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ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY – WHAT ROLE IN AND FOR THE EHEA?

**Background document for the thematic session at the meeting of the Bologna Follow-Up Group,
Bratislava, December 8 – 9, 2016**

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*Any views expressed in this document are those of the drafters and not necessarily those of their
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INTRODUCTION

At its meeting in Bratislava on December 8 – 9, 2016, the BFUG will hold a thematic session on academic freedom and institutional autonomy. Like previous thematic sessions, it will provide an opportunity for in-depth discussion of a topic of importance to the EHEA. It will be introduced by a couple of keynote speakers followed by discussion with members, consultative members, and a limited number of special guests.

Academic freedom and institutional autonomy are fundamental values of the European Higher Education Area. The thematic session will focus on these values because they are important to all EHEA members and because all EHEA members need to address issues related to these values as higher education systems, actors and provision, as well as societies, evolve.

While academic freedom and institutional autonomy are often featured in the news in conjunction with political crises, during which these fundamental values are particularly challenged, the starting point for the BFUG session is that academic freedom and institutional autonomy are issues in all democratic societies. All societies also aspire to an education system of quality. The session will therefore focus on issues of principle believed to be of relevance to all EHEA members.

The basic standard for academic freedom and institutional autonomy is the Magna Charta Universitatum (1988), at the time of writing (end August 2016) signed by 802 universities from 85 countries. New signatories are normally added at the annual meeting of the Magna Charta Observatory. The 2016 meeting will be held at the end of October and the number of new signatories is not yet known. A brief list of references and suggestions for further reading will be found at the end of this document.

PURPOSES

The purpose of this document is to provide background for the discussion and seek to identify some issues for debate.

Broadly speaking, the session will have a double purpose:

- to explore various aspects of academic freedom and institutional autonomy
- to identify possible EHEA policies, measures, and assessment criteria, with a view to making recommendations to the 2018 Ministerial conference.

ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY – TWO SIDES OF THE SAME COIN?

Academic freedom and institutional autonomy are generally considered together and often seem to be considered as intrinsically linked. It is nevertheless important to distinguish between the two.

Academic freedom

Academic freedom refers to the freedom of individual members of the academic community to pursue their research, teaching, and learning. In the words of the Magna Charta Universitatum (Fundamental principles, para. 3):

Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement. Rejecting intolerance and always open to dialogue, a university is an ideal meeting-ground for teachers capable of imparting their knowledge and well equipped to develop it by research and innovation and for students entitled, able and willing to enrich their minds with that knowledge.

Academic freedom has much in common with the freedom of expression but the two should not be confused. Academic freedom does not free members of the academic community from conducting their research, teaching and learning and from developing their conclusions and opinions in accordance with the standards

of their academic disciplines. By way of example, the freedom of expression would include the right to claim the earth is flat, even if this view would be rejected by almost all members of society¹. However, a teacher or student of astrophysics could not invoke academic freedom to express such a view, since the contention that the earth is flat could not be supported by evidence produced in accordance with the standards of astrophysics.

At the same time, the standards of academic disciplines evolve with new research, in large part thanks to those who question essential parts of the research consensus. A particularly striking example of the conflict between tradition and new research is medicine and natural sciences in 16th century Europe, where teaching was still strongly influenced by the traditions of Antiquity, whereas research gradually developed a very different view of the human body and the natural world. University teachers found themselves in the position of teaching in accordance with tradition while their research led them to different conclusions (de Ridder-Symoens 2006).

Institutional autonomy

Institutional autonomy refers to the ability of higher education institutions to set and implement their own policies and priorities for teaching and research, perhaps also other aspects of their mission, such as community service.

The Magna Charta Universitatum emphasizes that

the university is an autonomous institution at the heart of societies differently organised because of geography and historical heritage ... To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and economic power” (Fundamental principles, para. 1).

