating to the management or operational segment of educational establishments, the Court ruled that it wasn't justifiable either to discriminate on the grounds of nationality. Furthermore, the case also regarded homeschooling, as Greek legislation provided for the possibility of teaching at home only to Greek citizens; the Court ruled against this as it counted as a restriction of Community freedoms. Through this ruling, the Court clearly affirmed once again that the educational sector

The approach based on a case-by-case assessment had given rise to numerous difficulties and uncertainties due to the vagueness of the concepts of reference, which is why the Commission had drawn up a communication aimed at identifying more precisely the activities that fall within the exercise of public functions. In order to induce States to avoid discrimination on the grounds of nationality, the Commission warned that it would open infringement proceedings. Following the actions for failure to fulfil obligations brought by the Commission, the Court stated that the States may not apply the derogation in a general manner to "categories of workers falling within broad sectors, as in the case of education and teaching", since its application must be determined in a precise manner and in relation to the specific nature of the functions of each individual profession. The violation of the principle of non-discrimination on the grounds of nationality in the education sector has also been recognized by the Court in relation to various forms of indirect discrimination.

With regard to internal measures concerning the language regime, the Court has ruled on several occasions to ensure a balance between the legitimate need to protect traditional languages or linguistic minorities and the free movement of persons, avoiding that the application of disproportionate measures becomes a form of indirect discrimination. In particular, in relation

to the freedom of movement of workers, the Court has also interpreted restrictively the exception to the principle of equal treatment granted to migrant workers under the terms of the former art. 3(1) of Regulation 1612/68. Regulation 492/11 amended the former and provides for the prevention of legislation or practice from leading to discrimination on the basis of nationality, whether direct or indirect, in access to employment or the exercise thereof. The only exception refers to the provisions of internal measures aimed at ensuring that the worker knows a particular language whereof such a requirement is necessary in view of the nature of the employment.

2.4 GROENER V. MINISTER FOR EDUCATION

In 1989, the Court ruled upon a case concerning language barriers. Anita Groener, a Dutch teacher, was refused a permanent teaching job at a Dublin university because of her lack of knowledge of the Irish language; Groener took the case before the Court as a violation of her freedom of movement as a worker. Even though the Court ruled that knowledge of the Irish language was justified criteria in view of the specific functions that Groener would have had to comply with in her employment, it also established specific principles for a restrictive application of the derogation provided for in the regulation. For the Court, the derogation is justified only if the specific measure is part of a “general policy of the State aimed at enhancing the use of a particular national language”.

3. CHARACTERISTICS OF THE EUROPEAN UNION’S ADVANCING COMPETENCES IN HIGHER EDUCATION WITHIN AND OUTSIDE ITS BORDERS

From the framework of Community legislation examined so far, it is clear that, at the end of the 1980s, education could no longer be considered unrelated to the field of application of Community law, even though there was still no explicit competence in this area. With the Treaty of Maastricht, education was formally recognized as being part of primary law, so that recourse to the clause of subsidiary powers would no longer be necessary to justify Union action in this area. This aspect had a significant influence on the approval of Community initiatives and programs, as well as on the encouragement of cooperation between Member States. From Maastricht

onwards, particular significance was also awarded to the citizenship of the Union and the new connotation of the process of European integration, which stands today. The ideas stemming from such connotation saw a Union based on the rule of law in which democratic, social, and cultural values play a central role, and in which the “European Union citizen” is recognized a renewed position of importance also with respect to the enjoyment of rights not strictly linked to the exercise of an economic freedom but having a more political character. With regard to education, this concept was formalized in art. 3, stating that the Union should contribute to “quality education and training”, and in articles 126 and 127, dealing respectively with education and vocational training.⁴¹ The focal points of art. 126 include the Community’s growing role in promoting cooperation between Member States, encouraging mobility and exchanges, and the pledge to support, supplement, and harmonize, if deemed necessary, action in the educational realm. Furthermore, under the co-decision procedure involving the European Economic and Social Council (EESC) and the Committee of the Regions (CoR), the Council could adopt incentives in order to spur Members. In regard to vocational training, art. 127 explicitly provides for Community competence to implement a joint policy on vocational training, aimed at reinforcing and complementing actions of the Members. In order to implement vocational training policy, the Council could approve measures under the cooperation procedure, after consulting the Economic and Social Council. The distinction between the two procedures of articles 126 and 127 of the Maastricht Treaty was overcome by the Treaty of Amsterdam, which provided legal basis for the application of the co-decision procedure in both cases. An important change relating to art. 126 was the

⁴¹ Art. 126 of the Maastricht Treaty states as follows: “(1) The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. (2) Community action shall be aimed at: (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States, (b) encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study, (c) promoting cooperation between educational establishments, (d) developing exchanges of information and experience on issues common to the education systems of the Member States, (e) encouraging the development of youth exchanges and of exchanges of socioeducational instructors, (f) encouraging the development of distance education. (3) The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe. (4) In order to contribute to the achievement of the objectives referred to in this Article, the Council: (a) acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States, (b) acting by a qualified majority on a proposal from the Commission, shall adopt recommendations”.

exclusion of the Council's possibility to adopt measures for the "harmonization of the laws and regulations of the Member States", yet they could adopt recommendations on the Commission's initiative. It seems clear in art. 126 that the Community's role has an effect only in supporting and supplementing national action, even where the Community had an active role in contributing to the development and quality education within the Union, its competence remained one of support. The law indicated the aims of Community action, which included the development of "the European dimension of education, particularly through the learning and dissemination of the languages of the Member States"; the promotion of "cooperation between learning institutions"; the development of "exchanges of information and experience on common problems of the educational systems of the Member States". Community action was also to be directed at "fostering the mobility of students and teachers, by promoting, among other things, the academic recognition of diplomas and periods of study", as well as "exchanges of young people and leaders of socio-educational activities". Finally, the provision recalled the objective of "encouraging the development of distance education". The clearly defined limits to Community competence definitely influenced its action in the educational sphere, for example through incentive measures and forms of cooperation which went well beyond the borders of the Union and beyond its policies and regulations, for example in the Community involvement in the Bologna Process and the EHEA.

After the Treaties were redefined for the last time in Lisbon, education fell under art. 6 TFEU, which lists the Union's supporting competences, and which is discussed in the first chapter of this research. The Lisbon Treaty adds that all Union action, when directed towards the adoption of regulatory acts, must be exercised in compliance with the principles of subsidiarity and proportionality. The specific provisions relating to education and vocational training are articles 165 and 166, falling under Title XII of the Treaty on the Functioning of the European Union, denominated "Education, Vocational Training, Youth and Sport" under Part III, "Union Policies and Internal Actions". The provision relating to education policy, therefore, is no longer part of the title also dedicated to social policy, but assumes autonomy within the framework of a new vision that considers lifelong education and training as fundamental elements for the development of the person and not just policies characterized by employment objectives.⁴² The Lisbon Treaty did not changed

⁴² Art. 165 TFEU states as follows: "(1) The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the

the wording of the regulation regarding European education policy, apart from a new reference to sport at the end of the provision, but has reorganized its systematic position. The current relevance attributed to education as an essential factor for the affirmation of European identity is also reflected in art. 9 TFEU which aims “to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health”. Furthermore, the Charter on the Fundamental Rights of the European Union includes an article concerning the right to education and lifelong learning, applying strictly to European Union law and thus remaining within the scope and powers set out in the Treaties.⁴³ The action of the Union in this area, therefore, is essentially developed through forms of support and coordination of national policies, rendering the Erasmus program and the Union’s commitment within the Bologna process the main instruments that have concretely allowed the implementation of this action.

Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. [...] (2) Union action shall be aimed at: (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States, (b) encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study, (c) promoting cooperation between educational establishments, (d) developing exchanges of information and experience on issues common to the education systems of the Member States, (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe, (f) encouraging the development of distance education, (g) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen. (3) The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe. (4) In order to contribute to the achievement of the objectives referred to in this Article: (a) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States, (b) the Council, on a proposal from the Commission, shall adopt recommendations”.

⁴³ Art. 14 Charter of Fundamental Rights states as follows: “(1) Everyone has the right to education and to have access to vocational and continuing training. (2) This right includes the possibility to receive free compulsory education. (3) The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right”.

3.1 THE ERASMUS PROGRAM

As discussed, the first steps toward the achievement of a joint Community policy in the educational sphere dates to 1976, when the Council of Ministers met to establish means through which national educational systems cooperated with each other to create coordinated programs among themselves. In the context of this form of cooperation, the first logical step was to entrust the European Commission to coordinate and promote shared courses of study between universities and higher education institutions. The first program to be approved was called the Scheme of Grants for the Development of Joint Study Programmes (JSP), operative in the decade between 1977 and 1987. Because the mobility scheme evoked the figure of Erasmus of Rotterdam (European Region Action Scheme for the Mobility of University Students), the project later on came to include a series of initiatives with different nature but the same scope, come to be known under the name Erasmus and subsequently Erasmus+. The goal of the Erasmus program was to strengthen student mobility, based on the principle of mutual recognition which was finally established in the 1980s. In order for the Erasmus program to be effective, mutual recognition of titles was essential for students to be able to study abroad for a given period of time and consider exams and titles obtained abroad to be valid in their university of reference. The underlying competence of mutual recognition lay inevitably within the sphere of national competence of Member States, intertwining their competence with Community competence in higher education. However, while the Erasmus program was a clear political move within the project of a Citizens' Europe, the latter issue raised the problem of identifying the appropriate legal basis for its establishment within Community competence. The Commission claimed the basis was to be found in art. 128 TEC and Decision 63/266/EEC, whereas the Council added that the basis

should also be found in art. 235 TEC.^{44,45} The dispute resulted in Case 242/87, brought before the European Court of Justice in 1989.⁴⁶ The Court rejected the Commission's appeal, yet the grounds behind the judgement of the Court found a substantial overlap in the Commission's position in relation to the extent of the Community's powers in the field of professional training; consequently, further normative support of art. 235 TCEE was considered legitimate because the Court believed that inter-university cooperation also included aspects inherent to research not covered by art. 128.

The Erasmus "Community Action Program" was officially established with Decision 87/327, providing for a series of actions to be implemented by the Commission, highlighting its role in strengthening competitiveness in the labor market by developing and merging intellectual resources across Member States' universities and higher education institutions, in order to "ensure the highest possible levels of training". The Decision laid out the definition for the word "university", to be regarded as universal across States in which the program was applied, describing it as any "post-secondary education and training establishments which offer, where appropriate within the

⁴⁴ Art. 128 TEC states as follows: "(1) The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission. (2) On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 150, shall each year draw up guidelines which the Member States shall take into account in their employment policies. [...] (3) Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2. (4) The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States. (5) On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment". Art. 235 TEC, now art. 308 TEU, states as follows: "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures".

⁴⁵ Decision 63/266/EEC concerns "laying down the principles for implementing a common vocational training policy".

⁴⁶ Case 242/87, *Commission of the European Communities v Council of the European Communities*: "European Community action scheme for the mobility of university students (Erasmus) - Action for annulment - Legal basis - Vocational training". The Commission brought the Council before the ECJ requesting the annulment of Decision 87/327/EEC. *ma come detto non si citano così...*

framework of advanced training, qualifications or diplomas of that level, whatever such establishments may be called in the Member States”, therefore regardless of its name within its respective national context. The goal behind Erasmus was to create a network which made it possible to increase student and teacher mobility, while at the same time consolidating other forms of inter-university cooperation throughout the European Union; because of the nature of the process, action brought about by Member States was of the utmost importance. The actions delineated in Decision 87/327 reflected these objectives, covering aspects related to mobility, strengthening cooperation in order to enhance intellectual resources and potential, improve the quality of education and training across the board, ensure competitiveness of the Union, and promoting integration by ensuring the Community gained and “appropriate group of persons with direct experience of the economic and social life of other Member States”. The latter tied in with the idea of creating a Citizens’ Europe by uniting and consolidating relations between different Members. For the purpose of achieving the objectives, Decision 87/237 set out four specific actions listed in an explicit annex. The first one concerns the launch and operation of a “European University Network”, designed to promote student exchanges through forms of cooperation between higher education institutions; it included the delineation of the principle of mutual recognition by giving students the possibility to follow recognized study courses in a university outside of their own Member States, that would become an integral part of the title or academic qualification awarded by the university of origin. While this type of process resembles the process of qualification recognition discussed in the previous chapter around the Bologna Process, the recognition of singular courses is only a part of the broader, more complex project. This objective remains relevant today, highlighted in the EU’s current agenda for higher education and reflected in the continued will to conclude inter-university agreements within Erasmus+ and the persistent goal of promoting mobility of students, teachers, and university staff. While the type of agreement between higher education institutions follow a uniform model set out by the EU, universities are free to autonomously choose the partners with which to stipulate such agreements, often based upon common research interests between universities. Such basis stems from the fact that, within the aforementioned model, agreements are required to specify the disciplinary area of reference in which the exchange is configured, as well as indicating an academic coordinator for each higher education institution. In the management and implementation of the agreements, both the autonomy and the inevitable organizational differences of each university, even within the same state, come into play; in this context, what emerges is that the actors holding the

power to stipulate agreements are not, in fact, the Member States themselves, but the higher education institutions which participate in the program in first person, and which receive the allocated funds by the European Union for the implementation of such programs. Member States have to fulfill the obligation of permitting such agreements and the implementation of such programs, yet do not *de facto* hold the capacity to regulate them. Mobility remains the main subject of inter-university cooperation, serving as a valuable foundation for the expansion of a European identity through the spearing of knowledge beyond national borders through student mobility and mainly teacher mobility, as professors hold lectures in universities across countries. Mobility allows for the creation of the aforementioned European University Network and the creation of integrated study programs in order to guarantee possibilities to study abroad, all the while respecting the autonomy and individuality of each student and university by ensuring recognition.

The second action within the annex to Decision 87/327 veered on the economic aspects incurred by students participating in exchange programs. First and foremost, the Community awarded scholarships for students in order to broaden the context in which Erasmus could be applied and spread. Such scholarships were of a direct nature, from the Community to the students, with a duration of three, six, or twelve months, and had to be managed by competent national authorities on the basis of criteria set out at Community level.⁴⁷ The distribution of the total amount of the grants between Member States was to be decided by considering the number of students within each state. Given the priority objective of the program, the granting of the scholarship was (and continues to be) subject to the full recognition in the university of origin of the period of study carried out in the host partner university. However, the incentive of such scholarships was not enough to ensure the inclusiveness of the program to all students; the Community responded to this need by specifying that all living expenses which students received in their home should also be provided during their period of study abroad. In regard to tuition fees, Action 2 describes the obligation to allow Erasmus students to attend courses without charging a tuition fee, as the tuition fee paid to the university of origin would be sufficient to the purpose of the exchange; a clear manifestation of the inter-university cooperation that the program aims to promote. The third and fourth actions set out in Directive 87/327 were aimed at the long-term implementation of student mobility and the establishment of complementary measures to promote mobility respectively. The former regarded the creation

⁴⁷ For further reference, please see Decision 87/327, Annex I, Action 2.

of the ECTS and the recognition mechanisms set out as part of the Bologna Process, whereas the latter included financial aid for short-term intensive programs involving students from different Member States, for associations of universities in order to publicize the program, and for publications aimed at raising awareness of opportunities which students and teachers could take advantage of.

