The European Higher Education Area: Various Perspectives on the Complexities of a Multi-Level Governance system

Alberto Amaral and Amélia Veiga
University of Porto, CIPES and A3ES

1. Introduction

Education has always been considered an area of national sensitivity and that for a number of reasons. These range from the obligation of the state to provide compulsory education, to the role of educational institutions as nationally embedded socialising institutions. Yet, despite the tenuous nature of the legal basis that gives some substance to policy-making at Community level, the Commission is taking on an increasing role in education, and particularly in higher education.

The main vehicles for re-defining the Community’s role in this domain embrace the implementation of both the Bologna Process and of the Lisbon Strategy. In some cases we may see the Commission using the initiatives of national governments (e.g. the Bologna process) as a lever to promote its role. In other cases the Commission has taken the initiative, examples being the Green Paper on Higher Education or the implementation of the European Institute of Technology.

Some higher education researchers have analysed these evolutions. With a few exceptions, they dedicated their attention mainly to the implementation of the Bologna process or compared higher education and research systems in Europe. The other way round, specialists in European studies, or political scientists more broadly, tended to ignore the higher education and research sector while many worked on employment and other social policies. One of the reasons for this apparent lack of interest of Europeanists in the Bologna process may be related to the explanation given by Musselin:

…the Bologna process is intergovernmental and does not only concern EU countries: therefore it is not “consolidated in the making of EU public policy and politics”. For Radaelli (2001), this would exclude the Bologna process from the realm of Europeanisation studies. Nevertheless, this position is not shared by all Europeanists. (Musselin, 2009: 177)

In this chapter, we discuss the tools of policy implementation and how they contribute to changing the European higher education systems towards the establishment of a European Higher Education Area (EHEA), a goal of the Bologna process. Empirical data is used to assess how far the use of soft law mechanisms has been effective for the implementation of the Bologna process, including its coordination at institutional level.

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

---

1 We are grateful to Timo Idema for useful comments and suggestions.
networks) (Hooghe and Marks, 2001) creates very complex problems, namely at the level of coordination (De la Porte and Pochet, 2004).

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

Member states have frequently used international organisations for gaining legitimacy for implementing national policies, a good example being the signature of the Sorbonne declaration. In a number of cases governments have lost control over the process they initiated (Martens and Wolf, 2009) and the agent made opportunistic use of the chance to expand its competence, one of those cases being the Bologna process. In the case of Bologna many European states were encouraged to participate to avoid offering the lead of European higher education policies to the signatories of the Sorbonne declaration. Additional objectives such as mobility of students and graduates, the implementation of a European labour market, the attraction of extra-Community students and the implementation of the Lisbon agenda also played a role. However, national higher education systems are very diverse as are their problems, originating to large preference heterogeneity (Hawkins et al., 2006). Therefore, member states used the Bologna process to legitimise their own national policies, leading to an ‘a la carte’ implementation that was recently criticised by European students (ESU, 2009).

As the Commission was made an effective actor the implementation process, the use of the Open method of coordination (OMC) methodology became the preferred policy instrument and for the 2007 stocktaking report governments were asked to produce national action plans (for recognition), an OMC tool. There is an increasing use of ‘tools’ and ‘networks’ of new governance, which may be included in what some authors name as ‘mechanisms of soft law’. These mechanisms include both the development of ‘administrative networks’ in the area of higher education and the use of new tools or instruments of public policy, and are supposed to influence the behaviour of organisational actors participating in the implementation process, steering them to the desired objectives. Another question will be to understand how far those soft law methodologies, even when adequate to foster change, are adequate to ensure convergence and embeddedness of policy implementation and coordination, as there are successive levels (national, regional, institutional, etc.) with influence on the dynamic process of structural change. For this purpose soft law mechanisms used by the EU are compared amongst themselves and with soft law mechanisms used by OECD. In spite of clear differences in the dimensions of governance of the
two organisations (Martens and Wolff, 2009), there are overlapping elements that should be analysed.

2. The uses of soft law and the OCDE tradition

There is an increasing popularity of soft law mechanisms, including the ‘open method of coordination (OMC) in the European Union (Veiga and Amaral, 2009). In this section we compare the soft law mechanisms used by the European Union with those in operation at the OECD as Amaral and Neave proposed (2009), which will be useful for understanding how the OMC operates.

In an extensive article appropriately entitled Explaining Soft Law, Guzman and Meyer (2009) discuss the reasons why states enter into soft law agreements that are ‘non-binding’, instead of opting for the more binding forms of hard law. The authors define soft law as “those nonbinding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct” (ibid: pp. 5) and consider nonbinding rules can produce legal consequences when they shape state’s expectations as to what constitutes compliant behaviour. The authors present four theories – coordination, loss avoidance, delegation and international common law – to explain many of the soft law being used. In the case of the EU some of those theories can be applied: soft law is useful to solve straightforward coordination games in which the presence of a focal point is enough to generate compliance; loss avoidance explains why the negative sum character of sanctions for violating international legal rules makes in many cases binding legal obligations inefficient; and the delegation theory explains why under certain circumstances soft law will be an effective way for states to control their uncertainty over the future desirability of legal rules adopted today (Guzman and Meyer, 2009).

For Guzman and Meyer the main reason why soft law works is related to the role of reputation in encouraging compliance with international law, which explains the ‘naming and shaming mechanisms’ that usually are associated with the OMC:

When states enter into an agreement, they promise to comply. If they fail to do so, their future promises will be less credible and this will make it more difficult or more costly for them to enter into future promises. It is in this sense – a reduced ability to make credible promises – that a loss of reputation is costly to states. (Guzman and Meyer, 2009: 22)

Martens et al. (2004) use an institutionalist approach to the analysis of the governance within international organisations to distinguish between three dimensions in governance: governance by coordination, governance by shaping opinion, and governance by instruments:

Governance by ‘co-ordination’ refers to the ability of an international organisation to provide the means of organizing and handling procedures, which promote certain initiatives in a policy field... Through such co-ordinative governance, international organisations can give incentives and initiate proposals for policymaking. (Martens et al., 2004: 2)

Governance by ‘opinion formation’ refers to the capacity of an international organisation to initiate and influence national discourses about [policy] issues... With governance by opinion formation, the international organisation generates visions and values which shape policymaking of its member states. (ibid: 2-3)
Governance by ‘instruments’ thus refers to the capacity of an international organisation to draft and prepare legal decisions, international arrangements and agreed principles, which influence national policies. (ibid: 3)

Martens et al. (2004) consider the OECD has not been able to develop a strong instrumentality of governance. It lacks the power of the purse of the IMF or the World Bank or even the European Union. And unlike the EU, the OECD has no legal instrument on its side to push or force decisions on its member countries. They argue the OECD has developed a strong coordinating capacity by organising and handling procedures, which promote certain initiatives in a policy field (ibid.). In the area of educational policy the OECD has developed this capacity from the mid-1990s onwards through its work on educational indicators, which created “a climate of support among policy makers and analysts across member countries and even beyond” (Henry et al., 2001: 88). There is evidence to suggest that the organisation’s ability to shape expert opinion may in part be attributed to the regular publication of cross-national and comparative educational statistics and indicators – the annual appearance of Education at a Glance, the launching of the project on International Indicators of Education Systems (INES), the devising of the International Standard Classification of Education (ISCED), quite apart from the high profile Performance Indicators of School Achievement (PISA).

Porter and Webb see the OECD “as a paradigmatic example of an identity-defining international organization” (Porter and Webb, 2007: 3), while Henderson suggests the OECD acts by developing a set of distinctive norms and rules determining what is the appropriate behaviour of its members that integrate a ‘rich men’s club’ based on the appropriateness of liberal, market-friendly economic policies (Henderson, 1993). OECD influences institutions by developing and transmitting the norms that induce actors of a given community to switch to the logic of appropriateness (March and Olsen, 1998).

