

The Europeanisation of Higher Education

or... How 'European' is
Higher Education in Europe?

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Question:

How 'European' is Higher Education in Europe?



Topics:

1. What is Europeanisation of Higher Education?
2. Governance of higher Education in Europe
 - § Rules & Regulations
 - Primary legislation
 - Secondary legislation
 - § European Organisations
 - European Court of Justice
 - European Commission
 - § European Transnational Society
 - Emergence of a European Academic Community
 - Emergence of a European Political Community

5 perspectives on Europeanisation:

Europeanisation = Exporting forms of political organisation

§ Diffusing European sphere of influence

Europeanisation = Changes in external boundaries

§ Enlargement of Europe

Europeanisation = Central penetration of national systems

§ The increased national influence of Europe

Europeanisation = Developing institutions at the European level

§ Formalisation & institutionalisation of Europe

Europeanisation = A political unification project

§ The integration of Europe

1: diffusing European sphere of influence

**Europeanisation =
Exporting forms of political organisation**

- § Relations with non-European actors and institutions
- § Through colonisation and imposition, but also through imitation and voluntary borrowing
- § **Europeanisation(1) of higher education:**
through historical links and linkage programmes:
 - § 'Export' of education systems in colonial era
 - § Tempus programme
 - § Erasmus Mundus
 - § But also through institutional linkages (e.g. activities in Mediterranean, Latin America and Africa and bilateral linkages between European and non-European HE institutions)

2: Enlargement of Europe

**Europeanisation =
Changes in external boundaries**

- § Expanding territorial reach of European systems of governance
 - § Reunification of Europe after the fall of the Berlin Wall
 - § From EEC of 6 in 1957 (to 9 in 1973/10 in 1981/12 in 1986/15 in 1995) to the EU of 25 in 2004; Bulgaria, Romania, 2007; Turkey ??
- § **Example of Europeanisation(2) of higher education:**
 - § New countries of EU are also subjected to the EU authority in the field of education and training
 - § Expansion of ERASMUS to include CEE and EFTA countries
 - § Bologna process of 1999: intergovernmental process extending European higher education to accession countries, future accession countries (e.g. Bulgaria) and non-member countries of EU (e.g. Norway, Switzerland). Inclusion of other non EU countries in Prague and Berlin (e.g. Russia, Albania; Ukraine)

3: The increased national influence of Europe

**Europeanisation =
Central penetration of national systems**

- § The division of responsibilities and powers between different levels of governance
 - § Formally through directives and regulations
 - § Functional and sectoral spill-overs, mainly because of internal market and non-discrimination principle.
- § **Europeanisation(3) of higher education**
 - § Formally, national systems are hardly affected through European regulations
 - § However, substantial indirect influence through spillovers

4: formalisation and institutionalisation of Europe

Europeanisation = Developing institutions at the European level

- § Emergence of formal-legal institutions of governance to facilitate and constrain the ability to make and enforce binding decisions
- § Strengthening of an organisational capacity for collective action
 - § From ECSC 1952 to EEC in 1957 to EU in 1992
- § **Europeanisation(4) of higher education**
 - § Education not included in first treaties.
 - § First activities in HE in 1976; ERASMUS in 1986
 - § 1984: start of first Framework programmes
 - § Amsterdam Treaty (1997): Education cautiously included in the treaty for the first time. EU involvement on the basis of principle of subsidiarity and mainly focused on cooperation
 - § Substantial role for European Commission and European Court of Justice
 - § ...and for transnational institutions at the European level

5: The integration of Europe

**Europeanisation =
A political unification project**

- § The degree to which Europe is becoming a more unified and stronger political entity
- § **Europeanisation(5) of higher education:**
 - § The European Higher Education Area?
 - § The European Research Area?

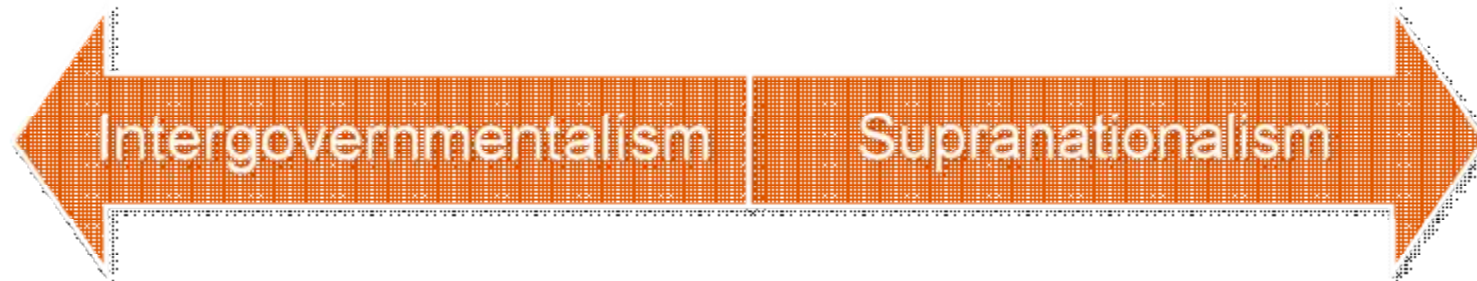
Much disagreement on:

- § The level and nature of integration:
 - § how integrated is Europe?
- § The modes of governance in this 'unification project':
 - § how is Europe integrated?

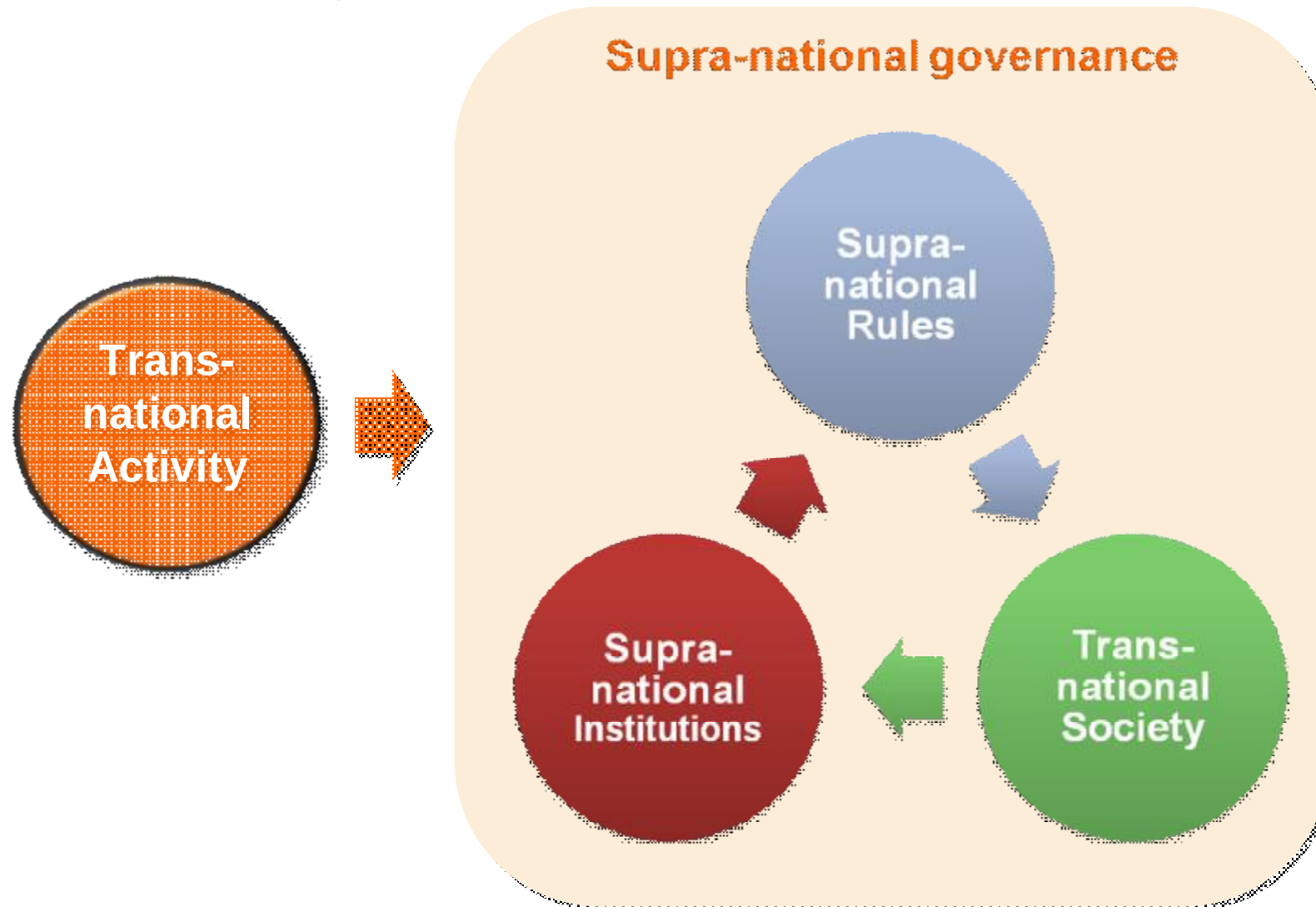
Perspectives on European Integration

Intergovernmentalists vs Supranationalists

- § Intergovernmentalists: realists assumptions.
 - § regional integration is the concerted pluralist articulation of national interests
- § Supranationalists: idealist and neo-functionalist assumptions.
 - § characteristics of a supra-national state, in which a new level of governance covers the region as a whole, not as individual nation-states. Supranational coordination & legislation is needed to facilitate and control flows

