



Is free education under attack from the EU? The case of Scandinavia

Ole Henckel, DPU, Aarhus Universitet

Two-fold intention with the presentation:

- To provide a historical account of European Union involvement in higher education (HE) as a contribution to understanding the Bologna-process
- Focus on the *process* of policy-making related to the implementation of joint degrees in a European context

Assumptions:

- that the EU – in particular the European Commission – is increasingly impacting on national HE policies and reforms
- that policy develops as much by the operation of day-to-day processes as by the ‘history-making’ decisions of treaties and high-level political events

The policy-making process

Genesis (genese)

Decision

Design

Implementation

Focus on action/administrative practises rather than discourse/rhetoric

Case study:

Involving 5 Danish universities (2004-2008) and 11 master programmes, established with the aim of awarding a joint degree

Historical accounts, policy-papers, media coverage, memos, notes, minutes, e-mails etc. acquired from the main actors – ministries and other authorities, universities, the national Rectors' Conference etc.

Genese: EU involvement in HE

Article 128:” ... *a common vocational policy capable of contributing to the harmonious development both of the national economies and of the common market...*”. Treaty of Rome. **No legal basis for HE**

1976: Joint Study Programmes

1985: The Gravier-ruling on the Minerval

1987: The Erasmus program (short term mobility)

1992: Treaty on European Union – provided a legal basis for HE

Findings: *No University fees for tuition, registrations, examinations, access or laboratory and library facilities are to be charged to incoming students.*

Implementation of student mobility supported by the EU has been based on bilateral agreements on **mutual exchange**

An entrepreneurial European Court of Justice (ECJ)

Gravier vs. City of Liège, case no. 293/83

“... article 7 of the Treaty does not prevent a Member State from treating its own nationals more favourable in the area of education, particularly as regards access to education, scholarships and grants, other social facilities provided for students and the contribution by students to the cost of education”.

Based on article 128 the ECJ argued that:

*“... any form of education which prepares for a qualification for a particular profession is vocational training, whatever the age and the level of training of the pupils or students, and even if the training programme includes an element of **general education**”.*

As the case did fall under the remit of the treaty:

*“The imposition on students who are nationals of other Member States of a charge, a registration fee or the so-called ‘Minerval’ as a **condition of access** to vocational training, where the same fee is not imposed on students who are nationals of the host Member State, **constitutes discrimination** on grounds of nationality contrary to article 7 of the Treaty”.*

The legal basis for HE

Treaty on European Union (Maastricht Treaty) 1992

Article 149 stated that the Community: “... *shall contribute to the development of quality education by encouraging co-operation between MS and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the MS for the content of teaching and the organization of education systems...*”.

Protocol 30: “... *excluding any harmonization of the laws and regulations of the Member States*”.

The Bologna Process (1999)

- adopt a system of easily readable and comparable degree (diploma supplement)
- adopt a system with two main cycles (undergraduate/graduate)
- establish a system of credits (ECTS)
- promote mobility by overcoming legal recognition and administrative obstacles
- promote European co-operation in quality assurance
- promote a European dimension in HE
- Involvement of HEI and students as essential partners (EUA, ESU)
- promotion of the attractiveness of the European Higher Education Area (EHEA)

The official background report for the meeting in Bologna 1999:

*”The system of tuition fees varies, and it may have consequences for the further development of a European higher education space as it may be financially more attractive to some students to go to countries with no tuition fees than to countries with high fees. Such fees are usually not a problem for **exchange students** because exchanges normally include agreements on fee waivers, whereas tuition fee becomes a problem for regular students who decide to take a **full study programme** in another country”.*

*Confederation of European Rectors’ Conferences (1999): **Trends in Learning Structures in Higher Education. Project report for the Bologna Conference on 18-19 June 1999***

Joint Degrees: a hallmark of the EHEA

Communiqué of the summit of European Ministers in charge of Higher Education in Prague 2001

*”... called upon the higher education sector to increase the development of modules, courses and degree curricula offered in partnership by institutions from different countries and leading to a recognized **joint degree**”*

At the official Bologna seminar *on Joint Degrees within the Framework of the Bologna Process* held in Stockholm 2002 concluded that:

”Joint degrees interfere with national funding systems”.

