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Supranational Institutions, Path Dependence and EU Policy Development: The Cases of Student and Patient Mobility

By

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Submitted in the Partial fulfilment
of the requirements for the degree of
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To my family and Fotis

University of Sussex

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ABSTRACT

The purpose of the present study is, by employing the methods of process-tracing and pattern-matching, to compare the policy-processes with regards to the cases of student and patient mobility. While the case-study approach to EU policy-making from a comparative perspective was introduced in the late 1970s, so far there has not been a study, which compares the cases of student and patient mobility. This gap in the academic literature is important in order to examine what conclusions can be drawn from such a comparison and as a result their consistency with previous theoretical work. In particular, and in contrast to current theoretical themes in the field of European studies and in the policy studies literature more generally, both of which stress policy change as opposed to policy stability, the comparison stresses the latter due to the interests of the most powerful member-states, that is, France, Germany and Britain. The role of interests is manifested with the adoption of the Erasmus Programme and of the European Health Insurance Card, which do not concern the free movement of students and patients. Through a synthesis between liberal intergovernmentalism and the concept of path-dependence it has been possible to create a model in order to explain why those particular policies were chosen when the alternative of free movement was also available. This interest-based account comes in direct opposition with those studies which stress the role of ideas in the policy-process but it also emphasizes the role played by the supranational institutions more specifically the Commission and the court.

Table of Contents

Chapter 1 A Policy Studies Approach to the EU Policy-Process	1
1.1 Introduction	1
1.2 The purpose of the study.....	3
1.3 The concepts of <i>policy</i> and <i>process</i>	5
1.4 The model	8
1.5 Methods of comparison	11
1.6 Chapter breakdown	12
1.7 Conclusions	13
Chapter 2 Theoretical Approaches on European Integration and on the Policy-Process	14
2.1 Introduction	14
2.2 The approach of liberal intergovernmentalism.....	15
2.3 Principal-agent analysis.....	21
2.4 Policy-process approaches to European integration.....	22
2.5 Synthesizing liberal intergovernmentalism with path-dependence.....	25
2.6 Conclusions	34
Chapter 3 The Case of Student Mobility	36
3.1 Introduction	36
3.2 The issue of the European University and the issue of student mobility ..	37
3.3 The issue of spontaneous student mobility on the Council's agenda	42
3.4 The role of the European Court of Justice in the Gravier case.....	50
3.5 Conclusions	54
Chapter 4 The Case of Patient Mobility.....	56
4.1 Introduction	56
4.2 The co-ordination of social security schemes and the issue of patient mobility	57
4.3 The issue of patient mobility on the Council's agenda	60
4.4 The role of the European Court of Justice in the Kohll and Decker cases .	66
4.5 Conclusions	71
Chapter 5 Comparing the Policy-Processes to the Cases of Student and Patient Mobility	72
5.1 Introduction	72
5.2 The stage of agenda-setting and alternative-specification.....	74
5.3 The stage of path-dependence	86
5.4 Conclusions	98
Chapter 6 Concluding Observations	99
6.1 Major finding	99
6.2 Supranational activity	101
6.3 Avenues for future research and limitations.....	101
6.4 The EU policy today	102
6.5 A policy on the free movement of students and patients	103
References	106

List of Tables

Table 5-1 Summary of the agenda-setting process.....	86
Table 5-2 Summary of path-dependence stage	97

Chapter 1

A Policy Studies Approach to the EU Policy-Process

1.1 Introduction

The purpose of this chapter is to present a policy studies approach to the European Union (EU) policy-process. Thus far the policy-process of the EU has been approached from different angles that form part of the policy studies theoretical literature. Examples of those different approaches are the approach of policy networks, the approach of advocacy coalitions and the approach of multiple streams all of which and the way they have been applied to the case of the EU is explored in chapter two.

In order not to conflate the concepts between comparative politics and policy studies this thesis follows Hogwood and Gunn (1984: 29) who argued that a policy studies approach should focus on two main aspects. First, we learn the history of the policy; in other words, what happened chronologically and how the policy was arrived at. Secondly, by focusing on different policy issues, we study the policy-process itself from a comparative perspective. As Hogwood and Gunn (1984: 27) put it “the concern here is with how policies are actually made in terms of the actions taken by various actors at each stage. This can consist of individual case-studies or attempts to devise generalizable but largely descriptive propositions about the nature of public policy-making”.

Thus, the first section of this chapter elaborates on the main purpose of this study. It reviews the literature on the study of public policy from a comparative angle by focusing both on the study of domestic policy-processes and on the study of the EU policy-process. The purpose is to

examine what are the views expressed as far as the policy-process is concerned and the extent to which we can devise generalizable statements according to various authors. Furthermore, special reference is given to the work of those scholars who attempted to devise a general theory of the policy-process.

In the second section emphasis is given to the separate concepts of policy and process. In order to study the policy-process and derive generalizations from its study it is important that we explain how those terms are to be understood. Thus, in this section the purpose is to stress the ambiguity the concept of policy has received within the policy studies literature but also to adopt a common definition on the concept of process. Again the purpose is to stress that in the EU literature no due attention has been paid to the meaning of those concepts.

The third section summarizes how the EU policy-process is viewed from the perspective of this study. It elaborates on the model developed in order to study the policy-process from a comparative perspective. The use of a model is helpful in that it allows us to test a variety of theories when the policy-process is under investigation but also to organize the empirical data into specific consecutive stages. The approach followed in this study adopts the logic of liberal intergovernmentalism, an approach which, as we will see in the following chapter, has received an immense amount of criticism. This is because it not only presents the large member-state approach to the study of European integration, when the rest strand of the literature stresses the pluralist nature of the polity, but also because it undermines the role of supranational institutions when the process of integration is examined. Given that the focus of this study is not with the process of integration, the approach of liberal intergovernmentalism is synthesized with the concept of path-dependence in order to compare the EU policy-process. As we will see in the following chapters, the utility of the concept of path-dependence has also become the focus of criticism for policy studies when in this study the utility of the concept is raised. A synthesis between liberal intergovernmentalism and path-dependence is deemed necessary in order to demonstrate the validity of the liberal intergovernmentalist approach when the EU policy-process is examined. The concept of path-dependence allows us to break the process into two stages, the stage of critical juncture or, as it is being used in this study, as agenda-setting, and path-dependence, in order to examine the actions taken by the various actors at each stage. The breaking up of the process into two stages also allows us to present liberal intergovernmentalism as an approach to the EU policy-process by showing the interactions between the supranational institutions and the importance of the role they played. At this stage, it is important to mention that for liberal intergovernmentalism the Commission plays no role during the grand intergovernmental bargains, the so-called history-making decisions, while the important role of the European Court of Justice (ECJ) is stressed when debating the policy-process. However, the

synthesis between the approach of liberal intergovernmentalism and the concept of path-dependence demonstrates the impotence of those supranational institutions against the interests of France, Germany and Britain. Finally, section four focuses on the methods of comparison and on the content of the empirical data. Section five outlines the structure of the study while section six concludes.

1.2 The purpose of the study

The purpose of this study is to compare the policy-processes that led to the adoption of two authoritative EU policy decisions with regards to the mobility of students and patients within the EU. The policy-processes I will be looking at are the ones that led to the Erasmus programme adopted in 1987 and to the European Health Insurance Card adopted in 2003.

The contribution of policy studies to the policy-process has been extensively debated within the political science literature. Ranney (1968: 15) and subsequently Anderson (1971: 119) argued that the comparative study of policy problems by political scientists can help decision-makers to better evaluate past and present policies and to contribute towards the resolution of many of society's problems. This is the first aim of this study. This means that the present study is not addressed only to political scientists who might have a theoretical interest for the policy-process but also to EU decision-makers who deal with the issue of student and patient mobility on a daily basis.

Ashford (1978: 16) observed that an attempt to compare different policy-processes without paying due regard to the historical and institutional constraints within which policies are made is likely to make a minor contribution to the examination of a specific policy issue denying thus the possibility of generalization. However, because the main purpose of this study is to consider whether we can generalise about the EU policy-process and the policy-process more generally, minor attention has been given to the historical and institutional constraints that led to the adoption of the Erasmus programme and of the health card. This should not be taken to mean that an important contribution as far as the policy issues concerned is not possible because as argued above the present study is supposed to help EU decision-makers to better evaluate their policies.

For the purpose of this study, the most significant contribution comes from Peters (1998: 13) who argues that one strand of comparative analysis is "to select a small number of instances of a process or an institution that appear similar (or at least appear 'comparable') in some important ways and then use those instances to illuminate the nature of either the process or the institution itself". The processes that led to the adoption of the Erasmus programme and to the health card seem comparable because both processes involved the foreclosure of the path of free movement

and secondly because both decisions emerged after Commission and ECJ activity. Peters (1998: 13), furthermore, argues that a clear example of process studies would be the application of a process model referring specifically to the policy-process. As he argues, “much public policy analysis in political science uses a process model, beginning with agenda-setting and ending with evaluation and feedback” (Peters, 1998: 14). However, within the political science literature such a model has been criticised because it does not explain how the movement occurs from one stage to the next obscuring as a result the role of agency in the political process (Jenkins-Smith and Sabatier, 1993).

As far as the EU is concerned, the proponent of liberal intergovernmentalism notes that we can disaggregate cases in order to isolate comparable elements within EU politics (Moravcsik, 1997). Again rather than focusing on the policy areas of health and education or on the sectors of healthcare and higher education, the decision was made to disaggregate the cases and focus on the cases of student and patient mobility in order to be able to isolate the comparable elements. Furthermore, Sbragia (1992: 267) argues that “the application of comparative frameworks in analyzing the Community can illuminate processes outside the Community as well as inside”. Thus, not only is the comparison of different policy-processes feasible -as most of the times political scientists focus on a single policy-process- but also by focusing on them within the EU case it can be shown that similar parallelisms with the EU can be made to domestic policy-processes. This is the main purpose of this study: to consider whether by focusing on the EU we can generalize on the path-dependent nature of the policy-process taking as examples the cases of student and patient mobility.

Much of the literature on EU policy-making is sceptical about generalization on the grounds that each policy sector is unique because of the presence of different policy actors and because of the technicalities of the policy issues. For example, in the most comprehensive work on EU policy-making which has introduced the case-study approach to EU policy-making, the study of Wallace and Wallace, it is argued that “to generalize about the policy-process demands sustainable analysis across a variety of issue areas. The reader is invited to draw her own conclusions as to whether such generalization is plausible or whether the variations between policy arenas are more striking than the differences” (Wallace, 1996:5). In the end, the authors stress the diversity of policy-making across the policy sectors by arguing that “new issues have been pushed into the EU framework, sometimes by one or more member governments or by particular political leaders, sometimes on Commission initiative, sometimes by advocacy coalitions” (Wallace, 1996: 443). Similarly, with regards to the domestic policy-process more specifically, Richardson (1969: 95) observed that “each example of the policy-making process is unique, and therefore, it is impossible to make firm generalizations on the basis of one case-

study. In addition, almost any case is going to be based on essentially limited information about events and the behaviour of participants”. The above assumptions will be guiding the present study but they are also assumptions that may be overturned by focusing on the cases of student and patient mobility.

However, within the literature of policy studies there have been efforts to generalize about the policy-process. The first comes from Smith (1969) who following Lowi’s famous dictum that policies determine politics, attempted to develop a comparative theory of the policy-process applicable initially to Western democratic regimes. Adopting Lowi’s categorization between distributive, regulatory and re-distributive policies, Smith (1969: 498) argued that, rather than beginning the study of the policy-process from the agenda-setting stage, we should begin from the expected outcome stage, which varied depending on the policy type. The second comes from Polsby (1984) who, following the examination of eight different case-studies, enriched our understanding of the agenda-setting process, renamed as policy innovation. Polsby (1984: 13) asserted that a policy is an innovation when it is introduced for the first time distinguishing therefore between policy innovation and policy enactment, which is the point where the policy is adopted. Following Polsby, Barbara Nelson in *Making an Issue of Child Abuse* (1984), divided the process of agenda-setting into four consecutive stages beginning with issue recognition, followed by issue adoption, priority setting and issue maintenance.

1.3 The concepts of *policy* and *process*

Since the purpose of this study is to compare the policy-processes in two different case-studies it is important to clarify what is meant by the concepts of policy and process but also to explain how I personally view the workings of the policy-process in general. Van Dyke (1968: 23) argued a long time ago that, “few have given specific attention to the meanings of these concepts and the purposes and implications of focusing upon them”. This is true for the EU literature, where the terms policy and process are used without paying due attention to their meaning. For example, in the case of the EU, Nugent (2003) distinguishes between a variety of EU policies such as economic and financial but without giving us a definition of the term policy. With regards to the process, he argues that “EU policy processes are not so different from national processes” (Nugent, 2003: 363), pointing to the pluralist nature of the EU polity, but without explaining what is meant by the term process.

While the meaning of the concepts policy and process has not received the attention of EU scholars, the same did not occur within the policy studies literature. This question occupied political scientists in the 1970s where the contribution of political scientists to public policy-making had become a matter of concern (May, 1986; Elkin, 1974; Bobrow et al, 1977). The

central question during this time was what role political scientists can play in the study of the public policy-making process. In the late 1970s, Feldman (1978: 288) observed that “no term in social science has suffered more ambiguity and abuse in the 1960s and the 1970s than policy”. Jones (1977: 427), Heclo (1972: 90) and Feldman (1978: 289) argue that, to derive comparative empirical theory from the study of the policy-process, it is important that we adopt a definition of the term policy. For example, Leichter (1979) saw public policy as “a series of goal-oriented actions taken by authoritative (usually governmental) actors”. On the other hand, Heclo (1972: 84) argued that the term policy is based on the meso-level of analysis and that as a term it “may usefully be considered as a course of action or inaction rather than specific decisions or actions”. Finally, Dearlove (1973: 2) argued that the term policy refers “to the substance of what government does”.

For the purposes of this study the concept of policy refers to “a product- perhaps a product of something called a process; it is an output of a system or subsystem” (Van Dyke, 1968: 28). According to Hogwood and Gunn (1984: 16-17) a policy output is to be distinguished from a policy outcome as the former is concerned with what the government actually delivers whereas the latter with what is actually achieved. Furthermore, Van Dyke (1968: 28) differentiates between substantive and procedural policies. The difference between them is that “a substantive policy in government is one designed to have consequences primarily outside the governmental system itself, whereas a procedural policy is designed to have consequences primarily within the system”. On the policy issues of student and patient mobility the products or outputs of the system have been the Erasmus programme and the health card. Both of these policies are substantive ones since the objects of those policies, in other words the individuals who are affected by them, are students and patients.

With regards to the concept of process Van Dyke (1968: 24) argued that the term “seems to refer to a system for turning out a product”. He furthermore argues that when studying processes political scientists tend to focus at the same time on different policy issues. The interesting aspect, however, of focusing on the policy-process is that, according to Van Dyke (1968: 24), political scientists “seem to think of process quite apart from any specific policy or issue. They think of patterns of activity, patterns of behaviour, which manifest themselves repeatedly in connection with different kinds of policies and issues”. Thus in developing the model of this study in order to compare the policy-processes we will be thinking of the general behaviour of the Council, the Commission and the Court irrespective of the policy issues under examination. Recent work on historical institutionalism helps us to better understand how to identify repeatable patterns when focusing on processes. According to Rueschemeyer and Stephens (1997: 57) “causation is a matter of sequence”. They thus suggest that in order to establish

causation we must first establish the sequence of events. This also helps us to establish the role of agency in the political process we are examining.

Following from the above analysis and from the findings on the policy-processes of student and patient mobility, I argue that we can conceptualise the policy-process to operate in a very specific manner. It is important to stress though that my thinking of the policy-process does not relate to the specific policies under examination. Instead, the examination of those policies allowed me to identify patterns of political behaviour, which manifested themselves repeatedly in the two case-studies. Thus, the focus is always on the process of political behaviour that leads to the emergence of the product in other words to the emergence of the policy under examination.

From my point of view, I am thus arguing that politicians may or may not have long-time horizons. When politicians have short-time horizons they do not pay the required attention to the manner the policy may develop in the future during the early stages of the policy-process. This behaviour can be the result of the distinction between high and low politics issues. It is likely that politicians will have short-time horizons when considering low politics issues, that is, issues that are not so important to them and when there are no vested interests such as a policy community.

On the other hand, when politicians have long-term horizons in order to avoid a path-breaking change in the future they make decisions, which lead to the creation of a policy. At first the creation of such a policy may not be a product in the true sense of the term instead it can constitute a non-decision meaning the choice between different alternatives. We can understand the taking of non-decisions by the creation of institutions, that is, by the creation of policy documents, which describe the policy framework and direct the future development of the policy. The initial policy framework locks in the taking of future decisions and it concerns high politics issues. The creation of such policy frameworks occurs during the agenda-setting stage of the policy-process. At this stage not all, the governmental institutions are influential. The power of the bureaucracy as a policy entrepreneur does not become evident until many years after the taking of the non-decisions. During agenda-setting, the bureaucracy plays the role of the secretariat and shares the same political values with the affected interests. In future years, the bureaucracy may attempt to alter the direction of the policy by bringing into the political agenda the excluded policy alternative, that is, the alternative that politicians excluded during agenda-setting. However, the success of the bureaucracy will depend on the extent to which its ideas fit with dominant political values. In case the bureaucracy's ideas do not fit with dominant political values and since politicians can exert their power by altering the content of policy

documents because of their participation-based monitoring role the bureaucracy's power will continue to remain minimal.

Consequently, excluded interests will approach other venues in order to promote their interests. One such venue is the Court. Most of the times the Court intervenes in the process of policy development following the bureaucracy's attempt to initiate a change in the development of the policy by bringing into the political agenda the excluded alternative. There is thus an interaction between politics and law. However, the court will find it difficult not to take into consideration the interests of the powerful despite the fact that it has to base its decisions on neutrality. The court may interpret the law in a very ambiguous way, which in fact does not support the interests of those who would like to see a change in policy. There is always a historical precedent behind the decisions of the court, which implies that excluded interests attempt in different periods to change the policy image of the issue. The precedent that exists behind a given policy issue rarely leads to path-breaking rulings given that the court usually supports the interests of those who are mostly affected. Eventually, a history of rulings will emerge making it extremely difficult to alter the development of the policy. The behaviour of the court explains why its rulings are rarely overturned.

1.4 The model

The comparison between the policy-processes in the cases of student and patient mobility is based on a liberal intergovernmentalist approach, emphasizing the primacy of state interests - and in particular the interests of France, Germany and Britain - as opposed to non-state interests. Non-state interests are the focus of both older and newer approaches to European integration such as neo-functionalism and the policy networks approach. As a result, the present study is based on the approach of liberal intergovernmentalist to explain the adoption of the Erasmus programme and of the health card and to demonstrate how, in the cases of student and patient mobility, the interests of France, Germany and Britain dominated the process by influencing the behaviour of the Commission and the ECJ as soon as the political agenda was set.

In combination, the cases of student and patient mobility have not been examined before whereas their common denominator is the idea of free movement. This is important because the issue of student mobility entails two main aspects: organized student mobility and free or spontaneous student mobility; similarly the case of patient mobility entails two aspects as well: planned healthcare and free healthcare when moving within the member-states. Thus, the research question posed by this thesis is why the idea of free movement was ruled out when such an idea is at the core of the EU philosophy. As Heidenheimer et al (1990: 2) argued, one of the aims of comparing public policies "is to gain a deeper understanding of how government

institutions and political processes operate as they deal with concrete problems. The classic questions of politics remain the same: Who governs? How do they govern? What are the results for citizen's lives and welfare? ”.

Synoptically, the focus of liberal intergovernmentalism is to explain the process of European integration as was the case with the approach of neo-functionalism. In liberal intergovernmentalism the central argument is that when the interests of France, Germany and Britain converged the integration process proceeded. When there was no convergence of interests between those member-states the integration process was stalled. As argued by Pollack (2001: 226) liberal intergovernmentalism “argues that major intergovernmental bargains, such as the Single European Act or the Maastricht Treaty, were not driven by supranational entrepreneurs, unintended spillovers from earlier integration, or transnational coalitions of business groups, but rather by a gradual process of preference convergence among the most powerful member-states, which then struck central bargains amongst themselves and offered side-payments to smaller, reluctant member-states”. Although the approach is not primarily concerned with the policy-process, the proponent of liberal intergovernmentalism has himself argued that its focus on grand bargains should not prevent us from using the approach to explain the policy-process (Moravcsik, 1995: 613). However, the proponent of the approach does not explain how it can be modified in order to explain the EU policy-making process.