Another instrument used by OECD, as well as by the EU, consists in networks and committees of experts and civil servants. Gornitzka refers to the presence at the EU level of “dense organisational structures that carry the education programmes, and these also involve a range of experts and national civil servants that prepare and are involved in the running of them” (Gornitzka, 2009: 111). The essential characteristic of networking, however, lies in being permeable, incremental and accumulative. Networking acts as a pre- or even a para-legal process, the winning of hearts and minds amongst key actors, whether civil servants, policy consultants or academic ‘experts’. It is, to revert to the typology developed by Martens et al., a prime factor in governance by opinion-formation, as “individual staff members or groups of members can be very influential through their position...” (2004: 2).

At the OECD level routines contribute to create a common sense of identification of national officials with notions of modernity, market-friendliness, liberalism and efficiency (March and Olsen, 1998: 961). It is argued the OECD review process “creates a community of policy practitioners... to bring their local knowledge to bear on the policy review process while also contributing to developing further the conceptual knowledge that they also need” (OECD, 2002: 9), being also recognized that “the regular participation in the peer review process leads to the development of a new frame of mind” (ibid. 11), and the objective is unashamedly assumed as “to have intellectual influence on policy makers” (ibid. 7). Porter and Webb refer to the socialisation
effect that results from national officers being closely involved in OECD work, being able to use “the support of their peers in other member states to try to sway opinion in their own bureaucratic battles” (2007: 7). For Marcusen:

... the OECD can be considered as an ideational arbitrator that helps national civil servants meet each other in supportive surroundings, thereby teaching them to develop their personal and technical skills, and even sometimes develop their personality and feelings of belonging. Such learning processes can take various forms – such as socialization, imitation and coercion - and the concrete meeting can be characterized by social logics as different as bargaining on the one extreme and deliberation on the other. (Marcusen, 2001: 3)

Marcusen argues the soft law used by the OECD is more important than often thought (2004), an argument also supported by Porter and Webb (2007). The OECD (2002) refers to ‘soft’ coordination by international organisations, carried by sophisticated modes of knowledge production and sharing. Peer pressure resulting, for instance, from OECD’s peer review exercises of national higher education systems or OECD’s deliberate identity-defining process by calling attention to ‘leaders’ and ‘laggards’ among countries in their adoption of OECD norms (March and Olsen, 1998: 961 as cited by Porter and Webb, 2007: 4) are different approaches to soft law mechanisms.

The OECD states, “mutual examination by governments, multilateral surveillance and peer pressure to conform and reform are at the heart of OECD effectiveness” (OECD, 2004: 4) and emphasises that the advantages of the OECD methodology include:

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

Moreover, the reports of the OECD reviews can be changed to remove ‘politically sensitive advice’ (OECD, 2002), which makes them more acceptable to governments that in any case could veto the publication of the report. However, in general OECD reports are critical of some government policies. Another interesting aspect that has some parallel in other international organisations is the increasing coverage of the OECD: “Some have called it, without intending any criticism, ‘mission creep’ into additional topics, in particular structural policies” (OECD, 2002: 2). This phenomenon has a parallel in the increasing expansion of the power of intervention of the European Commission in education, an area in principle reserved by the treaties to the nation state, a phenomenon that is often alluded to as ‘the creeping competence of the Commission’ (Pollack 1994, 2000).

3. Policy-making in the EU

3.1. The Community method and agency loss

In the Community Method of governance of the EU, the Commission has the monopoly for initiating legislative procedures and plays a major role in taking member states to court for failing to implement decisions. The Council of Ministers decides in most cases by qualified majority
voting, the European Parliament plays an active role and the European Court of Justice ensures the uniform interpretation of Community Law (Wallace, 2000). In principle, the Community Method might force a Member State to implement measures it is vehemently opposed to (Hagedorn, 2003). However, to solve a crisis between France and its five community partners and the European Commission, the Luxembourg Compromise, signed on 30 January 1966 provides that:

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

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

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

European law has, as every EC lawyer knows, a rich tradition of evolving through the aid of such ‘weasel words’, in the sense of terms which are ambiguous and open, and which are even chosen for these very characteristics. Many other examples can be given of terms which are highly significant within the EU legal and political context, but which remain nonetheless or even deliberately uncertain in scope and meaning: ever closer union, exclusive competence, the internal market, and the acquis communautaire, to name but a few. (De Burca, 1999:9)

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

Over time, however, the EU has expanded the range of its activities dramatically, so that by the early 1990s, the policies of the Union had spread from the core economic activities of the common market to embrace almost every conceivable area of political, economic and social life (Pollack, 2000).

This phenomenon is also known as ‘agency loss’ in the literature on delegation (Schäfer, 2004) and has to do with problems of asymmetric information. The principal-agent model has been used to analyse problems of agency relationships, which “are created when one party, the principal, enters into a contractual agreement with a second party, the agent, and delegates to the latter
responsibility for carrying out a function or set of tasks on the principal’s behalf” (Kassim and Menon, 2002: 2). Those problems are created by a frequent asymmetric distribution of information that favours the agent (Kiewiet and McCubbins, 1991; Holmstrom, 1979):

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

The asymmetry of information may lead to the agent’s opportunistic behaviour namely when the structure of delegation “provides incentives for the agent to behave in ways inimical to the preferences of the principal” (Pollack, 1997: 108). It also creates the classical principal-agent dilemma: “How the principal can best motivate the agent to perform as the principal would prefer, taking into account the difficulties [the principal faces] in monitoring the agent’s activities” (Sappington, 1991: 45 cited in Dill and Soo, 2004: 68). The principal-agent relationship has been used to explore “the motivations that lead principals to delegate functions and confer authority to agents in the political world” (Kassim and Menon, 2002: 3). By analogy, this perspective may be extended to include the workings of the European Commission that are in receipt of substantial delegated power from member states (Thatcher and Stone Sweet, 2002).

Schäfer recognises, “the Community Method delegates considerable power to the Commission and the European Court of Justice and offers ample opportunity to act independently of their principals” (Schäfer, 2004: 3). Consequently, being difficult for the principal to control the activities of the agent (Pollack, 1997), the Commission, with the support of the European Court of Justice, has been able to increase considerably its competencies and area of influence over the years. A speech of John Major at the House of Commons raised this problem:

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

In the early 1990s, national governments decided to oppose further expansion of the European Commission competencies that was apparently opening the way to what seemed to be an unlimited erosion of the sovereignty of the nation state (Dehousse, 2002: 2). Some national governments were annoyed with a number of directives imposed by the new qualified majority voting rule and were determined to avoid the interference of the Commission in sensitive national areas such as education, culture or health (Pollack, 2000). In turn, some regions such as the German länder opposed what they considered an attack on their constitutionally granted powers. This reaction brought about the revival of the subsidiarity principle in the 1992 Maastricht Treaty with the famous ‘double negative’ formulation of the principle in article 5 of the Treaty (Pollack, 2000):

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member State and can, therefore, by
reason of the scale or effects of the proposed action, be better achieved by the Community. (Pollack, 2000: 526)

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

These problems may be analysed using the Principal-Agent theory. Indeed, member states are thorn between the benefits from delegating in the Commission – including capture of policy externalities, resolution of disputes, enhanced credibility (Hawkins et al., 2006) – and the dangers of opportunistic behaviour by the agents and of undesirable political developments. Delegation is also made more difficult by large preference heterogeneity among member states in many political areas, as well as differences in the relative power of member states (Hawkins et al., 2006). This explains why member states shirk further delegation of sovereignty and their preference for a non-binding tool such as the OMC, the use of weasel words and the softening of the consequences of binding decisions. It will be interesting to see what comes out of the present financial crises that has clearly revealed the difficulties in controlling the frequent compulsion of member states and politicians to free ride.