In 2002 EUA and the European Commissions Survey on Master Degrees and Joint Degrees in Europe identified:

*”... serious problems for the award and recognition of joint degrees, since very few countries have specific **legal provisions** regarding joint degrees”.*

(input: admission/enrolment – output: awarding of degree)

EUA and the European Commissions *Joint Masters Project for Europe 2002-2003*
(100+ universities involved in 11 projects)

Conclusion on funding:

*”European diversity in higher education funding cultures creates challenges to joint programmes. At European level it seems unlikely that sustainable courses can be developed on a large scale which are free of charge to students **from certain countries**, while costing considerable amounts to others. For the moment **no solution has been found**”.*

Design – Erasmus World-program proposal July 2002:

Action 1: European Union Masters Courses must:

- have a duration of one or two years (60 to 120 ECTS-credits)
- involve at least three universities from three different Member States
- reserve a number of places for Erasmus World scholarship holders
- include a mandatory student mobility component in at least two universities
- lead to the award of a recognised joint – double or multiple – degree

The financial contribution to the internal management costs of the European Union Master Courses corresponds to a lump-sum of 15.000 Euro

Design – Erasmus World-program proposal July 2002:

Action 2: Scholarship scheme for third-country students

The devil is in the detail: (From the annex to the proposal).

*“A third-country graduate student on a one year European Union Masters Course would cost on average 21.000 Euros (this figure is composed of ten monthly grants a year of 1.600 Europe, 1.000 Euros for travel expenses, and a **block payment** of 4.000 Euros to the European Union Masters Course. A third country graduate student on a two year European Union Masters Course would cost on average 42.000 Euros (this figure consist of a simple doubling of the cost for one year)”.*

Nothing mentioned about **European students** and mutual exchange

Communiqué of the Summit of European Ministers in charge of Higher Education in Berlin 2003 stated a commitment to:

“... removal of legal obstacles to the establishment and recognition of such degrees and to actively support the development and adequate quality assurance of integrated curricula leading to joint degrees”

Co-Decision on Erasmus Mundus-program launched in April 2004

No changes to the proposed actions (economic instruments)

15 percent increase in the budget from 200 million euro to 230 million euro

Change of the program brand from Erasmus World to Erasmus Mundus

An Erasmus Mundus-committee (comitology) was established with representatives from the Member States:

- Advisory committee (on the selection of Master degrees)
- Management committee (QMV against) (on the general implementation)
- Regulatory committee (QMV in favour) (not in use)

Operational Description of Erasmus Mundus

“... applications must be submitted by a coordinating university on behalf of a consortium...” (legal entity)

*“... registration and **tuition fees** should follow national legislation”.*

Findings: By the time of implementation no solutions had been established regarding:

- (1) Legal provisions for Joint Degrees
- (2) The incompatible national funding frameworks

Implementation – National level

Regarding Joint European Masters in Materials Science (EMMS) 2004

Universidade de Aveiro (Portugal), Hamburg University (Germany), Aalborg University (Denmark).

*“The Ministry of Science, Technology and Innovation will be prepared to recognize the Joint European Masters Programme in Materials Science as a **joint degree** under the Erasmus Mundus programme **later this year**. We expect to present a law to the Danish Parliament in November. With this law, we expect to eliminate any doubt in the EU-Commission concerning the engagement in joint/double degrees by Danish Universities”.*

Letter from MSTI to the Commission 26 April 2004

Implementation – institutional level

“The Master’s course is partly funded by tuition fees (at UA) and by public money (at UA, TUHH and AU). Tuition fees at TUHH and AU are generally waived since higher education in Germany and Denmark at public universities is financed through taxes. Tuition fees will be charged only from student enrolled at UA from the start (2.250 Euro per year). Students from TUHH and AU will be fee exempt when doing a semester abroad at UA, as are UA students going to TUHH and AU”

Application from EMMS consortium to the Commission 31 May 2004

Implementation – institutional level

Joint European Masters in Journalism (MundusJournalism) 2004

Aarhus University (Denmark), Hamburg University (Germany),
Amsterdam University (Holland), City University London (England),
Swansea University (Wales).