The theoretical model advanced to explain the policy outputs provides a modified version of liberal intergovernmentalism through a synthesis between the latter and selected theories of from the field of policy studies. From the perspective of this study, the policy-process comprises two stages. The first stage, the stage of agenda-setting and alternative-specification, the latter concept borrowed from Kingdon in his *Agendas, Alternatives and Public Policies*, focuses on the literature of agenda-setting in order to assess the extent to which agenda-setting is being discussed within the approach of liberal intergovernmentalism and as a consequence the extent to which liberal intergovernmentalism can help us to understand this crucial process at the EU level. Following this, the processes of agenda-setting in the cases of student and patient mobility are compared in order to reveal the similarities between the two cases by stressing, in accordance with liberal intergovernmentalism, the absence of interest group intermediation in the preparation of the EU policy-proposals.

The second stage is the stage of path-dependence. In this study, path-dependence is considered as a stage of the policy-process because it follows from the stage of agenda-setting. While the stage of agenda-setting derives from the traditional model of the policy-process which is divided into agenda-setting, decision-making, policy implementation and evaluation this study does not consider the stage of path-dependence to include the last two stages. In the traditional model of

the policy-process, the researcher examines separately what happens during each stage. For example, during policy implementation we are examining how street-level actors implement in practice the objectives of the policy after the end of policy development. The same happens when we are evaluating a policy.

In this study, the first reason we keep, from the traditional policy-process model, agenda-setting as a stage is because it constitutes the beginning of the process of policy development. The beginning of the process is tremendously important because we can see which policy alternative is chosen by the decision-makers. We are thus constructing a relationship between agenda-setting and non-decision making. The second reason is to show the importance of the stage of path-dependence since the latter cannot exist without the stage of agenda-setting.

Path-dependence is seen therefore as a stage that may take several years to complete in contrast to agenda-setting that lasts for a brief period of time. This is the reason we are arguing that the stage of path-dependence can be linked to the stage of decision-making since decision-making is an act that lasts for many years too. Decision-making is a stage that tells us what occurs within the political system whereas policy implementation and policy evaluation focus on what happens outside the political system. Moreover, the stage of decision-making is concerned with the process of policy development.

In contrast to policy implementation and policy evaluation, the stage of decision-making is actually a procedure of choice between different policy alternatives. In replacing, the stage of decision-making with path-dependence we can actually investigate the path the policy follows from the moment the political agenda is set. Thus, during the stage of path-dependence, the focus will be on the unfolding of the process that preceded the taking of the authoritative decisions, that is, the Erasmus programme and the health card as according to Schlager (1999: 233) “in explaining policy-making processes, the emphasis is much more on the unfolding than it is on the authoritative decision”. As a result, the theoretical and comparative analysis of the second stage ends at stage three, which is the stage of policy enactment.

In addition, by defining path-dependence as a stage, we can explain why the policy is seen as path-dependent by knowing *a priori* the policy alternatives the decision-makers are examining since we have started examining the process from the stage of agenda-setting. Path-dependence as a stage allows us, moreover, to study political behaviour to a great depth. The traditional model of the policy-process does not provide us with such an opportunity because it requires political scientists to focus on each stage separately. As a result, it does not help us to examine how the various actors interact during policy development. Finally, viewing path-dependence as a stage enables us to adopt a critical stance at policy with the aim of improving it.

The purpose of the second stage is therefore twofold. First, it aims to show the link between the stage of agenda-setting and the stage of path-dependence. In other words, it aims to show how the explanatory variable, that is the interests of France, Germany and Britain, explain the behaviour first of the Commission and then of the ECJ, and finally the policy outputs, why Erasmus and the European Health Insurance Card were chosen in particular.

Secondly, it aims to show how the stage of path-dependence relates to the approach of liberal intergovernmentalism. It may be argued that as liberal intergovernmentalism stands at the moment, it becomes possible to equate the agenda-setting stage with the demand side of integration as well as with the bargaining/delegation stage and the path-dependence stage with the stage of ‘codifying’ or ‘cementing’ previous decisions and where the influence of the Commission and the Court is most apparent (Moravcsik, 1993: 509 & Moravcsik, 1995: 56). As with agenda-setting, the theoretical analysis on path-dependence is supplemented by a comparison between the case-studies in order to show the way with which the policies were maintained by paying special attention to the role played by the Commission and the ECJ. In particular, we will be examining the fact that before the intervention of the ECJ the principle of free movement had become completely lost. The alternative of free movement that had been ruled out during the agenda-setting stage was not pursued further by the Commission which played an active role in the policy-process before the issues were brought before the ECJ. When the ECJ intervened it was too late to change the process and break the path towards a free movement policy.

1.5 Methods of comparison

Before turning to the design of this study, it is important to refer to the methods I will be using in chapters three and four which deal with the case-studies. In those chapters, I will be using the method of process-tracing, according to which a significant amount of data is collected and analyzed to set out the facts into a sequential chronological order. In the case of the EU, the method of process-tracing has been firstly employed by Moravcsik (1989: 46) in explaining the adoption of the Single European Act (SEA) and later on by Pollack (2003: 68) in comparing six different case-studies concerning supranational entrepreneurship. It has to be stressed that in the empirical chapters the theoretical material developed in the following chapter will not be elaborated because of using the method of process-tracing.

In chapter five I employ the method of pattern-matching which has been recently introduced from within the literature of new-institutionalism and more specifically of historical institutionalism (Hall and Taylor, 1996). As a method, pattern-matching is a corollary to the method of process-tracing. With regards to the EU, Franchino (2005: 249) argues that “causal

mechanisms can be more clearly elucidated through, for instance, process-tracing and pattern-matching". Thus, when pattern-matching is used, the task of the analyst becomes one of locating the mechanisms that link the explanatory variable to the outcome variable thus the need for having employed before the method of process-tracing (Mahoney, 2003: 360). It is furthermore argued that, in contrast to other methods, pattern-matching is a method for theory falsification (Mahoney, 2003: 361). What this means for the particular study of the EU and its policy-processes, is that if neo-functionalism is the overarching paradigm upon which newer approaches to the EU are based, then the use of pattern-matching to the case of the EU and to the cases under examination, falsifies the claim about the pluralist nature of the EU polity. This claim is supported within the neo-functionalist and the newer approaches but not in liberal intergovernmentalism as it will be shown in the second chapter of the study.

Finally, as far as the empirical data is concerned, the study relies on documents from Agence Europe, from the Bulletin of the EEC, from the Council of Europe and the Council of Ministers, from CRE Information, from the European Commission, the ECJ and the European Parliament. The above documents constitute the empirical material for the case-study chapters and most of them have been used interchangeably. In particular, the documents from Agence Europe, from the Bulletin of the EEC, from the European Commission, the ECJ and the European Parliament have been very useful in gaining a deeper understanding on the role played by each actor in the policy-process. The documents from the Council of Europe have been important in understanding the role played by the organization regarding the issue of student mobility before the EEC's involvement whereas the documents from CRE Information have been important in understanding the role of the academic community on the same policy issue. Finally, it has been possible to extract hard sources from the Council of Ministers such as draft documents, reports and council minutes which allowed for a deeper understanding on the national positions of the member-states regarding the issues of student and patient mobility.

1.6 Chapter breakdown

The second chapter of this study focuses on theoretical approaches on European integration. The account covers the progress of the theoretical literature from the beginning of liberal intergovernmentalism until more recent theories whose focus is on micro level decisions such as the Erasmus programme and the health card. The chapter also provides the synthesis between liberal intergovernmentalism and the concept of path-dependence. Chapters three and four focus on the case-studies. These chapters are largely descriptive and provide the sequence of events until the taking of the authoritative decisions. Chapter five develops the theoretical model of the

study in an attempt to explain why the idea of free movement was not promoted. Finally, chapter six concludes.

1.7 Conclusions

The purpose of this chapter has been to present a policy studies approach to the EU policy-process with the purpose of assessing the extent to which we are able to generalize about its nature. In order to achieve this, the literature on the comparative study of policy problems has been reviewed both in relation to the EU and in relation to domestic policy-processes. Following this the meaning of the concepts policy and process were analyzed in order to provide an understanding as to what is to be compared by this study. The theoretical approach has been briefly discussed by providing the model that is to be used for the comparative analysis in chapter five. Finally, this chapter explained that the methods to be used are the methods of process-tracing and pattern-matching along with the empirical material for the case-study chapter and the structure of the study.

Chapter 2

Theoretical Approaches on European Integration and on the Policy-Process

2.1 Introduction

The purpose of this chapter is to provide a chronological account on the development of major theoretical approaches to European integration and to the policy-process, putting the literature into historical context. This chapter begins with a discussion of liberal intergovernmentalism as an account of the integration process and a review of the criticisms it received. The chapter then considers the application of principal-agent analysis to the case of the EU which sought to settle the neo-functionalism/intergovernmentalist debate¹.

The third part of the chapter focuses on the newer approaches to European integration which introduced to the study of the EU approaches from the field of policy studies and whose focus is on the daily activities of the EU or on its policy-processes. Thus, in this part the focus will be on the following approaches: the policy networks approach; the approach of advocacy coalitions; the theory of multiple streams and the punctuated equilibrium theory. The penultimate section analyses how liberal intergovernmentalism can be synthesized with the concept of path-dependence. In the concluding section the strengths and weaknesses of each of the above approaches are assessed.

¹ For an understanding on the approach of neo-functionalism see Haas (1958, 1968, 1961 & 1964).

2.2 The approach of liberal intergovernmentalism

To make sense of the contribution liberal intergovernmentalism has made to the study of European integration and its relevance for the policy-process in particular, one has to understand its emergence and evolution as a direct response to the shortcomings of the neo-functional theory. In particular, one has to consider that liberal intergovernmentalism owes its emergence to the empirical observation, in particular, the stagnation of the integration process between the early 1970s to the mid-1980s, a fact that neo-functionalism was not capable of explaining. The signing of the SEA gave the opportunity to re-consider the theoretical claims made by the then dominant neo-functional approach.

Liberal intergovernmentalism departed from neo-functionalism, in that it emphasised state interests and interstate bargaining as the major determinants of integration outcomes. As Slapin (2006: 53) observed: “Andrew Moravcsik makes the strongest argument for the ‘large member-states’ approach to the study of European bargaining. He argues that the history of European integration is best understood as a series of important intergovernmental bargains among the EU’s three largest member-states: Germany, France and the UK”.

The basic elements of liberal intergovernmentalism are to be found in an article entitled *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*. Moravcsik poses more or less the same question that neofunctionalists Sandholtz and Zysman had posed before him. In particular, in their article with title *Recasting the European Bargain*, Sandholtz and Zysman (1989: 99) recognised the limitations of the neo-functional theory. They argued that neofunctionalism could not account for the “stop-go nature of the European project” and that the integration did not proceed in a linear and dynamic fashion. They thus asked, “why did the renewed drive for the single internal market emerge in the mid-1980s and why did it rapidly acquire broad support among governments and business elites?” (Sandholtz and Zysman, 1989: 99) emphasizing the important role played by the Commission and interest groups. In a similar fashion Moravcsik asked, “what accounts for the timing and the content of the reform package that relaunched Europe? Why did this reform succeed when so many previous efforts had failed?” (Moravcsik, 1991: 20).

In his analysis, Moravcsik partially rejects Sandholtz’s and Zysman’s explanation of the relaunch of the integration process. As Moravcsik (1991: 20) argued “the findings challenge the prominent view that institutional reform resulted from an elite alliance between EC officials and pan-European business interest groups”. He tests two specific propositions of the neo-functional theory. The first concerns claims concerning Commission leadership where

Moravcsik (1991: 27-28) observes that the Commission made proposals on four issue-areas of which two (co-operation in the monetary field and political and defence co-operation) faced the strong opposition of Britain and Germany. Thus, Moravcsik (1991:46) concludes that “while logistical support from the Commission may indeed have hastened a final agreement, there is little evidence that it altered its substance”². The comparative chapter will demonstrate the same argument by examining which proposals the Commission made and which proposals failed. In particular, we will be examining the fact that in relation to the case-studies the proposals made by the Commission on the free movement of students and patients were rejected.

The second proposition tested by liberal intergovernmentalism concerns claims of functional spillover. Without rejecting the spillover hypothesis, regarding issues for which there was a specific Treaty mandate, Moravcsik (1991: 48) observed that the “opening of new issues, reforming decision-making procedures and ratifying the accession of new members” remained the prerogative of the nation-states. Based on the above argument chapter five will show that the bringing of the student and patient mobility issues, for which there was no Treaty mandate, into the Community agenda was the result of the wish of the member-states.

The central principle of the liberal intergovernmentalist approach can thus be summarised as follows. Liberal intergovernmentalism saw the Community as a forum for the accommodation of large member-state interests, in particular those of France, Germany and Britain, which were defended in the Council of Ministers and at the summits of the European Councils. Moravcsik (1991: 26) argued that, before the entry of Britain into the Community, the bargains struck reflected the lowest-common-denominator of France and Germany. Especially concerning the case of student mobility, we will see in chapter five that the issue came into the Community agenda by those two member-states. This happened because it was not in their interests to leave the issue in the hands of the Commission.

While liberal intergovernmentalism argued that interest groups would attempt to influence the taking of decisions by surpassing the nation-state, it nonetheless suggested that their main channels of influence would remain at the domestic level. Thus, the preferences each member-state brings to the Community negotiating table can be best seen as the outcome of a bottom-up rather than a top-down process. With regards to the passing of the SEA, Moravcsik (1991: 45) observed that the Roundtable of European Industrialists “was based in Geneva and did not move to Brussels until 1988”. The above image of liberal intergovernmentalism had its basis on a modified version of the realist paradigm in international relations. According to the structural realist model, states remain the principal actors in the international system. In contrast to

²For a detailed analysis of the Commission's political entrepreneurship during interstate bargains see Moravcsik (1999).

classical realism, Moravcsik (1991: 27) observed that “states are not black boxes; they are entities entrusted to governments, which themselves are responsible to domestic constituencies”³. Following from this argument, the comparative chapter argues that rectors and doctors had an influence upon the governments of the member-states through the domestic channels.

The first refinements on the liberal intergovernmentalist approach were made in a later article (Moravcsik, 1993). In there, Moravcsik develops further the proposition concerning the formation of member-state preferences seen as the product of domestic political conflict as dominant economic groups seek to influence the shaping of national preferences. The relationship between dominant economic groups and governments is seen as a principal-agent one where “societal principals delegate power (or otherwise constrain) governmental agents” (Moravcsik, 1993: 483). Thus, the following three observations regarding this process are made:

- 1) “Powerful groups disadvantaged by co-operation will seek to obstruct government policy, even where such policies generate net gains for society as a whole” (Moravcsik, 1993: 487).
- 2) “Where societal pressure is ambiguous or divided, governments acquire a range of discretion” (Moravcsik, 1993: 484).
- 3) “Where the net costs and benefits of alternative policies are diffuse, ambiguous or insignificant, and the risk is low, the societal constraints on governments are looser” (Moravcsik, 1993: 488).

To make more understandable the way in which the above theoretical propositions apply to the case of the Community, Moravcsik looks at patterns of domestic mobilisation in different policy areas. Concerning the internal market, Moravcsik (1993: 488) identifies the predominance of producer groups, which creates “a systematic political bias” as opposed to diffuse groups such as tax-payers and individual consumers. The reverse occurs in those policy areas that provide public goods and where Moravcsik (1993: 493) finds a “diffuse pattern of societal interests”.

Based on the above arguments we will observe the following elements in chapter five. First we will observe that in the cases of student mobility rectors threatened the national governments that if the European University was going to be created they would sabotage its implementation. Rectors were only willing to allow the creation of student exchanges programmes. Secondly, we will observe the fact that the systematic political bias concerning the cases of student and patient

³For a more elaborate analysis on how liberal intergovernmentalism differs from the realist and neo-realist paradigms of international relations see Moravcsik, 1993 especially p. 481 and p. 483 where Moravcsik following Gourevitch argues that “to the extent that international factors, such as economic

mobility emerged at the domestic level between the rectors and governments on the one hand and the doctors and governments on the other. Thus, the thesis will sustain the argument that this systematic political bias did not lead to policy change but to biased agendas at the Community level. The third element that we will observe concerns the fact that in contrast to liberal intergovernmentalism we find systematic political bias rather than a diffuse pattern of societal interests despite the fact that the issues of student and patient mobility concern the provision of public goods. In relation to this observation, we will also observe that, in accordance with liberal intergovernmentalism, the governments of the member-states did not enjoy strong governmental discretion because the interests of rectors and doctors were clear. In other words, the issues of student and patient mobility were of high political importance for rectors and doctors. However, it is important to observe that the concept of governmental discretion introduced by liberal intergovernmentalism is not very helpful because the cases of student and patient mobility demonstrate that the governments were not in opposition with rectors and doctors. All those actors wanted to achieve the same objective at the Community level, which concerned the promotion of student exchanges and the promotion of healthcare for emergency situations.

Having clarified the process through which national preferences are formed, a process that determines the demand side for European integration, Moravcsik turns to the role played by the supranational institutions during the bargaining stage. Moravcsik (1993: 508) views the Commission as a “passive structure, providing a contractual environment conducive to efficient intergovernmental bargaining”. For example, and with regards to agenda-setting, Moravcsik (1993: 511) argues that “where a wide consensus exists on a broad substantive agenda, it can often be realised more efficiently by granting a measure of agenda-setting power to a supranational institution, in this case the Commission. As a reliable source of independent proposals, the Commission assures that technical information necessary for decision is available”.

The argument concerning the passivity of the Community institutions is not upheld though as far as the policy-process is concerned or the otherwise called everyday legislation of the Community. As far as this process is concerned, Moravcsik (1993: 508) observes that the Community “seems to be a far more unusual international institution-more than a passive set of rules codifying previous decisions”. As an illustrative example, Moravcsik refers to the activities of the ECJ, in particular, to the constitutionalization of the Treaty of Rome as well as to landmark rulings on the free movement of goods. In all these cases, Moravcsik (1993: 513)

interdependence or external threats to national security influence preference formation, they must pass through the domestic polity”.

argues that “the Court clearly transcend what was initially foreseen and desired by most national governments”⁴. When critiques are made of the liberal intergovernmentalist approach, academics neglect this last element on the important role played by the ECJ in the policy-process. By making the above-mentioned argument Moravcsik clearly demonstrates that liberal intergovernmentalism does not reject the independent role played by the ECJ on the contrary it sees the ECJ as a causal variable in the policy-process. However, in contrast to liberal intergovernmentalism chapter five demonstrates that both the Commission and the ECJ were the obedient servants of the member-states. Concerning the Commission, we will observe that in accordance with liberal intergovernmentalism, the Commission did not have autonomous influence over the agenda.

The state-centred approach pursued by Moravcsik in his analysis of major Treaty revisions did not remain without its critics. Moravcsik himself acknowledged and warned about possible criticisms of the liberal intergovernmentalist approach. These could centre on the proposition that preference formation precedes the bargaining stage between states and on the claims regarding supranational autonomy.

Some of the above self-criticisms were taken forward by Daniel Wincott in the first critique of liberal intergovernmentalism. Wincott’s (1995a) main focus became the supranational institutions and whose role has been downplayed in liberal intergovernmentalist analyses. As opposed to Moravcsik, Wincott argued that many of the policies of the SEA emerged through everyday decision-making especially from the activities of the Commission and the Court. By focusing on the interaction between law and politics, Wincott demonstrated that the Commission has been capable of drawing on the principle of mutual recognition to push for legislative changes within the Council of Ministers. Furthermore, Wincott (1995a: 602) argued that “the empirical focus on liberal intergovernmentalism provides a source of bias” and that “supranationalism is regarded as a controlled means of implementing intergovernmental bargains”. Finally, Wincott (1995a: 598) argued that liberal intergovernmentalism presents “a two-stage model with a demand side and a supply side”.