3.2. The open method of coordination

In this section we analyse the emergence of OMC as a policy tool in the EU, a device that is compatible with the subsidiarity principle, allowing the implementation of policies without further delegation of power to the Commission:

At least in formal terms the OMC leaves intact the subsidiarity principle, by which competences are to be kept at national level whenever possible. The OMC does not involve any further transference of competences from the national to the EU level (Borras and Jacobsson, 2004: 197).

Scharpf (2006) considers governments of member states will only agree on further Europeanisation under the condition that they remain in control. Dehousse (2005: 7) argues the OMC “appeared as a compromise between a desire for common action, on the one hand, and the governments’ desire to maintain some degree of control over tools they considered essential for their political future, on the other”.

In the 1994 European Council held at Essen (European Council, 1994), heads of state and government reached an agreement on employment policy using a soft law approach that avoided the undesirable interference of the Commission in domestic policy-making, thus laying the foundations of the OMC. The 1997 Treaty of Amsterdam in its employment chapter confirms the basic elements – definition of common objectives, national implementation plans and surveillance by the Commission and member states – of what would become the OMC. For Schäfer, (2004) the OMC “was a soft coordination padded with mutual monitoring” which apparently served both the Commission and the member states.
As this procedure did not include sanctions (de la Porte and Pochet, 2001), the Luxembourg process tried to overcome the apparent lack of legal clout by creating mechanisms for reinforcing the commitment made by governments by ‘naming and shaming’ the ‘laggards’. Governments were asked to draw up yearly a ‘national action plan’, detailing their approach to fighting unemployment. This document could be used thereafter to compare word and action and the degree of fulfillment of promises and to compare implementation performances. Although being presented as a tool for mutual learning and for revealing best practices, it also allowed for ranking of member states’ performances, putting pressure on low performers.

At the Lisbon summit in March 2000 (European Council, 2000), under the Portuguese presidency, the Lisbon strategy was adopted aiming at making the EU the world’s most dynamic and competitive economy under the rationale that a stronger economy would drive job creation alongside social and environmental policies, to ensure sustainable development and social inclusion. As policy-making tool the Portuguese government proposed to retrieve the procedures already implemented and applied with the Employment Strategy – European guidelines, national action plans, peer review and naming and shaming – that were presented as a quasi-novelty under the name of ‘open method of coordination’:

1. fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms;
2. establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;
3. translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
4. periodic monitoring, evaluation and peer review organized as mutual learning processes.

(European Council, 2000: §37).

OMC avoids transferring power to the Commission, thus avoiding agency loss. As member states remain in control of politics they are not confronted with the principal-agent problem (Schäfer, 2004) while the nonbinding character of soft law protects them from undesirable consequences. And when deciding to implement unsavoury policies they can always use Brussels as a scapegoat. Schäfer (2004) quotes Wolf (1999) and Moravcsik (1997) to argue that an internationalisation of domestic decisions strengthens executive actors.

4. The Lisbon strategy and the tools of the OMC

The implementation structure of the Lisbon strategy was designed to ensure that member states would have control over matters of high political salience (Scharpf, 2006). The European Council plays the role of major decision maker, defining the agenda setting, while the European Commission presents proposals and recommendations to the Council and assesses the policies and progress of the member states (European Commission, 2005). The Council agrees on a common vision for the EU, while setting medium- to long-term priorities based on the proposals of the Commission. However, the Commission plays an important role despite its seemingly modest posture:
The search for cognitive convergence, which is at the heart of the OMC, involves tasks the Commission is better able to accomplish than any other institution, such as the monitoring of national action plans or the preparation of reports on the situation at European level, which are key elements in a process of knowledge accumulation. The Commission’s central place in the Community machinery makes it a reference point that cannot often be overlooked, particularly in fields with weakly structured trans-national networks. (Dehousse, 2002: 11)

The Commission can use its technical expertise, its knowledge of policy issues (Dehousse, 2002) and its budget to progressively gaining power by means of informal influence, which was visible in the case of employment policies (Trubek and Mosher, 2003) or the Bologna process (Amaral and Neave, 2009).

The introduction of implementation committees into the decision-making process may be seen as aiming at “facilitating a degree of continuing Council control over the Commission in the exercise of its executive functions” (Scott and Trubek, 2002: 3). However, the Commission has frequently been able to domesticate the committees that were supposed to control the Commission’s activities, which may be seen as another example of its creeping power:

Originally established by the member states to ensure that the Commission’s elaboration of rules respected political compromises, comitological committees in short order moved from policing the outcome of rulemaking to technical collaboration with the rule makers. Soon they became as much the artificers of Commission proposals as arbiters of their acceptability. (Sabel and Zeitlin, 2006: 12)

With the implementation of the Lisbon strategy committees of a different nature were created – employment, social protection, economic and political, economic and social:

These committees are unique in the sense that they hold a position in between the Council and the Commission. The Commission handles the secretariat and is also a full member of each committee, and the committees are to supply opinions on the request of either the Council or the Commission. This is different from both the implementation committees, which are under the Commission (the Comitology) and the preparatory committees, which are under either the Commission or the Council. (Borras and Jacobsson, 2004: 198)

What remains to be seen is how far a soft law instrument such as the OMC, without any apparent enforcing power, can produce and coordinate change? Borras and Jacobsson (2004: 196) quote Dolowitz and March (2000) to argue “not only is policy change in the absence of coercion possible, but there is plentiful evidence that such processes are taking place worldwide.” Scharpf considers that learning processes can play an important role in moving from a policy impasse into effective action (1997: 63) and Dehousse argues the OMC, as a learning process, can be a mechanism capable of “initiating or facilitating reforms to be conducted at the national level” (Dehousse 2002: 10) where mimetic and normative isomorphism play an important role:

Given the level of uncertainty that pervades EU policy-making, it can be argued that policy transfer should follow the path of mimetic isomorphism in many circumstances. Finally, a variant of normative isomorphism can occur in those policy-making processes dominated by cognitive resources, expertise and even technocratic aspects of political life (Radaelli, 2000: 29).

The OMC mutual learning process is based on a number of tools that are not only used for comparing best practice but also for supporting ‘naming’ and ‘shaming’ actions aiming at putting
pressure on member states to keep the pace of reform implementation. In the following sections, we will analyse in more detail the more important tools used in the OMC: national action plans, benchmarks and indicators.

4.1. National Action Plans

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

Unfortunately, “national reports often tend to present a flattering situation and the action plans are more verbose on the progress accomplished than on the initiatives taken” (Dehousse, 2005: 15). NAPs are in general reports on past activity (Netherlands Council for Social Development, 2004) carefully drafted by the relevant ministries, frequently without a critical analysis of progress made (Veiga and Amaral, 2009), “rather than as forward-looking action plans or strategic programming instruments subject to normal public scrutiny and debate by all stakeholders” (Zeitlin 2005: 15). As recognised by Kok, “up until now national parliaments and citizens have not been sufficiently associated with the process … The same applies to social partners and other stakeholders” (Kok, 2004: 40).