After the entry into force of the Maastricht Treaty, which as mentioned introduced a legal basis for educational competence attributed to the Union, the legitimacy of Community action in this field was strengthened, although the choice of the legal basis created an issue based on articles 126 and 127 of the Treaty of the European Community (TEC), respectively co-decision and cooperation. The issue around these two articles created the need to define the sphere concerning education or vocational training, and where Community action was most appropriate and most needed. The problem was pragmatically avoided by including both legal bases in the relevant acts. It should be noted that all the decisions that followed over time to give continuity to the program contained, in a single act, several incentive measures, including those relating to vocational training. As of 1995, Erasmus was included in the broader Socrates program and, later, in the Lifelong Learning Program (LLP). In this way, it was not necessary to deal with the problem of drawing a distinction between the notions of education and professional training, also in view of the fact that case law had blurred their respective boundaries. The legal basis on research, on the other hand, remained extraneous to the Erasmus program and to the broader programs that included it, and it did in Court judgments even after Case 242/87. Ultimately, Decision 87/327 had a much broader purpose than merely encouraging student mobility, and the Erasmus program proved to be an excellent tool to foster inter-university cooperation within the Community, laying the foundation for a system that is still in place and has fostered the cooperation for which it was created.

3.1.1 RECENT DEVELOPMENTS IN ERASMUS+, WITH SPECIFIC REFERENCE TO THE RESPONSE TO THE COVID-19 PANDEMIC

The proposal for the latest completed Erasmus+, which period ranged from 2014 to 2020, was proposed by the European Commission at the end of

2011 and was approved in 2013 with Regulation 1288/2013.⁴⁸ Growing from the experiences acquired over the years, both within Erasmus and through other mobility programs in the fields of education and vocational training, the Erasmus+ 2014-2020 program included a series of new elements geared towards improving the efficacy of incentive measures. The program came to encompass different areas hitherto divided into different funding instruments, such as the Lifelong Learning Program and Erasmus Mundus, uniting them into a single proposal for the educational sector, with a legal basis within articles 165 and 166 TFEU. Such legal basis reiterates the Union's competences strictly related to completion, support, and coordination, in this case especially competences include encouraging and coordinating Member State activity towards implementing national policies. The program's central management is entrusted to the European Commission, specifically its Education, Audiovisual and Culture Executive Agency (EACEA), which is assigned the responsibility of defining objectives, priorities, and criteria, as well as the main budget, as set out within Regulation 1288/2013. The Commission has exclusive competence to implement the centralized actions of the program, but in practice its implementation is essentially decentralized as national bodies carry out the relevant activities in conformity with the principle of subsidiarity and art. 6 TFEU. Specifically, the Erasmus+ program is articulated through three different actions, the first of which concerns mobility, the second focuses on innovation and exchange of good practices, and the third and final action concerns support for policy reforms. The former concerns individual mobility first and foremost, including students, teachers, trainees, volunteers, educational staff, and youth workers; it subsequently concerns joint Master-level degrees, under the Erasmus Mundus umbrella, and finally allows for the financing of loans intended for master studies. Since the dedicated EU body, as seen above, came to include sports, various activities are also envisioned within the program surrounding sports, as well as the so-called Jean Monnet activities with the aim to disseminate and deepen the knowledge around the Union itself.⁴⁹ The objectives delineated within the Erasmus+ program are coherent with broader EU objectives and strategies, once again aiming to strengthen European cooperation. In order to achieve the goals to ensure recognition and validation of skills and competences across state borders within the broader context of improving European cooperation, Erasmus+ provides a significant tool in the field of education and has influenced in turn a series of other initiatives: in this context, the ECTS system is worth mentioning due to its effects relating

⁴⁸ "Regulation of the European Parliament and of the Council establishing Erasmus+: the Union programme for education, training, youth and sport".

⁴⁹ Such activities envision a subsequent implementation within secondary education.

to diploma recognition, as is the EQF for professional recognition. The European Qualifications Framework was in fact established through a 2008 recommendation, later replaced in 2017.⁵⁰ The external dimension of the Erasmus+ program has as its main objective the encouragement of the internationalization of education and the use of digital learning, not only in the higher education sector, but also in the youth sector. Furthermore, Erasmus+ came to include countries outside the EU, with the aim of promoting multilingualism, improving European action in the field of youth, as well as promoting the EU founding values; it could be argued that the EU aims to advance its foreign policy through synergies stemming from Erasmus+ initiatives. In the potential involvement of non-EU countries, the modalities for participation in fundable projects differ depending on the country in question: the Union made a distinction between Program Countries and Partner Countries in order to classify and differentiate between which country was open to which action. The former concerns countries that can submit an application within any circumstance, including all Member States as well as the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway, and Turkey. On the other hand, Partner Countries can only be involved within a specific number of actions and on the condition that they respect the founding EU values set out in art. 2 TEU.⁵¹ In turn, Partner Countries are further divided between four regions which border EU Member States and nine regions which are further away, mostly subdivided into categories according to the geographical region to which they belong and sometimes subdivided according to yet other categories.⁵²

⁵⁰ Recommendation 2017/C/189/03 “on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning”.

⁵¹ “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. The EU is also bound by the European Charter of Fundamental Rights and is committed to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is worth mentioning the fundamental values of the European Union because, as the wording suggests, they determine the existence and the workings of the Union. In order to be admitted within the EU as a Member State, respecting and implementing such values within a national framework is paramount to accession.

⁵² Neighboring groups of Partner Countries include: the Western Balkans, Eastern partnership countries, South-Mediterranean countries, and the Russian Federation. Other Partner Countries are divided in the following categories: Region 5 (which includes small states such as San Marino, Andorra, Monaco, and the Vatican City), Asia, Central Asia, Latin America, Region 9 (Iran, Iraq, Yemen), Region 10 (South Africa), ACP, Industrialized Countries/Gulf Cooperation Countries, Other Industrialized Countries, and Region 14 (Faroe Islands, Switzerland).

To this day, Erasmus+ is considered among the most successful programs within the framework of the European Union, officially evaluated in a 2018 report by the European Commission on Regulation 1288/2013, and offhandedly considered so among public opinion. The reasons behind its success reside mainly in its result of having fostered mobility of as many of nine million people, allowing them to enhance both personal and professional skills, for having stimulated cooperation between actors in the educational sphere, not only within Union borders but also with partner countries.⁵³ The program has thus promoted in a concrete and effective way the objectives of the European dimension of education. The challenges which the program now faces in order to improve and increase its positive effects relate to its financial availability, which it needs to increase in order to be yet more effective towards inclusion and accessibility of the program. In relation to the international dimension, the intention is to promote institutional reforms in the education systems of non-EU partners, spreading the principles established in the context of the Bologna Process and supported by the EU itself, essentially through cooperation projects. The current scheme behind Erasmus+ for the period ranging from 2021 to 2027 reiterates the overall objective to support the educational, professional, and personal development of individuals in the fields of education, training, youth, and sport, contributing to sustainable growth, employment, and social cohesion, all the while strengthening the European identity. Key issues such as social inclusion, environmental sustainability, the digital transition, and the promotion of participation in democratic life among younger generations take a central role. For this period, Erasmus+ has a budget of €28.4 billion; an amount that has almost doubled compared to the 2014-2020 period. Over the 2021-2027 timeframe, the program will focus on promoting innovation in education, providing schools with more opportunities for students in disadvantaged areas, promoting innovation in curriculum design, learning and teaching practices, and particular focus on green and digital skills.