*”Each partner of the Consortium is funded from the students’ tuition fees and/or the respective state. For **EU students** this means they only have to **pay for semesters in the UK and NL**. The fee payment and funding of courses follows national rules”.*

Application from MundusJournalism consortium to the Commission 29
October 2004

Implementation – institutional level

Joint European Masters in Lifelong Learning: Policy and Management
(MA LLL) 2004

Aarhus University (Denmark), Universidad de Deusto (Spain), Institute of Education, University of London (England).

“There will be two levels of fee: 5.000 Euro for EU students and 12.000 Euro for third-country students”.

Application from MA LLL consortium to the Commission 31 May 2004

Implementation – institutional level

Joint European Masters in Sustainable Tropical Forestry (SUTROFOR) 2005

Copenhagen University (Denmark), Wageningen University (Holland), University College Cork (Ireland) and Università di Catania (Italy).

“There will be two levels of fee: 16.000 Euro for third-country students and 9.000 Euro for EU-students. Tuition fees will be distributed among Consortium institutions according to the number of student-years they are responsible for at the rate of 7000/3500. 1.000 euro per student-year will be allocated to the Secretariat”.

Application from SUTROFOR consortium to the Commission 31 May 2005

Implementation – national level

The university act 2005 (in effect from 2006)

Introduction of tuition fees for full-degree students from third countries

Regarding Erasmus Mundus:

- mobility for Danish and European students restricted to mutual exchange
- no tuition fee to be charged from European students
- regulation on double degree and multiple degree

Tuition fee for Danish/European students was not a political option

No specific legal provisions regarding JD or admission of students

Implementation – European level

As of February 2006 the following principle regarding tuition fees was introduced by the European Commission:

*“If consortia charge fees they **must charge a common tuition fee** for the entire Masters Course. The consortia are allowed to differentiate however between one fee for European students (EU, EEA-EFTA, candidate countries) on the one hand and one fee for third country students on the other”.*

Erasmus Mundus Program. Administrative and Financial Handbook. Actions 1 and 2: Erasmus Mundus Masters Courses and Scholarships.

Comitology – the management committee!

National and institutional implementation

January 2006 – March 2006

Universities and the national Rectors' Conference make seven (or more) attempts to get a response from the MSTI regarding the use of tuition fee for European students on these "*transnational master programs*".

MSTI receive a complain from a Danish student regarding tuition fee in Holland

Internal "analysis" presented to the management in the MSTI elaborating that mutual exchange do not work on cooperation on full-degree programmes:

Result: complete silence

Interim Evaluation of Erasmus Mundus 2007

On *European Master in Global Studies* (EMGS) involving universities from England, Germany, Austria and Poland:

*”A common tuition fee of 5000 euros was set by the consortium. As with other EM Masters Courses, there were challenges in arriving at a common tuition fee given wide variations in fee rates. Since tuition fees cannot legally be collected in Germany, this posed some practical constraints, which were overcome by using the European consortium itself as the **legal vehicle** through which tuition fees could be charged”*. (From the annex of the evaluation report).

July 2007 the Commissions proposal for Erasmus Mundus (2009-2013) involves (mandatory) use of tuition fee – mentioned only in the annex.

National implementation – is politicized

Awareness on the use of tuition fee is brought to the public's attention during the national election campaign in September 2007

Danish universities admitting to the use of tuition fee for European and Danish students, but claiming the relevant authorities have been kept informed and that admission of students is a matter for the established consortia and not the universities themselves

Despite implementation going on for more than three years it becomes clear during the press coverage that there is no clarification on the legal provisions for JD and the funding issue resulting from incompatible funding frameworks.