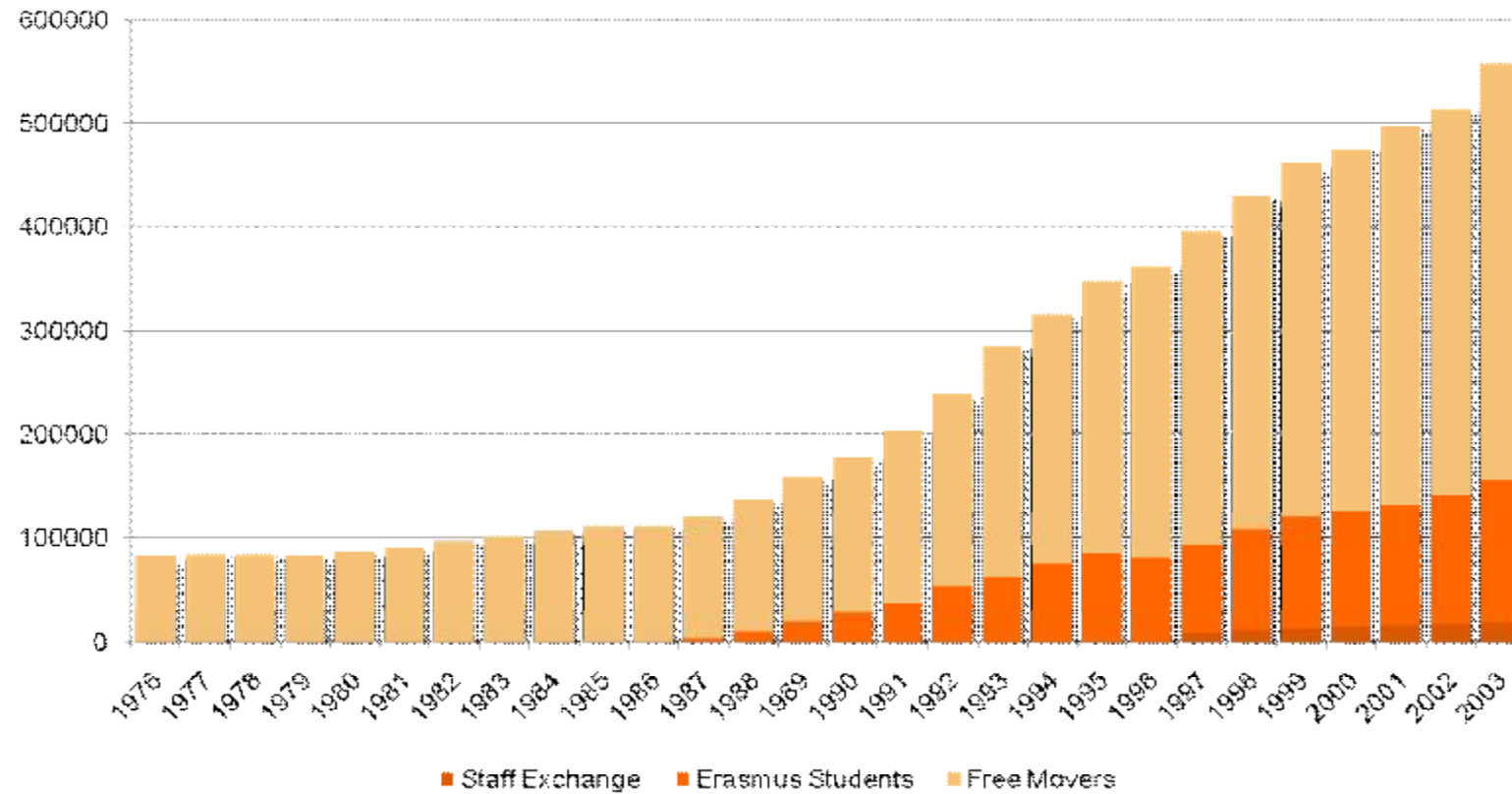


A new layer of Governance?