In the face of the Covid-19 pandemic, the European Commission issued provisions useful for ongoing projects to ensure the implementation of the program notwithstanding social distancing restrictions and the reduction of international mobility. For example, mobility activities shifted to a virtual mode, through distance learning activities organized by hosting higher education institutions, which are envisioned to be combined with a physical mobility component once emergency protocol softens. The Commission

⁵³ All countries participating in the Erasmus+ program are full members in the Bologna process.

specifically requested that all activity carried out in digital form must be fully recognized within the ECTS framework, confirming the continuity of the program and the joint effort to pursue and advance its goals.

3.2 EUROPEAN COOPERATION THROUGH THE BOLOGNA PROCESS: BENEFITS AND DRAWBACKS OF ADVANCING POLICY OBJECTIVES OUTSIDE THE EU FRAMEWORK

Community action in the field of education has been and continues to be developed in a broader context than purely within the Union, as we have seen. The Bologna process has certainly heightened European cooperation in the educational field, providing a decisive impulse to the integration process, principally through the establishment of the EHEA. As seen in the previous chapter, the Bologna Declaration and the process which followed emphasized the need to progressively and steadily promote cooperation in order to achieve the objective of “increasing international competitiveness of the European higher education system [through a series of structural reforms of universities and other higher education institutions that foster] greater compatibility and comparability of higher education systems”. Greater transparency of courses of study, a common system for the recognition of credits and shared criteria for evaluation and quality assurance would, and have been, encourage student mobility and the recognition of degrees. Competitiveness and attractiveness of the system is at the forefront of the objectives within the Process, the main actions including a common and comparable qualifications framework and international promotion of the initiatives. As mentioned in numerous occasions across this chapter and the previous one, mobility was and still is a predominant priority within the EHEA, concerning similar if not equal aims than the Erasmus program just discussed. In order to achieve these objectives, it was considered necessary to have the cooperation of the institutions involved while respecting the different competences, different cultures, different languages, and different traditions. The advantages linked to the Bologna process configure it outside of the European Union, therefore outside the limits of competences set out in the Treaties and open to a collaboration with countries outside the European framework in addition to EU Member States. In fact, from the initial phase of its establishment, the EHEA now includes 48 countries and some subjects with consultative membership status, such as the Council of Europe. The European Union is actively involved in the Bologna

process, not only through the action of the Member States but also through the direct involvement of the European Commission. The objectives that need to be progressively achieved for the consolidation of the EHEA are outlined in the Ministerial Conferences that are held every two to three years, as seen in the previous chapter, recognizing that this form of cooperation has to be linked to a legal instrument of international law, especially when including countries that are not members of the EU or of the Council of Europe. The process of reform of education systems includes the commitment of States to establish their own national qualifications framework for higher education, the so-called national qualifications framework (NQF), which must be divided into three cycles of study. For each cycle there is a duration and a number of training credits. The organization of studies in cycles provides specific learning outcomes, defined by the Dublin descriptors that were developed by a group of experts following the Ministerial Conference in Prague in 2001. These descriptors refer to the outcomes that students should achieve after successfully completing each cycle of studies. Each Member to the Process has aligned its educational goals in line with those of the EHEA, strengthened within EU Member States because of the Union's firsthand adoption of such objectives. The full involvement of the Union makes it possible to optimize the results of the reform process and serves to advance the operation of the EU's own mobility programs, such as Erasmus+ seen above, for example through the ECTS system which is also implemented in the latter. In order to strengthen the synergies between Bologna and European Union policy, the institutions have invited the Member States to enter into dialogue with universities, precisely in order to implement the appropriate tools to achieve the main objectives identified within the European Higher Education Area. In particular, the direct involvement of universities is essential to promote international mobility, the internationalization of curricula, digital learning, and strategic cooperation. The synergies between the two systems are thus evident: not only are the policies promoted by the Union and the Member States an element of stimulus and the exchange of ideas within the Bologna Process, but the positions developed and the results achieved in this context are implemented within the EU clearly by its institutions, its Members, and the universities in accordance with their different competencies.

The European dimension of higher education has been progressively established within the Union and its current prospects through the Bologna Process. From the turn of the century, the EU has progressively recognized the importance of education both in terms of insertion within the labor market and in the development of lifelong skills throughout the job. Since the 1990s,

lifelong education and training have been perceived as investments in human capital, seen not only as instrumental to employment objectives but also in relation to human personal development. The key principles of this approach are then developed in the European strategies aimed at making the Union a smart, sustainable, and inclusive knowledge-based economy. In order to achieve the objective of the knowledge economy, a series of measures have been put in place concerning the education sector that have required, in addition to the commitment of the institutions, the involvement of Member States. In this perspective, higher education policy has developed over the years through a wide-ranging and constant production of soft law acts.⁵⁴ In particular, the open method of coordination has been affirmed, which favors exchanges of information and best practices by directly involving the many stakeholders. The European Commission plays a fundamental role in this context through the continuous support offered both through the development of documents and European reference frameworks, functional to increasing mobility through the comparison of different skills, and with the financial support provided through sector programs. The Union's action thus has the function of supporting and complementing that of the Member States, which remain primarily responsible for the organization and operation of higher education, as well as the main financial backers. The priorities and orientations of the European institutions are set forth in numerous pieces of soft law on the modernization and internationalization of European education approved in recent years by both the Council and the Commission. In particular, within the recently concluded Education & Training 2020 strategic framework, the need was expressed to modernize higher education, to promote policies and strategies aimed at strengthening the so-called "knowledge triangle" formed by education, research, and innovation, and to open up to internationalization. At the present time, the European Union intends to consolidate the results achieved in recent years and further promote cooperation between Member States in order to improve the qualifications of citizens. The European Commission has often mentioned that higher education has "a duty to ensure that content keeps up with the times", mentioning the need to overcome persistent obstacles such as skills imbalances and skills mismatching. In order to counter such obstacles, the EU calls upon its Members to adopt a series of internal measures involving universities and higher education institutions, which hold

⁵⁴ The open method of coordination is an intergovernmental policy-making approach that does not result in the introduction or modification of EU laws through binding legislative actions at EU level; it is a voluntary cooperation-based, intergovernmental governance instrument in the European Union, which depends on mechanisms of soft law such as guidelines and indicators, benchmarking, and best practice sharing. No formal consequences are imposed on countries which lag behind, rather the efficacy of the approach is based on peer pressure.

an essential role in the process: not only are they called upon to implement the new rules that are gradually being formed in this sector, but through their cooperation they actively participate in the entire process of transformation of the European higher education system.

The overlap between the EU agenda and the Bologna Process can be seen in meetings of the European Council and the Council of the EU Ministers for Education. For example, former President of the European Council Donald Tusk, dedicated his first Summit meeting with education and culture as main topics, in which the Council and the Commission both committed to promote cooperation within their respective spheres of influence and competence. The issue remains on the EU agenda, highlighted by Member States and Union institutions alike, both of which are continuing to strive towards a common European space of higher education. The most important initiatives, contemplated in the new higher education agenda, stand in synergy with the other instruments developed in the context of the new competency agenda in order to foster employment and promote the mobility of young people and professionals. In the EU's recent strategy, the European dimension of higher education is a key factor in promoting economic recovery, overcoming employment difficulties, and contributing to policies aimed at combating social inequality. The role attributed to education goes beyond this: education has a fundamental social and cultural function in addressing the current serious problems related to the loss of values and the consequent and worrying resurgence of phenomena such as populism, racism and radicalization, as well as the pressing pandemic. The European dimension of education, which through cooperation and mobility of citizens fosters dialogue between peoples, thus becomes an essential factor in promoting the founding values of the Union set out in art. 2 TEU.