A second critique of the liberal intergovernmentalist approach comes from Mazey and Richardson (2006: 252). In their analysis of interest group intermediation at the EU level, they argued: “In summary, our thesis is that the national preference formation process is certainly

⁴However and in a similar fashion to Moravcsik who stresses the interests of the three largest member-states, Garrett (1992: 558) argued that with regards to the ECJ its rulings are always consistent with the preferences of France and Germany. For a response to Garrett’s argument see Mattli and Slaughter (1995) and Mattli and Slaughter (1998) and for other seminal works on the court’s role see Stein (1981), Weiler (1982), Burley & Mattli (1993), Alter & Meunier-Aitsahalia (1994), Bulmer (1994), Armstrong (1995), Wincott (1995b), Sweet and Caporaso (1998), Tallberg (2000) and Dimitrakopoulos (2001a).

‘shaped through contention among domestic political groups (Moravcsik, 1998: 22) as intergovernmentalists argue’, but that domestic groups are also increasingly engaged *independently* at the supranational level and see that level as a venue where they can pursue their own goals”. Sweet and Sandholtz (1997: 302) argued that according to liberal intergovernmentalism “integration proceeds, but the sequence never varies”.

Another critique of liberal intergovernmentalism comes from the perspective of multi-level governance, the origins of which are to be found in the making and implementation of the EU’s regional policies. As Rosamond (2000: 120) argued, “analysts beginning with a multi-level governance frame of reference dispute quite fundamentally the intergovernmentalist account of what the EU is”. Accordingly, from the perspective of multi-level governance, the EU is viewed as a venue where “authority and policy-making influence are shared across multiple levels of government, subnational, national, and supranational” (Marks *et al*, 1996: 342). The Commission is not seen as the agent of the member-states as it is the case within the analysis of liberal intergovernmentalism. For example, Marks *et al* (1996: 356) argue that, “from a multi-level governance perspective, the European Commission has significant autonomous influence over the agenda”. Furthermore, agenda-setting is seen as a “shared and contested competence with European institutions competing for control, and interest groups and subnational actors vying to influence the process” (Marks *et al*, 1996: 359).

A final critique of liberal intergovernmentalism comes from the perspective of the epistemic communities, a concept that has been applied to the case of the EU from the field of international relations. Epistemic communities are characterised by their knowledge-based contribution to the early stages of the policy-process especially under conditions of high uncertainty. Uncertainty leads governments to seek the advice of epistemic communities in the policy-making process (Haas, 1992).

Zito (2001) attempted to assess the influence of an epistemic community in the environmental policy of the EU. According to Zito, the complexity and ambiguity that characterises many of the EU’s policy problems makes the EU an ideal laboratory for the application of the concept. Similarly, Richardson (2001: 16) observes that as national policy-makers feel the need to consult epistemic communities “it would be surprising if Commission officials did not engage in similar behaviour”. Zito’s examination of the EU environmental policy stressed the limited influence of the epistemic community because of the EU’s policy structure. As Zito (2001: 590) observed with regards to the institutional structure of the EU, “less permeable institutional systems and ones containing norms antithetical to the epistemic knowledge will pose adverse conditions for entrepreneurship”.

2.3 Principal-agent analysis

The application of principal-agent analysis to the case of the EU attempted to settle the neo-functional/intergovernmentalist dichotomy by generating a number of hypotheses concerning supranational autonomy. From the perspective of this study, the ensuing works are of great importance because they focus solely on supranational autonomy. The first work comes from Tallberg (2000: 844) who, as a critic of liberal intergovernmentalism, argued that “intergovernmentalists maintain that EU governments remain in control and that the institutions function as ‘obedient servants’, only fulfilling functions entrusted to them by the member-states”. In sum, principal-agent analysis posits that principals (member-states) delegate functions to the agents (the Commission and the ECJ) who are assumed to have distinct preferences with the prospect that the agents will produce the intended policies desired by the principals (Tallberg, 2000: 845). In chapter five, we will observe that there were no distinct preferences between the supranational institutions and the member-states. This becomes obvious when examining the preparation of the proposal on the European University and on Regulations 3 and 4. As we will see in the comparative chapter of this study the power of the Commission and the ECJ is judged by the ability of the agents to produce the policies that were not intended in this particular case policies on the free movement of students and patients. Empirically, we will observe in chapter five that the Commission and the ECJ achieved to produce the policies that were not in opposition with the wish of the member-states.

Tallberg compared the autonomy of the Commission and the ECJ to pursue their own agenda on a single case-study namely the creation of sanctions for non-complying member-states. With regards to the Commission, Tallberg found that the Commission was constrained by the participation-based monitoring of the member-states, which prevented the Commission from pursuing its own agenda and obligated the Commission to adjust its proposals in order to reflect the preferences of the member-states. As argued by Tallberg (2000: 860) “the Commission did not succeed in manoeuvring EU governments into accepting its proposals”. Chapter five demonstrates the participation-based monitoring role played by the member-states with regards to the case of student mobility. First, it is shown that the participation-based monitoring role was not important during the early years of the policy-process but on the other hand, it was important when the Commission submitted its 1978 communication. Furthermore, Tallberg (2000: 855) argues that the ECJ used its power of interpretation to create a form of decentralised sanctions which were unwanted by the member-states. However, in measuring the autonomy of the court, Tallberg does not explain why the ECJ rulings were not overturned by the member-states since they did not reflect their preferences. It is only stated that the member-states “explored possible ways of limiting the implications *ex post*” (Tallberg, 2000: 857). In relation

to the case of patient mobility, chapter five hypothesises that the Kohll and Decker rulings did not go against the preferences of France otherwise they would have been overturned.

The second application of principal-agent analysis comes from Pollack (2003) who similar to Tallberg begun his analysis by referring to the neo-functionalist/intergovernmentalist debate. As argued by Pollack (2003: 4) “for international relations scholars, the role of supranational organizations has been one of the principal points dividing the two traditional schools of thought, with neofunctionalists generally asserting and intergovernmentalists generally denying, any important causal role for supranational organizations in the integration process”. In contrast to Tallberg, Pollack (2003: 8) argues that the absence of sanctions to supranational agents may be the result of the law of anticipated reactions. Thus, Pollack (2003: 8) argues that what at first glance seems autonomous behaviour “may in fact be subtly influenced by the preferences of the principals”. Chapter five demonstrates how the law of anticipated reactions operated during the agenda-setting stage by stressing the absence of distinct preferences between the Commission and the Council. Nonetheless, Pollack (2003: 11) develops a number of hypotheses in order to predict the autonomy of the Commission and the Court. The first concerns the autonomy of the Commission. In particular, it concerns the control mechanisms established by the principals to monitor the Commission. It is argued that the Commission will enjoy greater influence under the advisory committee and lesser influence under the regulatory committee procedure (Pollack, 2005: 377). If the approach of principal-agent analysis had been chosen for the purpose of this study then we could argue that the Commission had played an influential role due to the existence of the Education Committee. Finally, it is argued that supranational autonomy will be greater in the case of the ECJ where a ruling can be overturned only by a unanimous decision. In chapter five, we will observe that neither Belgium in the case of student mobility nor France in the case of patient mobility decided to take the issue further in order to overturn the Gravier, Kohll and Decker rulings of the ECJ respectively.

2.4 Policy-process approaches to European integration

The purpose of this section is to explore the way in which theories of the policy-process have been applied to the case of the EU. The approaches explored in this section all originate from the field of policy studies as opposed to international relations and they all can be seen as critiques to the liberal intergovernmentalist approach since they either emphasise the active role played by the Commission and the ECJ or the access of interest groups to the EU policy-process. In sum, the following approaches have more in common with the neo-functionalist paradigm rather than with liberal intergovernmentalism. As argued by Richardson (2001: 4) concepts from the field of public policy such as Kingdon’s multiple streams theory, the policy

community/policy networks approach and Sabatier's advocacy coalitions "may also be useful in assisting our understanding of the policy dynamics of the EU, especially if we view the EU policy-process as essentially multi-level, multi-arena game".

For the first time, the policy networks approach has been applied to the EU setting by Peterson (1992) in the area of technology policy. Peterson's examination of the policy-making process in the technology sector, made a significant contribution to the approach of policy networks despite the uniqueness of the EU polity. As opposed to the classical formulation of the policy networks approach where producer networks represent a distinct form of policy network, one that is differentiated by the policy community network, the examination of the EU setting revealed the existence of a policy community dominated by producer interests (Peterson, 1992: 229). However, the application of the concept to the case of the EU did not remain without its critics. In particular, Kassim (1994) ascertained the difficulty concerning the delimitation of networks at the EU level because of the presence of the Council of Ministers, an institutional configuration unknown to normal political systems. In chapter five the policy networks approach will be examined in the first stage of the model because according to this approach we expect policy networks to emerge at the very early stages of the policy-process that is at the stage of agenda-setting.

Another approach that made its entry to the study of the EU steel policy over a fifty year period is the advocacy coalition framework developed by Sabatier (1998) and Jenkins-Smith and Sabatier (1993). According to this perspective, policy sub-systems consist of competing advocacy coalitions and which are held together by their belief systems. These are divided into deep core beliefs, policy core beliefs and secondary aspects. The first set of beliefs is argued to be very resistant to change given that it represents ontological and normative beliefs.

In the case of the EU steel policy, during the early years of the ECSC Dudley and Richardson (1999) identified two competing advocacy coalitions one composed of supranational officials, espousing ideas towards a common market and the second composed of French steel interests, opposing the move from national protectionism towards a common market. From the period of the early 1970s until the late 1980s, a 'Grand Coalition' was identified between the president of European Steelmakers' Group Jacques Ferry and the then Industry Commissioner, Etienne Davignon. Jacques Ferry carried into the Community French interventionist policies for the steel sector and which were translated into policy proposals by the latter. Finally, the move towards a common market in steel was realised by the political entrepreneurship of Sir Leon Brittan who being part of a Commission advocacy coalition succeeded in transferring into the Community free market values from Britain.

In the area of women's rights, Mazey (1998) identified the emergence of a feminist advocacy coalition during the early 1970s composed of women's groups, women MEP's, Commission officials and judges and who succeeded in bringing women's issues, such as equality at work, into the Community agenda. In chapter five, we will test the advocacy coalition framework by examining whether such networks emerged around the issues of student and patient mobility. In particular, we will test the theory during both stages of the model developed in this study. In the stage of agenda-setting we will be examining whether a dominant advocacy coalition emerged while in the stage of path-dependence we will be focusing on the activities of the adversarial advocacy coalitions.

Kingdon's (1995) multiple streams theory has also been applied to the case of the EU. This approach identifies three different independent processes of agenda-setting. The first the problem stream focuses on the way decision-makers become aware of policy problems. The second the policy stream is concerned with the generation and coupling of policy proposals to policy problems by policy entrepreneurs. Politics is the third stream which is a necessary prerequisite for coupling to take place. It is concerned with factors such as changes in national mood, election results and pressure from interest groups.

The above theoretical model found empirical application to the case of EU higher education policy. As argued by Corbett (2003: 315) "an approach to the history of EC policy development in higher education in terms of the policy-process – agenda-setting, decision-making and implementation – can reveal a very different story". From 1955 until the adoption of the Erasmus programme in 1987, Corbett (2002, 2005) identified nine policy entrepreneurs who at different points of time attempted to advance the issue of higher education to the decision-making stage. For the period 1955-1971, the policy entrepreneurs were Hallstein, Hirsch, Guichard, and Spinelli. None of them, however, succeeded in obtaining a policy-decision in the sense of creating a plan for future action. Amongst them, Spinelli was the most successful because he was able to create an organizational domain for the development of a Community education policy. For the period 1973 to 1976 the policy entrepreneurs were Dahrendorf and Hywel Ceri Jones while for the period 1985 to 1987 they were Sutherland, Richonnier, Delors and Hywel Ceri Jones. For the whole period, Corbett distinguished Hywel Ceri Jones as the most successful policy entrepreneur because he succeeded in advancing the policy issue to the decision-making stage. In particular, Jones proposed the 1974 Communication on future action in the education domain, the establishment of the Education Committee and the 1976 action programme all of which were positively accepted by the member-states. Finally, Jones proposed the Erasmus programme, drafted the proposal and acted as policy advocate on the adoption of the programme. Concerning the theory of multiple streams chapter five examines various

weaknesses of the theory. First, it looks at the concept of critical juncture in order to demonstrate that critical junctures do not necessarily have to refer to the coupling of the three streams. As a result, chapter five offers empirical evidence on how we can avoid the issue of infinite regress since in the theory of multiple streams infinite regress is considered as a problem. Lastly, chapter five looks at the motivations of policy entrepreneurs emphasizing in particular the absence of defending certain interests as a motivation.

The final approach applied to the case of the EC from the field of policy studies is the punctuated equilibrium theory. This perspective attempts to explain, by bringing together under a single theoretical framework, long periods of policy stability followed by abrupt policy change. According to this approach, political actors are seen to pursue a dual strategy. On the one hand, those in favour of a given policy attempt to safeguard its policy image through the use of rhetoric, symbols and policy analysis. On the other hand, those who perceive existing policy arrangements as detrimental to their interests attempt to approach different institutional venues until policy-makers become receptive to their policy ideas (Baumgartner and Jones, 1991).

This particular theoretical approach found empirical evidence in the case of the EU social policy. Wendon (1998: 344) has observed that, during the late 1980s, the only available alternative to the Commission in order to expand its policy competence in the social domain was to create an alternative institutional venue, the Social Dialogue that brought under a common institutional platform Commission officials, employers and leaders of trade union organizations. As a second Commission strategy, Wendon (1998: 347) describes the Commission's efforts to reshape the image of social policy to one that emphasised economic growth and job creation with the purpose of initiating new policies in the social domain. As with the previous approaches, we will test the punctuated equilibrium theory in chapter five. In particular, we will be examining the role of the ECJ concerning the theory of punctuated equilibrium since it constitutes a venue for the change of the policy image.

2.5 Synthesizing liberal intergovernmentalism with path-dependence

Having discussed the approach of liberal intergovernmentalism and the criticisms it received, the purpose of principal-agent analysis and the way with which policy-process theories have been applied to the EU this section explains how the approach of liberal intergovernmentalism can be synthesised with the concept of path-dependence. This would provide a model for comparing the two different policy-processes in chapter five and testing various theories in particular the policy networks approach, the approach of advocacy coalitions, the theory of multiple streams and punctuated equilibrium and principal-agent analysis. The model consists of

two stages which will be examined separately in chapter five with the help of the empirical material.

The first stage is the stage of agenda-setting and alternative specification the later term borrowed from Kingdon in his *Agendas, Alternatives and Public Policies*. Agenda-setting is an ideological process and is considered to be the most crucial stage of the policy-process (Hill, 1997: 115). This is because it is at this stage that policy issues make their first appearance on the political agenda as policy problems. As we saw in chapter one, according to Polsby (1984), agenda- setting is the stage of policy innovation.

As far as the definition of agenda-setting is concerned, this study considers to be of mediocre importance the various definitions that have been attributed to the term over the years as our concern is with what occurs during agenda-setting rather than with establishing which definition works best when referring to the term. For example, Cobb and Elder distinguished between the systemic and the institutional agenda (Cobb and Elder cited in Jones, 1984: 58). In a similar fashion, Kingdon (1995: 3) distinguishes between the governmental and the specialised agenda while Nelson (1984: 20) refers to the public, popular and professional agendas. In the case of the EU, we may regard as the systemic agenda all the issues that are considered at any point in time by the policy-makers and the institutional agenda as the more specific items that are discussed in the separate Commission DG's or sectoral councils⁵.

Drawing upon the path dependency literature, we argue that agenda-setting can be seen as the critical juncture point in the process of policy development, characterised by openness and permissiveness as to the choice of alternative paths compared to the closed and coercive nature of the path-dependence stage, setting therefore the future development of the policy (Pierson, 2004: 51 & Pierson, 2005). It is at this stage that 'lock in' takes place in the sense that once a particular choice is made it is difficult to reverse in the future (Pierson, 2000a: 492). Usually, however, the term critical juncture is associated not with small events but with ground-breaking events as is the case within the multiple streams theory where the critical juncture is the coupling between the three different streams leading therefore to policy enactment (Kingdon, 1995: 78). This, however, must not be the case according to Pierson (2004: 135, 2000b: 75).

Even the problem of infinite regress, a problem raised by Kingdon, is solved by using the concept of critical juncture as the agenda-setting stage because it enables us to break the policy-process into separate constituent parts (Pierson, 2004: 45). Kingdon (1995: 73) argued for

⁵ For a similar description on EU agenda-setting see Peters (2001: 80) but also Pollack's (2003: 47-49) categorization between the formal and informal agenda-setting of the EU. For influential works on the agenda-setting phase of the EU policy-process see Peters (1992, 1997, and 2001) and Richardson (2001).

instance that “the ultimate origin of the idea, concern or proposal cannot be specified. Even if it could be, it would be difficult to determine whether an event at an earlier point in time was more important than an event at a later point”. Similarly, Polsby (1984: 13) argued that “a search for the genesis of policy innovations is bound to prove fruitless, since it is so difficult to settle definitively on the exact point in time at which any particular innovation emerged”.

Traditionally, agenda-setting had been studied by breaking the policy-process into a number of specific stages with the purpose of describing what happens during each stage. For the purpose of this study, the stages heuristic provided by Charles Jones (1984) to describe the workings of the American public-policy process is of great importance. Unavoidably, if we want to understand the policy-process of a democratic political system, we have no other option than to focus on the American political system since the literature on the subject is American. As argued by Peters (1994: 15) the EU’s court system “makes it more like the United States in which some of the major issues decided by government (racial integration, abortion) have been initiated through the legal system”. Pollack (2005: 371) further compares the EU with a federation noting substantial differences between the two but also three main similarities in particular that “public authority is divided between state governments and a central government; each level of government has some issues on which it makes final decisions, and a federal high court that adjudicates disputes concerning federalism”.

At the same time, a look at the American political system helps us to better understand the abnormality of the EU that is the Council of Ministers a point raised by Kassim (1994) in his critique of the policy networks approach as we have seen above. For Jones (1984: 5, 41), as for Easton (1965) before him, the policy outputs of the system do not come out of nowhere (Kingdon, 1995: 71). Policy demands from societal actors are processed into a political system comprised of three institutions - the legislative, the executive and the judiciary - and translated into policy outputs.

Here, we can clearly see how it is possible to synthesize liberal intergovernmentalism with theories of policy studies. This is because the approach of liberal intergovernmentalism expresses the view that further integrative steps are the product of a tight relationship between dominant groups and governments at the domestic level. Thus, and in order to make clear the difference between the approach of liberal intergovernmentalism and the other approaches, liberal intergovernmentalism denies the existence of policy networks, advocacy coalitions and epistemic communities at the Community level but not at the domestic level. In other words, liberal intergovernmentalism stresses the importance of the interests of societal actors and as a consequence the above concepts may become relevant when the focus is on the first stage, the preference formation stage, of the liberal intergovernmentalist approach.

Having clarified what a normal political system is, that it provides the shell within which policies and decisions are initially made and subsequently maintained, and how theories of policy studies relate to liberal intergovernmentalism, the next important step is to look closer at the stage of agenda-setting as according to Jones (1984: 51), “the battle over policy may well be decided in the preliminary stages of issue emergence and agenda-setting”. Here, the liberal intergovernmentalist approach becomes relevant again because it stresses the conflict and competition between groups at the domestic level in maintaining or altering, in other words disrupting foreign policies.

Apart from the theory of pluralism, which was initially introduced by neo-functionalism and followed by policy-process approaches to the case of the EU, liberal intergovernmentalism has predominantly introduced the theory of elitism by arguing that the influence of tight policy communities when preferences are formed at the domestic level may lead to systematic political bias. This was the argument of Peter Bachrach and Morton Baratz (1963 & 1970), the proponents of the elitist approach, who, in an effort to refine Dahl’s conception of pluralism, argued that the participation of all the active and legitimate groups resulted in biased agendas⁶.