Failed or successful implementation?

In January 2008 The Ministry concluded:

- students participating in an EMMC was left in a judicial “no mans land” since the consortia was not regulated by any jurisdiction
- use of tuition fee for Danish and European students in breach of national legislation and the principle of mutual exchange

Consequence:

- Refund of tuition fee to Danish students
- Refund of tuition fee to European students having completed a part of their degree at Danish universities

Due to this administrative practise...

Implicit threat of a case with the ECJ

... the Commission received a complaint from an Italian student who never studied in Denmark, but nevertheless felt that this differentiation was in contradiction with the treaty principle on non-discrimination. Once again the Commission made contact:

*”Please note that we are currently analysing the situation of all Erasmus Mundus Masters Courses (EMMC’s) including Danish Universities in order to assess the impact of this new approach which is not only in contradiction with the programme’s requirements but leads to a discrimination between European citizens who have enrolled in a **joint and integrated European masters programme** and should therefore be treated on equal grounds (...)*

As a conclusion, we invite you to discuss with your consortium partners in order to provide us with a concrete proposal that will solve the unequal treatment faced by some of the European students enrolled (in the past, currently or in the future) in the SUTROFOR EMMC (...) Please note that failure to do so by the given deadline may lead to the termination of the framework agreement”.

Letter from the Commission to A Danish university 30 April 2008.

Policy solution – after 5 years of implementation

Establishment of a national scholarship-scheme – more or less restricted to Danish citizens – to fund parts of EMMC's completed by Danes at partner universities abroad

Will that stand a test with the European Court of Justice? (probably not!), though so far no one has raised the issue with the Commission or ECJ.

Is free education under attack from the EU? No doubt!

EM used by governments to legitimize tuition fees for third country students

EM used by universities to introduce tuition fees for European students

Commission of the European Communities (2003) *Operational Description of Erasmus Mundus – Revision 2*. European Commission. Brussels, 22. December 2003

Commission of the European Communities (2007). *Interim Evaluation of Erasmus Mundus. Appendix F Case Studies*. Commission of the European Communities, Directorate-General for Education and Culture, Brussels, June. 2007

Council of Ministers (1980). *General Report by the Education Committee*. European Economic Community, Brussels 11. June 1980

Danish Rectors' Conference (1999). *Trends in Learning Structures in Higher Education. Project report for the Bologna Conference on 18-19 June 1999*. Copenhagen, The Danish Rectors' Conference

Education, Audiovisual and Culture Executive Agency (2006). *Erasmus Mundus Programme. Administrative and Financial Handbook. Actions 1 and 2: Erasmus Mundus Masters Courses and Scholarships*. Version February 2006

European University Association (2003). *Joint Masters Project for Europe EUA Project 2002-2003*. Genève, European University Association

Flyvbjerg, B (1991). *Rationalitet og Magt. Det Konkrete Videnskab*. København: Akademisk Forlag.

Ministry of Education and Science (2002). *Memorandum: The Stockholm Conclusions – Conclusions and recommendations of the seminar on Joint Degrees within the framework of the Bologna Process Realising the European Higher Education Area. Communiqué of the Conference of Ministers responsible for Higher Education in Berlin on 19 September 2003*

Smith, Andy. (2003). Multilevel Governance: What it is and how it can be studied. In: *Handbook of Public Administration*. (Ed.) Peters, G. and J. Pierre. London, Sage

Tauch, C. & A. Rauhvargers (2002). *Survey on Master Degrees and Joint Degrees in Europe*. Genève, European University Association, September 2002

Towards the European Higher Education Area. Communiqué of the meeting of European Ministers in charge of Higher Education in Prague on May 19th 2001

Treaty establishing the European Economic Community (EEC) signed in Rome on 25 March 1957