In the words of the Council of Europe Recommendation on the responsibility of public authorities for academic freedom and institutional autonomy (Council of Europe 2012), para. 6:

Institutional autonomy, in its full scope, encompasses the autonomy of teaching and research as well as financial, organisational and staffing autonomy. Institutional autonomy should be a dynamic concept evolving in the light of good practice.

The International Association of Universities’ policy statement on academic freedom, university autonomy and social responsibility defines institutional autonomy as “as the necessary degree of independence from external interference that the University requires in respect of its internal organisation and governance, the internal distribution of financial resources and the generation of income from non-public sources, the recruitment of its staff, the setting of the conditions of study and, finally, the freedom to conduct teaching and research” and academic freedom as “the freedom for members of the academic community – that is scholars, teachers and students – to follow their scholarly activities within a framework determined by that community in respect of ethical rules and international standards, and without outside pressure”. It will be noted that these definitions explicitly include independence from external interference and the dimension of governance.

There is generally assumed to be a strong link between academic freedom and institutional autonomy and in many – probably most – cases this assumption is sound. The link is, however, not a logical necessity. It is perfectly possible to imagine a highly autonomous institution with a strong leadership that does not leave much room for academic freedom within the institution. The opposite – academic freedom without institutional autonomy – is perhaps more difficult to imagine but one could at least imagine an institution with a high degree of academic freedom and such a decentralized structure that there would be little in terms of effective institutional leadership and hence also little institutional autonomy.

¹ But not quite all – there is a Flat Earth Society: <http://www.theflatearthsociety.org/cms/>.
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THE RESPONSIBILITY OF HIGHER EDUCATION INSTITUTIONS

With academic freedom and institutional autonomy come responsibilities to society/social responsibility. Regardless of whether and the extent to which institutions are publicly funded, they play important roles in and for society. In the words of the IAU policy statement: “Rights confer obligations. These obligations are as much incumbent on the individuals and on the University of which they are part, as they are upon the State and Society”.

Obligations incumbent on the academic community and its members include abiding by, upholding and developing the standards of the discipline as well as obligation to quality, ethics, and tolerance. The academic community and its members should to the best of society, which may in given situations entail a moral obligation to oppose and seek to influence public authorities and/or the prevailing public opinion.

Academic freedom and institutional autonomy are not ends in themselves. They are enablers of good and methodically sound academic practice as well as characteristics of an open academic culture of debate and investigation. The collection of relevant data, the use of proven methodologies and a basic openness to novel approaches and ideas are essential attributes of this academic culture. Formal powers of (outside) authority and a climate of narrow political correctness may threaten such openness². The concept of an “open academic culture” is a key issue, even if university research is much embedded with political and economic considerations (see e.g. Horizon 2020) and it can be very useful if we consider that higher education should play a major role in developing sustainable and equal societies.

PUBLIC AUTHORITIES AND PUBLIC RESPONSIBILITY

In this context, “public responsibility” is understood as being exercised by public authorities. “Public authorities” refer to any body exercising authority over an education system or a part thereof, in accordance with a duly established mandate. In the words of the Council of Europe Recommendation on the public responsibility for higher education and research (Council of Europe 2007), para. 4:

“Public responsibility” is to be understood as the responsibility of public authorities. Public responsibility for higher education and research can be exercised in different ways and at different levels (national, regional, local or combinations of these) in different countries. A “public authority” is understood to be any body, organ, entity or other organisation, at any level, empowered to supervise, oversee or make decisions, representing or acting on behalf of the population of the territory concerned, irrespective of its legal status under public or private law. Public authorities may be competent at local, regional or national level, in accordance with the constitutional arrangements of the country concerned.

At first sight, the role of public authorities may seem paradoxical. Academic freedom and, even more, institutional autonomy are often thought of as *absence* of interference by public authorities, yet neither academic freedom nor institutional autonomy can be a reality unless public authorities allow this. On the one hand, this implies that public authorities refrain from undertaking action that would endanger or impinge on academic freedom and institutional autonomy. History, including recent history, within and outside of what is today the EHEA, offers no shortage of examples.