4.2. Benchmarks

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

The OMC uses benchmarking both to identify good practices among member states and as a process that may allow for ‘naming and shaming’ of poor performers (Netherlands Council for Social Development, 2004: 14). The early implementation of benchmarking activities was met with resistance from the member states when they felt at risk. Trubek and Mosher (2003) reported the opposition of member states to benchmarks in employment before they were diluted by amendments from the Council. To overcome the resistance of member states it was agreed that indicators should be contextualised, taking into account national differences and diversity (De la Porte, Pochet and Room, 2001; Hemerijck and Visser, 2003).
The European benchmarks are reference levels of European average performance. Education benchmarks relate to objectives such as improving the quality and effectiveness of the education and training systems in the EU, facilitating the access of all to education and training systems, and opening them up to the wider world. Until recently there were five benchmarks focusing on the share of early school leavers (18–24 years), the ratio of low-achieving 15-year-olds in reading literacy, the upper-secondary education completion ratio (20–24 years), the graduates in mathematics, science and technology, and adult participation in lifelong learning (25–64 years). These benchmarks were updated for 2020 by the European Council of 12 May 2009 under the strategic framework for European cooperation in education and training (ET 2020):

- At least 95% of children between 4 years old and the age for starting compulsory primary education should participate in early childhood education.
- The share of low-achieving 15-year-olds in reading, mathematics and science should be less than 15%.
- The share of early leavers from education and training should be less than 10%.
- The share of 30-34 year olds with tertiary educational attainment should be at least 40%.
- An average or at least 15% of adults should participate in lifelong learning. (European Council, 2009)

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

4.3. Indicators

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

Indeed, defining indicators is faced with two kinds of problems. On the one hand, member states will oppose indicators based on methodological issues raised by national experts, especially when those indicators would make some countries “look bad in certain performances” (Kröger, 2004). On the other hand, indicators are scourged by the low quality of available European statistics (Peña-Casas and Pochet, 2001). As indicators will be the ultimate tool for naming and shaming poor performers, member states follow closely their design and implementation and there are several cases where no agreement was possible, for instance on inclusion policies (Kröger, 2004) or on indicators to measure the efficiency of higher education systems (European Commission, 2004).

A large number of indicators were defined to cover all policy areas within Education and Training 2010. The Commission appointed a “Standing Group on Indicators and Benchmarks and of Objective Working Groups composed of experts from all Member States” (European Commission,
to establish a list of 29 indicators that was also used in the 2006 progress report of the Commission (European Commission, 2006). More recently, the Council (2009) decided to include new areas and to analyse the possibility of developing composite indicators “to give an aggregate view of progress towards the Lisbon targets for the European knowledge economy” (European Commission, 2004: 10).

For the Lisbon strategy the instruments for ‘naming and shaming’ are the Lisbon scorecards produced by the Centre for European Reform (Tilford and Whyte, 2009). Countries are classified in relation to five issues: innovation, liberalisation, enterprise, employment and social inclusion and sustainable development, and there is also an overall classification. Good performers are labelled ‘heroes’ and the worst performers are labelled ‘villains’. There is also a Lisbon league table ranking countries on the overall Lisbon performance.

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

5. The Bologna process

When the European ministers of education signed the Bologna declaration, the European Commission was not allowed to join them. Marçal Grilo, the Portuguese Minister of Education that signed the declaration argued in an interview:

The Bologna Declaration was meant to be a declaration of an exclusively political nature and all its words were analysed in great detail to avoid excessive embarrassment to any country... Such a document is both remarkable and vague. What is important is to understand that it is a political declaration, each party having surely its own intentions in its country.

The Bologna process was initially much closer to the intergovernmental method than to the community method. In the intergovernmental method there is only a reduced role of the European Commission, the right of initiative being shared with Member States. The European Council decides by unanimity under this method, thus formally giving each Member State capacity to block a decision it is opposed to by using a veto. The European Parliament is only consulted. Hagedorn argued “the European Commission and the European Parliament, proved natural allies in favour of strengthening the Community method in the future constitution – since both stand to gain from such an evolution” (Hagedorn, 2003: 6).

Decision-making in the Bologna process is carried out ‘intergovernmentally’, decisions being reached by consensus of the ministers for higher education of the 45 signatory countries involved. This approach acknowledges the diversity in Europe’s higher education systems. The most
important forum in the decision-making process is the biannual conference, where the ministers meet to assess progress and to plot the course for the near future. The last ministerial summit took place in Belgium in 2009, following those in Prague in 2001, Berlin in 2003, Bergen in 2005 and London in 2007.

After the Bologna Declaration, the ministers decided to create a follow-up structure to prepare the conferences and coordinate the action needed to advance the goals of the Bologna Declaration. The composition of the follow-up group has changed frequently to adjust to changing power relationships.

The follow-up structure to prepare the Prague Conference comprised an ‘consultative group’ of representatives of all signatory countries and a smaller ‘follow-up group’ (BFUG) including representatives from the countries successively holding the EU presidency in the two years from Bologna to Prague (Finland, Portugal, France, Sweden), the Czech Republic, the European Commission, the Association of European Universities and the Confederation of European Union Rectors’ Conferences. The European Commission was conspicuously absent.

In Prague (2001) the ministers decided to include the European Commission in the BFUG and downgraded the role of the representatives of higher education institutions (European University Association – EUA and European Association of Institutions in Higher Education – EURASHE) and of students (National Union of Students in Europe – ESIB, now ESU) to that of mere consultancy, a similar role being attributed to the Council of Europe (Prague Communiqué, 2001). In Berlin (2003) the UNESCO/CEPES was added to the consultative members. Following the 2005 Bergen Conference, the European Association for Quality Assurance in Higher Education (ENQA), the Education International Pan-European Structure (EI) and the Union of Industrial and Employers’ Confederations of Europe (UNICE) were added as consultative members of the BFUG. The ENQA was to play an important role in the implementation of quality policies.

These changes show an increase in the intervention power of the European Commission, which was initially in a backstage position and was not allowed to sign the Bologna Declaration. At the same time, there was a decrease in the power of institutions representing universities and students and the gradual increase of the number of consultative members to incorporate an enlarged array of stakeholders, eventually to ensure increasing legitimacy. This was clearly the case of UNICE that is supposed to represent the academics.

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

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

5.1. Stocktaking and Scorecards

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

In Bergen (2005), the ministers asked the BFUG to engage in continuing and widening the stocktaking process that should “be based on the appropriate methodology and to continue in the fields of the degree system, quality assurance and recognition of degrees and study periods” (Bergen Communiqué, 2005: 5). The 2007 stocktaking exercise was directed to look for progress in the new policy areas to be addressed by the national reports, namely quality assurance, qualification frameworks, joint degrees and recognition of prior learning. In Bergen, the ministers also asked the BFUG to present comparable data on the mobility of staff and students, as well as on the social and economic situation of students in participating countries as a basis for future stocktaking and reporting in time for the next ministerial conference (2007). This stocktaking should take into account the social dimension as a policy area.

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

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

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

5.2. National Reports and National Action Plans for Recognition

The first national reports were prepared for the Berlin Conference (2003). These reports were
produced under the responsibility of ministers of education and the chair of the BFUG considered
“reports offer an opportunity for member states to explain the data brought out by stocktaking”
(Bologna Follow-up Group 2004).

The reports produced for the Berlin Conference were quite difficult to compare as no
guidelines were provided for their presentation. This problem was tackled in the reports for the
following ministerial conferences as implementation guidelines were used to ensure comparability. In 2005, the guidelines imposed specific questions, such as those concerning the
degree system, recognition, mobility, internationalisation and quality. In later reports further
items were progressively added to meet the recommendations of the ministers. These included
the implementation of standards and guidelines for quality assurance as proposed in the ENQA
Report; the implementation of the national frameworks for qualifications; the awarding and
recognition of joint degrees, including the doctorate level; and creating opportunities for flexible
learning paths in higher education, including procedures for the recognition of prior learning.

The 2005 Bergen conference for the first time introduced national action plans in the Bologna
process. Recognising that 36 of the 45 participating countries have now ratified the Lisbon
Recognition Convention (Council of Europe 1997), ministers have committed to draw up “national
action plans to improve the quality of the recognition process of foreign qualifications, which
represents another step towards the adoption of the OMC mechanisms. These plans will form part
of each country’s national report for the next Ministerial Conference” (Bergen Communiqué 2005:
3). These national action plans are quite similar to the NAPs currently used for other areas such as
employment and follow a common structure and should report on previous and future
developments concerning mutual academic recognition issues.