Transnational activity in HE&R

European Mobility of Staff and Students

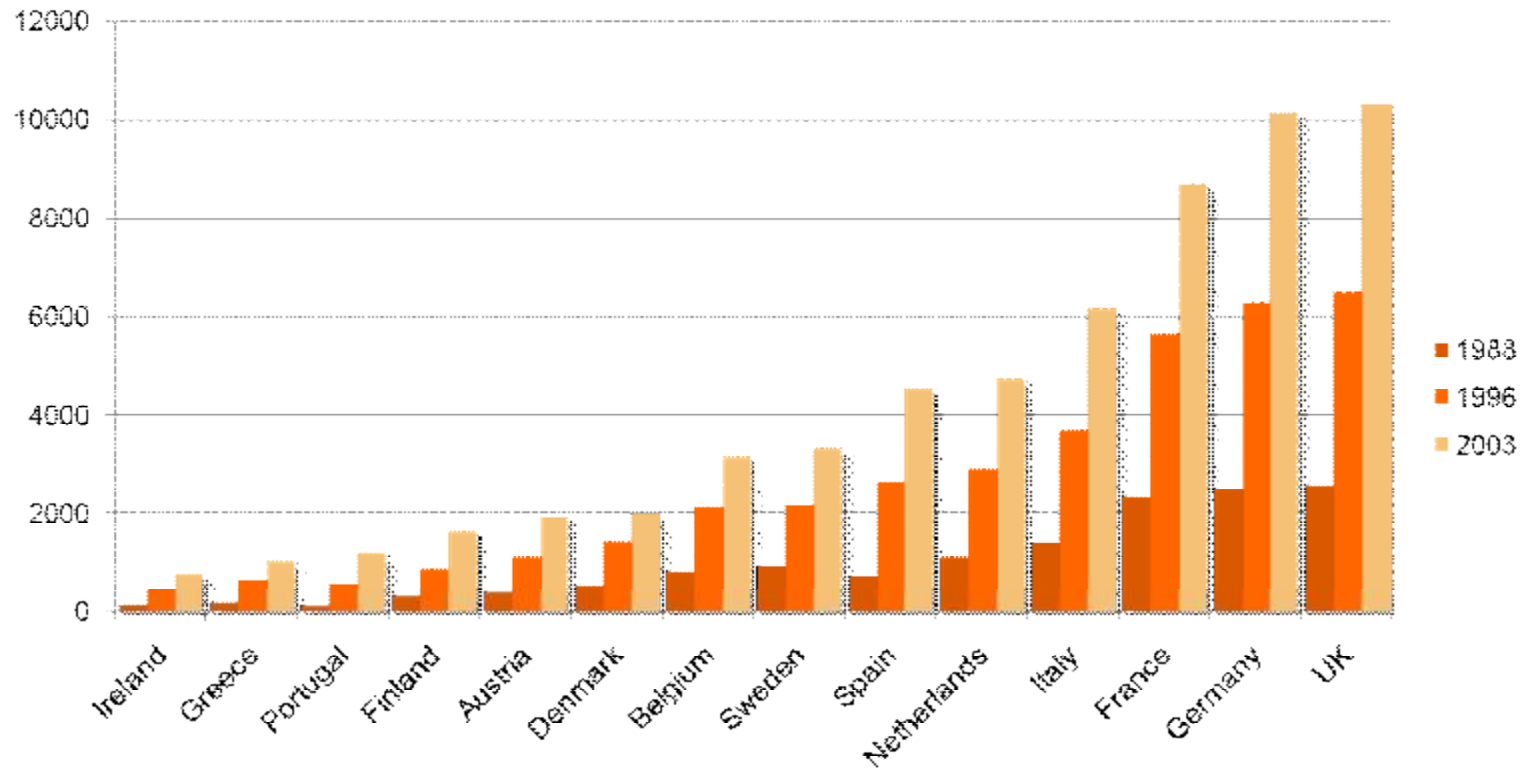


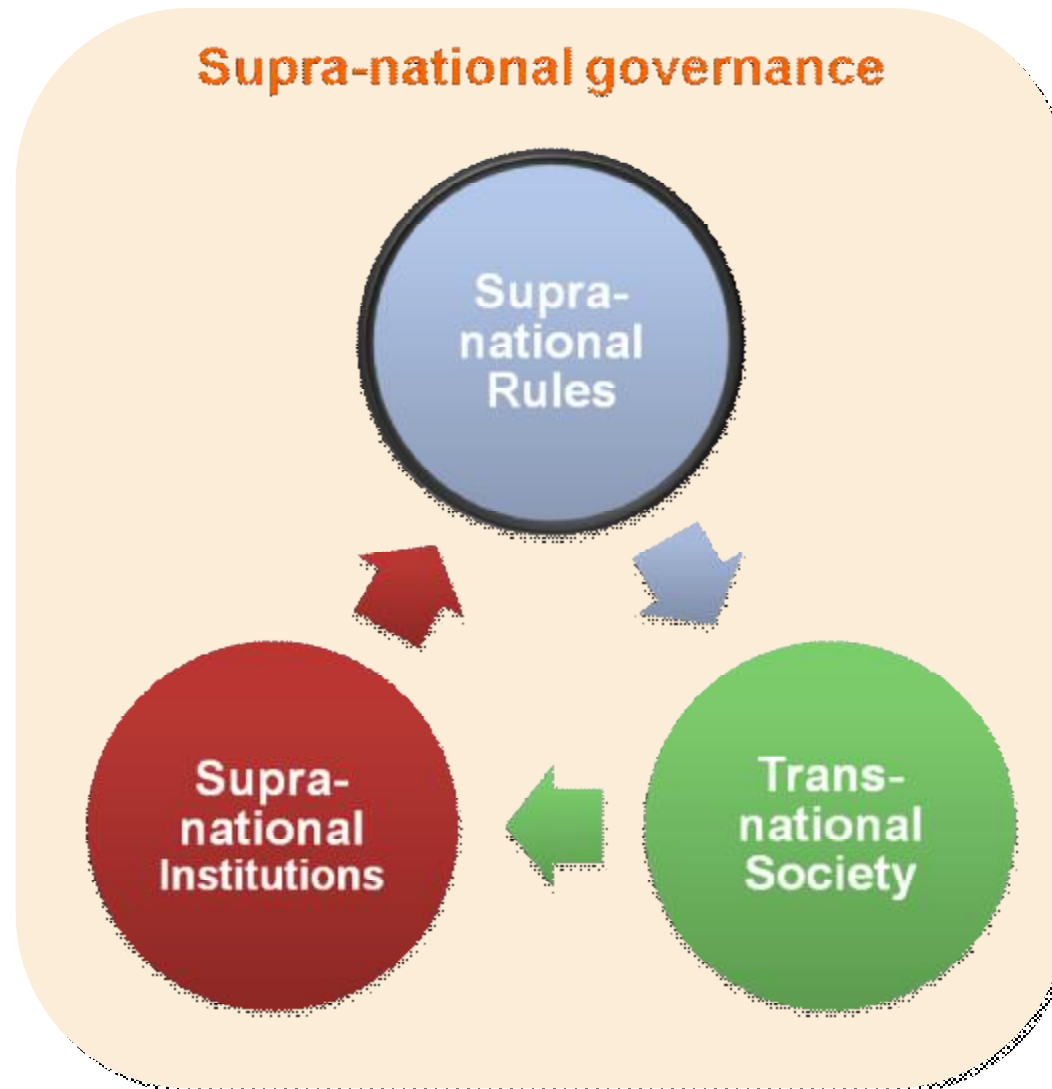
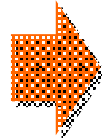
Transnational activity in HE&R

- Organised staff mobility low, collaboration high:
- Cooperation in Socrates:
 - 90% of European universities
 - 860 cooperative projects between 1994-2004 resulting in joint curricula, joint conferences, joint research reports, etc.
- Erasmus Mundus 2004-2007: 80 consortia
- Cooperation and consortia in Framework Programmes
- Non organised cooperation in research