On the other hand, it means that public authorities lay down the framework that makes academic freedom and institutional autonomy possible, and this role can be played by public authorities only. In the words of the 2007 Council of Europe Recommendation, para. 7, public authorities have

- exclusive responsibility for the framework within which higher education and research is conducted;
- leading responsibility for ensuring effective equal opportunities to higher education for all citizens, as well as ensuring that basic research remains a public good;

² See the recent report of the University of Chicago committee on Freedom of Expression: <https://freeexpression.uchicago.edu/>

– substantial responsibility for financing higher education and research, the provision of higher education and research, as well as for stimulating and facilitating financing and provision by other sources within the framework developed by public authorities.

The framework for which public authorities have exclusive responsibility includes legislation, the degree system/qualifications framework, and ensuring there is provision for quality assurance, even though the public authorities would not necessarily conduct the quality assurance. In some countries, the quality assurance agency may legally be a private body operating under a mandate given by the competent public authority.

LEGISLATION

Academic freedom and institutional autonomy cannot exist unless this is provided for in the relevant legal framework, whether explicitly or implicitly. However, legal provision is not itself sufficient to ensure academic freedom and institutional autonomy; practice must follow suit. Some of the more difficult issues may in fact arise from a discrepancy between legal provision and actual practice.

Even if (higher education) legislation may explicitly make provision for academic freedom and institutional autonomy, other laws may have the opposite effect. It is important to underline that academic freedom and institutional autonomy are not absolute, whether in legal or practical terms. Few would argue that higher education institutions, whether public or private, should be exempt from general legalisation on and public regulation of matters such as safety in laboratories, financial accounting, fair employment and access, or protocols for the treatment of medical and dental patients³. Therefore, discussion is likely to focus not on whether higher education institutions should be bound by general laws but on whether and how such laws could impinge unduly on academic freedom and institutional autonomy.

PUBLIC VS. INSTITUTIONAL POLICES

The ability of an institution to set its own policies is a key aspect of institutional autonomy. Nevertheless, public authorities also have an important policy making role. Even if public policies may give rise to heated discussion, few would dispute the right of public authorities to set a vision, articulate their expectations of what the HE system should deliver and develop policies for the education system accordingly. Disagreement would be on specific issues of public policy and on whether a given issue is one on which public authorities should reasonably set policy rather than the principle of public authorities developing a higher education policy.

For example, public authorities in Europe may develop policies for the overall number of students in higher education, or the number of students in specific academic fields, typically – but not exclusively – in study programs qualifying for regulated professions. Access regulations, student support, programs designed to support research in disciplines to which public authorities attach particular importance, and programs to further excellence in research are other examples.

Institutions may develop their own policies within broader policies set by public authorities. Institutions may, for example, decide whether or not to aim for participation in programs aimed at furthering excellence in research and, if they so decide, may identify specific academic areas or research groups within their institution for this purpose.

³ In the development of which the relevant parts of the academic community are likely to have been involved.

ACTORS

While academic freedom and, even more so, institutional autonomy is often seen in terms of the relationship between institutions and public authorities, other actors are also important.

Some are actors with a mandate from public authorities, such as quality assurance agencies. It may be worth recalling that while the principle of quality assurance in higher education as a public responsibility is now accepted, and EHEA Ministers have adopted both the original and later a revised version of the Standards and Guidelines for Quality Assurance in the European Higher Education Area⁴, this is a relatively recent development. As late as 1997, when the Council of Europe/UNESCO Lisbon Recognition Convention⁵ was adopted, there was still disagreement on whether public quality assurance should be required or not. Article VIII.1 of the Convention therefore distinguishes between “Parties having established a system of formal assessment of higher education institutions and programmes” and parties that have not done so. At least for Parties belonging to the EHEA, this distinction should no longer be operational.