In spite of the above, and even if liberal intergovernmentalism sees the substantive agenda on taking place in two stages, one that takes place at the domestic level and one that occurs when member-states meet together at the Community level, needing the Commission’s logistical support and neutral thinking over the choice of alternative proposals (Moravcsik, 1993: 511-512), Moravcsik does not go into greater detail in what is involved during the stage of agenda-setting process. This is a limitation in liberal intergovernmentalism but it is justifiable in the sense that the purpose of the approach is not to explain the policy-making process at the Community level.

To understand what agenda-setting is about requires a return to Jones (1984) who argues that agenda-setting involves three main activities: aggregation, organization and representation. The first involves the collection of individuals from within society and subsequently their organization in order to address their problems to government. Following this, groups will seek representation in government since representation provides the link between government, people and their problems where action is sought to alleviate a distressing concern through the production of a new policy (Jones, 1984: 54).

As noted above, in analyzing the adoption of the SEA, Moravcsik (1991: 45) observed that the Roundtable of European Industrialists “was based in Geneva and did not move to Brussels until 1988, when Dekker assumed its presidency”. This observation suggests that there has been

aggregation and organization but there has not been representation at the Community level. This means that relations between the Commission and the Roundtable of European Industrialists began only after the substantive agenda had been set by the governments of the three largest member-states, indicating that the Roundtable came too late in the process and therefore did not influence the content of the SEA.

Moravcsik's observation significantly affects the coherence of the liberal intergovernmentalist approach and conflicts with Wincott's (1995a:600) critique which questioned "whether transnational civil society has its impact, more weakly, only via the transmission belt of domestic politics". It seems that Wincott seeks to understand whether liberal intergovernmentalism accepts a pluralist image concerning the formation of national interests only at the domestic level or whether preference formation and therefore pluralism plays a role at the Community level according to the liberal intergovernmentalist approach.

The final concept that can be integrated into the liberal intergovernmentalist approach is the activity of problem definition and which is the joint activity between pressure groups and government. According to Cobb and Elder "policy problems are not simply as givens, nor are they matters of the facts of a situation, they are matters of interpretation and social definition" (Cobb and Elder quoted in Rochefort and Cobb, 1993: 57). Similarly, Hoppe argued that "an analysis of agenda-setting processes becomes an analysis of how problems developed, how they were defined, the courses of action formulated to act on these problems, the legitimation of one course of action over another, the emergence of policy systems designed to act on such problems on a continuing basis" (Hoppe quoted in Jones, 1984: 57). Thus, while liberal intergovernmentalism argues that national interests are formed following a group-government interaction the question of how problems are defined between the actors at the domestic level is not part of the approach. As a result, liberal intergovernmentalism would benefit from paying greater attention to the activity of problem definition especially when governments negotiate at the Community level and whereas problems may be re-defined.

Earlier it was mentioned that liberal intergovernmentalism introduced the elitist approach to the study of the EU. At this stage, it seems opportune to place the above discussion within the context of both approaches in an effort to show how the theory of elitism can be integrated with the approach of liberal intergovernmentalism when the focus is at the Community level.

First, it is important to mention that, for Bachrach and Baratz, the mobilization of bias was present in every political system. However, their main contribution was the concept of non-decisions which meant "the choice of one alternative rather than another" on a given issue at the

⁶Actually, Cobb and Elder (1971: 894) have argued that Dahl's pluralism can be seen as the "elitist

very preliminary stages of the policy-process (Bachrach and Baratz, 1963: 639)⁷. With regards to the EU, Peters (1994: 12) argues that “one of the most important powers for a political actor is to create non-decisions when a decision might be inimical to his or her interests, and a policy activist within the EC would be no different in that respect”. Secondly, the taking of non-decisions could only be understood if the differences between the conflated concepts of power, authority, influence and force became clear as for Bachrach and Baratz, the policy-process involved the interaction between two actors which in theory must have had conflicting preferences.

For example, Bachrach and Baratz (1963: 632) argued that “power in the political [or economic or social] sense cannot be conceived as the ability to produce intended effects in general, but only such effects as involve other persons” distinguishing therefore between power over matter and power over people. Thus, theoretically, according to Bachrach and Baratz (1970: 39) a power relationship may emerge over the preferred course of action, in other words over the choice of the feasible alternative. However, they believed that in most cases a power relationship is not involved at all and that the policy-process could only be explained in terms of authority because of B’s understanding that A’s preference on the chosen course of action is reasonable (Bachrach and Baratz, 1970: 34).

In the second stage the purpose is to analyse how, following the stage of agenda-setting, the policies were maintained until the adoption of the two authoritative decisions, that is, until the stage of policy enactment, by focusing on the role played by the supranational institutions. For example, Jones (1984: 58) argued that “once agenda status is achieved, the next challenge is to maintain it” and that “the politics of initiating action differs from that of maintaining action”.

To help us explain how the policies were maintained, the second stage focuses on the concept of path-dependence. In the study of the EU policy-process, the concept of path-dependence has been employed in the case of the Common Agricultural Policy. However, the concept has been employed in a critical way because according to Kay (2003) path-dependence provides a static image of the policy-process unable to accommodate major policy reforms. In a different article, Kay (2005: 568) offers a critique of path-dependence for policy studies in general arguing that “it is difficult to say that there exists another path that could have been arrived at which is more

theory of democracy”.

⁷In an attempt to exemplify the Bachrach and Baratz approach, Parry and Morriss (1974: 324) explain that the concept of decision has been wrongly associated with the end point of the deliberation or of the policy-making process and therefore with policy enactment. They observed that decisions and non-decisions were not antithetical, on the contrary, the belief was upheld that the Bachrach and Baratz approach could be classified as “a decisional approach to non-decisions” because to differentiate between the concepts would mean that “no point of choice had been reached, no performative utterance or illocutionary act”.

efficient and without such a relevant counterfactual it is difficult to accept the imputation of inefficiency”⁸.

The aim of the second stage of the model is not to confirm liberal intergovernmentalism because as we saw in chapter two the approach’s concern with the influence of the supranational institutions in the policy-process is marginal. For example, the liberal intergovernmentalist approach sees the Commission’s role as “late, redundant, futile and counterproductive” only during treaty-amending negotiations but not during the process of policy development (Moravcsik, 1999: 270). This is because during interstate negotiations the dominant actors are the governments as opposed to the Commission, the ECJ or the European Parliament. The Commission is a participant but it lacks the necessary resources to alter the preferences of governments (Moravcsik, 1999: 271).

The reason for bringing forward the above theoretical discussion is because, with the exception of the model provided by Bachrach and Baratz, there is no other model available in the policy studies literature to explain how the bias which is manifested during agenda-setting and which concerns the choice of an alternative course of action is being sustained or maintained over a long period of time. Even if the model proposed by Bachrach and Baratz focuses on the relationship between groups and more specifically on the efforts of marginal groups to access the policy-process we can still use it in the case of the Community.

The model can be used to assess the influence of the supranational institutions until the adoption of the authoritative decisions. Here, liberal intergovernmentalism becomes relevant again when it is argued that “demonstrating influence requires more than the claim that supranational actors were active and negotiations were subsequently successful in a given case. More explicit theory, more rigorous methods and multiple cases lead to the opposite finding” (Moravcsik, 1999: 299). Elsewhere, Moravcsik (1995: 616) makes a similar observation when he argues that “it is insufficient to observe that a supranational entrepreneur - I shall continue to use the Commission as an example - has made a proposal and something akin to it was eventually accepted”.

Apart from the concept of non-decisions, which as we discussed above, characterises the choice over alternative courses of action, the term that is equally useful from the Bachrach and Baratz model is that of strategic interaction. While in the approach of Bachrach and Baratz strategic interaction refers to the interaction between groups and government, in particular, how marginal groups attempt to reverse the authoritative allocation of values, in this study the focus is on the strategic interaction between the Council, the Commission and the ECJ. Bachrach and Baratz

⁸ For similar criticisms, on the concept of path-dependence see Peters *et al* (2005).

(1970: 52) argued that once a particular institution is established groups and governmental institutions will strive to maintain it. What is of great importance, therefore, is to examine whether the Commission's future action was constrained by previous decisions in particular by the decisions taken during the agenda-setting stage and whether both the Commission and the ECJ wanted to alter the course of action taken during the agenda-setting/critical juncture stage. As Pierson (2004: 43) argued from the perspective of rational choice historical institutionalism, the purpose of the actors who come first in the policy-process is to remove alternative paths and to design policies in order to bind their successors.

Since Bachrach and Baratz's major concern is with the reinforcement of existing policies and with the exclusion of the less powerful groups from the political process, it is important to look at what they have to say concerning the strategic interaction between the actors, in other words, on the manner with which policies are maintained. For example, Bachrach and Baratz (1970: 57-59) note that those in government will employ "power-authority-influence" to block or to silence the issue-initiator from bringing unsafe issues into the decision-making process in an effort to maintain the policy. As far as dominant groups are concerned, they will use "power and to a lesser extent authority" to exclude the issue-initiator. For example, it is argued that in such circumstances defenders of the *status quo* may threaten hostile groups by saying that "if you persist in your demands, we will decide in favor of the proposal of a rival organization" (Bachrach and Baratz, 1970: 57).

Apart from the above concepts the approach of Bachrach and Baratz does not introduce other concepts to help us further understand the manner with which policies are maintained. However, recent literature on path-dependence is very helpful in this regard. The literature on path-dependence does not refer to blockage or silencing but to mechanisms. What is meant by the term mechanisms is not specified but we can say that blockage and silencing are the mechanisms or the means that the institutions of government employ to maintain existing policies after the agenda has been set with the purpose of excluding the issue initiator because the government is also under pressure by dominant groups.

To make clearer the difference between the agenda-setting and path-dependence stages it has to be noted that path-dependence is the outcome of an earlier phase - hence the origins of the meaning of path-dependence - in this particular case the outcome of agenda-setting. Pierson (2004: 68) notes that until the beginning of the period of path reproduction there will be a significant interval. Furthermore, path-dependence means that as we proceed towards the adoption of the authoritative decision and therefore as we observe the unfolding of the process we will observe that the road not chosen, in other words the alternative course of action, "will

become an increasingly distant, increasingly unreachable alternative” becoming in the end totally lost (Pierson, 2000b: 75 & Pierson, 2004: 16).

Thus, at an empirical level, the analysis of path-dependence must focus on the actions of the institutions of government in order to show “how the amplification of initial effects in these social processes actually happens” (Pierson, 2000b: 78). From the moment we begin to analyze the period of reproduction, the central focus of analysis becomes how the selected path is reinforced while the excluded path becomes more and more distant (Pierson, 2004: 16). In observing how these overlapping processes take place, our attention turns to agency as we begin to identify the mechanisms that reproduce the selected path and cause the alternative path to become finally lost. With regards to the institutions of government, Bachrach and Baratz (1970: 60) argue that the committee-system of the US House of Representatives represents such a barrier but they also see the Supreme Court as a barrier to outside influences. In the case of the EU, it has become common wisdom to regard the Commission and the ECJ not as barriers but as dynamic agents operating in a hostile environment which is the Council of Ministers.

What Pierson’s analysis on path-dependence also adds to the elitist approach, is that it helps us understand how blockage takes place by stressing the sequence into which alternative proposals are submitted to the decision-makers concerning a given issue (Pierson, 2004: 60). According to Pierson, paying careful attention to sequence allows us to establish the connection between the hypothesised explanatory variable and the outcome variable and to explain how the hypothesised explanatory variable relates to the intervening variables in assessing their impact (Pierson, 2004: 54).

In examining the sequence of events, attention will first be given on the order in which policy ideas are presented to the decision-makers. Here Kingdon’s theory is helpful because he considers career civil servants to have a significant impact on the generation of policy proposals that decision-makers examine. Pierson (2004: 60) seems to agree with Kingdon at least on this point by acknowledging, ‘because the sequence into which alternative proposals are considered determines the eventual outcome, tremendous power rests with those actors who select the sequence’.

Nonetheless, it has to be emphasised that the power to select the sequence of proposals is qualitatively different from the power of the actors that initiated the policy at the stage of the critical juncture and which is causal in nature (Parry and Morris, 1974: 332). Even Kingdon (1995: 88) agrees that policy entrepreneurs’ proposals are unlikely to pass the decision-making stage if they do not fit with the dominant values of the decision-makers.

It seems reasonable therefore to suggest that the presence of those actors in the system influences the behaviour of policy entrepreneurs. In particular, it will have a significant impact on the outcome if the policy entrepreneurs choose to present decision-makers first with a policy proposal that reinforces the path actors excluded at the initial critical juncture, rather than presenting them with a proposal that reinforces the selected path. In this latter case, the policy entrepreneur ensures on the one hand the adoption of the proposal because it fits with dominant political values, but, on the other, this choice increases further the possibility that the excluded path will become eventually lost.

The importance of carefully observing entrepreneurial behaviour through the order into which policy proposals are presented to decision-makers is directly related to the issue of timing. Pierson stresses the importance of timing which can be seen in two different ways: either showing how two unrelated events are joined with the purpose of producing a significant change (Pierson, 2004: 12) or, as it is employed in this study, to show the timing of a factor relative to what has occurred prior to its appearance (Pierson, 2004: 55). In this particular case, the timing relates to the ECJ intervention in the process relative to what has happened prior to the path-breaking rulings. In particular, the empirical analysis in chapter five seeks to illustrate that the ECJ intervened too late in the process so that the prospect of changing the policy image had become entirely foreclosed.

2.6 Conclusions

The main purpose of this chapter was to review the theoretical material on the subject of European integration and on the policy-process. This was done in order to know *a priori* which approach might explain the decisions made at the EU level concerning the cases of student and patient mobility. Secondly, the aim of this chapter was to explain how a synthesis between the approach of liberal intergovernmentalism and path-dependence could be achieved in order to compare the different policy-processes. It was argued that in the first stage we would be looking at the stage of agenda-setting in order to understand how this crucial process took place with regards to the case-studies whereas at the stage of path-dependence the focus will be on the role of the supranational institutions.

As a concluding remark to this chapter, it is important to look closer at each of the approaches reviewed earlier on in order to assess their strengths and weaknesses for the purposes of this study.

As far as the approach of liberal intergovernmentalism and principal-agent analysis is concerned, it has to be stressed that the former's limitation is that it shares the same dependent variable with neo-functionalism but without attempting to predict the future of integration.

Nonetheless, despite the criticisms it received, liberal intergovernmentalism, by focusing on very specific decisions, succeeded in explaining what neo-functionalism was not able to, in other words, the stop-go nature of the process of European integration. Despite liberal intergovernmentalism's focus on history-making decisions a synthesis between liberal intergovernmentalism and theories of policy studies is possible. As we saw, liberal intergovernmentalism provides the skeleton upon which we can build a model in order to compare different policy-processes.

With regards to principal-agent analysis its central limitation for the purpose of this study is that it does not examine the interaction between law and politics. However, according to (Burley and Mattli, 1993: 73) legal decisions cannot be separated from politics. From this perspective law functions as a mask. Nonetheless, from the perspective of principal-agent analysis and for the purposes of this study the assumption that the supranational organizations are conceptualised as unified entities is extremely useful.

The contribution of neo-functionalism cannot be underestimated since it paved the way for the emergence of policy-process theories to the study of the EU with its focus on interest group activity along with Commission entrepreneurship. With regards to these theories, it may be argued that, even if most of them emphasise interests, they nonetheless stress the interests of non-state actors as opposed to governmental interests. As a result, those approaches may be more appropriate when studying the politics of the member-states rather than when studying the politics of the EU where the presence of the Council of Ministers is most obvious. Finally, with regards to the theory of multiple streams and the framework of advocacy coalitions it has been argued that they ignore completely the role of the court in the policy-process (Barclay and Birkland, 1998: 230). The same critique can be made with regards to the approach of policy networks. This is an important limitation of the above approaches when in the theory of punctuated equilibrium the court is seen as a venue for interests that are excluded from the policy-process.

Chapter 3

The Case of Student Mobility

3.1 Introduction

This chapter focuses on the case of student mobility. In particular, it covers the flow of events as they happened from the moment student mobility, as a policy issue, first appeared on the Community agenda until and after the adoption of the Erasmus programme in 1987, in other words, until and after the policy enactment phase. In this chapter, we adopt the methodology of process-tracing with the aim of setting out the facts in a sequential chronological order. We apply the theoretical approach outlined in the previous chapter in chapter five's comparative analysis.

It is important to clarify that the analysis in this chapter has as its basis the Commission's own use of the term on student mobility. In particular, according to the Commission student mobility has two main aspects: spontaneous/free and organised student mobility (European Commission, 1974a). The difference between them is that in free student mobility the student migrates to another member-state to pursue a whole degree whereas in organised student mobility, that is the Erasmus program, the student migrates to a host institution for a limited period of time and graduates from the home institution (Gordon and Jallade, 1996). In 1984, the European Parliament defined student mobility as follows: "A Community Policy on student mobility must however distinguish between a full course of study and a partial period of study that can be integrated into a course of study completed in the home country. Without preventing complete courses of study abroad, Community support should concentrate on temporary periods of study that contribute towards the final qualification and are assessed in the host country" (European Parliament, 1984a: 22). Furthermore, the Socrates decision which followed Erasmus refer to students as "persons registered in Universities, whatever their field of study, in order to follow

higher education studies leading to a degree or diploma up to and including the doctorate” (Council of Ministers, 1998: 121).

To enable the comparative analysis in chapter five the sequence of the historical events is divided into the following sections. The first section focuses on the creation of the European University, currently based in Florence and commonly known as the European University Institute⁹. The reason for focusing on this policy issue is that early discussions on the creation of a European University also focussed on the prospect of enhancing student mobility within the Community, *albeit* in an organised form. A second reason is that, during this time the idea of encouraging the spontaneous form of student mobility was excluded from the menu of future political options. Thus, and in terms of the theoretical conclusions to be drawn in chapter five, this agenda-setting stage is of significant importance because the policy problem of student mobility was defined and a Community policy was adopted.

The second section describes the events from the first meeting of education ministers in 1971 until the ECJ’s landmark decision on the Gravier case in 1985, which gave the Commission the opportunity to propose the Erasmus programme. This section will examine the Commission’s attempts to elevate, along with the idea of organised mobility, the issue of spontaneous mobility onto the Council agenda. What we will be looking at are the specific proposals made by the Commission and the responses of governments in terms of obstructing or facilitating the policy of student mobility. The third section discusses how the ECJ used the Community law to facilitate the adoption of Erasmus and to leave outside of the political agenda the problem of spontaneous student mobility. In this section, we will also be looking at the problems the Commission faced from the member-states concerning the adoption of the programme. The final section draws some preliminary conclusions with regards to the historical events that led to the adoption of the Erasmus programme.

3.2 The issue of the European University and the issue of student mobility

As a policy issue, student mobility first appeared on the Community agenda during the late 1950s. There are two main factors that may help explain such an early interest in the issue on the part of the six. First of all, the EEC Treaty signed by the six member-states of the Community in 1957, emphasised the importance of the idea of free movement. The preamble of the EEC Treaty sets out the Community’s principles of which free movement possesses a very

⁹It is important to stress that in this study the establishment of the European University Institute in Florence is seen as a separate policy issue from that of student mobility. For a detailed analysis of its

special role. Along with the idea of establishing and completing a common market, a principle that points to the economic benefits to be gained from deeper integration, Article 3 of the EEC Treaty sets as an overall Community objective “the abolition, as between member-states, of obstacles to freedom of movement for persons, services and capital”. With the exception of this clause, which is indirectly related to the issue, the EEC Treaty does not refer to student mobility. The second reason for early Community interest in student mobility was that the Council of Europe, a purely intergovernmental organization without the attributes of a federal-like entity or federal aspirations, had already become involved with the issue of student mobility.¹⁰

During the 1950s, policy-making in the education domain within the Council of Europe was the prerogative of the Committee of Cultural Experts, composed of the senior officials of the member-states, and of the Committee of Ministers, composed of their Foreign Ministers and their deputies (Haigh, 1970: 28). In 1960, the Committee of Ministers was replaced by the Committee for Higher Education and Research which brought European Rectors and Ministers of Education under a common institutional umbrella. University representatives and government officials would meet twice a year and discuss issues of common concern to the member-countries of the Council of Europe (Barblan, 2001: 4-5). As a separate entity, the Standing Conference of European Rectors (CRE) was created in 1959 and was based in Geneva (Barblan, 1982: 29).