4. HARNESSING HIGHER EDUCATION AS A MEANS FOR ADVANCING EU FOREIGN POLICY PRIORITIES

An interesting point of view regarding educational competence within the European Community lies in the idea that the Union is endowed with external competences in a general sense, which can be said to incorporate the educational sphere. With the opening of the Bologna Process to countries outside the European Union, as it does not constitute a Community action in the strict sense, the EHEA enters into the external dimension and is included in the EU's global strategy and globalization toolkit. It can be argued that the

Bologna Process is used at EU level as a tool to advance the community's foreign policy through a global higher education. To support this claim, art. 149 explicitly provides that "the Community and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education", which ties in with the EU aim set out in the Lisbon Strategy to make the Union "the most competitive and dynamic knowledge-based economy in the world". Despite the extra-European, inter-governmental nature of the Bologna Process, it is undeniable that most leading countries of the Process are indeed European Union Member States, and it is likewise clear how the European Commission, even as an observer, has gradually taken a leadership role within the Ministerial conferences by strongly influencing meetings' agendas and coordinating the implementation of decided measures into the European framework. Economic reasonings behind EU involvement in the Bologna Process and in overall deliberations around higher education have been thoroughly considered through the significance of mobility of students, professionals in the educational field, and their subsequent movement within the labor market; the relationship between mobility, spreading resources, increasing integration and competitiveness, and promoting the knowledge economy through the correlation between higher education in the labor market is clear. It is also interesting to note how the EU extended geopolitical motivations within its action towards higher education: the Bologna Process serves also as a means for the EU to expand its influence to countries which are not Member States, but which ascertain its leadership role within the Process. Higher education appears like an international regime lead by the EU, where leadership itself represents the advancement of foreign policy interests and the expansion of a global role. Moscovitz and Zahavi argue that reforms concerning higher education are rooted in the Union's foreign policy agenda towards asserting the Community's international attractiveness and appeal; while higher education remains a national competence, it is also seen as essential to the efforts of the Community itself. In practice, Bologna's international expansion joined the protagonists of the process after the Ministerial conference in Bergen in 2005, when the external dimension of the EHEA was stressed and various global-oriented initiatives started to take the floor, such as the Bologna Policy Forum which extended conversations surrounding the Process beyond Bologna members, in addition to bringing forward the goal of increasing the attractiveness of the EHEA (and consequently of the EU). Through the legitimization and consolidation of higher education reforms, Bologna's external and internal effectiveness mutually enhance each other. As the European Union gains international impact, it allows for the transfer of its policies and institutional grounds at a broader global level,

surpassing its influence on Member States and neighboring countries. It is relevant to note that such influence does not directly translate into policy changes from the European Union to non-member countries, yet it can be argued that the Community is able to silently guide the structure of international objectives through its leadership and attractiveness, through the global transmission of norms, ideas, and agendas. In fact, EU external influence is associated with the ability to stimulate actors beyond its Member States and bring forward its goals in the global environment and to act externally on behalf of the Union.⁵⁵

⁵⁵ ASDERAKI (2019), *Researching the European Higher Education Area external effectiveness: regime complexity and interplay*, in *European Journal of Higher Education*, Vol. 9, no. 1, pp. 40-57.

CONCLUSIONS

The ideal behind the European Union was born with the Schuman Declaration on 9 May 1950, searching for cooperation between States to promote peace and prosperity. It was born after the scourge of the first and second world wars and began with the establishment of the European Coal and Steel Community (ECSC) in order to separate and legislate over the two principal goods needed to build weapons. The initial objectives behind the process of European integration were clearly linked to the devastation left behind by the wars, yet throughout its young life the European Community has grown into a much larger phenomenon that perhaps was envisaged by its founding fathers. Throughout the years, beginning from the shift from the European Coal and Steel Community to the European Economic Community to the European Union, Member States have broadened not only its borders to include an additional number of participants, but have broadened ideological horizons, objectives, and measures for cooperation. While the economic evolution of European integration is apparent, evolution on other fronts has been better hidden, yet by no means slower or less prevalent, although it can be argued that the motivation behind other priorities remains an economic one. In this context, education is configured as an element which has undergone and is undergoing a great scale of evolution within the European Union, within and outside its borders yet always under its leadership. The focus on education stems from the EU's desire to grow into an advanced knowledge economy, thus bringing attention back towards the economic point of reference. However, the interesting analysis described in the present dissertation relies on the EU's jurisprudence, on the advancement of soft law, and on the ability to advance social competences by justifying them with economic objectives.

The research outlined above has observed precisely the "hidden" evolution of EU involvement in the field of education, analyzing the shifts in its competences, its policies, its engrossment and commitment to higher education specifically. The research begins with an observation of the normative context in which the European Union falls, responding to international law, European law, the law of international organizations, but also national law. The analysis of the EU's nature as a unique supranational organization renders it necessary for studies around its competences to consider overarching and interlacing principles, both due to the structure of the Union itself, and due to the singular configuration of European law within the normative context previously mentioned. In particular in the field of education, borders are quite thin when relating to EU competence, precisely because of the overlap the

educational sphere has with the labor market, thus productivity and the internal market. The intersection between education, a supporting competence as defined by the founding treaties, and the main objective of the Union to create a prosperous economic integration process make it possible for EU institutions to weave their way into the educational realm, especially in regard to higher education which is inevitably closely linked to the research and labor spheres. While the Treaties expressly prohibit European institutions from producing hard law in an area outside its exclusive or shared competences, the existence and expansion of soft law has made it possible throughout the years to influence national legislation and national policies to match European objectives. Furthermore, the EU has been able to assert its leadership position even outside its borders and outside its competence within the intergovernmental Bologna Process, in which Member States exercise complete sovereignty. Through this leadership position, the Union has been able to influence the harmonization and homogenization of higher education across its Member States and beyond its confines.

It can be argued, and it has been discussed in the chapters above, that the European Union has gradually assessed its competence in the field of education by advantageously making use of a plurality of instruments. It advanced supranational policies based on national objectives set out within intergovernmental processes through Bologna, understanding and influencing its Member States' needs and goals and providing a toolkit for them to pursue such goals in a common framework; it set out institutionalized programs across the Union, such as Erasmus+, by linking the educational sphere to its internal market and development objectives and creating one of the most successful EU projects yet; it took advantage of internal jurisprudence by enhancing mobility in education through the promotion of one of the Union's fundamental freedoms, linking freedom of movement to education as well and thus creating practice within its case law. Soft law is generally seen as less efficient than hard law, as is reflected in its wording alone, yet the European Union proved that soft law, being more malleable and flexible, can create standards across different policy fields that inevitably create rules which seem informal but which have significant bearing on national law, which influence national policies, and which thus produce preponderant and lasting legislative change.