It is also worth noting that while the Standards and Guidelines were adopted by Ministers, they were developed by stakeholder organizations. This points to the role of NGOs, some of which represent the academic community or parts thereof. This includes organizations representing the interests of a specific part of the academic community, such as trade unions and student organizations, exemplified by the role played by Education International and ESU within the EHEA. Other NGOs also play a role. As an example, human rights organizations played a key role in shaping the policy of many higher education institutions in regard to contacts with South Africa under the apartheid regime.

The business sector is also an important actor, which is often a partner for higher education institutions, as exemplified by the role of BusinessEurope within the EHEA. Cooperation with business provides important funding as well as opportunities to develop applied research. At the same time, it raises issues of institutional governance, in particular in setting institutional priorities and in the ability and will of institutions and well as of individual researchers or research teams to make their research results publicly available without delay. There is a long running debate about the commercialization of higher education and the extent to which this impinges on academic freedom and institutional autonomy. Many of the same issues arise in relation to foundations or other bodies providing funding for research or study programs, typically medical research in specific fields such as cancer or cardiology.

GOVERNANCE

The traditional European model of institutional governance underlines autonomy in that the governing bodies have typically been made up exclusively or almost exclusively of members of the academic community: academic staff (tenured and non-tenured), students, and technical and administrative staff. While the representation of groups has evolved over time and may vary somewhat between countries, there has generally been a tendency for tenured academic staff to hold a majority of seats on the governing bodies and for students to elect more representatives than technical and administrative staff. Rectors, deans and other academic leaders have generally been elected by and from within the academic community.

This governance model is now changing through the inclusion of external members of institutional governing bodies, either as a minority or as a majority of the board, as well as the hiring of institutional leaders from outside of the institution on fixed term contracts and following a call for applications. This is, incidentally, a model that has a long history in the United States. Many factors have influenced the shift towards a new governance model, including the influence of as well as the controversy around theories of “new public management” but two important considerations seem to have been given little explicit consideration. On the one hand, the emerging governance model redefines the competence required to govern a higher education institution, from an emphasis on competence in research and teaching to a broader but perhaps less clearly defined societal competence. On the other hand, the impact on academic freedom and institutional autonomy does not seem to have been a prominent consideration in the shift.

⁴ The revised Standards and Guidelines, adopted by Ministers in 2015, are available at http://bologna-yerevan2015.ehea.info/files/European%20Standards%20and%20Guidelines%20for%20Quality%20Assurance%20in%20the%20EHEA%202015_MC.pdf ,

⁵ <http://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/165>

It may be argued convincingly that academic freedom and institutional autonomy are privileges of universities with a clear goal setting that is not static but dynamic, evolving over time, requiring good maintenance and regular self-monitoring.

POLICY INSTRUMENTS

A range of policy instruments are available to promote or impede academic freedom and institutional autonomy. This section will be limited to presenting some of the key instruments.

Legislation and regulation

The role of legislation and regulation has been described above and will therefore not be explored here; suffice to recall that while legislation is the privilege of public authorities and may be adopted at national or other levels according to the structure of the country, regulations may emanate from within higher education institutions as well as from public authorities. Internal regulations would fall within the domain of institutional autonomy; they may or may not further academic freedom.

Education systems and structures

Public authorities are responsible for education systems and structures. As an example, institutions will issue qualifications that are a part of a national qualification framework or else operate outside of any national education system. An institution cannot, for example, decide to offer only integrated Master's degree (300 ECTS credits) if it operates in a system with a three tier qualifications framework, as is the case for all EHEA members. Within the qualifications framework, institutions would, however, have considerable leeway to determine the exact composition of a given degree. Similarly, while institutions would be expected to undergo external quality assessment based on the ESG. They nevertheless have considerable scope in designing and providing study programs.

Funding

The saying that whoever pays the fiddler calls the tune also applies to higher education, at least to an extent. There has been a tendency in Europe to see public funding as neutral, or at least as more neutral than funding from private sources. However, while public funding may be provided for broad purposes, it is often accompanied by stated policy expectations or performance indicators. Public funding may also be attached to specific projects or programmes. An equally important but less immediately evident point is that public funding may be withheld from certain areas or research with the same steering effects.