Transnational activity in HE&R

Joint European Publications by Country





Dimension 1: Supranational Rules

Transnational activity à Supranational regulation

§ Treaties

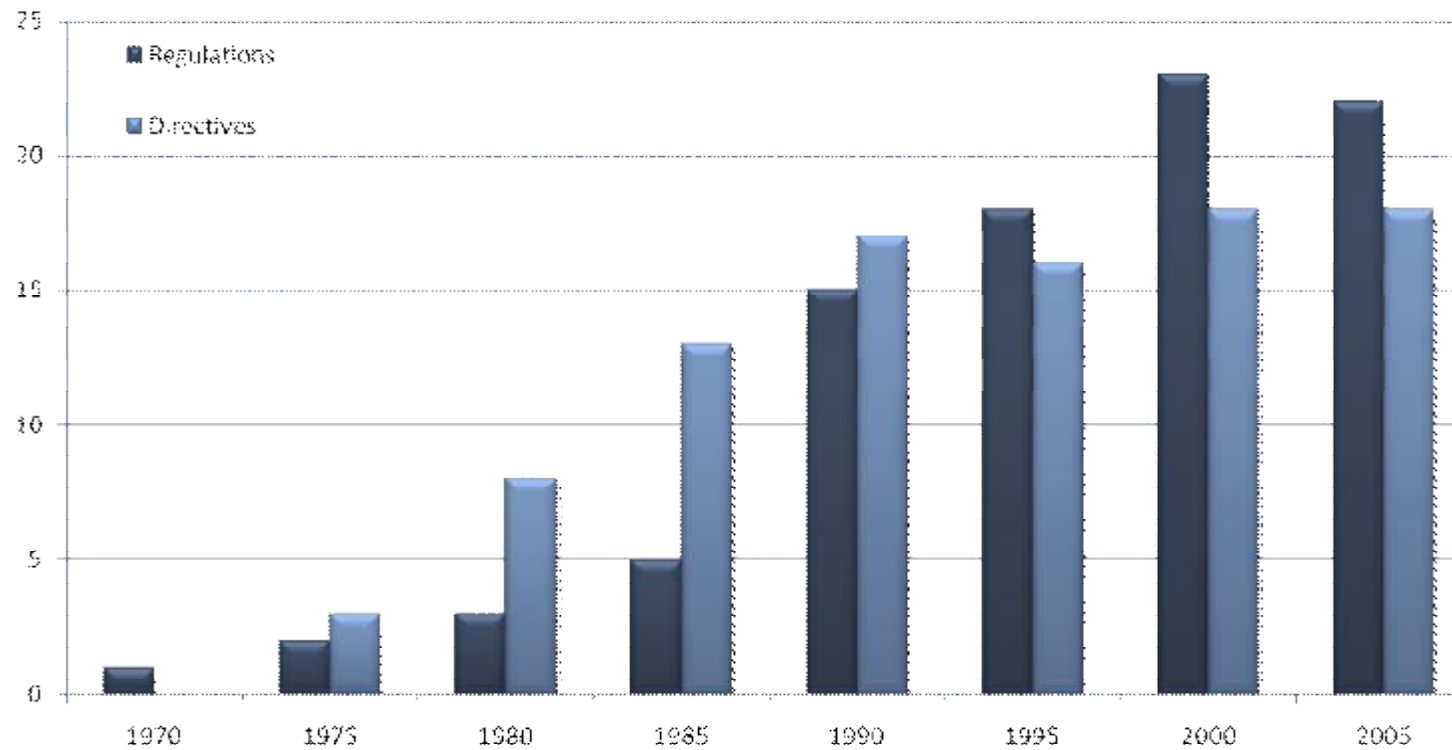
§ Directives & Regulations

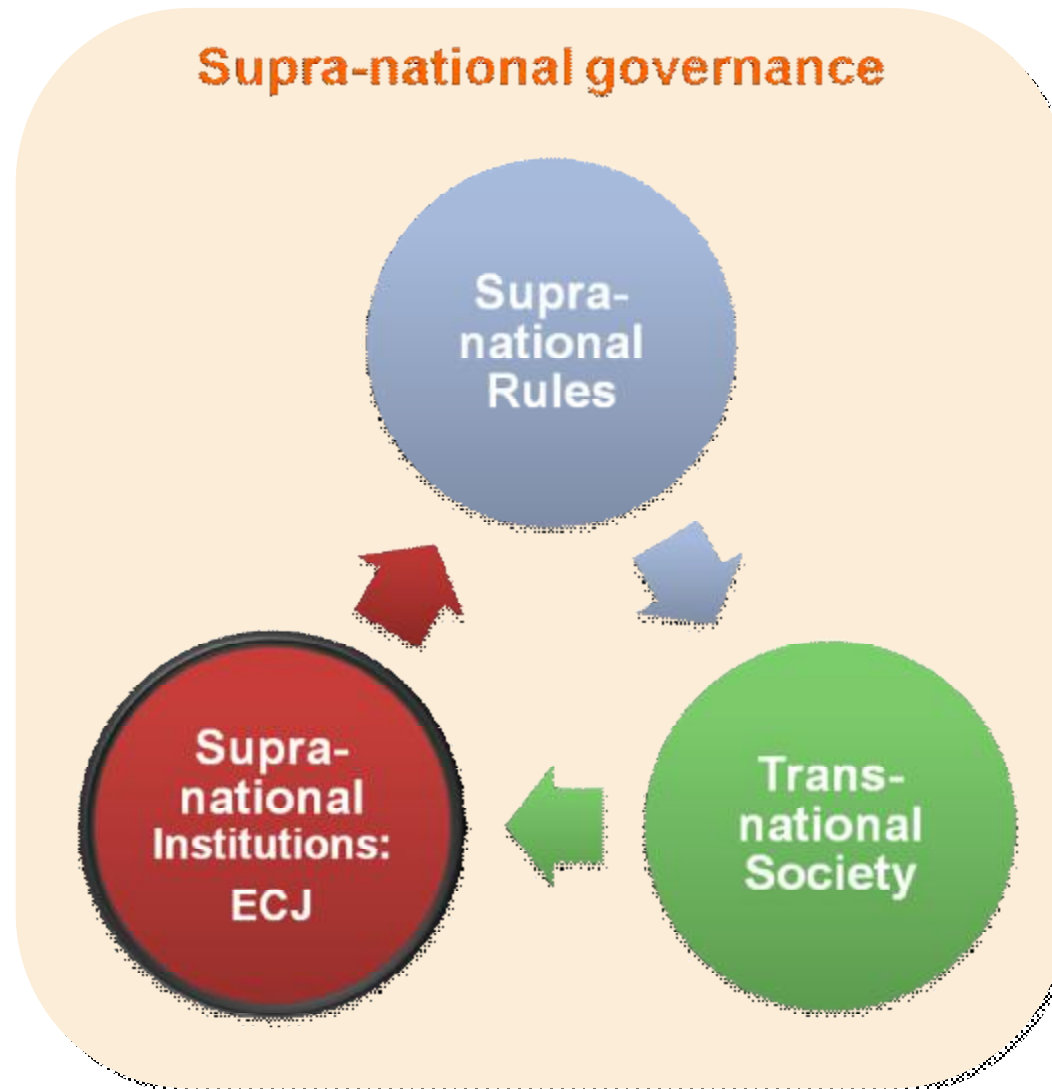
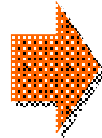
Dimension 1: Supranational Rules

- § Primary legislation:
 - § Treaty articles on HE:
 - § No provisions on HE until Maastricht Treaty in 1992
 - § Art 128 on Vocational Training applicable after Gravier but cautiously used
 - § Treaty articles on Research
 - § In Treaty of Rome and the Euratom Treaty
 - § Role of EU distributive rather than regulative
- § More activity in Secondary Legislation
 - § Recognition of qualifications
 - § Education of children of migrant workers
 - § Right of Residence for Students
 - § Admission of third country nationals for studies or research

Dimension 1: Supranational Rules

Regulations and Directives in Force in Education, Training and Science, 1970-2005