Three main conventions resulted from the negotiations held within the Committee of Ministers on student mobility, all of which were focussed on the recognition of qualifications for academic purposes. The first, on the Equivalence of Diplomas leading to Admission to Universities, signed in 1953, provided for the generous recognition of diplomas obtained in another member-state (Council of Europe, 1953). The second, on the Equivalence of Periods of University Study, signed in 1956, emphasised the need to encourage student mobility through organised study-periods where recognition would be fully provided. This convention discussed the recognition procedure for students of modern languages and for students of the applied and pure sciences. For the former, it asked for recognition on the basis of a certificate issued by the host university demonstrating that the student had completed satisfactorily the study period. The length of study would be determined by the competent authorities of the member-states. Regarding the students of other disciplines, the convention did not provide any specific recommendations on how recognition should be granted. Instead, it argued that the competent

creation and the political factors that delayed the establishment of the European University Institute, see Corbett 2005.

¹⁰For an interesting analysis that seeks to compare the involvement of the Council of Europe with that of the European Union in the domain of education see Ryba (2000).

authorities themselves should consider the means through which a period of study could be recognised for these categories of persons (Council of Europe, 1956: 2-3). The third convention, on the Academic Recognition of University Qualifications, signed in 1959, aimed at facilitating the recognition of degrees for entering post-graduate education (Council of Europe, 1959).

Although the Council of Europe did not possess the supranational characteristics of the EU, the adoption of the above conventions nonetheless had political ramifications. According to a commentator, the 1956 convention on the organised form of student mobility had the simplest purpose and was the easiest to sign whereas the 1959 convention was the most difficult to sign because it asserted the *de jure* recognition of foreign degrees (Haigh, 1970: 65). By simply reading the 1959 convention, it becomes evident that it was carefully crafted in order to avoid tensions between rectors and Ministries of Education.

For example, the convention includes a clause where it is stated that “in cases where the examination requirements for a foreign university qualification do not include certain subjects prescribed for the similar national qualification, will withhold recognition until a supplementary examination has been passed in the subjects in question; require the holders of a foreign university qualification to pass a test in its official language, or one of its official languages, in the event of their studies having been pursued in another language” (Council of Europe, 1959).

The above exemption indicates the complexity of student mobility as a policy issue but it also shows how far the six were prepared to go with the development of a policy within the Community context and therefore what Commission proposals were likely to succeed or fail. Therefore, discussion on the content of those conventions is necessary in order to understand the development of the Community policy on student mobility. We saw how the problem of student mobility was defined within the framework of the Council of Europe. Student mobility involved all those school-leavers who wanted to pursue a full degree in another member-state (spontaneous student mobility); those students who while being students in their country would decide to spend a limited period of time at the University of another member-state (organised student mobility); students who having completed their first degree would like to move to another member-state to follow post-graduate education¹¹.

With regards to the Community, early discussions on higher education policy had focussed on the creation of a European University. According to Rüegg (1993: 35), the creation of a European University had occupied the Ministers of Education within the Council of Europe but proposals had been rejected by the Committee of Ministers. However, in the case of the

¹¹For a more in-depth analysis of these conventions see Dalichow (1987).

Community the eventual creation of a European University was seen as a necessary step towards the creation of an educated Community (Corbett, 2005).

The green light to submit proposals on the issue of the European University was given to the EURATOM Commission by the Foreign Ministers of the six in May 1958. The outcome of the working group set up by the EURATOM Commission was the first ever proposal on the creation of the European University submitted to the Council in December 1958. It proposed the progressive establishment of a classical type university (Palayret, 1996: 53-61). However, the proposal was rejected by the Council because there was opposition from university leaders (Barblan, 2001: 9). Rectors wanted to co-operate but by preserving the mission of traditional universities and eventually encourage the penetration of a 'European spirit' into their institutions through the promotion of exchanges for students and professors which could be promoted by the establishment of specific programmes (Palayret, 1996: 39). German rectors and presumably other conferences, were threatening their federal government that if such an establishment would be created they would sabotage its implementation (Palayret, 1996: 82).

Following the rejection of the proposal, a second proposal called 'Proposal by the Interim Committee for the European University' was submitted to the Council. Five different groups were set up for its preparation under the auspices of the EURATOM Commission. Furthermore, only a few French rectors took part in the negotiations (Comité Intérimaire, 1960: Annexe II). Given the general hostility of rectors towards the creation of a classical type university, the Commission proposed the establishment of a post-graduate institute (Palayret, 1960: 75). Given that the European University was the major issue at the time, three working groups were allocated to work out proposals on this issue. The fourth focused on the establishment of European institutes for higher education and research. The fifth group, chaired by the German Foreign Minister examined the problem of student mobility by focussing on the equivalences between degrees and on the prospect of harmonizing their content.

The biggest part of the report on the European University was devoted to the issue of the European University. The report referred to the existence of other international agreements in the field and only a few pages were devoted to the issue of student mobility. Corbett (2002: 66), who has provided the most detailed account of EU policy-making in the area of higher education, is also questioning the fact that student mobility was included into this document by adding that the report "does not go into detail on the Committee's reasoning" as far as student mobility was concerned.

The report on the European University emphasised the need to promote student exchanges for limited periods of time and therefore the need to take decisions on the organised form of student mobility. With regards to the spontaneous or the free movement of students, the report

emphasised the impossibility of taking future action in this field given the heterogeneity of the admission policies of the member-states. In exact words, the report mentioned that “en effet, il n’y a intérêt à harmoniser les programmes d’études que dans la mesure où les différences existent entre eux rendent difficile, voire impossible, la libre circulation des étudiants” (Comité Intérimaire, 1960: 24).

An additional and most important reason for precluding the possibility of taking action on the free movement of students seems to have been the fact that from experience students were generally seeking to study in their home country. As Vandepitte observed, those who would decide to pursue higher education in another member-state were not the best students of the country. According to Vandepitte, the best students were able to study at home and choose to pursue post-graduate education in another member-state usually at a highly reputable department (CRE-Information, 1973c: 36-37).

Accordingly, the harmonization of the content of degrees was ruled out. Instead, a system of credit transfer was proposed to facilitate solely organised movement. Furthermore, a student passport was proposed to include information on previously taken examinations and on the opinion of teachers on the student. Finally, the report on the European University proposed the dissemination of a student guide that would include information on the universities of the other member-states such as their admission policies, tuition fees, and information on courses and on academic staff, on the way of life in the host country and on living conditions (Comité Intérimaire, 1960: 24-26). It may be argued that the student guide would be of value not only to those who would decide to move within a pre-arranged scheme but also to those who would decide to move spontaneously.

The European University report was submitted to the Council of Ministers in April 1960. For a second time, however, agreement could not be reached because the French delegation objected to the content of the report. The result was that the six Foreign Ministers finally agreed to send the document back to the interim committee. According to Palayret (1996: 96), “this referral back to Committee meant in fact discarding the April 1960 proposal” including the proposals on the issue of student mobility.

Nonetheless, and despite their opposition to the rest of the proposal, the French wanted the issue of student mobility to be discussed separately by an ad hoc working group at a later point. However, and as Palayret (1996: 97) further noted, “this alternative, however, seemed in many respects to be a move meant to bring the discussion outside the Community area”. Overall, it seems that the earliest phase of the policy-making process on the issue of student mobility was characterised by intense political activity as far as the issue of the European University is

concerned along with an interest to limit the future policy-making activity on the issue of student mobility to that of organised movement.

3.3 The issue of spontaneous student mobility on the Council's agenda

More than ten years had passed from the moment the French called for a separate meeting to re-discuss the issue of student mobility. One year following the rejection of the proposal on the European University, the political leaders of the six met in Bonn and signed a declaration on cultural co-operation. They called for the creation of a Council of Education Ministers to examine future co-operation on this area and re-emphasised that policy-making with regards to student mobility should be confined within university co-operation to encourage the exchange of students (Bulletin of the European Economic Community, 1961). While the European Parliament, following Bonn, asked the Commission to submit proposals on the above-mentioned issues, no proposals were put forward and no meeting took place between the Education Ministers until 1971 (Bulletin of the European Economic Community, 1969: 81-82).

In the meantime, student mobility as a policy issue continued to be an item in the agenda of the Education Ministers who had been meeting at the Standing Conferences within the framework of the Council of Europe. At the Hamburg meeting of 1961, the Ministers of Education discussed the issue following a report that focussed on the implementation of the conventions signed in 1953, 1956 and 1959 respectively. To fulfil the correct implementation of the conventions, the report suggested that a new approach should be adopted with further discussions to be held on the matter (Haigh, 1970: 51).

Despite the continuing importance of student mobility as a policy issue, the Ministers of Education of the six were not ready yet to properly involve the Community with the issue and it remained a matter primarily addressed within the Council of Europe. At the fourth Standing Conference of Education Ministers, held in London in 1964, student mobility was again on the agenda. This time the Education Ministers were concerned with the problem of financial assistance to students who moved within bilateral agreements and therefore with the content of the 1956 convention. In London, it was proposed that the convention should be complemented with national programmes of financial support in order to encourage students to spend a period of time in another member-state of the Council of Europe (Council of Europe, 1964).

A few months before the first meeting of Education Ministers at the EC level in June 1971, the Council of Europe Ministers of Education met for a third time. The Ministers revisited the issue of student mobility by emphasizing that “study visits or temporary sojourns abroad can enlarge

the horizon and the knowledge and experience of the individual concerned and make an important contribution to his personal development” (Council of Europe, 1971). During this meeting, they suggested that more work should be done to find the best possible means through which students could receive recognition for the study-period spent in another institution.

The Ministers of Education of the six finally decided to meet in November 1971. They decided to set up a working group of senior officials to examine future co-operation in the education domain within the context of the Community (Συμβούλιο των Ευρωπαϊκών Κοινοτήτων, 1987a: 11). The report of the working group was completed in November 1972. There was general agreement that the Community should be involved with the mobility of students and with the mobility of teachers and research staff (European Commission, 1974a: 12). While the working group was preparing its report, the European Commission asked Professor Henri Janne to prepare a report on the main elements of a Community education policy¹². The document, entitled ‘For a Community Policy on Education’, was submitted to the newly created DG for Research, Science and Education in February 1973. These two documents served as the base line for the proposals submitted to the Council by the Commission in 1974 and which resulted to the first action programme in education with regards to the organised mobility of students (European Commission, 1974a: 8 & Agence Europe, 1974).

It is necessary to look closer at the proposals made by Janne for two central reasons. Firstly, with the exception of Neave (1984), Janne’s proposals have not received the required attention within the EU higher education literature¹³. Secondly, and as opposed to the 1960 report which, as we saw, had ruled out future action on the spontaneous mobility of students, the Janne report provided the foundations of such a policy at the Community level. As Janne (1973: 12) mentioned back then “it would be rather paradoxical that the cultural field in which there are already so many intra-European exchanges (spontaneous or in the setting of multilateral and bilateral agreements) should not be the subject of systematic promotion and co-ordination at Community level”.

To develop his policy ideas, Professor Janne consulted more than thirty people with expertise in the making and implementation of national education policies. Based on the responses he received, Janne presented the Commission with a number of policy ideas which centred both on the organised and on the spontaneous mobility of students within the Community. With regards to the former, Janne proposed the establishment of co-operative schemes to be financed through

¹²It should be noted that during this period, the Commission employed only twenty officials (Corbett, 2002: 147).

¹³The higher education consists of the following studies: Pratt, (1974); Banks, (1982); Cerych, (1989); De Witte, (1989); Lonbay, (1989); Sprockereef, (1995); McMahon (1995); Field, (1998); Moschonas (1998); Beukel, (2001); Hackl, (2001) and Dougan, (2005).

Community funds in order to encourage the voluntary exchanges of students for a limited period of time (Janne, 1973: 35). This idea was fairly similar to the one proposed by the Ministers of Education at their London meeting of 1964 within the framework of the Council of Europe. Janne (1973: 37) also asked whether it would be more appropriate to adopt a binding legal instrument, such as a directive, in order to make compulsory the spending of a six-month period at the university of another member-state.

With regards to the spontaneous mobility of students, Janne (1973: 36-37) proposed the establishment within each university or in embassies of a European Delegate for Admissions, a person of foreign nationality, who would hold sole responsibility for the admission of foreign students. A second proposal concerned the creation of a specialised chamber within the ECJ to deal with disputes concerning the admission of foreign students. According to Janne, a case-law would be established over time to monitor infringements at the domestic level concerning the admission of foreign students.

Janne (1973: 37) also proposed the design of a list of courses to ease entrance to foreign institutions for the purposes of post-graduate education. According to Janne (1973: 53), during this time the idea of aligning the content and the duration of the degrees so as to encourage student mobility was unrealistic. With the exception of the proposals on organised mobility, the proposals on the spontaneous mobility of students pre-supposed some minimum form of harmonization across the member-states, especially with regards to the way higher education institutions organised their internal affairs. Irrespective of whether those proposals would find the support of the ministers of education, nonetheless, Janne submitted those proposals in order to show what really should be done if spontaneous mobility was to be facilitated within the Community.

In 1974, the Commission presented its proposals to the Council. To justify the need for a Community policy on education the Commission relied on the 1969 Hague Summit which endorsed the future construction of a People's Europe (Bulletin of the European Economic Community, 1970: 44). The Commission put forward some very modest proposals with regards to student mobility, after taking into consideration both the importance of the concept of freedom of movement for the Community as a whole and the particular problems with regards to the different categories of students. The proposals were mainly concerned with the collection of information to assess movement across the member-states while the greatest innovation was the proposal concerning the establishment of an Education Committee (European Commission, 1974a).

As a response to the Commission's communication, the first meeting of the Education Committee, was held in October 1974. It was chaired by a French rector and other members were delegates of national ministries and Commission officials. The Education Committee also included rectors from the Liaison Committee which was established in 1973 in Brussels to represent university interests at the Community level. The bulletin published by CRE since 1965, mentioned that the Commission DG on Research, Science and Education was of particular significance to the whole University community adding furthermore that "le comité désire, à cet effet, un contact étroit avec les organes des Communautés Européennes" (CRE Information, 1973a: 98 & CRE Information, 1975a: 8). For example, during the first meeting of the members in March 1973, there was unanimous agreement to co-operate with the Commission on issues such as the mutual recognition of qualifications, student mobility and research co-operation (CRE Information, 1973a: 98). This isolated evidence is not however sufficient to assert the existence of a tightly integrated network, in the form of a policy community between the Commission and the Liaison Committee, leading to the adoption of Erasmus in 1987.

Further examination of the student mobility issue was assigned to a specialist sub-committee on higher education that was set up upon the initiative of the Education Committee (Council of Ministers, 1975: 2). In its workings, explicit reference is made to the weaknesses of the conventions signed within the framework of the Council of Europe: "The Committee notes that all member-states have ratified the Council of Europe Conventions on the mutual recognition of academic qualifications and periods of university study, but that these global measures have not led to the solution of all difficulties in this field, particularly in relation to the recognition of periods of study in another member-state" (Council of Ministers, 1975: 17).

The result of the committee that met five times throughout 1975 was the 1976 action programme in the field of education. The Education Committee redrafted the policy proposal and presented it to the Ministers of Education in the form of a resolution. Its main aim was to provide financial assistance for the initial operation of joint programmes of study to encourage the organised mobility of students. Participation in the joint programmes of study would begin as from 1977. As a future initiative to encourage organised mobility, the action programme provided for the examination of existing provisions within national financial schemes with the purpose of supplementing them through Community funds (Council of Ministers, 1975: 20). As far as spontaneous mobility was concerned, the action programme did not go very far. It solely provided for the dissemination of the student guide from 1977 (Council of Ministers, 1976). The only information the student guide did not provide concerned the recognition of the study-

period since under the joint programmes of study recognition was left at the discretion of the relevant department.

Attending a conference in Munich, organised by CRE in 1976, with the title 'Foreign Students and their Access to European Universities', the European Commission suggested that the concept of student mobility was difficult to define. In this regard, the Commission noted that if student mobility was to be defined as unprompted movement then greater attention should be given at Community level to the admission policies of the member-states (CRE Information, 1976: 30). In 1978, a separate communication was submitted to the Council entitled 'Admission to Institutions of Higher Education of Students from Other Member-States'. The Commission observed that existing mobility levels had remained extremely low representing only 0.5 % of the total enrolments and urged the member-states to take immediate action. While the Commission acknowledged the importance of the joint programmes of study and of the student guide, nonetheless it stressed that these initiatives were only solving part of the problem because of the spontaneous mobility of students (European Commission, 1978a: 1). In particular, the Commission observed that some of the member-states were solely exporting students because of strict *numerus clausus* policies at the national level (European Commission, 1978a: 14). This was particularly true for the case of Greece, which whilst not a Community member in 1978, nonetheless it had both in percentage and in absolute terms the highest number of exports across all the major European countries (Drettakis 1978: 87). As noted further by Drettakis (1978: 90), in the case of Greece, the intention of the undergraduate student who had failed to pass the entrance examinations of the Greek higher education system was either to attempt to graduate from the foreign institution or to transfer at a home institution after years of studying in the foreign country.

The rationale behind the implementation of *numerus clausus* policies has been one of protecting the taxpayer from the burden of having to finance the studies of those students who have not been able to study at home (CRE Information, 1973b: 5-7 & CRE Information, 1973c: 36). From the perspective of the Commission, however, a common policy was needed to ease the problems for those who would decide to move spontaneously. Thus, the Commission proposed that the principle of equal treatment should apply between foreign and national students on the basis of not less favourable criteria than the ones applied to home nationals (European Commission, 1978a: 2).

The Commission argued that host institutions should not require Community students to pay higher fees or to pass additional tests and examinations other than the ones applied to home nationals. Furthermore, according to the Commission, the entrance of Community students to the higher education system of another member-state should be solely based on the possession

of the qualification required in the home country for entering higher education in another member-state (European Commission, 1978a: 4). The Commission even threatened the member-states on this issue by invoking Articles 48 and 52 of the EEC Treaty and according to which any discrimination with regards to access to education in another member-state was prohibited (European Commission, 1978a: 2-3). While the above provisions related to the free movement of workers rather than to students, nonetheless the Commission's reasoning for referring to the EEC Treaty was to inform the member-states that access to education was not a matter totally unrelated to Community law.

When the Ministers of Education received the Commission's report they were not able to reach agreement on a common admissions policy¹⁴. We saw that in the 1960s, the intention was not to encourage the development of a policy with regards to the spontaneous mobility of students so in this regard the Commission's plans should be seen as over-ambitious. The draft minutes of the meeting held between the Ministers of Education on 27 June 1980 refer to the Commission's proposals as follows: "The Council and the Ministers for Education meeting within the Council examined the Education Committee's general report on the progress made with the implementation of the action programme of 9 February 1976. They were able to resolve the last outstanding questions regarding the admission of students from other member-states to higher education. The text of the general report thus finalised will be the subject of the new document" (Council of Ministers, 1980a: 3).

The education ministers added further textual amendments and derogations to the Commission's proposals. First of all, they added that the "the host country will not bear any responsibility towards the awarding of grants to foreign students" (Council of Ministers, 1980b: 24). By contrast, for students moving within pre-arranged schemes it was decided to enable the transfer of maintenance grants and on the German's delegation request to exempt students moving within organised schemes from the payment of fees for up to a year (Council of Ministers, 1980b: 23).

Secondly, the national delegations did not accept the Commission proposal on equal treatment with regards to the payment of fees. This particular proposal faced strong opposition from Belgium which argued that, "as things stood at present, Belgium could not undertake to make these preferential Community arrangements completely general" (Council of Ministers, 1980b:

¹⁴In the *Limits of European Integration* Taylor (1983: 220) says that "barriers were also encountered when the Communities proposed to introduce a common system for admittance to universities, or attempted to persuade member-states to establish a health education policy" and that "the Communities had indeed achieved little success in obtaining legislation in any of these areas, though it had made relevant proposals".

23)¹⁵. It has to be noted that according to Belgian law, students were exempted from the payment of higher fees only in very special circumstances such as when one of the student's parent happened to be of Belgian nationality; when the student was the child of a Community worker in Belgium; when students had attended secondary education in Belgium or when they had exercised a professional activity prior commencing their studies and when they were of Luxembourg nationality (European Commission, 1978a: 2, 8). Thus, and on the basis of the above, it was unlikely for Belgium to change its policy towards the admission of foreign students with regards to those students who had no prior relationship with the country.