Private funding may also be of entire institutions or of specific projects and programs and may be accompanied by more or less specific funding conditions or performance indicators. As specified in the Council of Europe Recommendation on the public responsibility for higher education and research (Council of Europe 2007, para. 17), funding should be provided within a framework established by public authorities and be balanced between general and targeted funding.

One important issue would seem to be whether institutions and programs rely primarily on a single or limited source of funding, or whether funding is diversified. In general terms, diversified sources of funding may be assumed to provide less scope for any single funder to influence institutional policy and hence reduce institutional autonomy. Nevertheless, funding emanating from a single source with few strings attached may provide greater institutional autonomy than highly specified funding from a broad range of sources.

Projects

Academic freedom generally refers to the ability of individual members of academic communities to pursue their own academic interests and publish the results of their research. However, in many academic disciplines most research is carried out within research teams and/or through specifically funded projects. Many funding schemes are also linked to research projects. The individual academic able to set his or her research agenda without taking account of the priorities of institutions, research teams, or opportunities for funding of research projects would therefore be the exception rather than the rule. Such cases may nevertheless modify institutional priorities, and institutions may consider developing policies and guidelines encouraging individual or team academic culture and be more inductive-oriented than having a prescriptive agenda.

Performance review

There is broad agreement on the need to ensure quality in teaching and research as well as on the need for accountability in the use of public and other funding. There is perhaps less agreement on how quality and accountability should be ensured, and parts of this debate have links to the debate on academic freedom and institutional autonomy. Publications records, student numbers per course, and student assessments of teaching are examples of performance criteria that may influence academic staff members' ability to pursue teaching and research according to their own preferences or those of their academic discipline.

Such criteria are not necessarily unreasonable, and it would be difficult to make the case that the performance of academic staff should not be assessed. The issue is perhaps more what kind of assessment is reasonable and adequately combines concern for assessing individual and/or team performance with a concern for academic freedom, possibly also institutional autonomy. As two examples, publications patterns vary considerably between disciplines, and there may other criteria than student numbers to decide whether a course should be given or not.

ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY AS A MEASURE OF DEMOCRACY

Academic freedom and institutional autonomy are key features of democratic societies. The Fundamental Principles of the Magna Charta Universitatum underlines the need for institutions to be independent of political authority and economic power, whereas the Preamble to the 2012 Council of Europe Recommendation states that "higher education is crucial to the development and maintenance of the democratic culture and is indispensable for democratic societies to become a reality as well as for the social cohesion of European societies".

It is difficult to imagine democracy without academic freedom and institutional autonomy, and it is equally difficult to imagine that these fundamental values would flourish in the absence of democracy. It is also worth underlining that our understanding of democracy is not limited to institutions, legislation, and procedures (exemplified as parliaments, constitutions, and elections) but extends to democratic culture, i.e. the set of attitudes and behaviours required to make democratic institutions and laws function in practice. Education, including higher education, plays a key role in developing democratic culture⁶.

These fundamental values challenge democratic societies in various ways in "normal" situations, and the discussion above focuses on the everyday aspect of democracy, academic freedom and institutional autonomy. We have, however, also seen several situations in which academic freedom and institutional autonomy have been threatened for political reasons, including in EHEA member countries.

It is therefore worth recalling that academic freedom and institutional autonomy are key values of the EHEA, that the Bologna Declaration explicitly refers to the Magna Charta Universitatum, and that respect for academic freedom and institutional autonomy is among the criteria for accession to the EHEA as well as one of the elements on which compliance with EHEA values and policies should be judged. The BFUG thematic session should help define how this could best be done.