Dimension 2: Supranational Organisations

Transnational activity à Strengthening Supranational Organisations

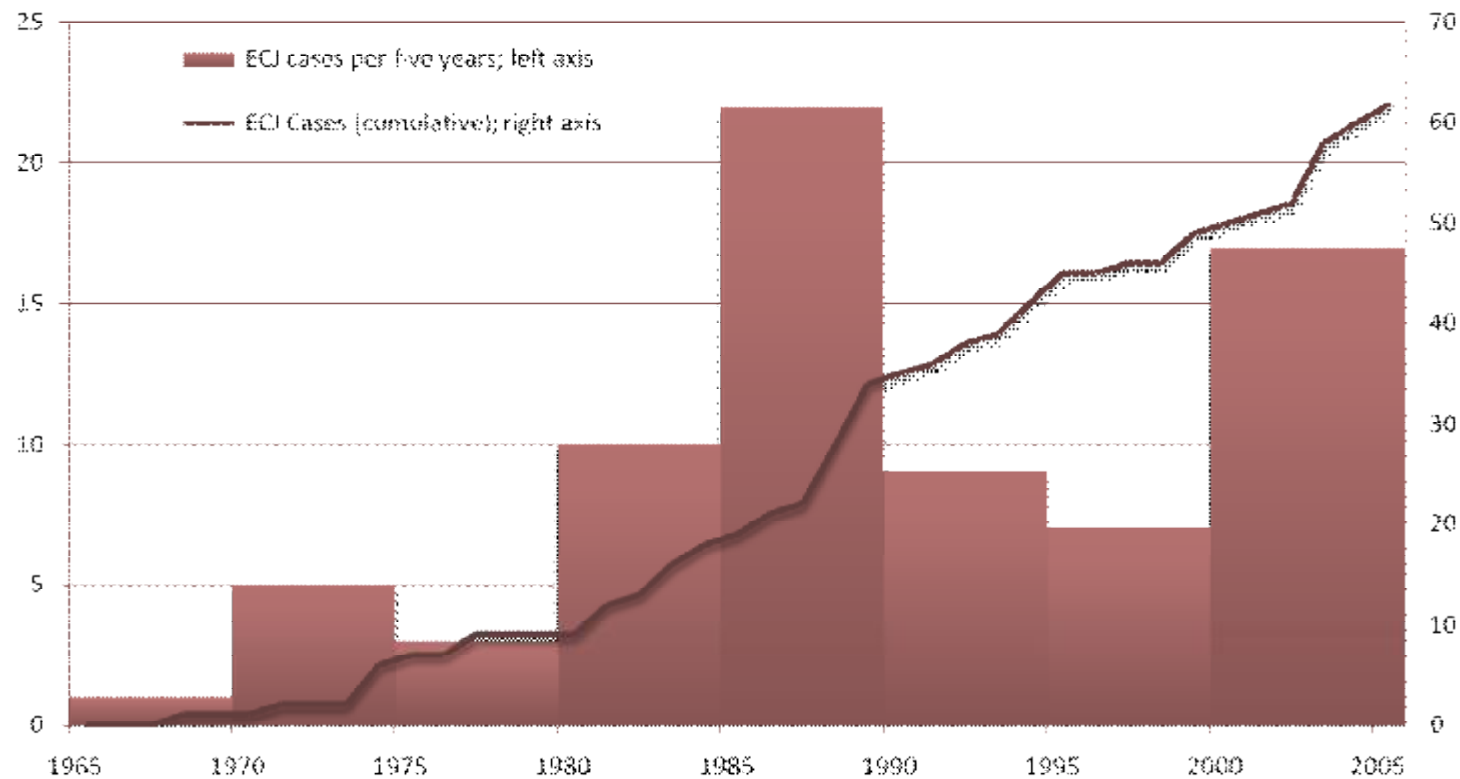
§ European Court of Justice

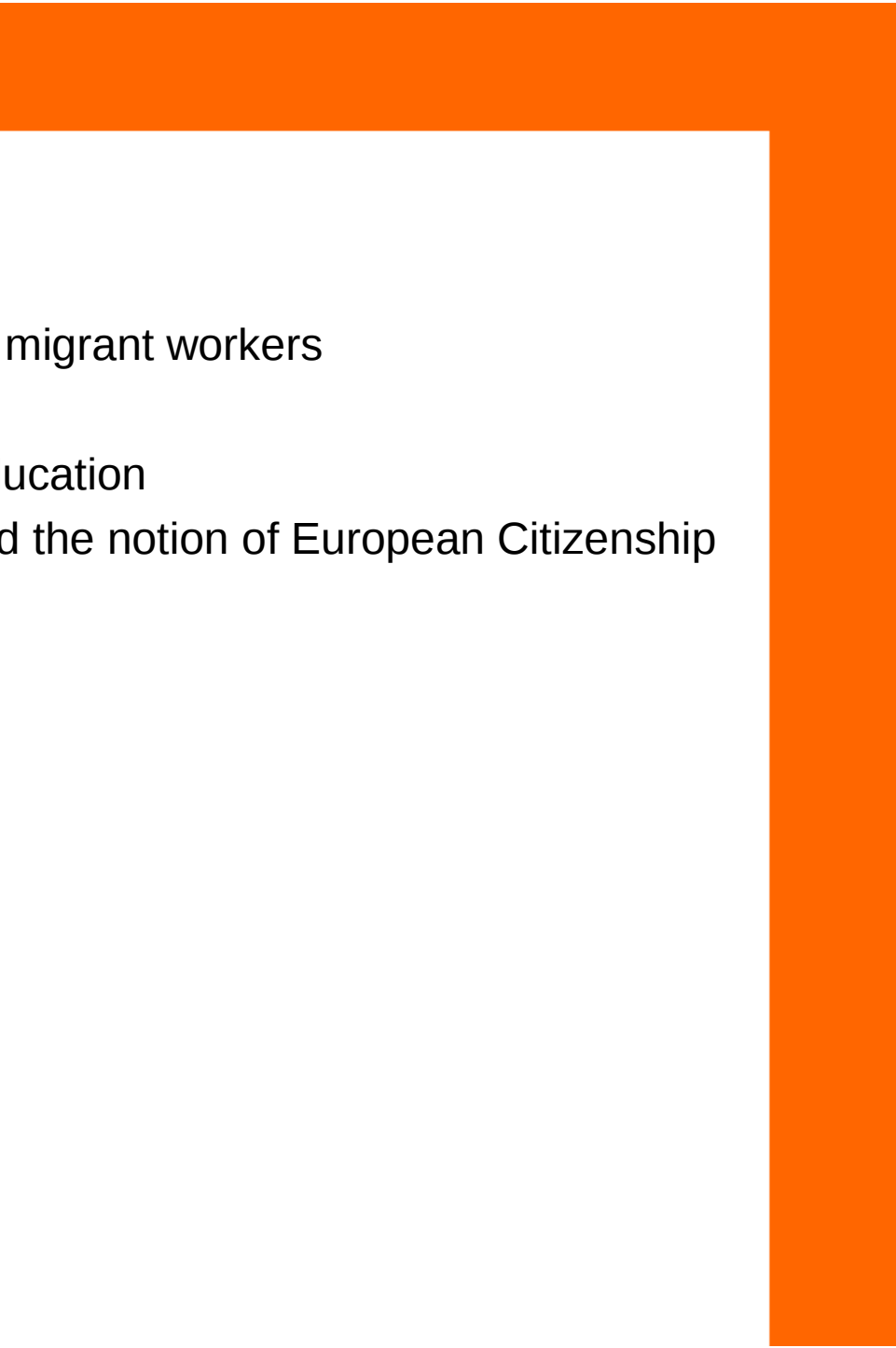
§ European Commission

Dimension 2: Supranational Organisations

European Court of Justice

ECJ Cases in the fields of education and research





ECJ Case law in 4 domains

1. The right of education of children of migrant workers
2. Recognitions of qualifications
3. Definitional issues and access to education
4. The non discrimination provision and the notion of European Citizenship

The right of education of (children of) migrant workers

Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers

Article 7

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

Relevant ECJ Rulings on Article 7:

Case C-39/86 *Lair* [1989]

Case C-197/86 *Brown* [1988]

Case C-235/87 *Matteucci* [1988]

Grants should be made available to workers pursuing vocational courses as a social advantage under article 7

The right of education of (children of) migrant workers

Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers

Article 12

The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Relevant ECJ Rulings on Article 12:

Case C-9/74 *Casagrande* [1974]

Case C-68/74 *Alaimo* [1975]

Case C-389/87 *Echternach and Moritz* [1989]

Case C-263/86 *Humbel* [1988]

Case C-308/89 *di Leo* [1990]

All forms of education are covered by this article and discrimination to access in education is forbidden. Children must furthermore not be subject to discrimination in relation to maintenance grants.

Recognitions of qualifications

- § 1960s/1970s: ECJ based its rulings on general principles of community law
- § Late 1970s: first sectoral directives were issued on the recognition of qualifications (nurses, veterinarians, architects, etc.)
- § ECJ rulings only in cases where specific legislation did not exist.
- § 2005: Directive 2005/36 EC, replacing the sectoral directives.
Transposed in national law in 2007:

2005/36 EC obliges Member States to consider the qualifications acquired elsewhere in the Community to allow access to a regulated profession in their territory.

- § ECJ cases expected mainly on incomplete transposition into national law.

Definitional issues and access to education (1)

Definition and scope of 'vocational training' in article 128 EEC

In the *Gravier* Case (1985) the Court defined vocational training as

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

Further refined in subsequent cases:

Case C-309/85 *Barra* [1988];
Case C-263/86 *Humbel* [1988];
Case C-308/89 *di Leo* [1990];
Case C-24/86 *Blaizot* [1988]

Definitional issues and access to education (1)

Definition and scope of 'vocational training' in article 128 EEC

Further refined in subsequent cases:

Case C-309/85 **Barra** [1988]

Case C-263/86 **Humbel** [1988]

Case C-308/89 **di Leo** [1990]

Case C-24/86 **Blaizot** [1988]

Although the Commission argued that all university education was vocational, the Court implicitly rejected this in its *Blaizot* judgement.

The Court stated that university studies usually fulfilled the criteria of the *Gravier* definition, but that the only exceptions were courses which were intended to improve general knowledge rather than to prepare for an occupation.

Definitional issues and access to education (2)

Can education be seen as a service and therefore be subjected to the services provisions of the treaty?

Gravier Case:

Education is not a service and does therefore not fall under article 49 (ex 59)

Further refinement in other cases:

Wirth Case:

- § Publically funded educational establishments are not covered by the service provisions
- § Courses of higher education provided essentially out of public funds do not constitute services in the meaning of the Treaty

Neri Case:

- § A course of education that is funded essentially out of private funds and where the education institute seeks to make a profit, is a service of an economic nature (and falls within the scope of art. 49 (ex 59))
- § This also applies where a private institution is performing tasks for a university recognised to award degrees

The non discrimination provision and the notion of European Citizenship

Gravier Case:

Principle of non discrimination (art 12) applies to policies on access to vocational training

NDP empowers individuals but can severely impact national competences. Inclusion of education in Maastricht treaty opened up avenues for the Council to take over again from the Court but NDP still plays big role.

If discrimination on the basis of nationality is not allowed, what about:

- Maintenance grants & social benefits?
(Grzelczyk; **Bidar**; **Förster**, **Commission v Netherlands**)
- Access to HE Institutions?
(**Commission vs Austria**; Commission vs Belgium)

The non discrimination provision and the notion of European Citizenship

Bidar Case:

An individual of French nationality, Dany Bidar, completed his secondary education in the UK. After that, he enrolled at University College London and applied for a maintenance grant.

He was refused the maintenance grant on the basis that he was not “settled” in the UK. In order to be “settled” a person has to have lived in the UK for four years other than for the purposes of receiving full-time education.

ECJ was asked whether a student applying for student loan in the UK could invoke the principle of non-discrimination on grounds of nationality laid down in Article 12 EC Treaty. ECJ stated that a student, during the residence in a host Member State, can rely on the right of equal treatment contained in article 12 EC Treaty.

Therefore it was unlawful to deny French citizen Dany Bidar access to student loans for maintenance purposes during his studies at University College London.

§However it is legitimate for a Member State to grant such assistance *only* to students who have demonstrated a certain degree of integration into the society of that State (so students don't pose “*an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State*”)

The non discrimination provision and the notion of European Citizenship

Förster Case:

German student Jaqueline Förster went to the Netherlands to study in 2000. She worked the minimum number of hours in order to be eligible for the Dutch student support. This amount of work apparently provided a substantial enough degree of integration.

The Dutch scholarship board initially granted the student aid to her but asked for a partial refund in 2005 because Förster had not worked in the second half of 2003. She took the case to court saying the move was discriminatory as Dutch students do not have to work (art 12).