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EXECUTIVE SUMMARY

Gli ideali racchiusi all'interno dell'Unione europea (Ue) e rappresentati nel corso della sua evoluzione nascono dalla Dichiarazione di Schuman del 9 maggio 1950, a seguito delle guerre mondiali e della disastrosa instabilità geopolitica della prima metà del ventesimo secolo. Precisamente, il processo di integrazione europea nasce con la creazione della Comunità europea del carbone e dell'acciaio, con l'obiettivo economico-politico di differenziare il mercato dei beni maggiormente coinvolti nella creazione di armi, chiaramente legando il processo alla devastazione delle guerre e trovando una soluzione di natura economica a quello che negli anni divenne un processo basato indubbiamente sull'economia, ma che ha incorporato diritti umani, integrazione e collaborazione estesa alla società come insieme. In questo contesto, quello della globalizzazione e delle potenze ed economie globali, l'Unione europea si configura all'avanguardia della leadership internazionale, e mentre l'evoluzione di natura economica rimane evidente, l'evoluzione dell'integrazione europea su fronti definibili "sociali" rimane maggiormente nascosta, quasi di sottofondo nonostante la sua critica rilevanza. La presente ricerca vuole evidenziare come l'evoluzione delle competenze europee in materia di istruzione superiore sia la dimostrazione della potenza dello sviluppo della dimensione sociale dell'Europa, e come sia caratterizzata da elementi politici ed economici spesso sottovalutati. La tesi sopra esposta ha infatti osservato precisamente l'evoluzione "nascosta" del coinvolgimento dell'Ue nel campo dell'educazione, analizzando gli spostamenti delle sue competenze, l'ampiamiento delle sue politiche e il suo coinvolgimento e impegno nel campo dell'istruzione superiore.

In tale contesto, con il termine "istruzione superiore" si intende l'istruzione post-secondaria, ovvero istruzione di terzo livello nei casi in cui il percorso di studi porti al riconoscimento di un diploma di laurea. L'istruzione superiore discussa nella presente ricerca si riferisce all'istruzione formale, cioè ai programmi educativi che sono ufficialmente riconosciuti e spesso istituzionalizzati all'interno del sistema educativo di un paese. La formazione professionale e l'apprendimento permanente, il cosiddetto *lifelong learning*, sono altresì menzionati nella ricerca allo scopo di analizzare e comprendere l'azione legislativa dell'Unione europea e dei paesi membri del Processo di Bologna. L'istruzione superiore è tipicamente fornita attraverso le università; tali istituzioni si diversificano per i programmi, i finanziamenti, i fornitori e i clienti, dove per ottenere la medesima qualifica entrando in gioco

variabili quali i curricula e la durata del percorso. L'indipendenza di tali istituzioni ha permesso la creazione di barriere al riconoscimento di lauree e diplomi attraverso confini nazionali in termini di contenuto e qualità, limitando il movimento di studenti e personale scolastico. Purtroppo, tali barriere creano ostacolo ai processi di globalizzazione all'avanguardia dell'integrazione europea. Il Processo di Bologna è dunque un tentativo di creare una struttura unificata attraverso la quale il riconoscimento dei titoli di laurea diventa uno strumento piuttosto che una barriera verso la promozione dell'integrazione e della libera circolazione. Oggi, il Processo di Bologna si distingue come un pilastro del cambiamento dell'istruzione superiore, avendo generato una reazione a catena di riforme a livello nazionale nell'istruzione che hanno a loro volta promosso la competitività e l'attrattiva dell'istruzione superiore europea.

Partendo dall'osservazione del contesto normativo in cui si colloca l'Unione europea, risulta evidente quanto risponda a elementi complessi quali il diritto internazionale, il diritto europeo, il diritto delle organizzazioni internazionali, senza trascurare il diritto nazionale proprio degli stati membri dell'Ue. L'analisi della natura dell'Ue come organizzazione sovranazionale *sui generis* rende necessario che gli studi circa le sue competenze considerano i principi generali e interconnessi, sia per la struttura stessa dell'Unione, sia per la singolare configurazione del diritto europeo nel contesto normativo precedentemente menzionato. Pertanto, l'analisi dell'evoluzione delle competenze europee in materia di istruzione non può che partire dall'analisi del contesto normativo, delle fonti del diritto e delle precise competenze all'interno della struttura stessa dell'Unione e al contempo al di fuori di essa, come avviene nella dimensione intergovernativa analizzata attraverso il Processo di Bologna.

Le organizzazioni internazionali si configurano nel contesto del diritto internazionale e della soggettività internazionale, all'interno di un complesso sistema legislativo di fonti e di prassi. Le organizzazioni internazionali (OI), gli accordi internazionali e le conferenze internazionali, producono considerevoli quantità di atti di diritto secondario in un ampio spettro di fonti, di contenuti, di portata e di effetti giuridici. La diversa natura degli atti giuridici della comunità internazionale ha richiesto l'elaborazione di una dottrina di classificazione, in quanto ha posto e continua a porre sfide alla comunità giuridica su innumerevoli fronti, compreso quello delle competenze europee. Il criterio per definire e classificare gli atti delle organizzazioni internazionali comincia con l'estrometterli dal contesto del diritto internazionale, nonostante

l'aggiunta della dottrina immette poco a quanto previsto dal diritto internazionale di per sé; la differenza principale risiede nella legittimazione del diritto. Infatti, mentre il diritto internazionale è l'espressione della sovranità statale, il diritto delle organizzazioni internazionali è un derivato di poteri conferiti, di attribuzione di competenza da parte degli stessi stati sovrani. Le organizzazioni internazionali possono quindi produrre atti istituzionali unilaterali come definiti negli strumenti costitutivi di ogni OI, nel caso dell'Unione dal Trattato sull'Unione europea e dal Trattato sul funzionamento dell'Unione europea. Nell'ambito del diritto delle organizzazioni internazionali, l'Unione europea si configura come singolare esempio a causa del suo complesso sistema giuridico, il quale prevede un elenco di atti e le declinazioni delle loro caratteristiche, comprese le materie di intervento definite nella divisione delle competenze.

Facendo un passo indietro, risulta pertinente la menzione al principio cardine sottostante le competenze dell'Unione: il principio di conferimento, il quale definisce la legittimità delle competenze dell'Ue come attribuite, pertanto *conferite*, all'Unione da parte dei suoi Stati membri sovrani, vale a dire il principio per cui ogni Stato membro è sovrano e, precisamente, conferisce all'Unione un insieme di poteri specifici. Gli insiemi di poteri detenuti dall'Unione e dalle sue istituzioni possono essere classificati in competenze esclusive dell'Unione, competenze condivise tra l'Ue e i suoi Stati membri, e competenze di sostegno, dove l'UE svolge un ruolo residuale nel sostenere gli Stati membri se necessario o agire attraverso il coordinamento e la complementazione dei poteri degli Stati membri. A loro volta, le competenze dell'Ue sono descritte nel Trattato sul funzionamento dell'Unione europea (TFUE) negli artt. 3, 4 e 6. L'articolo 3 descrive le competenze esclusive dell'Unione, ciò significa quelle aree in cui l'Unione è unica e sola ad esercitare potere giuridico, legislativo ed esecutivo. Le aree incluse all'interno delle cosiddette competenze esclusive includono l'unione doganale, la concorrenza, la politica commerciale comune, la politica estera dell'Unione e la conservazione delle risorse biologiche marine. L'articolo 4, che invece descrive quelle competenze che l'Unione condivide con gli Stati membri, in cui quindi gli stati partecipano attivamente al processo legislativo e alle procedure di adozione di atti giuridicamente vincolanti, include il mercato interno, la coesione socioeconomica, politiche agricole ed energetiche, ricerca e sviluppo, cooperazione allo sviluppo, ambiente, protezione dei consumatori. In fine, l'articolo 6 descrive quelle competenze in cui l'Unione interviene unicamente per sostenere, coordinare o completare l'azione dei singoli Stati membri, tra cui protezione e miglioramento della salute umana, cultura, turismo, istruzione, sport,

e cooperazione amministrativa. Degno di nota è l'attenzione allo specifico lessico utilizzato negli articoli competenti, compresa la possibile traslazione tra le competenze descritte nell'uno e nell'altro articolo; ad esempio, la ricerca rientra tra le competenze condivise, mentre l'istruzione risulta una competenza di sostegno. I mondi dell'istruzione e della ricerca sono strettamente interconnessi, e la loro divisione a livello di competenze europee permette l'assottigliamento delle linee di confine tra la natura delle competenze europee e l'esercizio del suo potere. In termini generali, l'istruzione non è inclusa nei poteri trasferiti all'Unione. Purtuttavia, l'istruzione è stata colpita indirettamente attraverso altre misure in sfere di competenza condivisa o esclusiva, ad esempio l'unificazione del mercato del lavoro o il rafforzamento dello spazio europeo della ricerca, i quali richiedono che gli stati europei adottino strategie comuni per aspetti importanti dei loro sistemi di istruzione e formazione.