6. Education policies at national level: Soft law and coordination problems

We have seen that the EU is increasingly using ‘soft law’ instruments in matters of national
political sensitivity. Although the OMC has allowed the European Union to invade areas that have
been considered the preserve of the member states (Dehousse, 2002: 6), it pays a price by being
too weak to guarantee efficient policy coordination (ibid: 15).

OMC is used in areas of national political sensitivity where, unlike the case of economic policy,
convergence is not imperative (Dehousse, 2002: 10). Some authors argue that “the central aim of coordination is to encourage national reforms, convergence being seen as a side-effect rather than as an end in itself” (Biagi, 2000: 159) or “most coordination processes are aimed at initiating or facilitating reforms to be conducted at the national level” (Dehousse, 2002: 10). And Hemerijck considers “The objective is not to achieve common policies, but rather to share policy experiences and practices” (Hemerijck, 2002: 40). Therefore, it may well happen that “as harmonization is not the goal and legislation is not the method, the effectiveness of open coordination could be frustrated” (The Netherlands Council for Social Development, 2004: 16).

OMC aims at allowing each state to take steps to protect “national differences while accepting commonly agreed guidelines and taking inspiration from ‘best practices’ abroad” (Hemerijck, 2002: 40). OMC leaves policy implementation completely in the hands of national governments while the Commission is charged with assessing the policies and progress of the member states (European Commission, 2005). OMC complies with the principle of subsidiarity, respecting national contexts. It pleases politicians as it offers them the possibility to “shift the blame for unpopular decisions to the EU” (Mosher, 2001: 4) or “as a source of legitimation and blame-sharing in order to advance their own domestic agenda” (Zeitlin, 2005a: 451) and “focuses on processes instead of outcomes (thereby leaving negative outcomes to future governments)” (Kröger, 2004: 6).

The fact that no formal sanctions are foreseen (Radaelli, 2003; Trubek and Trubek, 2005) and the use of what is in general a broader rather than detailed definition of objectives, leaves ample room for interpretation and implementation in the member states (Kröger, 2004). Musselin argues this allows member states to use “more offensive forms of re-nationalisation, by which governmental actors re-nationalise the process, not so much by taking control over the European measures but by using them to tackle domestic objectives or problems” (Musselin, 2009: 185).

The difficulties of the OMC in ensuring effective coordination are also the result of the low degree of accuracy of ‘naming and shaming’ mechanisms that are based on analysis of national action plans and national reports, both of them produced by national governments. As argued by Zeitlin, governments use OMC as “an exercise in symbolic politics where national governments repackage existing policies to demonstrate their apparent compliance with EU objectives” (Zeitlin, 2005b: 18).

However, despite its apparent weakness, OMC is capable of producing results and promote changes. “Open coordination can contribute to a disciplined policy cycle because it creates an external expectation of periodic target setting and evaluation in the form of action plans” (The Netherlands Council for Social Development, 2004: 12), while “a more subtle or creeping way of stimulation can result from common language-use through the European interactions” (ibid.: 14). Zeitlin argues there is enough evidence, at least in some areas, to illustrate substantive political change that contributed not only to “broad shifts in national political thinking” but also “to specific changes in individual Member States’ policies” (Zeitlin, 2005: 20).

In principle, OMC could stimulate the bottom-up input of stakeholders through civil society, stimulating domestic learning and reinforcing its democratic legitimacy by fostering the participation of local actors, regional governments, social actors and parliaments (The Netherlands
Council for Social Development, 2004). Unfortunately, OMC has not so far produced results in this area, as neither parliaments nor civil society are involved in the discussion and evaluation of NAPs, only a very limited number of local and national policy makers being involved in peer reviews (ibid.).

It is interesting to compare the OECD policy implementation methods with those of the EU open method of coordination. Hemerijck and Visser (2003) compared the OECD’s Job Study and the European Union’s Employment Strategy (EES), both aiming at improving the poor employment performance of member states in the late 1990s. But they embody quite different mimicking strategies, conditions and procedures, with varying consequences for domestic learning and reform (2003: 29). The OECD hires country specialists to prepare and examine their own data on policies, outputs and outcomes and the report can be finished almost “without the co-operation of member states, though publication is in general preceded by tough negotiations with national officials” (ibid.: 39). The EES relies on cooperation from the member states, even for data collection (the national action plans) and the organisation of peer review (ibid.). Therefore, the OECD reports may induce the perception that undertaking reform involves conflict with policy objectives concerning equity and social cohesion (Elmeskov, 1998): [The EES] is therefore more contextualised by domestic concerns. While the OECD’s learning from others tells how it should be, learning with others in the EES tells what is feasible. (Hemerijck and Visser, 2003: 39).

We will now examine the implementation of the Bologna process for understanding how national higher education policies relate to EU level policies. A number of authors (Musselin, 2009; Gornitzka, 2006; Krücken et al., 2005; Witte, 2006) recognise the implementation of Bologna entails what Musselin designates re-nationalisation processes as national authorities use Bologna to achieve other objectives. And Musselin adds:

Similar to many other European, international or global processes, the Bologna reform is confronted with specific institutional contexts in the country where it is implemented. There is therefore no automatic and similar declination of this reform in each country: when the same measures are ‘applied’ on different national settings, the latter incorporate the European measures and transform them into a specific national mixture... the local adaptations, national translations and side effects attached to each domestic implementation weaken the convergence potential of Bologna. (Musselin, 2009: 180, 192)

There is a recent progress report entitled “The Bologna Process Independent Assessment” (Bologna Assessment, 2010) that was presented at the 2010 Bologna Ministerial Anniversary Conference, held at Budapest and Vienna. This report concludes that in general all countries have passed legislation to introduce and regulate elements of the Bologna process and most ‘architectural’ elements of the European Higher Education Area (EHEA) have been implemented (Bologna Assessment, 2010). However, not only countries have implemented Bologna at considerably different speeds – some have shown considerable progress across all the action lines while others have still to start on some of them – they also used different interpretations of Bologna to answer different national contexts.

There are explanations for the lack of convergence of OMC type processes. Not only sanctions are not foreseen for laggards but also the ‘naming and shaming’ instruments are rather crude as
they are based on national action plans and national reports prepared by the relevant ministries. And ministries will obviously try to avoid presenting too negative accounts of their own activity. It has been argued that open coordination “allows for window dressing: the process by which open coordination remains an administrative formality of dressing-up existing policy” (The Netherlands Council for Social Development, 2004: 16).

In the case of the Bologna process, ‘naming and shaming’ is based on the stocktaking report that was described in section 5.1. The successive biannual scorecards present an increasingly green picture (very good and excellent performances), reminding us of an Irish landscape, with lots of green almost everywhere, only a few scattered reds (little progress) to be seen. Colours are based on national reports that in many cases are more of a marketing exercise than a critical analysis of progress (see Veiga and Amaral, 2009 for a more detailed analysis). Indeed, many national reports carefully avoid presenting a critical picture of national implementation progress thus making difficult any eventual shaming, a task made even more difficult by the frequent use of “weasel words” (Amaral and Neave 2009) and the “general texts of presidency conclusions and rather open targets” (Idema and Kelemen 2009: 113).

The 2005 stocktaking report concluded that very good progress had been made on achieving the targets in the three priority action lines set by Ministers in the Berlin Communiqué: quality assurance, degree system and recognition. However, the report also identified a number of important gaps in those areas. 43 countries participated in 2005 in the first stocktaking exercise. 28 countries were given ‘green or light green’ and no one was given the red colour for the item ‘Quality Assurance’; there were 31 ‘green or light green’ countries and only two red ones for the item ‘The two cycle degree system’; 34 ‘green or light green’ countries and no red one for the item ‘Recognition of degrees and periods of study’.