Thirdly, national delegations challenged the Commission proposal on equal treatment with regards to the provision of academic qualifications. During this period, many member-states of the Community were requiring students to provide specific evidence in order to be admitted at a higher education institution. This was the case with Belgium where, for example, to gain access into medical schools foreign students had to provide evidence that they had not been rejected in their home country. In the French case, foreign students had to prove that they had attained the same level with French students before entering higher education and also to provide evidence that they could study the same subject in their home country. The situation was the same in the Federal Republic of Germany with the only difference that preferential treatment was given to students who had finished their secondary education at a German institution and to students who have not been able to study the chosen subject due to the lack of facilities in their home country. In Denmark, foreign students were admitted solely on the basis of their marks only if they had obtained a Danish qualification whereas in Italy foreign students were required to pass two separate oral examinations (European Commission, 1978a: 5-7).

Given the diversity of practices at member-state level, the Commission's proposals were deemed to fail from the very beginning. For example, Cerych (1978: 102) argued at around the same time that, "the issue raises a number of subsidiary questions. For example, should students from other member-states be considered as equal to students from the home country in matters of admission policies and conditions of entry? Given the plethora of different practices, this is perhaps an unrealistic goal to work towards". Thus, what was decided in the end was that in theory foreign students should not be admitted on less favourable criteria than national students. However, it was added that the member-states could adopt more liberal measures if they wished by requesting any additional evidence such as additional tests and examinations. A whole new clause was inserted to justify this particular change on the original Commission proposal and

¹⁵The main reason behind Belgium's objection to the Commission's proposals rested on the Belgian's delegation fear on an influx of foreign students from other member-states because of the absence of *numerus clausus* in Belgium from member-states where *numerus clausus* policies existed (Agence Europe, 1980a).

into which it is stated that the existence of *numerus clausus* policies in some member-states, along with the existence of rigorous entrance examinations at home, has resulted in a diversion of student influxes to the rest of the member-states (Council of Ministers, 1980b: 21). Again, it is important to observe, that with regards to organised mobility member-states agreed that students should be totally exempted from numerical limitations and that generous procedures should apply with regards to recognition (Council of Ministers, 1980b: 22).

Along with the communication on the spontaneous mobility of students, the Commission had submitted a second communication entitled a 'European Community Scholarship Scheme for Students' (European Commission, 1978b). The Commission proposed the funding of 650 scholarships to increase student participation within the joint programmes of study initiated in 1976. The original plan of the Commission was to disseminate the first student scholarships in the academic year 1981-1982 for an initial period of five years. It was originally planned to allocate 10 grants to Luxembourg, 20 grants to Ireland and Denmark, 50 grants to Belgium and the Netherlands and 125 grants to West Germany, the United Kingdom, France and Italy (Agence Europe, 1978a).

In April 1981, the Commission had proposed a third communication entitled 'Academic Recognition of Diplomas and of Periods of Study'. Given that there has not been political will to initiate policies in this direction concerning the spontaneous mobility of students, the Commission had simply suggested the creation within the member-states of a network of National Academic Equivalence Information Units to inform students regarding recognition matters (European Commission, 1981: 9). A similar initiative to the one proposed by the Commission has been earlier undertaken within the framework of the Council of Europe, however, only the UK, Germany and the Netherlands had established such centres in their territory (Hagen, 1987: 79 & CRE Information, 1975b: 67). Finally, the Commission proposed the establishment of a system for the transfer of credits to encourage the organised mobility of students (European Commission, 1981: 7).

When the Ministers of Education met on the 2nd of June 1983, they expressed their support for taking further the idea of organised mobility. In particular, they acknowledged that the adoption of the joint programmes of study in 1976 was the most appropriate solution to the problem of student mobility and they called on the higher education institutions to be generous and flexible enough towards the recognition of the study period following return at the home institution. They furthermore explained that as opposed to the spontaneous mobility of students, organised mobility brought a number of benefits for the individual student. First of all, organised student mobility enabled the individual to overcome the difficult recognition procedure at home since examinations on the final degree were taking place after return to the home institution

(Συμβούλιο των Ευρωπαϊκών Κοινοτήτων, 1987b: 97-98). Despite the reasoning of the national governments on the need to take future action with regards to the organised mobility of students, the Ministers of Education were unable to approve the Commission proposal on the student grants and on the credit transfer system. What was adopted instead was the idea of the National Academic Recognition Information Centres (NARIC).

3.4 The role of the European Court of Justice in the Gravier case

Only a few months after the adoption of the Commission proposal, in December 1983, a case was brought before the ECJ. It concerned a French national who went to Liege, Belgium, to study strip cartoon in the Royal Academy of Fine Arts. In 1976, Belgium had adopted a law according to which students of foreign nationality, who wanted to pursue higher education at a Belgian institution, had to pay an enrolment fee that Belgian students did not have to pay. As we saw in the previous section, foreign students could be exempted from the payment of higher fees only under very special circumstances. Gravier was requested to pay an enrolment fee, called *minerval*, but she sought exemption from the payment of the fee. The Royal Academy rejected Gravier's request arguing that all foreign students should know the legislation before coming to Belgium and therefore be prepared to pay the enrolment fee. As a consequence, the Royal Academy requested Gravier to pay the fee for the academic years 1982 and 1983.

Gravier refused to pay, the Royal Academy refused to let her continue her studies and her right of residence was withdrawn. Under these circumstances, Gravier took the case before the Belgian court invoking Article 7 of the EEC Treaty according to which discrimination on grounds of nationality is prohibited. For Gravier, the request by the Belgian authorities to pay the enrolment fee constituted such discrimination (European Court of Justice, 1985: paragraphs 3-6). Because Gravier invoked Article 7 to justify why she should be exempted from the payment of the enrolment fee, the Belgian court considered the matter to be one of interpretation of Community law and therefore referred the case to the ECJ.

The first question addressed by the ECJ concerned whether the payment of the enrolment fee constituted an actual discrimination on grounds of nationality in accordance with Article 7 of the EEC Treaty. According to the Belgian authorities, the request of the fee did not constitute an act of discrimination. It was judged that foreign students who did not pay taxes in Belgium should contribute towards the cost of their education. The Commission, on the other hand, argued that the payment of the enrolment fee was discrimination because Belgium was the only member-state in the Community that made such a requirement obligatory on foreign students and because particular categories of students were exempted from this obligation (European Court of Justice, 1985: paragraphs 12 & 13). As it had done in 1978, the Commission took the

opportunity to remind the member-states that access to education according to Articles 48, 52 and in the present case Article 128 of the EEC Treaty was not unrelated to Community law (European Court of Justice, 1985: paragraph 17).

The ECJ agreed with the arguments put forward by the Commission. The ECJ found that the payment of the enrolment fee was discrimination on grounds of nationality and therefore Article 7 of the EEC Treaty applied to the Gravier case. As a result, Belgium was requested to remove this financial condition on the admission of foreign students (European Court of Justice, 1985: paragraph 15). Furthermore, the ECJ argued that the financial barrier imposed on Gravier concerned a specific type of education, called vocational training, for which the EEC Treaty had provided a specific legal basis and thus the development of a common policy under Article 128. In this regard, the ECJ ruled that the conditions of access to vocational training and only as far as it related to the payment of tuition fees fell within the scope of the EEC Treaty. According to the ECJ, vocational training was to be defined as “any form of education preparing 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 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” (European Court of Justice, 1985: 30)¹⁶.

It has to be noted that the Gravier case concerned the issue of spontaneous student mobility. Gravier had decided to move to Liege with the purpose of pursuing a whole degree and thus spontaneously. Her refusal to pay the enrolment fee, by invoking Article 7 of the EEC Treaty, meant that the ECJ could have used this principle to provide a much wider interpretation of Community law, one that would have returned the issue of spontaneous student mobility to the Council agenda. For example, the court’s ruling would have been seen as path-breaking with previous policy on the issue, if the ECJ had ruled that Article 7 applied to all conditions of entry and not only to the payment of higher fees. For instance, the ECJ had the power to rule that according to Article 7 host institutions would not be allowed to ask foreign students for additional academic qualifications which, as we saw, these were the proposals made by the Commission back in 1978.

The member-states, fearing the repercussions of such a decision, decided to award the first scholarships to students, with the aim of encouraging the organised mobility of students in 1984 while the Gravier case was still pending (European Commission, 1984: 18). It has to be further noted, that the issue of student mobility, did not feature at all in the agenda items of the

¹⁶The concept of vocational training was further defined in the Blaizot case where the ECJ found that that the term applied also to University courses which did not necessarily prepare for a specific profession but which provided students with specific training and skills (European Court of Justice, 1988).

Fontainebleau European Council which had as its main objective the creation of a People's Europe. For this reason, the Commission submitted a communication to the Council to request that the Adonnino Committee, established to examine the implementation of a Peoples' Europe, should also focus on the issue of student mobility¹⁷. For the Commission, the place of student mobility was central in this political initiative and considered unacceptable the fact that Heads of State and Governments excluded the issue from the agenda.

While acknowledging that the student grants would increase participation on the joint programmes, the Commission also argued that, "it would need very great practical and financial support to develop this action in an adequate manner" (European Commission, 1984: 18). Also, the Commission stressed that major importance should be given to the recognition of the study-period (European Commission, 1984: 16). The Gravier ruling was delivered six months after the submission of the communication to the Council in February 1985.

In June 1985, the Adonnino Committee set out specific proposals on the organised mobility of students. It proposed the continuation of the joint study programmes but in the form of a comprehensive exchange programme that would give the opportunity to a greater proportion of the student population to spend a study-period in the university of another member-state. In contrast to the joint programmes of study, the proposed programme would introduce a European Academic Credit Transfer System (ECTS), in order to facilitate the recognition of study period and which would be implemented by the higher education institutions on a voluntary basis (Bulletin of the European Economic Community, 1985a: 25). The Milan European Council approved the proposals of the Adonnino Committee and the Commission was asked to submit the necessary proposal (Bulletin of the European Economic Community, 1985b: 13).

In December 1985, the Commission proposed Erasmus on the basis of Article 128 of the EEC Treaty. The Secretary General of the Liaison Committee, Harry Lutikholt, commented on the Commission's proposals as follows: "The Erasmus proposals came at an appropriate moment. After many years of discussion on international mobility, and after increasing involvement on the side of the European Parliament and of the European Council, it was appreciated that something substantial had to be undertaken in this respect" (CRE-Information, 1987: 86).

The Commission set out the aims of the Erasmus programme as encouraging co-operation between higher education institutions by giving the opportunity to a minimum number of 150,000 students annually, a 10% target, to spend a period of study in another member-state

¹⁷The three issues that made up the People's Europe agenda were the introduction of a European passport, the abolition of immigration and custom formalities for travellers and the adoption of a general system for the mutual recognition of diplomas regarding the freedom of establishment and the freedom to provide services (European Commission, 1984).

beginning from 1992. The financial support provided for by the Erasmus scholarships which would cover travel costs, foreign language preparation and the cost of living differential would allow student participation to increase as follows: 5,000 students for 1987, 10,000 for 1988, 25,000 for 1989, 70,000 for 1990, 110,000 for 1991 and 150,000 for 1992.

Secondly, Erasmus would support the development of European University Networks between institutions of higher education and would put into practice for an experimental phase of six years the ECTS. Funding for this action would also support the development of joint curricula between universities. Finally, Erasmus would support a number of other activities such as the allocation of grants and prizes to academics, Erasmus students and to the best co-operation programme. Erasmus would fund the publication of the Community student guide, meetings between NARIC representatives and studies on the implementation and evaluation of the programme. With the exception of student scholarships, the rest of the Erasmus actions would be centralised¹⁸.

To put the programme into practice for the period 1987-1990, the Commission requested a commitment from the Community budget of 175m ECU (European Commission, 1985a). The ministers of the member-states expressed concerns with regards to the financial amount requested by the Commission. As a result, the Education Committee proposed an initial amount of 85m ECU but to which the French and German delegations were not able to commit (Council of Ministers, 1986a & Council of Ministers Corrigenda 1 & 2, 1986b). Those member-states wanted the second action of Erasmus, student scholarships, to be removed completely as both countries had extensive bilateral agreements at the domestic level (Agence Europe, 1986b)¹⁹. For Germany, in particular, the amount requested by the Commission was characterised as “exorbitant” (Agence Europe, 1986e).

In the end, the Commission had to withdraw its proposal because it considered that “these compromise solutions distorted very significantly the objects of the programme” (Council of Ministers, 1986c: 4). The reduction of the budget to 85m meant that organised mobility would not increase to the degree originally envisaged by the Commission. The final amount allocated to the programme would allow only some 20,000 students to spend a study period to another member-state of the Community as opposed to 70,000 students originally estimated by the Commission for the period 1987-1990 (European Commission, 1987: 36).

¹⁸For example, from 1987 onwards applications for financial support to universities were to be addressed to the Erasmus Bureau, the predecessor of the Office for Co-operation in Education under the joint programmes of study (European Commission, 1988: 28).

¹⁹See also Agence Europe (1986c&d).

As a result of those budgetary changes, the 10% target was removed from the content of the proposal. Erasmus central objective would be to “achieve a significant increase in the number of students from universities spending an integrated period of study in another member-state” (Council of Ministers, 1987c: 21 & Agence Europe, 1987b)²⁰. As far as the legal base was concerned, Erasmus was adopted in May 1987 under the Belgian Council Presidency (Agence Europe, 1987a) while the Liaison Committee gave its opinion, generally agreeing with the content of the proposal (CRE-Information, 1987: 87). Since Article 128 of the EEC Treaty, did not provide for a voting procedure, then according to Article 148 (1), Erasmus would be adopted by majority and the Parliament would simply issue its opinion (Lenaerts, 1995: 5)²¹. In the end, however, Erasmus was adopted unanimously on the dual legal basis of Articles 128 and 235 of the EEC Treaty²².

3.5 Conclusions

The focus of this chapter was with the process of policy development on the case of student mobility. In the introduction of this chapter the distinction was made between spontaneous/free and organised student mobility. However the final decision, the Erasmus program aimed at facilitating the organised mobility of students bringing important changes at the domestic level. The chapter demonstrated that student mobility was a high politics issue because it became an agenda item from the very early days of the Community. If it was not, then the governments of the six would not have precluded the taking of any decisions as far as the free movement of students was concerned. Thus, the main purpose of Erasmus was to create a sense of belonging to the Community as EU citizens, to give the opportunity to meet and learn different cultures, to be the first step towards the homogenisation on the content of degrees and to encourage the learning of other Community languages as part of a single programme. We have furthermore seen that the Commission was aware of the problems student mobility posed as a policy issue, in particular, the distinction between free and organised mobility. At different stages of the process the Commission attempted to make those problems known to the member-states but

²⁰However, the 10% target was introduced in 1995 with the adoption of the Socrates programme following the European Parliament’s request under the co-decision procedure (Council of Ministers, 1994a: 486 & Council of Ministers, 1994b: 14).

²¹According to Agence Europe (1986a) the European Parliament approved the Erasmus proposal by 143 votes against 3.

²²This choice from the part of the member-states was later challenged by the Commission before the ECJ. The ECJ had to reject the Commission’s application on the grounds that Erasmus impinged on the research policies of the member-states (European Court of Justice, 1989). Following the passage of the SEA, which provided a new legal base on research and technological development, Erasmus II was

without success succeeding thus to lead to the adoption of the Erasmus programme. This failure on the part of the Commission and of the ECJ to create a policy on the free movement of students shows the prevalence of the member-states throughout the policy-process and most importantly the prevalence of the preferences of France, Germany and Britain that would mostly affected by a free movement policy (Gordon and Jallade, 1996: 136).

Chapter 4

The Case of Patient Mobility

4.1 Introduction

This chapter focuses on the process of policy development with regards to the issue of patient mobility. As with the previous chapter in the present chapter, no mention to the theoretical material of chapter two will be made because in this chapter the method of process-tracing is employed. As argued both in the introductory and in the previous chapter, the method of process-tracing enables us to structure the historical events in a chronological order. Furthermore, similarly to the chapter on student mobility, in this chapter the Commission's own use of the term "patient mobility" is employed. According to the Commission in the case of patient mobility there are two main aspects: free access to health care when in another member-state only in cases of emergencies and planned healthcare after receiving the prior-authorization when, for instance, there are waiting lists or when the disease cannot be cured at home (European Commission, 2004b, Association Internationale De La Mutualité, 1991& Van Der Mei, 2003). When referring to a policy on the free movement of patients what is meant is that a patient previously diagnosed with a disease has the free choice to be treated in another member-state without having to apply for an authorization from their insurance fund. Thus, the European Health Insurance Card which was the output of the policy-process is not concerned with the free movement of patients since the card is aimed at people who are in need of emergency treatment while in another member-state. According to the Commission patient mobility "can refer to patient mobility within border regions, for example in the Maas-Rhine Euregio between Belgium and the Netherlands. It can also refer to healthcare received in another member-state without any implication of proximity, such as arrangements for referral between Malta and the UK for specialist diagnosis and treatment" (European Commission, 2004b:5). Furthermore,

according to the Commission a patient is “any natural person who receives or wishes to receive healthcare in another member-state” (European Commission, 2008b:34)

As with the previous chapter, the description of the policy events is divided into the following sections. The first section focuses on early Community initiatives concerning the free movement of workers. In particular, it focuses on the social security regulations to co-ordinate the disparate systems of the member-states in order to promote free movement. The purpose of focusing on the decisions taken for workers is to examine whether patient mobility as a policy issue had become a matter of concern during the early days of the Community, as was the case for student mobility, and what were the particular provisions for this category of persons. Section two focuses on the events that followed the first meeting of Health Ministers at the Community level. It discusses the Commission’s efforts to make patient mobility an issue of concern by proposing the adoption of the European health card, and the outcomes of the Commission’s initiatives. The third section looks at the specific role played by the ECJ. In particular, it focuses on the timing the cases were brought before the ECJ and examines whether the ECJ rulings were in favour of a free movement policy. The last section concludes.

4.2 The co-ordination of social security schemes and the issue of patient mobility

Patient mobility and the involvement of the EU in the delivery of health services can be seen as one of the most controversial issues in the history of the Community. This happens at a time where increasing public expectations, technological advancements in the medical sector and shortages in the health professions in some member-states of the Community make the involvement of the EU with this issue a necessity (European Commission, 1986 & 2001a). At the same time, the EU has an ethical responsibility towards its own citizens. For the majority of European citizens, the EU represents nothing more than an economic force and this kind of perception undermines the EU’s credibility²³. On the other hand, it may be argued that greater involvement of the EU with the policy issue of patient mobility would impinge on the social policies of the member-states which have been traditionally seen as a national prerogative (Geyer, 2000; Hantrais, 1995; Cram, 1993; Leibfried and Pierson, 1995; Taylor, 1983; Hoffman, 1966). It is mainly for this latter reason, in other words, to safeguard national sovereignty in this policy sector, that the ECSC, EEC and EURATOM Treaties did not provide a legal base for policy development on the issue of patient mobility. The Treaties assigned a

²³Meehan (1993: 172) for example argued that “there are no such animals as European citizens. There are only French, German or Italian citizens”.

minimal role to the EU in the health sector, one restricted to the protection of workers in the workplace and to their right to move freely within the Community²⁴.

With regards to patient mobility, early Community provisions on this issue were inserted in the Council Regulation 3/58 and in the implementing Regulation 4/58 on the co-ordination of social security schemes with the purpose of facilitating the mobility of workers. Article 48 of the EEC Treaty provided workers with the right to move freely within the Community. In order to assist workers in exercising this right, the legislators of the Treaty also provided Article 51 and according to which the Council, following a proposal from the Commission, would adopt measures in the field of social security to ensure that workers moving to another member-state not lose their benefits. Regulations 3 and 4 were adopted on this legal basis and were revised in 1972 by Regulations 1408/71 and 574/72.