⁶ See the Council of Europe project on Competences for Democratic Culture http://www.coe.int/t/dg4/education/competences_en.asp
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ISSUES FOR DISCUSSION

This background document has sought to explore different aspects of academic freedom and institutional autonomy to help develop a fuller understanding of the issue. The discussion in the thematic session of the BFUG should focus on how academic freedom and institutional autonomy may be developed as and remain key values of the EHEA in practice as well as in word, and on how members' performance as regards academic freedom and institutional autonomy may be assessed as a part of the assessment of their overall implementation of EHEA values and policies.

The following questions are suggested for debate:

- How are academic freedom and institutional autonomy expressed and implemented in higher education policy and practice today?
- What are the greatest challenges to academic freedom and institutional autonomy?
- How can institutions best regularly reflect on their policies and practices both in terms of freedom and autonomy and in terms of responsibilities and services (to students who participate, to the society they serve, to the future of the global community of nations and to the sustainability of life on the planet)? What roles should the different stakeholders in the EHEA (e.g. public authorities; higher education institutions and their organizations; staff, students, and their organizations; international institutions and organizations; other stakeholder organizations) play in furthering academic freedom and institutional autonomy?
- How can implementation of academic freedom and institutional autonomy best be assessed, and what should be the implications of non-compliance?
- What should be the message of Ministers meeting in Paris in 2018 on academic freedom and institutional autonomy within EHEA as well as in the context of the Bologna Policy Forum? How should it be connected with other fundamental values for EHEA such as public, social and sustainable development responsibility and services?

While this list of suggested questions should not be considered exhaustive, it will be important to seek to focus the discussion on limited number of key issues and to identify possible EHEA policies and measures.

REFERENCES

Council of Europe (2007): Recommendation CM/Rec(2007)6 of the Committee of Ministers to member states on the public responsibility for higher education and research

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d5dae

Council of Europe (2012): Recommendation CM/Rec(2012)7 of the Committee of Ministers to member States

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805ca6f8

De Ridder-Symoens, Hilde (2006): "The intellectual heritage of ancient universities in Europe", in Nuria Sanz and Sjur Bergan (eds.): *The Heritage of European Universities* (2nd edition) (Strasbourg; Council of Europe Publishing; Council of Europe Higher Education Series No. 7)

Magna Charta Universitatum (1988) <http://www.magna-charta.org/resources/files/the-magna-charta/english>

SUGGESTIONS FOR FURTHER READING

The web site of the Magna Charta Observatory provides useful overview of background papers

<http://www.magna-charta.org/publications-and-documents/background-papers> and publications

<http://www.magna-charta.org/publications-and-documents/observatory-publications/index.html>.

The EUA project on institutional autonomy <http://www.university-autonomy.eu/> has given rise to an

exploratory study and a score card: <http://www.eua.be/policy-representation/governance-funding-and-public-policy/projects/university-autonomy-in-europe.aspx>.

The International Association of Universities has issued a policy statement on academic freedom, university autonomy and social responsibility [http://www.iau-](http://www.iau-aiu.net/sites/all/files/Academic_Freedom_Policy_Statement.pdf)

[aiu.net/sites/all/files/Academic_Freedom_Policy_Statement.pdf](http://www.iau-aiu.net/sites/all/files/Academic_Freedom_Policy_Statement.pdf)

The International Association of Universities and the Magna Charta observatory have developed the IAU-

MCO Guidelines for an Institutional Code of Ethics in Higher Education [http://www.iau-](http://www.iau-aiu.net/sites/all/files/Ethics_Guidelines_FinalDef_08.02.13.pdf)

[aiu.net/sites/all/files/Ethics_Guidelines_FinalDef_08.02.13.pdf](http://www.iau-aiu.net/sites/all/files/Ethics_Guidelines_FinalDef_08.02.13.pdf).

A number of the publications in the Council of Europe Higher Education Series

<https://book.coe.int/eur/en/112-higher-education-and-research> are also of relevance.

The University of Chicago committee on Freedom of Expression: <https://freeexpression.uchicago.edu/>