The 2007 report presented an even greener picture. The main conclusions were there had been good progress in the Bologna Process since Bergen, the outlook for achieving the goals of Bologna by 2010 was good, although there were still some challenges to be faced. The report concluded that stocktaking worked well as an integral part of the Bologna Process strategy. Out of the total 48 countries participating in the exercise, there were 34 ‘green and light green’ countries and no red one on the item ‘Stage of implementation of the first and second cycle’; 42 ‘green and light green countries’ and only 3 red ones on the item ‘Access to the next cycle’ and 13 ‘green and light green countries’ and only 1 red one on the item ‘Implementation of national qualification frameworks’.

The 2007 EUA Trends report used for the first time both quantitative and qualitative research with substantial effort being dedicated to the local level where implementation was now taking place. The report was substantially more critical than previous reports in the series and raised several implementation problems. Its conclusions were far more critical than the very green picture presented by the scorecard seemed to indicate. This raised questions about the adequacy of the indicators being used. It was therefore without surprise that the 2009 scorecards suddenly lost some of its green colour, with a lot more of red to be seen. The report explained this was the result of using more demanding indicators:
Whereas in 2005 it was sufficient to show that work had been started, and for the 2007 stocktaking it was often enough that some work towards achieving the goals could be demonstrated or that legislation was in place, in 2009 the criteria for the indicators were substantially more demanding... the overall picture for the whole EHEA is not as ‘green’ in 2009 as it was in the two previous stocktaking reports in 2005 and 2007” (Bologna Process Stocktaking Report, 2007: 6)

The 2009 report included again 48 countries. There were 41 ‘green and light green’ countries and one red one on the item ‘Stage of implementation of the first and second cycle’; 44 ‘green and light green countries’ and no red ones on the item ‘Access to the next cycle’ and 12 ‘green and light green countries’ and 9 red ones on the item ‘Implementation of national qualification frameworks’. However, while announcing that there had been further progress in the Bologna process since London, the report also acknowledged that not all the goals of the Bologna process would be achieved by 2010.

It is also interesting to compare the results of the Bologna stocktaking exercise that classifies the performance of countries by awarding colours with those of the Lisbon scorecard that classifies countries as ‘heroes’ and ‘villains’. Just to give an example, in the 2009 Lisbon stocktaking report, Portugal was awarded green or light green on every item, which means that apparently the country was doing very well in the implementation of higher education policies. However, the Lisbon scorecards branded Portugal as villain in the items ‘Bringing people into the workforce’ (rigid labour markets and under-performing education systems) and ‘Upgrading skills’ (fewer than 20% of young people graduate with a university degree). This demonstrates that there is also some inconsistency in the use of indicators for the same area (education) in different contexts.

All this sheds some light on the Bologna implementation strategy. On the one hand, the objectives of Bologna have increased in quantity and refinement, and some even argued this aimed at keeping the impression of progress, of successful implementation (like riding a bicycle, if you stop you fall). On the other hand, the Bologna process lived off the notion of successful progress towards its final objectives, without reflection on inconsistencies or unintended effects its progress might produce. Reports were in general uncritical, presenting results in a triumphal mode, while implementation difficulties at local level were ignored as they might distract from the ultimate objective of shaping the EHEA, whatever this shape might be. However, as stocktaking proved incapable of producing efficient implementation and when other instruments questioned its optimistic conclusions, its indicators were made progressively more demanding.

Therefore, it remains to be seen if the coordination difficulties of soft law policies can deal with the apparent large diversity of national implementation policies to create, in the long term, a coherent policy framework and the convergence of the Bologna process. For Musselin this will not be possible “unless the same aspects are addressed in the same way in each country, but there is poor evidence of that” (Musselin, 2009: 192).

7. Soft law and embedding at institutional level

The implementation of Bologna offers a fascinating opportunity to examine multi-level governance processes as its final implementation depends on the workings of autonomous
institutions, the universities. And “domestic institutions play a key role in absorbing, rejecting, or domesticating Europe” (Bulmer and Radaelli, 2004: 9). This raises the question of determining how far soft law processes can be embedded or mainstreamed within domestic institutional contexts (Armstrong, 2003 as cited by the Netherlands Social Council, 2004: 5). And Neave argues “the test of 'embeddedness' does not lie at the systems level, rather at the institutional level” (Neave, 2004).

Our analysis of the institutional level is based on data collected using a questionnaire handed out in 2008 to academic staff, students and administrative and management staff from seven comprehensive European universities. The seven higher education institutions that accepted to participate in the survey are located in Germany, Italy, Norway and Portugal. The selection process was random. The contribution of each university was 30 academics and 60 students, per scientific area, and 20 administrative and management staff. These numbers give a well-balanced representation of the constituencies of universities in the selected scientific areas: law, history, medicine and physics.

Table 1 – Response rate, per higher education institution

<table>
<thead>
<tr>
<th>HIGHER EDUCATION INSTITUTIONS</th>
<th>SAMPLE</th>
<th>NUMBER OF RESPONSES</th>
<th>RESPONSE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-PT</td>
<td>385</td>
<td>304</td>
<td>79%</td>
</tr>
<tr>
<td>B-PT</td>
<td>385</td>
<td>267</td>
<td>69%</td>
</tr>
<tr>
<td>C-IT</td>
<td>385</td>
<td>113</td>
<td>29%</td>
</tr>
<tr>
<td>D-IT</td>
<td>385</td>
<td>82</td>
<td>21%</td>
</tr>
<tr>
<td>E-GE</td>
<td>385</td>
<td>63</td>
<td>16%</td>
</tr>
<tr>
<td>F-NO</td>
<td>385</td>
<td>88</td>
<td>23%</td>
</tr>
<tr>
<td>G-NO</td>
<td>385</td>
<td>30</td>
<td>8%</td>
</tr>
<tr>
<td>Total</td>
<td>2695</td>
<td>947</td>
<td>35%</td>
</tr>
</tbody>
</table>

Respondents were asked to rate each statement according to a four-point rating ordinal scale to force an option (from ‘disagree’ to ‘agree’; from ‘no change’ to ‘large change’, from ‘no impact’ to ‘major impact’, from ‘not implemented’ to ‘fully implemented’ and from ‘no activity’ to ‘high activity’, depending on the specific question). Respondents could also declare ‘no opinion’ if issues were recognizable but they had no opinion, and could state, ‘do not know’ if issues were totally unfamiliar.

The questionnaire included three distinct parts:

a) the Bologna process as a policy process
b) the views on the implementation of the Bologna process in the university
c) the views on changes in the teaching/learning and research processes

In total, 947 respondents replied to the questionnaire, which corresponds to a response rate of 35%. Tables 2 to 3 detail the response rate per higher education institution, per disciplinary field and the three university Estates (academics, students and administrative and management staff).
Table 2 – Response rate, per higher education institution and disciplinary field

<table>
<thead>
<tr>
<th>HIGHER EDUCATION INSTITUTIONS</th>
<th>LAW</th>
<th>PHYSICS</th>
<th>HISTORY</th>
<th>MEDICINE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sample Responses</td>
<td>Rate</td>
<td>Sample Responses</td>
<td>Rate</td>
</tr>
<tr>
<td>A-PT</td>
<td>90</td>
<td>81</td>
<td>90%</td>
<td>90</td>
</tr>
<tr>
<td>B-PT</td>
<td>90</td>
<td>39</td>
<td>43%</td>
<td>90</td>
</tr>
<tr>
<td>C-IT</td>
<td>90</td>
<td>0</td>
<td>0%</td>
<td>90</td>
</tr>
<tr>
<td>D-IT</td>
<td>90</td>
<td>70</td>
<td>78%</td>
<td>90</td>
</tr>
<tr>
<td>E-GE</td>
<td>90</td>
<td>0</td>
<td>0%</td>
<td>90</td>
</tr>
<tr>
<td>F-NO</td>
<td>90</td>
<td>19</td>
<td>21%</td>
<td>90</td>
</tr>
<tr>
<td>G-NO</td>
<td>90</td>
<td>22</td>
<td>24%</td>
<td>90</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>630</td>
<td>231</td>
<td>37%</td>
<td>630</td>
</tr>
</tbody>
</table>