Gli effetti risultanti dagli atti delle organizzazioni internazionali, in questo caso l'Unione europea, possono essere confinati all'interno della stessa o possono avere applicabilità al di fuori dei confini dell'organizzazione, producendo effetti esterni. La natura degli atti internazionali delle OI può essere distinta tra atti vincolanti e non vincolanti, ma la natura dell'applicabilità varia da un'organizzazione all'altra. Nel caso dell'Unione europea nel contesto dell'istruzione superiore, la stessa definizione degli atti assume caratteristiche anomale soprattutto nel quadro del Processo di Bologna, nel quale è possibile affermare che l'Ue esercita una posizione di leadership nonostante il Processo cada al di fuori della struttura strettamente legata all'Unione. Di talché, a causa delle competenze nazionali per la progettazione dei sistemi educativi, il Processo di Bologna non si inserisce nelle azioni portate avanti dall'Ue, ma si pone come un accordo intergovernativo includente anche paesi esteri all'Unione. Invero, lo Spazio europeo dell'istruzione superiore, il cui consolidamento è l'obiettivo stesso del Processo, si estende significativamente oltre l'Unione europea. La presente tesi ha infatti analizzato l'armonizzazione dei diversi sistemi e modelli di istruzione superiore in seguito alla serie di incontri intergovernativi dei Ministri dell'istruzione superiore configurati attraverso il Processo di Bologna. La ricerca ha evidenziato come il Processo abbia interessato l'educazione terziaria, analizzando il quadro giuridico in cui i paesi partecipante hanno operato per creare un'istruzione superiore globalizzata, con particolare attenzione al ruolo dell'Unione europea e la parallela evoluzione interna delle competenze europee negli Stati membri.

L'era della globalizzazione richiede che l'istruzione superiore si espanda e si adatti ai bisogni crescenti di una società in costante e crescente

interconnessione. Lo spostamento verso un'integrazione globale, l'interazione tra paesi, entità, persone, economie e società richiede integrazione e interazione anche nel campo dell'educazione. Le economie globali chiedono un bacino di conoscenza che non sia più confinato all'interno di un singolo sistema educativo o di una singola struttura sociale, ma cercano invece una gamma più ampia e completa di conoscenze e competenze. Per rispondere a questo cambiamento, i governi hanno riconosciuto la necessità di affrontare la domanda di conoscenze e competenze in un contesto internazionale, confrontando metodi e condividendo informazioni. L'Unione europea nasce leader proprio nel raggiungere tale conclusione, riconoscendo il dibattito intorno al mutamento delle economie e alle trasformazioni industriali, e in esso il ruolo dell'istruzione superiore come perno centrale, come strumento critico, elemento fondante delle competitività, dello sviluppo e dell'innovazione. L'Unione europea ha riconosciuto l'importanza dell'istruzione in una fase precoce, dedicando ingenti risorse allo sviluppo di politiche e progetti educativi, primo fra tutti il progetto Erasmus. Mentre il Processo di Bologna si configura come un processo intergovernativo al di fuori della sfera di controllo dell'Unione, la ricerca esposta nella presente tesi dimostra come l'Ue ricopra un ruolo di primo piano nel contesto internazionale dell'istruzione superiore attraverso la menzionata leadership all'interno del Processo, le politiche all'interno dei suoi confini, e l'avanzamento delle competenze in relazione all'istruzione superiore all'interno dei suoi Stati membri.

Il Processo di Bologna è definibile come modello della cooperazione intergovernativa nel campo dell'istruzione superiore, nato a seguito di dibattiti relativi al ruolo dell'istruzione superiore come motore di sviluppo. Incontri a Lisbona nel 1997 e a Parigi nel 1998 vedono un dibattito accademico che pone l'istruzione superiore al centro dell'innovazione, l'integrazione e la cooperazione internazionale, portando successivamente alla Dichiarazione di Bologna nel 1999 e all'inizio del Processo. Il Processo si caratterizza come un processo intergovernativo di convergenza delle politiche educative con l'obiettivo di creare un quadro condiviso di istruzione superiore. L'elemento intergovernativo permette ai membri del processo di agire al di fuori della struttura delle organizzazioni internazionali, soprattutto quei membri parte anche dell'Unione europea, comportando la libertà dei poteri legislativi dell'Unione o da qualsiasi altro accordo internazionale. Pertanto, il Processo di Bologna si configura come un processo intergovernativo unico con conseguenze uniche, sollevando notevoli dubbi sulla sua applicazione e sul suo ruolo nel diritto internazionale. L'altro lato della medaglia vede il Processo di Bologna come uno strumento volubile a causa del carattere volontario e della mancanza di

coordinamento al suo interno. Si può sostenere che la Dichiarazione di Bologna e i successivi documenti che partecipano al processo non sono altro che strumenti di *soft law* che dichiarano l'intenzione dei membri di collaborare e coordinare le politiche all'interno dei loro quadri nazionali. Per *soft law* si intende quel bacino di legge "morbida" costituita da regole tipicamente emanate da organizzazioni internazionali o da stati sovrani attraverso negoziati intergovernativi, come nel caso sovraesposto. Si sovrappone direttamente alla *hard law*, la quale definisce invece strumenti giuridici vincolanti. Talvolta, l'Unione europea ha previsto strumenti di *soft law* all'interno della sua struttura, come linee guida o risoluzioni. Il processo di Bologna può certamente essere definito come un sistema di coordinamento internazionale, nato da una collaborazione strettamente tra stati. Tuttavia, col tempo l'Unione europea si è assicurata una parte preminente all'interno del processo, rendendo il suo ruolo particolarmente interessante nel quadro del diritto internazionale. Se i regimi internazionali possono essere sinonimo di istituzioni che creano strutture di azione interstatale e di comunicazione permanente che funzionano in una singola area di interesse con una portata di politica estera, ne deriva l'affermazione che il Processo di Bologna si configura come un regime internazionale. Tuttavia, tale classificazione non implica una competenza giuridica o una legittimazione giuridica del Processo né dei documenti che ne derivano.