While the purpose of Article 51 was to allow for the adoption of policies in the field of social security with the purpose of facilitating worker mobility, nonetheless, the regulations specified under which conditions all persons insured under a public health scheme, and thus not only workers, had the right of free access to the health care system of another member-state. In particular, Regulation 3 distinguished between two categories of persons: workers who by moving to another member-state had also to transfer their residence to the host state and people who moved for other reasons other than work, such as tourism and business, and whose staying was going to be only temporary.

With regards to workers, the legislators of the Treaty gave them the same right as with the nationals of the member-states namely the right of free access. With regards to people who moved for other reasons other than work, Article 19 of Regulation 3 gave them the right of free access to the health care system of the host member-state. The only difference with workers was that the right of free access was guaranteed only in cases of emergency treatment during the temporary stay at the host member-state (Conseil de la Communauté Economique Européenne, 1958a: 569). In both cases, the provider of the host state would be reimbursed by the competent authority of the home state in accordance with the tariffs applicable to the member-state offering the treatment (Conseil de la Communauté Economique Européenne, 1958a: 571).

In 1963, Regulation 36/63 was adopted granting frontier workers (i.e. those who lived on one side of the border but worked on the other) the right of free access on both sides of the border without having to obtain the authorization of their insurance fund by simply receiving the E106 form (Association Internationale De La Mutualité, 1991: 16, 184 & Κυρίτσουλος & Γείτονα, 1995: 73-74). A study completed in 1991, on behalf of the Commission's Directorate General

²⁴For detailed analyses on the EU's public health policy see: Randall, (2000 & 2001); Holland and

on Social Affairs by the International Association for Mutual Assistance, with the purpose of discussing the possibilities of a Community policy on patient mobility, had found the provisions of Regulation 36/63 unjust arguing further that unless patients were given the right of free access across the Community, frontier workers and workers would continue to be in a more privileged position (Association Internationale De La Mutualité, 1991: 169).

It has to be noted that the decision to give people the right of free access to the healthcare system of another member-state did not preclude the improper use of Article 19 by those who would move to the host member-state for the purpose of receiving medical treatment in order to avoid waiting lists at home. To prevent the possibility of such an occurrence with regards to Article 19 of Regulation 3 the governments of the member-states inserted Article 18 into the implementing Regulation 4. According to this article, people would be able to exercise their right of free access only upon presentation, to the medical authorities, of a certificate confirming the duration of the stay at the host member-states and that they were insured under a public scheme in their home country (Conseil de la Communauté Economique Européenne, 1958b: 605)²⁵.

By inserting Article 19 in Regulation 3 and Article 18 in Regulation 4, it became evident from the very early days of the Community that a policy concerning the free movement of patients was unlikely to develop in the future as the above regulations gave the right of free access to the healthcare system of another member-state only in cases of emergency. These provisions did not preclude, however, the prospect of developing at some future point in time a policy that would further facilitate access for this particular category of persons. With regards to the insertion of Article 18, it may be argued that this decision was not primarily intended to inform the medical authorities that the right of free access could be invoked within a forthcoming period of time. Rather, it seems that the purpose of Article 18 was to ensure that when the right of free access was invoked it constituted a case of actual emergency.

Regulations 1408/71 and 574/72 were adopted on the same legal basis as Regulations 3 and 4 and their content regarding access to the healthcare system of another member-state did not differ significantly from the provisions of Regulations 3 and 4. For example, people who would move to another member-state and who were in need of urgent medical care were required to apply for an E111 form from their home insurance fund. Secondly, Regulation 1408/71

Mossialos, (1999); Busse *et al* (2002); McKee *et al*, (2002); Mossialos and McKee, (2002).

²⁵In 1984, the Administrative Commission on Social Security for Migrant Workers, composed of national officials from the member-states and established under Regulations 3 and 4 to monitor the implementation of the regulations issued Decision 123 giving persons undergoing renal dialysis the right of immediate necessity. According to Decision 123 “regard must be had to preventing the improper use of the provisions of Article 22 (1) [of Regulation 1408/71] by persons who go to stay temporarily in another member-state with the intention of obtaining benefits in kind” (Council of Ministers, 1984).

simplified the meaning of patient mobility under the title of planned care and the E112 form, requiring patients to receive first an authorization in order to receive treatment in another member-state of the Community. In this latter case, the patient should apply for an authorisation from the competent institution at the home state and only when authorisation was granted could the patient go ahead with the treatment. According to Article 22 (2) of Regulation 1408/71, the authorisation could not be refused when the treatment was covered by the healthcare package but it could not be provided within the necessary time at the home state. Furthermore, Article 22 of Regulation 1408/71 clarified that the insurance fund should take into account the patient's state of health and the probable course of the disease before deciding to refuse the authorization. As far as the reimbursement of costs is concerned, Regulation 574/72, similar to Regulation 4, clarified that the tariffs were going to be set by the country providing the treatment (Council of Ministers, 1971, 1972).

Even if in all the above regulations, with the exception of workers, the right of free access to the healthcare system of another member-state was prohibited, unless the prior-authorization condition was fulfilled and unless the case constituted one of urgent care, nonetheless their adoption was a significant step towards the involvement of the EU with the national healthcare policies of the member-states. Prior to the adoption of Regulations 3 and 4, bilateral agreements had been signed between Belgium and France in 1910, Germany and Belgium in 1925 and Belgium and Holland in 1947. Due to the principle of territoriality, these agreements did not encourage the mobility of patients but simply allowed doctors to provide medical services to the patients of other member-states without losing their benefits (Κυρίόπουλος & Γείτονα, 1995: 16, Association Internationale De La Mutualité, 1991: 7 & Hermesse and Lewalle, 1993: 13). However, with the accession of Denmark, Ireland and the United Kingdom into the European Community in 1973, it was estimated that approximately 2.5 million people would benefit from the provisions of Regulations 1408/71 and 574/72 (Agence Europe, 1973).

4.3 The issue of patient mobility on the Council's agenda

Co-operation at Community level on public health matters faced constraints from the beginning. In the 1970s and early 1980s, the economic and social situation in the Community was deteriorating with serious implications for social security schemes and health expenditure in particular. To this regard, the Commission has set out as one of its objectives to make the Community a better place to live and work in.

As argued by the Commission in 1973, "the Commission is anxious to promote throughout the Community higher standards of public health. In all member-states there appears to be a need for much closer co-ordination of public health policy, particularly in matters such as migrant

workers and their families, prevention of mental and psychosomatic illness related to working and living conditions and a wider approach to prevention and care of serious diseases. For that reason, the Commission will examine these areas in order to consider possible scope of Community action in the field of public health” (European Commission, 1974b: 12-13).

While there were opportunities for the Commission to address the above problems, nonetheless, the Commission was aware that the only proposals to be accepted in the Council would be the ones that complied with the wishes of the Health Ministers. Even before the first meeting of Health Ministers at the Community level, it was felt that Community action in the field of public health should not impinge on the organisation of healthcare and as a consequence on the free movement of patients. For instance, in 1974, the Council of Ministers approved the Commission’s Social Action Programme according to which two major initiatives would be undertaken in the domain of public health. The first concerned the establishment of an Advisory Committee on Safety and Health Protection at Work while the second concerned the establishment of a European Foundation for the Improvement of Working and Living Conditions (European Commission, 1975: 8). Thus, the proposals adopted by the Council in the field of public health were consistent both with the Commission’s proposals of 1973 and with the proposals made within the ECSC, EEC and EURATOM Treaties.

The year 1977 was significant for the development of the Community’s public health and healthcare policy. Five years following the Commission’s statement on the future development of public health policy, the Ministers of Health met for the first time at the Community level. The first meeting of the Health Ministers of the nine member-states was initiated by the French and British Health Ministers. Meeting informally nine months before the first meeting at the Community level, in April 1977, the French and British Health Ministers set many of the agenda items that the nine Health Ministers discussed during their first meeting. In particular, the French and British Health Ministers put into the Council agenda the issue of health education, the issue of the economic aspects of health and the issue of the free movement of doctors (Agence Europe, 1977a). The significance of referring to the content of the first meeting of Health Ministers relates to the fact that it becomes possible to understand their perceptions on the matters and whether they would allow for the development of a policy on the free movement of patients.

As far as patient mobility is concerned, the issue was brought onto the Council agenda by the French and British health ministers, but it was discussed under the general theme of the economic aspects of health. As noted earlier, the increase in health costs was a problem common to most of the member-states of the Community during this period. After describing the situation in their home countries and the measures to be taken in order to curb the rise in

health expenditure, the Health Ministers focused on the studies carried out by the Commission since 1971 on the healthcare policies of the member-states. These had focused on pharmaceutical consumption and its costs for social security schemes as well as on the costs of hospitalisation (European Commission, 1972: 186; European Commission, 1973: 30 & European Commission, 1974b: 28).

The Commission had compared hospitalisation costs in ten hospitals across five member-states (Belgium, Germany, France, the Netherlands and the UK) half of which provided a capacity of 300 to 600 beds and the other half a capacity of 600 to 2000 beds. This study allowed the Commission to provide an overview of the situation in their home countries regarding admission rates, the length of stay and the allocation of medical staff per bed (Agence Europe, 1977b). During the first meeting of Health Ministers, the Commission observed that along with the idea of reducing health expenditure, the Community should strive to “promote the individual’s right to health itself and to other fields outside it” (Agence Europe, 1977b). As far as access to the healthcare services of another member-state for urgent care was concerned, the Commission announced to the Health Ministers that it was looking into the desirability and feasibility of introducing a Community health record card. The Health Ministers welcomed the Commission’s proposals and asked the Commission to submit concrete proposals on the above matter (European Commission, 1978c: 15).

The issue of patient mobility, under the title of health expenditure, was again on the Council agenda during the second meeting of Health Ministers in 1978 which was held under the German presidency (Agence Europe, 1978b & European Commission, 1979: 18). The second meeting of the Health Ministers in 1978 was important in another respect. The Health Ministers, apart from considering that the containment of health care costs could be achieved by providing better medical and patient information, they have also suggested that future Community action should focus on three priority areas. These were the issue of pharmaceutical consumption, the free movement of doctors and the harmonization of healthcare definitions and statistical information (Council of Ministers, 1978: 3 & European Commission, 1979: 18). The issue of emergency healthcare treatment has not been discussed at all during the second meeting of Health Ministers (Council of Ministers, 1978: 6).

Following the second meeting of the Health Ministers at the Community level, there was a six year gap before the next meeting was held. In 1979, the Commission announced that it would draw up a programme to improve the coherence of its activities in the field of public health. The programme would be named ‘Better Health at Less Cost’ and it would focus on the three priority areas decided by the Health Ministers in 1978 but the programme was never proposed to the Council of Ministers (European Commission, 1980: 10). In 1980, the Commission argued

that, “it was not easy to start a discussion on health going in the EEC. Many people might consider it perfectly normal for the EEC to deal with health but the Treaties made no specific mention of health as such” (Agence Europe, 1980b).

Aside from the Commission, the European Parliament was a strong supporter of greater Community involvement within the field of public health policy. Members of the European Parliament Socialist Group, of the Christian Democratic Group and of European Democrats were all agreeing that the Community should strengthen its presence in the field of public health (Agence Europe, 1981a). Given that the idea of a Community health record card has been originally discussed at the first meeting of Health Ministers in 1977 but no action has been taken since then on the issue, in 1981 the European Parliament adopted a resolution with the purpose of making the health card a reality for the Community citizens of the ten member-states.

The Hooper resolution, named after a European Democrat MEP, was adopted unanimously on 26 February 1981. It owed its emergence to two earlier motions for a resolution prepared by members of the Christian Democratic and Socialist Groups and to the opinion of the Legal Affairs Committee. Both political parties agreed that the Council should adopt a directive on the implementation of a uniform European health card or - as it was otherwise named - a health passport. In the case of accidents, the health passport would allow Community citizens to receive rapid access to the healthcare system of another member-state, facilitate the formalities on the reimbursement of costs and avoid the repetition of unnecessary examinations since it was envisioned that the card would mention clinical data on the patient. The European Parliament furthermore proposed that eventually the health card should lead to the replacement of the E111 form (European Parliament, 1980a, b).

The Legal Affairs Committee argued that the thinking behind the whole idea of the European health card was well-founded as it would not only facilitate access to medical treatment in emergency situations but it would also safeguard the right to health, which was seen as a fundamental human right. Furthermore, the Legal Affairs Committee agreed with the content of the proposals concerning patient information but it highlighted a number of practical problems regarding the introduction and implementation of a uniform health card.

The first concerned the issue of the confidentiality of patient information. From the Committee’s point of view the card should become available only following a request by the patient and should not become therefore freely available to all Community citizens. The second concerned the issue of the legal base. According to the Legal Affairs Committee, the health card should in principle be adopted on the basis of Article 3 (c) of the EEC Treaty, which provided

for the creation of an ever closer union among the peoples of Europe and the abolition of obstacles to freedom of movement for persons, services and capital. The problem with this legal base was however that in practical terms it referred to freedom of movement for employed and self-employed persons leaving thus outside its remit persons who moved for non-economic activities. The Committee had thus suggested that the appropriate legal base for the adoption of the European health card should be Article 235 of the EEC Treaty which had been used in the past for the adoption of policies which were not mentioned in the EEC Treaty. Given the above difficulties concerning the introduction of the health card, the Legal Affairs Committee suggested as an alternative solution the incorporation of the proposal into the 'Better Health at Less Cost' programme which had yet to be defined by the Commission (European Parliament, 1981).

The Hooper resolution was adopted following the above recommendations. While taking note of the increasing mobility among European citizens, the European Parliament had also stressed that the conditions were not favourable enough for the adoption of a uniform health card. Member-states were worrying about the administrative costs in introducing such cards but there were also reservations from the medical profession without whose support the introduction of the card could not become a reality. Another problem was that none of the member-states of the Community had experience with such a general card. Only the Federal Republic of Germany and Luxembourg had introduced health cards on a voluntary basis in 1974 and 1978 respectively. These cards were however addressed to people who were at risk, that is, people with serious and chronic illnesses. As a consequence, the proposals on a directive concerning the introduction of a uniform health card were abandoned. The member-states decided to draw from the experience of Germany and Luxembourg and proposed the introduction of a voluntary emergency health card for people already diagnosed with a serious or chronic illness. The Hooper resolution however emphasised that the introduction of a general health card for all Community citizens should continue to be the Community's objective (European Parliament, 1981 and Council of Ministers, 1981).

Following the Hooper resolution, the Commission presented the European Parliament's Committee on the Environment, Public Health and Consumer Protection with a speech into which it required the Health Ministers to convene a public health meeting the soonest the possible. The Commission expressed the hope that the third meeting of Health Ministers could take place in the first half of 1982 either in April or May (Agence Europe, 1981b). Despite the efforts of the committee and the Commission, the Ministers of Health did not meet in the first half of 1982. Then, the European Parliament asked the Council why the Health Ministers have not met since 1978. The Council representative argued that since the Commission did not make

any proposals the Health Ministers did not consider it appropriate to hold a meeting. By contrast, the Commission argued that no proposals have been made because the Health Ministers did not show the willingness to meet (Agence Europe, 1983).

Following the debate between the Commission, the Council and the European Parliament and in order to hasten the process towards the third meeting of Health Ministers, the Commission submitted to the Council a recommendation on the adoption of a European emergency health card. The Commission argued that, “politically and psychologically, their introduction would strengthen the idea of European citizenship”. The Commission took into account the results of the Hooper resolution and proposed to the Council the adoption of a card for people at risk following application by the patients themselves (European Commission, 1983).

The Commission’s proposal on the emergency health card was submitted to the Council only a few months before the Fontainebleau European Council on the creation of a People’s Europe held in June 1984. In November 1983, the European Parliament proposed the adoption of a European Charter on Patient’s Rights to outline the essential rights of patients. The European Parliament thought that since, ethical codes of this kind existed at the international level, such as the 1948 Geneva Declaration, similar initiatives should be undertaken at the Community level. For instance, the Pruvot report suggested that patients should have the right to the free choice of doctor, if they wanted to be treated in another member-state, but also the right to file complaints to a conciliation committee in case the authorization had been refused. Pruvot noticed that in some member-states contrary to the provisions of Regulation 1408/71, authorization was granted only when the treatment was not available in the home state (European Parliament, 1983 & Agence Europe, 1984a).

Unfortunately, the issue of patient mobility along with the proposal on the emergency health card were not included in the Fontainebleau agenda on the creation of a People’s Europe (European Commission, 1984). This omission attracted the attention of the European Parliament who in November 1984 approved a second report, the Parodi report following the name of the Italian Christian Democrat MEP. Compared to the Hooper report, which was reflected in the Commission’s proposal for a recommendation, the Parodi report was categorically opposed to both propositions. While the Hooper report had argued in 1981 that the conditions were not favourable enough for the introduction of a uniform health card for all Community citizens and while the Health Ministers had not met since 1978, nonetheless, the Parodi report found the Commission’s proposal unsatisfactory. This was because it not only referred to people with serious or chronic illnesses but also because it excluded disabled people. Parodi argued that the Commission should amend its proposal to give all persons the opportunity to apply for the European emergency card. While in its explanatory statement the Commission spoke about a

health card for people at risk the main body of the recommendation implied that the card should become available to all people. Parodi found this Commission's approach discriminatory given that the emergency health card would benefit only those previously diagnosed and Parodi reminded the Commission that there were also people who did not suffer from a serious or chronic illness and who could also benefit from such a card. Parodi also expressed his dissatisfaction with the choice of the legal instrument which was non-binding in nature jeopardising therefore the introduction of the card at the national level (European Parliament, 1984b & Agence Europe, 1984b).

The Health Ministers finally decided to meet informally under the Irish Presidency towards the end of 1984. Concerning the health card, the Ministers recognised its usefulness but they were not able to reach agreement on the Commission's recommendation (Agence Europe, 1984c). A fourth meeting was held in Venice in May 1985 but again no agreement was reached on the health card. The Social Affairs Commissioner, Mr. Sutherland, spoke of the need to establish a genuine health policy at the Community level irrespective of the legal issues involved in the creation of such a policy (Agence Europe, 1985).

Patient mobility was finally discussed within the Adonnino Committee, established to implement the conclusions of the Fontainebleau European Council on the creation of a People's Europe. The Heads of State and Governments agreed that the Council should endorse the Commission's proposal on the emergency health card in the near future (Bulletin of the European Economic Community, 1985a & European Commission, 1985b: 12). Indeed, the Council adopted a resolution on the European emergency health card in 1986. The card would become available to all people who would apply for it and not only to those who suffered from chronic and serious illnesses. The Council assigned to the member-states all issues regarding the implementation of the card. It requested the member-states to publicize the introduction of the card to the medical authorities and the citizens of the Community so as to ensure that it would be widely used at the national level (Council of Ministers, 1986d & Council of Ministers, 1986e). Following the adoption of the resolution, and at a separate meeting the Ministers discussed the possibility of introducing a computerised health card and of computerising the personal data of the patient at some future point (Council of Ministers, 1987d: 6).

4.4 The role of the European Court of Justice in the Kohll and Decker cases

Before the path-breaking Kohll and Decker rulings of 1998, a number of initiatives had been undertaken by the Commission to put the issue of patient mobility onto the political agenda. Unfortunately, the Commission's efforts did not lead to immediate action by the member states

who instead remained primarily concerned with the issue of emergency healthcare abroad. It was in this context that the Court made its rulings. To assess the influence of the Court decisions in the above-mentioned cases on the policy-process more generally but also the interaction between law and politics, it is important to understand the context in the years before Kohll and Decker were brought before the ECJ.

In 1990, five years before the Decker case was brought before the ECJ, the Commission issued a communication on the living and working conditions of the frontier population. The reason for putting forward such an initiative was to commence a dialogue at the Community level on the economic, social and cultural benefits of living in the frontier regions of the Community so that cooperation could be enhanced between the frontier population. According to the Commission, trans-frontier cooperation could focus on a wide range of fields such as employment, taxation, social protection and access to health care. It is in this communication that we meet for the first time in the history of the Community proposals on the abolition of the prior-authorization procedure.