Table 3 – Response rate, per “higher education institution” and “the three Estates”

<table>
<thead>
<tr>
<th>HIGHER EDUCATION INSTITUTIONS</th>
<th>ACADEMIC STAFF</th>
<th>STUDENT</th>
<th>ADMINISTRATIVE AND MANAGEMENT STAFF</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sample Responses</td>
<td>Rate</td>
<td>Sample Responses</td>
</tr>
<tr>
<td>A-PT</td>
<td>120</td>
<td>101</td>
<td>84%</td>
</tr>
<tr>
<td>B-PT</td>
<td>120</td>
<td>79</td>
<td>66%</td>
</tr>
<tr>
<td>C-IT</td>
<td>120</td>
<td>40</td>
<td>33%</td>
</tr>
<tr>
<td>D-IT</td>
<td>120</td>
<td>24</td>
<td>27%</td>
</tr>
<tr>
<td>E-GE</td>
<td>120</td>
<td>20</td>
<td>17%</td>
</tr>
<tr>
<td>F-NO</td>
<td>120</td>
<td>48</td>
<td>40%</td>
</tr>
<tr>
<td>G-NO</td>
<td>120</td>
<td>9</td>
<td>8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>840</td>
<td>321</td>
<td>38%</td>
</tr>
</tbody>
</table>
The aim of the questionnaire’s first section was to perceive how the constituencies of universities were aware of Bologna as a policy process. They were asked questions about dimensions related to Bologna’s drivers, objectives, focuses and changes, taking the perspective of each national higher education system. The second part of the questionnaire aimed at understanding how the different constituencies assessed the implementation of Bologna in their own university. The third, and last, part of the questionnaire focused on changes in the teaching, learning and research processes as perceived by the academic staff. The aim of this section was to understand how academics assessed changes in teaching and learning processes resulting from the implementation of Bologna. In this paper we present only some preliminary findings of the results obtained.

Academics are centrally positioned in higher education institutions and they read changes and adapt to sustain their positions (Becher & Trowler, 2001: 164), which emphasises the process of local interpretation that conditions change. In this process academics try to ensure they will not loose privileges or their professional prerogatives (Martin, 1999). Therefore, academics are not passive, rather they can be actively involved in using coping strategies, even voicing discontent with the status quo, or leading policy reconstruction aimed at reinterpreting and reforming policies interfering with their institutional life (Trowler, 1998). Henkel (2000) refers to collective resistance in the form of deliberate distortion of policy requirements (e.g. into compliant paper-chasing) or even of ‘wilful misunderstanding’, while Kogan (1999) speaks of the opportunities created by ‘constructive ambiguity’.

Students as clients or consumers are placed in a peripheral, volatile and ephemeral position regarding higher education. In the Portuguese context studies about the involvement of students in evaluation processes (Cardoso, 2009) indicated they were not involved in decision-making and evaluation processes because, among other reasons, the academic staff and the administrative and management staff were seen as more representative of academic authority and management, respectively. Consequently, students are not very motivated to get involved in processes and institutional dynamics within higher education institutions (Cardoso, 2009). This position contrasts with the role of (some) students acting as consultative members of the Bologna process in representation of the European Students’ Union (ESU). However, this role does not provide evidence it creates a stimulus to their active participation in university structures. Students do not sustain convincingly their intellectual interests and it is difficult to grasp their perception about the university (Clark, 1983). Then, students are often (in)voluntary excluded from institutional dynamics.

The administrative and management staff originally tended to be in the periphery of higher education institution but as they created and spread routines and procedures related to their professional activity, they moved to the centre (Clark, 1983). With the rise of New Public Management the administrative staff see themselves as essential professional contributors to the successful functioning of the contemporary university and consider that the present complexity of their job is no longer compatible with the amateur approach of “a senior professor of patriarchal structure ... with the role assumed by people who were good at that sort of thing and also had established academic reputations” (interviewee quoted in Henkel, 2000: 236).
The first part of the questionnaire enquired respondents about the implementation process at system level. The very high percentage of answers ‘no opinion’ and ‘do not know’ about perceptions on Bologna as a policy process (motivations, goals, targets, focuses and changes) is probably the most disturbing result as it shows a very low level of awareness about the Bologna process. Questions about rationales (e.g. political rationales), strategic objectives (e.g. establishment of EHEA), targets (e.g. administrative reform), focus of the reforms (e.g. removal of barriers to facilitate the mobility of citizens) and policies (e.g. mobility of European students and staff) collected a very high percentage of ‘suspended opinion (see Figure 1). As these sub dimensions are in the core of the Bologna process, the results show a very low level of embedding of the political process by the ‘pays réel’ to use Neave’s terminology (Neave, 2004).

Figure 1 – Bologna motivations, goals, targets, focuses and changes

A – Motivations of the Bologna process – In your HE system the implementation of Bologna is strongly motivated by political considerations
B – Strategic goals of the Bologna reforms – In your HE system recent reforms are being implemented to establish the EHEA
C – The targets of Bologna reforms – In your HE system the implementation of Bologna is an administrative reform (degree structure, ECTS, etc.)
D – The focus of Bologna reforms – In your HE system the implementation of Bologna is focused on removal of barriers to facilitate mobility
E – Changes resulting from the implementation of Bologna – In your HE system the implementation of Bologna has changed the mobility of European students and staff

Furthermore, the low awareness about Bologna as a policy process may be understood by factors affecting the implementation process as identified in the literature (Cerych and Sabatier, 1986). The analysis of rationales and strategic objectives as perceived by the pays réel demonstrates lack of consistency and clarity, which does not facilitate policy implementation. This undermines the degree of institutional commitment to the various objectives linked to the EHEA such as increasing mobility, employability, competitiveness and attractiveness.

The objectives of Bologna as in most policies are multiple, conflicting and vague (Cerych and Sabatier, 1986) and they have been progressively changed as successive ministerial conferences added more and more additional objectives to give an impression of dynamism. A good example of shifting goals leading to lack of clarity of political purposes is the analysis
of mobility that lies at the very heart of the Bologna process and was reflected in the vagueness of answers to questions related to mobility (51% of ‘no opinion’ and ‘do not know’). This may be the result of a shift of the fundamental nature of mobility activities within the EHEA. The traditional concept of mobility as established by European programmes such as ERASMUS and SOCRATES, that have promoted the mobility of European students for a period of studies is being replaced with the notion of the attractiveness of higher education systems for students from other continents and regions. The new objectives are related to competitiveness and attractiveness of the EHEA where economic rationales, the development of competitive European HE market and internationalisation are interlinked. It is also interesting to note that the rated answers provided a wide range of contradictory views between groups of respondents. Few elements were consensual, suggesting dispute of arguments and different perceptions about external pressures.

The second part of the questionnaire aimed at understanding how the university constituencies assessed the implementation of Bologna in their own university. The first section analysed the impacts of European and national initiatives, the European dimension and changes in the university.

**Figure 2 – Impact of European and national initiatives, European dimension and changes in the individual university**

![Impact of European and national initiatives](image)

A – Impact of European initiatives – What is the influence of Trends reports by the European University Association on the Implementation of Bologna?

B – Impact of national initiatives – What is the impact of the legal framework on the implementation of Bologna?

C – The European dimension of the Bologna process – Does the convergence of the degree structure reflect the European dimension in your University?

D – Changes in the university resulting from the implementation of Bologna – Did the implementation of Bologna change the benchmarking activities in your University?