Nonostante la convinzione diffusa che l'istruzione sia motore di crescita e strumento essenziale per la trasmissione di valori, soprattutto all'interno del quadro europeo, e la stessa convinzione che le società si stiano evolvendo in economie della conoscenza nelle quali l'istruzione gioca un ruolo da protagonista, nell'Unione europea l'istruzione rimane confinata a quelle competenze di supporto delineate nell'art. 6 TFUE. Di fatto, le politiche europee in materia di istruzione sono essenzialmente dirette alla promozione e all'incoraggiamento della cooperazione tra Stati membri e tra le istituzioni di istruzione superiore all'interno degli stessi paesi, avanzando una politica di coordinamento e di convergenza. Purtroppo, l'Ue ha gradualmente adottato misure legislative nel campo dell'istruzione superiore attraverso mezzi politici e giuridici, creando una prassi a favore di una politica europea dell'istruzione superiore appoggiandosi alla giurisprudenza della Corte di giustizia europea. La ricerca sovrastante analizza infatti sentenze della Corte di giustizia europea in materia di istruzione e di formazione professionale, favorendo l'Unione sulla base della libertà di movimento, principio fondante dell'OI. Inoltre, lo stesso Processo di Bologna ha fornito un forum per l'espansione delle priorità dell'Ue in relazione all'istruzione superiore, creando uno spazio in cui l'Ue

può portare avanti le sue preoccupazioni in uno spazio in cui le decisioni sono prese a livello nazionale, dove tecnicamente non ha potere decisionale. Poiché l'Unione ha gradualmente guadagnato una posizione di leadership all'interno del Processo di Bologna, si può sostenere che le conferenze intergovernative sono servite come opportunità per l'Ue di promuovere i suoi obiettivi in un campo in cui le competenze sono esclusivamente di supporto, coordinamento e completamento. Si può inoltre affermare che, attraverso una varietà di strumenti e pratiche, tra cui l'elaborazione delle politiche, il coordinamento delle politiche, la giurisprudenza, il forum di Bologna e il progetto Erasmus+, la competenza dell'Unione europea nel campo dell'istruzione si è gradualmente affermata come una competenza comunitaria.

Sullo sfondo di un processo di integrazione europea nato dalla volontà di creare un processo di integrazione economica e un mercato comune, il legame tra la sfera dell'istruzione e quella dell'occupazione diviene evidente, manifestandosi nell'inclusione delle questioni educative nella legislazione del mercato interno e fornendo un processo intellettuale che legittima la traslazione dell'esercizio delle competenze europee in materia di mercato in quelle in materia di istruzione. Volendo corredare un esempio, risulta opportuno approfondire il concetto di mobilità e la libera circolazione delle persone come prerequisito per l'integrazione del mercato interno, e che a sua volta richiede una precondizione di mobilità altrettanto nella sfera dell'istruzione. Di talché, rimanendo l'istruzione un campo politico interno all'Unione, l'Unione stessa ha sviluppato tale campo attraverso il riconoscimento dei diplomi, avanzando sforzi attraverso programmi interni e sfruttando il Processo di Bologna. La sovrapposizione tra le competenze che si riferiscono al mercato interno e quelle che riguardano l'istruzione costituisce una linea estremamente sottile, ed è pertanto discutibile; nonostante questo, le misure legislative esistenti, tra cui i Trattati, dichiarano alquanto chiaramente la distinzione tra le due sfere di interesse. Il dibattito attorno all'avanzamento delle competenze sovranazionali in materia di istruzione favorisce l'argomento che, poiché il coinvolgimento dell'Ue nel Processo di Bologna si configura in ambito politico, l'Ue è legittimamente intervenuta a sostegno dell'azione dei suoi Stati membri all'interno di un processo intergovernativo rispecchiando i loro singoli obiettivi e la loro volontà. Affinché si possano legittimare le competenze dell'Unione europea in ambito di istruzione superiore in correlazione con il Processo di Bologna, si supporta la tesi che il Processo influisce direttamente sul mercato interno e sulla libera circolazione delle persone, libertà fondante dell'Unione. Si potrebbe inoltre sostenere che gli studenti necessitano di incoraggiamento ed assistenza nell'esercizio di tale diritto, permettendo loro di raccogliere i

benefici della loro istruzione mobile dopo essere entrati nella forza lavoro e creando quindi ricadute positive per il mercato del lavoro e lo sviluppo generale della produzione della società della conoscenza, e rientrando quindi all'interno delle competenze comunitarie. In effetti, le competenze del mercato interno acquistano una rilevanza giustificabile nel campo dell'istruzione solo nella confluenza dell'istruzione superiore nel mercato del lavoro. La Dichiarazione di Bologna e il processo che ne segue ha sottolineato la necessità di promuovere progressivamente e costantemente la cooperazione al fine di raggiungere l'obiettivo di aumentare la competitività e l'attrazione del sistema europeo di istruzione superiore sul fronte internazionale. Infatti, la competitività e l'attrattività del sistema si collocano in prima linea tra gli obiettivi del Processo, e le sue azioni principali includono un quadro di qualifiche comune e comparabile e la promozione internazionale delle iniziative. Una maggiore trasparenza dei corsi di studio, un sistema comune per il riconoscimento dei crediti e criteri condivisi per la valutazione e la garanzia della qualità hanno incoraggiato la mobilità degli studenti e il riconoscimento dei titoli di studio. I vantaggi legati al Processo di Bologna lo configurano al di fuori dell'Unione stessa, e quindi al di fuori dei limiti imposti nei Trattati, aprendo la via per una collaborazione che includa paesi esterni al quadro europeo. Infatti, lo Spazio europeo dell'istruzione superiore comprende ad oggi quarantotto paesi, in cui l'Unione è attivamente coinvolta anche attraverso la Commissione europea che detiene uno status consultivo. Tali membri del Processo portano progressivamente avanti gli obiettivi posti al fine del consolidamento dello Spazio europeo dell'istruzione superiore, delineati attraverso le conferenze ministeriali del Processo e riconoscendo che tale forma di cooperazione necessita di essere legata ad uno strumento di diritto internazionale esterno all'Unione, richiedendo l'impegno dei singoli stati a stabilire il proprio quadro nazionale di istruzione in linea con gli scopi ribaditi ogni due anni.

La dimensione europea dell'istruzione superiore è stata progressivamente stabilita all'interno dell'Unione europea e delle sue attuali prospettive attraverso il Processo di Bologna. A partire dal secolo scorso, l'Ue ha progressivamente riconosciuto l'importanza dell'istruzione sia in termini di inserimento all'interno del mercato del lavoro che in termini di sviluppo di competenze nell'arco della società intera. L'istruzione e la formazione permanente sono dunque concepite come investimenti in capitale umano, visti non solo come strumentali agli obiettivi occupazionali, ma anche in relazione allo sviluppo personale umano. I principi chiave di questo approccio sono poi sviluppati nelle strategie europee volte a rendere l'Unione un'economia intelligente, sostenibile ed inclusiva basata sulla conoscenza. Di talché, per raggiungere

L'obiettivo dell'economia della conoscenza, la cosiddetta *knowledge economy*, sono state messe in atto una serie di misure riguardanti il settore dell'istruzione che hanno richiesto il coinvolgimento degli Stati membri e l'impegno delle istituzioni. In questa prospettiva, la politica dell'istruzione superiore si è sviluppata negli anni attraverso un'ampia e costante produzione di atti di *soft law*. Si può sostenere che, come determinante critico nella competitività e modernizzazione nazionale, l'istruzione superiore risiede al centro del passaggio mondiale verso l'economia della conoscenza. Ne consegue che il Processo di Bologna è la risposta dell'Europa ai crescenti sviluppi della società, offrendo un quadro all'interno del quale diventa possibile comprendere le interazioni tra i livelli istituzionali, sia dal punto di vista nazionale che sovranazionale. Chiaramente, una missione con ripercussioni globali in risposta ai bisogni che sorgono in tutto il mondo richiede a sua volta una cooperazione internazionale che riunisca i leader mondiali in diverse forme. Si trae la conclusione che l'istruzione e la formazione ricoprono un ruolo fondamentale per trasformare l'Unione europea in una società ed economia della conoscenza a livello mondiale, e che nonostante la limitata competenza delineata nei Trattati, l'Unione è in grado di utilizzare strumenti interni alle sue istituzioni ed esterni ai suoi confini nella persecuzione di obiettivi comuni.