Dutch IB Group: 'a certain degree of integration' = 5 years of work

à Contested by the Advocate General: 5 years = disproportionate

ECJ Ruling:

§ Art 12 applicable? YES

§ 5 year period: appropriate measure and also proportionate (contrary the AG)

Fear for scholarship tourism halted....for now

The non discrimination provision and the notion of European Citizenship

Commission vs Netherlands:

The Commission has sent the Netherlands a Letter of Formal Notice ordering the Dutch government to change its law on student support

The regulation states that only students that have lived for three of the past six years in the Netherlands are eligible for portable student support

European Commission: this criterion is a form of indirect discrimination

The non discrimination provision and the notion of European Citizenship

Commission vs Austria:

Until 2005, Austria only country without a cap on the number of students in medical schools.

In order to avoid an influx of foreign students to study medicine in Austria, the ministry established special requirements for foreign EU students (meet requirements to be admitted to the programme in the home country).

ECJ (2006): these requirements are illegal. Discrimination on the basis of nationality because it required foreigners to meet admission requirements by Austrian and domestic authorities.

At the day of the court ruling 700 German students had applied for a place in the medical school of the University of Vienna.

The same day, Austrian authorities introduced a measure ending unlimited access to specific programmes. 75% of the places in Austrian Medical schools would be reserved for students who finished their secondary education in Austria. 20% of the places were for EU students, and 5% for other students.

The non discrimination provision and the notion of European Citizenship

Commission vs Austria:

European Commission (in a Letter of Formal Notice, 24 January 2007): Admittance conditions that “are liable to have greater effect on nationals of other Member States than on Austrian nationals” are forbidden and cannot be justified.

“Commission jeopardizes the Austrian Health System” (Austrian Chancellor Grubenhauer)

On 28 November 2007, the Commission officially decided to suspend the infringement cases against Austria on the basis of the information provided in reaction to the formal notice.

The Commission considered that there was *‘prima facie evidence that without these restrictive measures, a problem could arise in the future for the Austrian health system, as a result of a potential shortage of health professionals practicing in Austria’*.

On this basis, the Commission plans to judge, after a five-year suspension, whether the national measures in question are justified

Austria was driving a hard bargain in the context of the negotiations of the Lisbon Treaty. Austria demanded a special Treaty protocol, which would allow it to set a cap on the number of foreign university students it would take in. This might have change the stance of the commission

The non discrimination provision and the notion of European Citizenship

Commission vs Austria: Reactions from legal experts

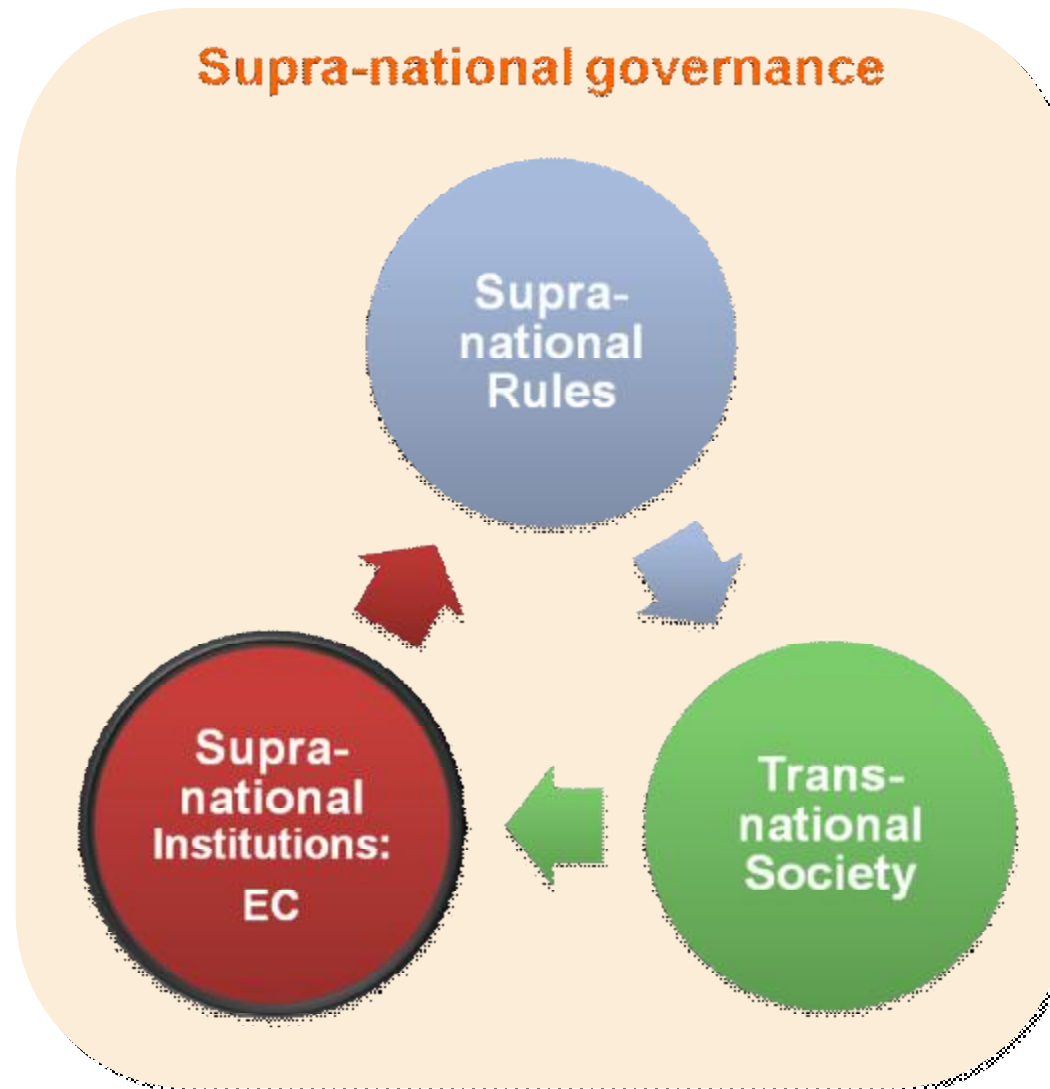
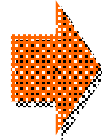
Lonbay (reacting on this case and the – slightly similar – case *Commission vs Belgium*):

Case makes clear that - although competency still lies in the Member states – European Law can nevertheless pack a considerable punch at how states can organise and fund access to higher education

Rieder argues that:

It is necessary for member states to become aware of the fact that in a common market, where people move around, it will always be the case that a Member State pays for a person's education without necessarily harvesting the fruit.

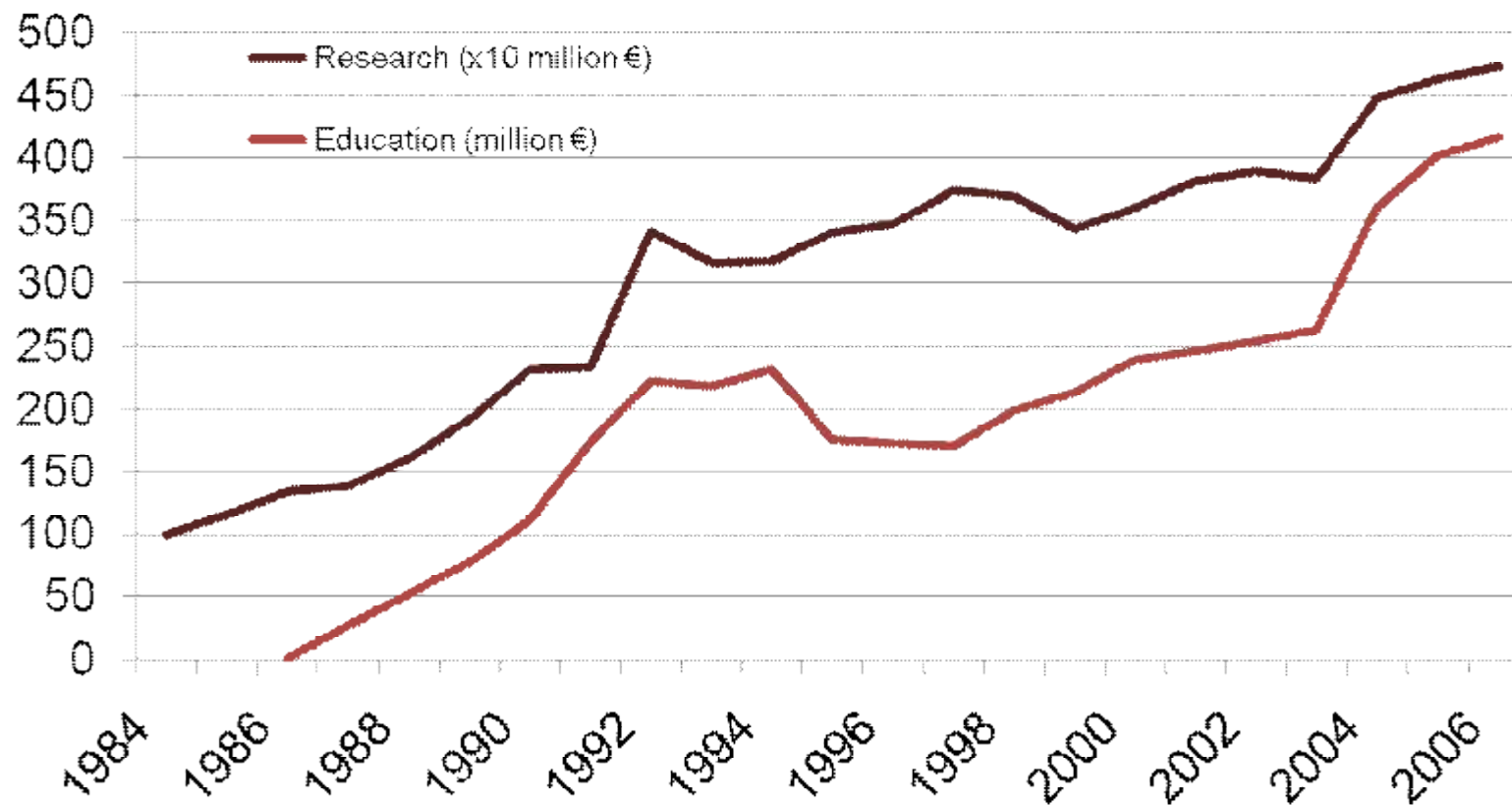
Are national governments willing – and able – to adopt such a European perspective?