The percentages of ‘no opinion’ and ‘do not know’ continued to be rather high but not so high as for the first part of the questionnaire (Figure 2). This might be explained by implications that the implementation of the policy decisions have for the grassroots of higher education institutions, i.e., they are more aware of the implementation problems at their own institution than at system level. However, the level of ‘no opinion’ and ‘do not know’ in some areas was still disturbing. This was the case about the perceived impact of
international reports, the legal framework, the convergence of the degree structure with other European degree structures, and benchmarking activities.

The second section analysed the awareness about the degree of implementation of different dimensions of the Bologna process (degree structure, pedagogic reform, diploma supplement, credit system and quality assurance mechanisms). It also enquired about the level of fulfilment of the objectives set for the degree structure, the diploma supplement and the ECTS, and the objectives of internal mechanisms for quality assurance and its degree of implementation.

Figure 3 – Embedding the Bologna reforms at institutional level

A – Awareness of the Bologna implementation – What is the progress of the implementation of the ECTS in your University?
B – Impact of the degree structure – Has the implementation of Bologna in your university increased the mobility of students and graduates?
C – Impact of the Bologna supplement – Has the implementation in your university of the Diploma Supplement improved legibility?
D – Impact of the Bologna supplement – Has the implementation of the Diploma Supplement in your university increased the attractiveness to foreign students?
E – Impact of the credit system – Has the implementation of ECTS improved the comparability of European HE systems?
F – Quality assurance – Were quality assurance mechanisms implemented in your university to enhance the European dimension?
G – Assessment of research quality – How much your university has implemented procedures for the assessment of research quality?

Awareness about transformation, changes and impacts addresses the impact of European programmes, the changes in internationalisation and quality policy areas and in recognition procedures of European and foreign degrees; the setting up of support structures aiming to improve information/communication systems; the recognition of large changes in pedagogies; the major impact of competencies definition and learning objectives in the Bologna degree structure; the perceived impact of the Bologna degree structure on mobility; and the perceived impact of the credit system on comparability (the two latter questions addressing two objectives of the EHEA, mobility and comparability).
Interesting results were the perception of negative impacts related to increased control by central administration and the lowering of the level of job satisfaction resulting among other aspects from increased bureaucracy and less time available for research. Some results reveal substantial contradictions in the answers given by respondents. For example, 56% of the respondents perceived the level of implementation of pedagogic reform as fully implemented or moderately implemented. However, this percentage was only 30% for the implementation of the Diploma Supplement and 35% for the implementation of the ECTS. This is mainly the result of the contribution of the answers from the academic staff that did not give much relevance to the Diploma Supplement and the credit system.

The analysis of the level of awareness about the implementation of Bologna identified, at least, two issues lost in translation in the trajectory of policy implementation – increasing employability and relevance of lifelong learning. Answers on the perceived impacts of the Bologna degree structure placed employability after everything else. The differentiation of profile of qualifications was not perceived with great interest and the development of students’ professional competencies obtained the highest share of partially disagreeing answers. And although respondents recognized changes in lifelong learning resulting from the implementation of Bologna, its connection with the credit system was not established clearly.

The last part of the questionnaire was reserved to the academic staff and enquired about changes in the teaching, learning and research processes as perceived by the academic staff. It is interesting to notice that the percentage of ‘no opinion’ and ‘do not know’ answers decreased substantially when compared with the initial parts of the questionnaire, which corresponds to the core activities of universities.

8. Conclusions

We can derive some preliminary conclusions from the research results. The first conclusion is that the implementation of higher education policies using soft law is successful in promoting change but has difficulties in effective coordination. The absence of sanctions and the lack of clarity and consistency of policies, together with re-nationalisation processes contribute to convergence difficulties.

The second conclusion is that the ‘naming and shaming’ mechanisms of Bologna were designed to spread the gospel by giving a permanent impression of successful advance towards the intended objectives, which has not made them suitable for putting effective pressure over the national governments to ensure a reasonable level of convergence. And even if there was a real intention of using effective shaming mechanisms it is debatable how far this effectiveness could be achieved (Idema and Kelemen, 2006)

The third conclusion is that there is still a low level of embeddeness of the Bologna process at institutional level, as demonstrated by the high level of ‘no opinion’ and ‘do not know answers’ given by respondents to questions that are at the core of the Bologna process. The level of opinion suspended increased when questions addressed levels more removed from the daily life of institutions, such as those related to the European level or the system, and decreased when they entered the realm of the core activities of universities.
The dimensions covered in the survey also elicited a wide range of contradictory views between groups of respondents. Few elements were consensual (e.g. cultural rationales, reduction of public expenditure, governance reform, perceived impact of Bologna degree structure, etc.) suggesting dispute of arguments and different perceptions about external pressures depending on the university, the Estate and the discipline.

The administrative and management staff tended to be more enthusiastic, showing a proactive approach towards the development of a competitive European HE market, internationalisation, perceived impact of European programmes, significant European content of courses and curricula, recognition procedures of European and foreign degrees, perceived impact of Bologna degree structure, support structures, perceived increase control by central administration, improvement of information/communication systems, setting up new university structures. The role of the administrative and management staff appears reinforced as a privileged interlocutor between the pays ‘politique’ and the pays ‘réel’. The emergence of New Public Management associated to the increased autonomy of institutions and the concentration of power at the level of central administration has contributed to a more visible role of the administrative and management staff. They are really those more supportive of the different dimensions of the Bologna implementation.

The academic staff was in general less positive than the administrative and management staff, except in perceiving the impact of quality assurance mechanisms as aiming at progressing towards accreditation. In this case, the expression of a rated opinion outnumbered other groups of respondents, revealing understanding about the issues raised. And they also revealed detailed knowledge about changes in the teaching, learning and research processes that are at the core of university activities, which became visible in a substantial decrease in the percentage of suspended opinion answers.

At last, our findings confirm the marginal role of students who in general were responsible for the highest percentage of opinion suspended. They were the least involved in the implementation process, which might be explained by the criteria used to select the students that did not privilege the choice of unionised students.

Recent developments around the future of the Bologna process are also interesting. Apparently there is no intention to assess the real degree of success of the Bologna process by researching how far its objectives were fulfilled before deciding to move on. Questions such as – “Are most students entering the labour market after completing the first cycle?” “Is the second cycle becoming an instrument of lifelong learning instead of a component of the initial training?” “Do employers see the first cycle as granting employability?” “Did Bologna increase student and graduate mobility?” “Is the European higher education area efficient in attracting students from outside Europe?” – have remained largely unanswered, except for a number of ‘soft’ reports paid by the Commission. The only independent report was made by the European Students Union (ESU 2009), which concludes there is a “distinctly ‘déjà vu’ feeling that strongly reflects a lack of progress with many aspects of the Process” while implementation remained “an ‘à la carte’ menu that member countries were using to hand-pick the reforms and action lines they wanted to work on, and turning a blind eye to the rest” (ESU 2006: 7) thus confirming the coordination difficulties of the OMC. The draft motion for a European Parliament Resolution of 27 October 2011 (European Parliament 2011), on the role of the European institutions to the consolidation and progress of the Bologna process is supported on a report written by Enrico Berlinguer (2011), the
Italian Minister of Education who signed the Sorbonne declaration and organised the Bologna meeting. Berlinguer’s report recognises there are still a number of implementation problems and bottlenecks that were not unravelled until the 2010 deadline. What is interesting is the fact that the draft motion “Points out that the Bologna Process 2012 Biannual Ministerial Meeting in Bucharest must take into account that the creation of EHEA has determined the conditions for a joint competence of the EU and the Member States on the issue of higher education” (European Parliament 2011). Thus the possible consequence of the political recognition of the frailties of the OMC to ensure coordination is apparently leading to further creeping competence of the Commission, an opportunity this agent will not ignore.

REFERENCES