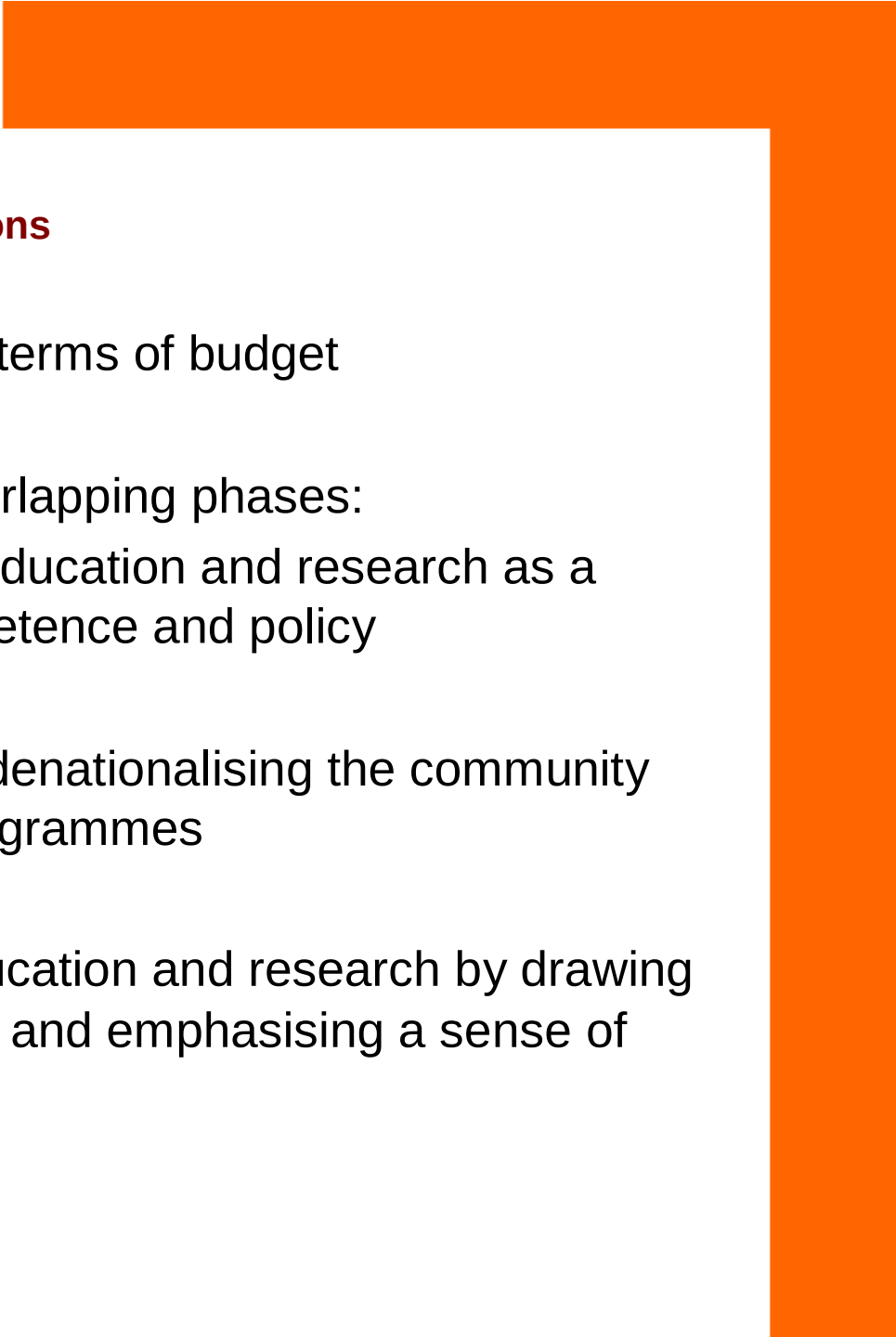


Dimension 2: Supranational Organisations

European Commission

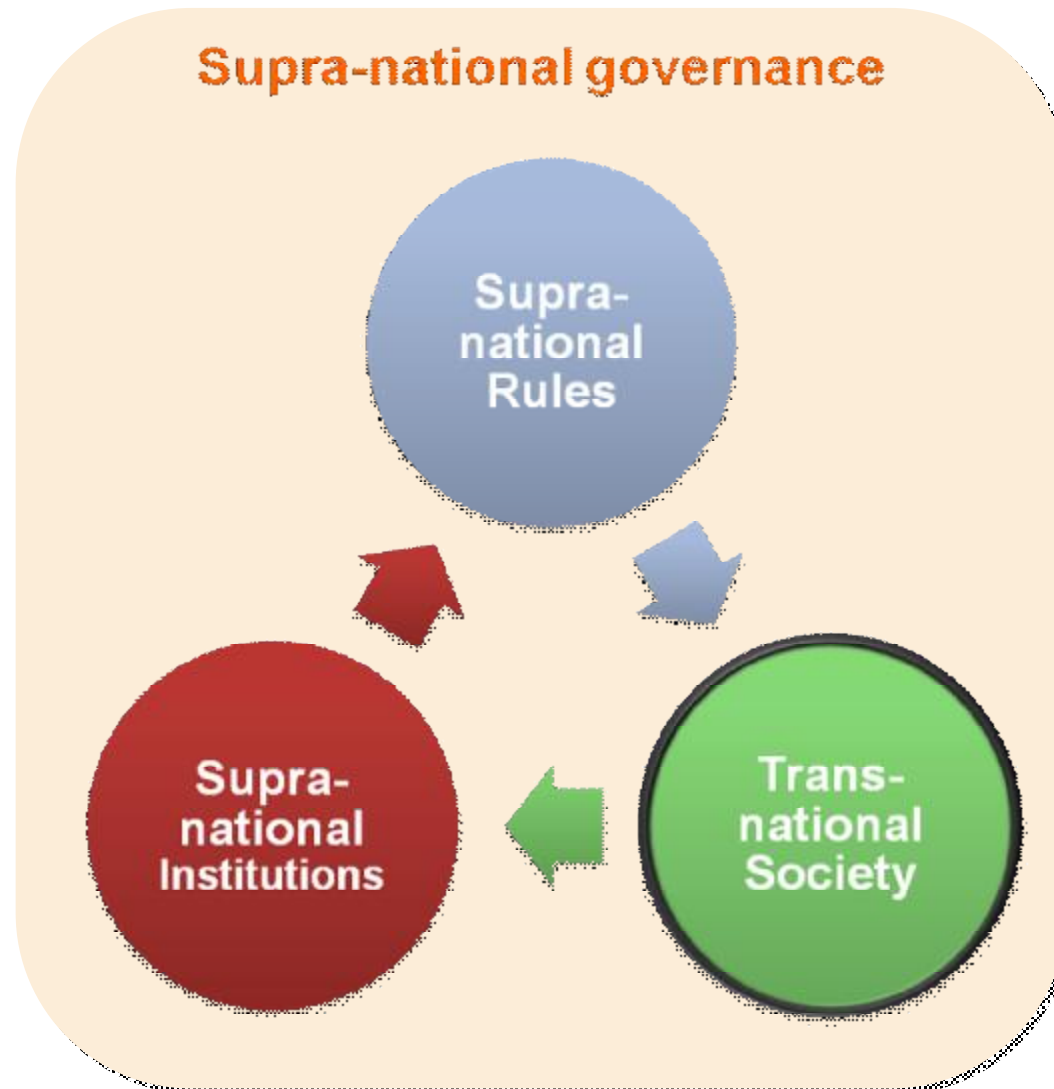
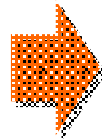
Annual budget for Higher Education & Training and Research





Dimension 2: Supranational Organisations

- § Moderate role in education, in terms of budget
- § Important political role in 3 overlapping phases:
 - § 1953 – 1992: establishing education and research as a domain for European competence and policy
 - § 1987-2006: extending and denationalising the community education and research programmes
 - § 2000, à : ‘*Lisbon-ising*’ education and research by drawing it into the economic domain and emphasising a sense of urgency





Dimension 3: Transnational Society

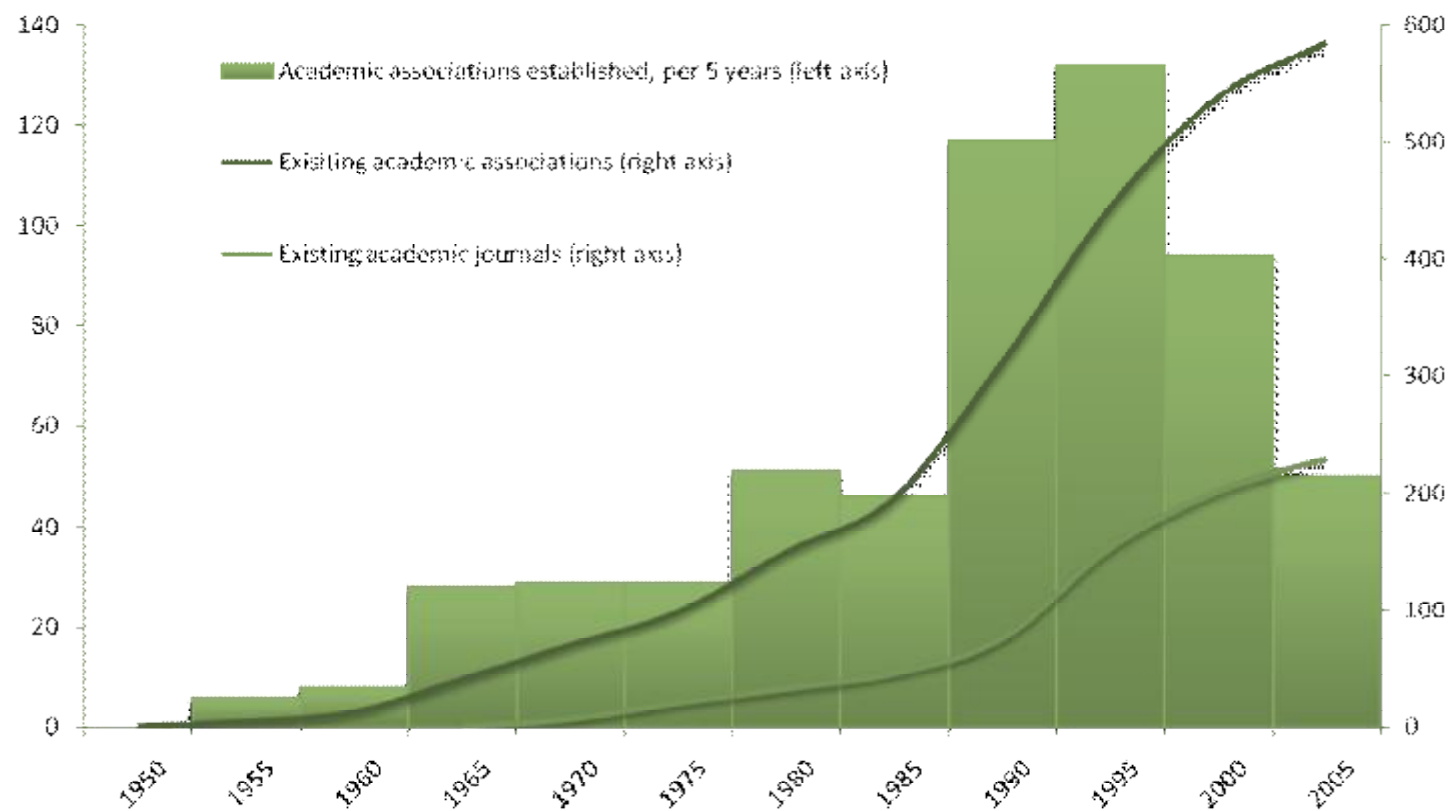
Transnational activity à Emergence of a Transnational Society

§ Academic

§ Political

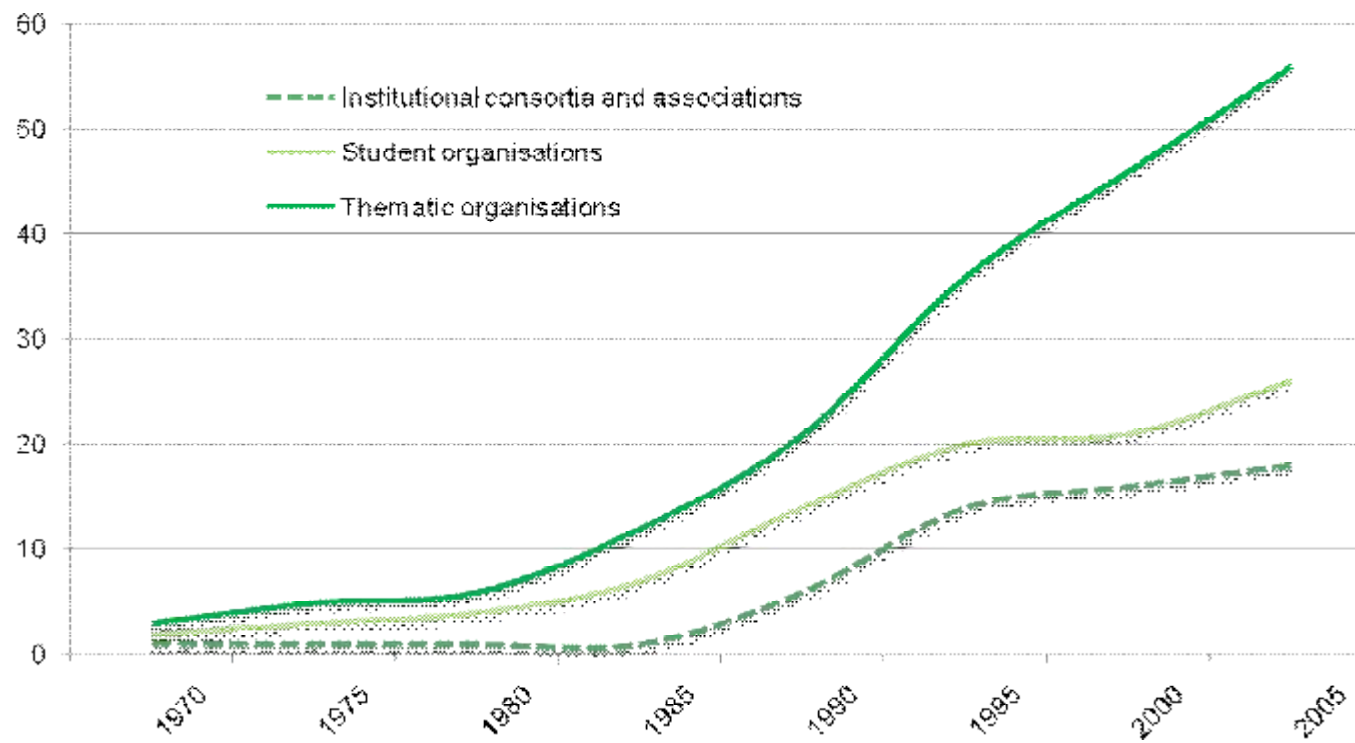
Dimensions 3: Transnational Society

Emergence of a European Academic Community



Dimensions 3: Transnational Society

Emergence of a European Political Community





Dynamics in European Integration

§ The Logic of Institutionalisation

§ The Working of Spill-overs

§ Functional Spill-overs

§ Political Spill-overs

§ Cultivated Spill-overs



Conclusions & Discussion

How 'European' is Higher Education in Europe?