We saw earlier that cross-frontier workers enjoyed certain advantages compared to other citizens of the Community with regards to access to healthcare. The Commission noted that similar provisions should be adopted for members of their families and for retired people emphasising that the procedure of prior-authorization had become a focus for criticism from patients and healthcare institutions. In the words of the Commission “consideration could therefore also be given to revising the provisions in the sense of getting rid of the need for authorisation” (European Commission, 1990b: 10 & Hermesse, Lewalle and Palm, 1997: 9).

In 1994, the Commission raised the issue of free patient mobility for a second time in its proposals on European Social Policy. The Commission argued that the provisions of Regulation 1408/71 were “too restrictive and no longer appropriate to today’s requirements” (European Commission, 1994: 28). In the same year, a meeting was organised between the European Commission and the Permanent Committee of EC Doctors, which by that time had moved to Brussels. As a response to the Commission’s initiative in proposing the abolition of the prior-authorization procedure, the President of the German Doctor’s Association, indicated the impossibility of harmonizing the disparate social security systems of the member-states to achieve a genuine free movement of patients. The President nonetheless noted that a first step towards this direction would be the introduction of the European Health Insurance card (Agence Europe, 1994).

In April 1995, the case of Nicolas Decker was brought before the ECJ. According to Nourissat (1999), this case along with the case of Aline Kohll joined *Costa v. Enel* and *Cassis de Dijon* in

the list of cases in the Community's judicial mythology. However, for some legal scholars the Kohll and Decker cases brought only minor changes at the domestic level²⁶. An interesting aspect is that, with the exception of the Kohll and Decker rulings, many of the issues with regards to the correct application of the regulations were settled between the Commission and the relevant departments of the member-states (European Commission, 1992: 36; Mavridis, 1998: 154; Jorens and Schulte, 2001: 245). As an example of such a case, reference is made to a Greek lawyer who following severe burns received authorization and was transferred to France. The Greek insurance fund refused to renew his authorization and to pay the full amount of the treatment. Rather than taking his insurance fund before the national Court, the patient has filed a petition to the European Parliament which requested the Commission to intervene (European Commission, 1992: 32). Thus, the matter was peacefully resolved without the need to appeal to the ECJ. The Greek fund renewed the patient's authorisation and agreed to pay the full costs of the treatment.

As far as the case of Nicolas Decker is concerned, it can be seen as a kind of development that would happen. In the early 1990s and as the issue of free patient mobility was not reaching the top of the political agenda, policy analysts began to speculate about the possible effects an application of the free movement principles on goods and services could have for the healthcare systems of the member-states. As Kuile, Pré and Sevinga (1992: 17) argued, "as far as the services are concerned in the view of the European Court the patient can invoke certain rights as a customer".

While the possibilities of obtaining prior-authorization in the case of Luxembourg were high, due to limited healthcare infrastructure (Kesteloot, Poceschi and Schueren, 1995: 48), both cases concerned two Luxembourg citizens who attempted to take advantage of the principles governing the free movement of goods and services²⁷. In the first case, Nicholas Decker, a lawyer who decided to fight the case as a matter of principle (European Voice, 1997), ignored completely the provisions of Regulation 1408/71 and went to Belgium to purchase a pair of spectacles. When he requested the reimbursement of the costs, at the tariffs applicable in Luxembourg, meaning that the balance of health expenditure would not be affected, his insurance fund refused to reimburse him given that he has not requested an authorization. For Mr. Decker, this decision was contrary to the principles governing the free movement of goods

²⁶See also Alessandra's Bosco (2000) study on the implications of the Court's jurisprudence, especially pages 16-17. For a review on member-state reactions following Kohll and Decker see Gobrecht (1999).

²⁷Hatzopoulos (2000: 62) has mentioned that "there are numerous cases in which the parties invoke Community law in order to circumvent the application of some unfavourable domestic legislation or, on the contrary, in order to benefit from the more favourable legislation of some Member State". Similarly, Costa (2003) objects to the argument on the 'democratization' of the EU because of the existence of the

in particular Articles 30 and 36. Thus, the national court referred the case to the ECJ to find out whether the request of prior-authorization was against this fundamental Community principle (European Court of Justice, 1998a).

From the Commission's viewpoint, the request for prior-authorization was a barrier to the free movement of goods. The governments of Luxembourg, Belgium, UK, France, Germany, Spain and the Netherlands, in their submissions to the Court, argued that the case of *Nicholas Decker* should be dealt exclusively under the provisions of Article 22 of Regulation 1408/71 rather than under the Treaty principles on the free movement of goods. Contrary to the Commission's view, the member-states argued that the free movement of goods principle referred to goods rather than to people (European Court of Justice 1998a: paragraphs, 17 and 18). For example, while the governments of the member-states did not dispute the fact that Articles 30 and 36 allowed for the import of spectacles into another member-state, they nonetheless argued that when it comes to the free movement of patients then an authorization must be obtained. The ECJ found the above national position unjustified. It allied with the Commission, arguing that the provisions of Regulation 1408/71 discriminated against the purchase of products from the other member-states. It argued that while the same product could be purchased within the territory of Luxembourg, without having to obtain first an authorization, the same was not true for the purchase of products in other member-states (European Court of Justice 1998a: paragraphs, 33, 35, 36). The ECJ decided that the request of prior-authorization constituted a barrier to the free movement of goods as far as it related to the purchase of medical products (European Court of Justice 1998a: paragraphs, 46).

The case of *Aline-Raymond Kohll* was similar, in the sense that Kohll requested the reimbursement of the costs for his minor orthodontic treatment at the tariffs applicable in Luxembourg. In this particular case, where there was only one orthodontist in Luxembourg and where the treatment was available within the normal period of time, the principle of the free movement of services was invoked in particular Articles 59 and 60 of the EEC Treaty. As in the *Decker* case, the court found that the services principle applied to the healthcare systems of the member-states meaning that the authorization procedure should be abandoned when orthodontist or non-hospital treatment rather than hospital treatment was involved (European Court of Justice 1998b)²⁸.

ECJ, as well as of the European Parliament, arguing that access to the ECJ depends on the litigant's financial means and on his/her knowledge of how the ECJ legal system works.

²⁸In the above cases, a series of significant issues were left undefined for the protection of national sovereignty. From the perspective of this thesis, the most important one is the issue of hospital treatment. Following the *Smits-Geraets* and *Peerbooms* cases of 2001 where the *Decker* and *Kohll* procedure was used, the ECJ argued that the prior-authorization procedure should be maintained when hospital treatment is being planned. While the ECJ argued that in theory hospital treatment can be seen as a service since, in

In awaiting the decisions of the court, the view was expressed that, if answered in the affirmative, the Decker and Kohll rulings would give the opportunity to every Community citizen to make use of the healthcare services of other member-states. As argued by Mavridis (1996: 1086), “si la Cour répond affirmativement, tout assuré en Europe pourrait se faire soigner dans n’importe quel État membre à la charge de l’État d’affiliation. Un tel arrêt pourrait être accueilli *favorablement* par les citoyens qui se verraient enfin reconnaître un droit supplémentaire à la santé: il s’agirait d’une liberté fondamentale de recevoir les soins les plus appropriés à sa santé dans un espace unifié”.

Although the Court had found in favour of patient mobility in the Decker and Kohll rulings, their application remained limited to those persons who would move with the purpose of receiving non-hospital treatment. At the same time, the idea of patient mobility had begun to wither away not only because of the need to safeguard the interests of the member-states but also because the time had come to take the first serious steps towards the adoption of the emergency health card.

In 1996, two years before the ECJ's rulings, the Commission presented an information paper on the emergency health card to the Council. This time the Commission referred to the introduction of a computerised health card which would allow doctors to access patient data from all the Community's member-states. The Commission explained that the introduction of such a card was impossible due to technical and legal problems. On the technical side of things, the Commission argued that the costs of acquiring the necessary facilities at the domestic level to read the card would be immense. As far as the legal issue was concerned, the Commission pointed that doctors would still need to repeat examinations in order to avoid charges of negligence. Given the above obstacles, the Commission considered that it would not be “opportune at present to bring forward proposals in relation to a European health card” (European Commission, 1992: 34 & European Commission, 1996: 8).

Thus, following the abandonment of the discussions on the computerised health card as well as following the ECJ rulings, the Administrative Commission for Social Security for Migrant Workers adopted the European Health Insurance Card in 2003 (Council of Ministers, 2003). The Commission President at the time Romano Prodi, characterised the adoption of the card to the public as “another piece of Europe in your pocket. The millions of European citizens who

these particular cases the patients paid for the costs of the treatment themselves, it was nonetheless upheld that the request of prior-authorization would continue to safeguard “a rationalized, stable, balanced and accessible supply of hospital services” (European Court of Justice, 2001: paragraphs 55, 81). Further justifications on the reasons of maintaining the prior-authorization procedure were given in the Müller-Fauré and Van-Riet judgments of 2003 (European Court of Justice, 2003).

travel within the Union every year on holiday, school exchanges, business trips will now find it much easier to access healthcare when abroad” (Agence Europe, 2004).

Between 1998 and 2003 the Commission published a proposal for a decision on a Community action programme in the field of public health. This document stated that Community action “shall fully respect the responsibilities of the member-states for the organization and delivery of health services and medical care” (European Commission, 2000b: 3). Thus, the main objective of the programme was to guarantee a high level of health protection across the member-states. In 2001, the High Level Committee on Health, established in 1991 and composed of member-state officials, set up a working group on the internal market and health which published an information paper on the impact of Community legislation on the healthcare systems of the member-states (European Commission, 2001a). This document considered of great importance the collection of information on the impact of Community legislation but also proposed measures on the resolution of the problems arising as a result of this legislation. In particular, the working group proposed the review of Regulation 1408/71 in order to ease access to the healthcare system of another member-state. Finally, in 2003, the same year the European Health Insurance Card was adopted the Commission published a second information paper on the implementation of the ECJ’s jurisprudence. The Commission addressed specific questions to the member-states with regards to the implementation of the court’s rulings and found unsatisfactory their implementation. As argued by the Commission the Kohll and Decker rulings “have led to changes in national legislation or practice in only a small number of them” (European Commission, 2003b).

4.5 Conclusions

The main conclusion to be drawn from this chapter is that clearly, elements of a policy on mobility did emerge but not as much as might have been possible. As in the case of student mobility, the path towards a policy on the free movement of patients was precluded from the very beginning of the policy-process. As we saw the Commission at various instances proposed the abolition of the prior-authorization procedure but without success. From its part the ECJ was able to rule for the abolition of the prior-authorization procedure under very specific circumstances such as the purchase of medical products and non-hospital treatment.

Chapter 5

Comparing the Policy-Processes to the Cases of Student and Patient Mobility

5.1 Introduction

The purpose of this chapter is to move from a description of the sequence of events that led to the adoption of the Erasmus programme and of the European Health Insurance Card, to a theoretically informed comparative analysis of those decisions. The difference between this chapter and the previous two chapters is that in the previous two chapters only the causal links have been described. This is a limitation of the method of process-tracing, employed in the previous two chapters, because it does not allow us to proceed from a semi-analytical description into causal explanation, in other words to explain why the idea of free movement for students and patients was ruled out, ultimately resulting in different policies.

This is the purpose of this chapter as according to Patton (2002: 438), “interpretation involves explaining the findings, answering ‘why’ questions, attaching significance to particular results, and putting patterns into an analytical framework”. In Patton’s (2002: 439) work, the method pursued in the previous two chapters for describing the causal events is that of chronology and history according to which the researcher describes “what happened chronologically, over time, telling the story from beginning to end”.

In this chapter, the method of pattern-matching is used. As we saw in chapter one the purpose in this chapter is to look for patterns of activity or patterns of behaviour that manifested themselves repeatedly irrespective of the policies under examination. With the use of this method the comparative analysis is based on the theoretical model advanced in chapter two which has as its basis the theory of liberal intergovernmentalism. It is divided into two stages: the stage of agenda-setting and alternative-specification and the stage of path-dependence.

With the concepts of agenda-setting and alternative specification, what is meant is how the issues of student and patient mobility emerged onto the Community agenda and how the choice was made between the alternatives of organised and free student mobility and between emergency and planned healthcare. Thus, the first stage considers as agenda-setting the moment where those issues were brought into the institutional agenda for the first time. The second stage is concerned with the codification and cementing of the decisions made during the stage of agenda-setting. Because we are concerned with the codification of the previous decisions this stage is considered to be path-dependent, in other words, linked with the stage of agenda-setting in a sequential order. Thus, the sequence of events is of extreme importance during this stage because the aim is to establish what role was played first by the Council, second by the Commission and third by the ECJ in the adoption of Erasmus and of the health card.

It is important to say that in the academic literature there has been some debate concerning the status of liberal intergovernmentalism. Wincott (1995a: 600) argued that liberal intergovernmentalism is an approach rather than a theory whilst the proponent of liberal intergovernmentalism categorized the latter as a paradigm (Moravcsik, 1995: 613). Today, however, the proponent of liberal intergovernmentalism argues that liberal intergovernmentalism “has acquired the status of a baseline theory” (Moravcsik and Schimmelfennig, 2009: 67).

This new development is very important because according to Schlager (1999: 255) models are based on theories and models allow us to test specific parts of theories. In the present chapter the theories tested are the policy-process ones reviewed in chapter two, namely the theory of policy networks, the theory of advocacy coalitions, the theory of multiple streams and the punctuated equilibrium theory in order to explain why the alternative of free movement when referring to students and patients was not pursued. Furthermore, the limitations of the principal-agent approach are explored.

In particular, some of the questions posed are the following: were the Erasmus programme and the health card the outcome of an alliance between the Commission and interest groups following the policy networks approach? Did adversarial advocacy coalitions emerge with the

purpose of altering the policy image of the issues by using as a venue the ECJ or other institutional venues? What was the role played by the Commission and the ECJ as policy entrepreneurs in succeeding making a reality a free movement policy on students and patients and how best can we conceptualize the interaction between the Commission and the court in adopting Erasmus and the health card? Or can the policy outputs be best explained by the interests of France, Germany and Britain following liberal intergovernmentalism?

Since both policy decisions emerged in the absence of a legal base in the EEC Treaty we would expect these policy decisions to reflect the interests of non-state actors rather than the interests of the most powerful member-states. This is argued because in other EU policy areas namely in the cases of telecommunications (Sandholtz, 1998), air transport (O'Reilly and Stone-Sweet, 1998) and merger control (Bulmer, 1994) the most important role was played by non-state actors along with Commission and ECJ entrepreneurship.

Finally, with regards to variation between the case-studies it is important to say that the sequence of events that culminated in each policy decision varies considerably with the first decision emerging in 1987 and the second in 2003. In chapter two we saw that one of the criticisms concerning liberal intergovernmentalism concerned the 'no variation' problem. As argued by Sweet and Sandholtz (1997: 302) according to liberal intergovernmentalism "integration proceeds, but the sequence never varies". Second, both policy decisions emerged only after observed Commission activity which also varies. In the case of student mobility the Commission became actively involved in 1973 and in the case of patient mobility in 1977.

5.2 The stage of agenda-setting and alternative-specification

As argued in chapter two agenda-setting is an ideological process in the sense that various ideas are proposed in order to deal with a given policy problem. It is also, according to Polsby (1984), the stage of policy innovation and the stage where policy sub-systems are created in order to preserve the policy image of the issue. What is meant by the concept of policy image is that policy communities or more generally policy sub-systems are formed and give to the policy issue a very specific understanding that is manifest in the media and policy analysis reports. As argued in chapter two, for Hoppe "an analysis of agenda-setting processes becomes an analysis of how problems developed, how they were defined, the courses of action formulated to act on these problems, the legitimation of one course of action over another, the emergence of policy systems designed to act on such problems on a continuing basis" (Hoppe quoted in Jones, 1984: 57).

The theories of advocacy coalitions and punctuated equilibrium predict that at some point in time adversarial networks will emerge to demand a change in the policy image of the issue.

Whether this has occurred in the cases of student and patient mobility will be examined in the second stage of the process. This is because those theories focus on how actors who are marginal to the policy-process strive to make their voices heard. On the basis of those theories, the focus will be on the role played by students and patients. Secondly, because it takes a very long period of time until the appearance of adversarial policy subsystems in the policy-process.

For the time being it is important to say that this study follows Polsby, because before the policy enactment phase - the adoption of Erasmus and of the European Health Insurance Card - there were no policies for students and patients at the Community level meaning that no Community involvement existed. Thus, both policies were an innovation for the case of the Community. However, until the emergence of those products, the Erasmus programme and the health card, ideas emerged on those policy issues which signified the future development of the policy. Many of those ideas were used in later years by the Commission, during the second stage of path-dependence, to propose policies on the more specific issues of organized student mobility and emergency patient mobility.

In particular, we saw in chapter three that the fifth working group on the preparation of the second proposal for the European University in 1960, chaired by the German Foreign Minister, focused on the more specific issue of student mobility. The ideas that emerged during this period around the issue of student mobility focused on both organised and free movement. However, as we saw with regards to the free movement of students the report mentioned that “en effet, il n’y a intérêt à harmoniser les programmes d’études que dans la mesure où les différences existent entre eux rendent difficile, voire impossible, la libre circulation des étudiants” (Comité Intérimaire, 1960: 24). The differences between the degrees across the Community’s universities were the central reason given for excluding the possibility of a policy on the free movement of students. No reference was made to the admission policies of the member-states, which, as we saw, became the primary reason for justifying inaction in 1980.

Nonetheless, the ideas proposed during this period concerning student mobility were an innovation because they were proposed for the first time at the Community level. These were the ideas of establishing a system of credit transfer with the purpose of facilitating organised movement. This system is currently known as the ECTS (European Credit Transfer System). After long years of discussion the establishment of the credit system was proposed by the Commission to the Council in 1981 but the proposal was not adopted. What we also observe is that the ECTS, one of the central actions of Erasmus, was proposed during the very early days of the Community long before the Commission submitted its decision to the Council in 1985. Second, the 1960 report of the interim committee spoke about the publication of a student passport to include information on previously taken examinations and on the opinion of teachers

on the student. This proposal was never adopted. Finally, the report of the interim committee proposed the dissemination of a student guide providing students with information on the universities across the Community's member-states. This proposal was adopted with the establishment of the 1976 action programme in the field of education. As argued in chapter three, this is the only measure the Community has taken so far to facilitate the free movement of students.

Similarly, in the case of patient mobility the Community became firstly involved with the adoption of Regulations 3/58 and 4/58 where a distinction was made between planned healthcare and emergency healthcare. However, Regulations 3/58 and 4/58 made indirectly the distinction between planned and emergency healthcare abroad. They provided only for emergency healthcare and implied that for planned healthcare the prior authorization of the insurance fund was required. As we saw in chapter four the meaning of planned healthcare was firstly introduced in Article 22 (2) of Regulation 1408/71, which replaced Regulation 3/58.

By contrast in the case of student mobility we saw that the Council of Europe was actively involved with the issue through the adoption of the 1953, 1956 and 1959 conventions on the Equivalence of Diplomas leading to Admission to Universities, on the Equivalence of Periods of University study and on the Academic Recognition of University Qualifications respectively. Despite the previous involvement of the Council of Europe with the issue of student mobility the proposals made on the establishment of the credit transfer, on the student passport and on the student guide signified a major departure from previous international agreements. They signified that something more important should be done at the Community level in order to bring closer the Community's students and to materialise the principle on the free movement of persons understood and defined as organised movement.

However, the principle of the free movement of persons could be interpreted differently by different people because it could be taken to mean that the Community should become involved both with the free and with the organised movement of students. The way the policy issue was defined within the Council of Europe greatly helped the Commission and the Council to see the problem from various aspects. As we saw within the Council of Europe, the issue of student mobility took mainly three forms: school-leavers who wanted to pursue a full degree in another member-state (spontaneous student mobility); students who would decide to spend a limited period of time at the University of another member-state (organised student mobility); and finally students who, having completed their first degree, would like to move to another member-state to follow post-graduate education. Certainly, the Erasmus programme aids towards the development of a policy on the free movement of students through the organization of joint courses between universities across the member-states. Although this action leads to a

minimum homogenization of degrees to enable the recognition of the study period at home, nonetheless those measures remain relevant only for those students who move within pre-arranged schemes.

In chapter two, it was argued that for Kingdon (1995: 73) “the ultimate origin of the idea, concern or proposal cannot be specified. Even if it could be, it would be difficult to determine whether an event at an earlier point in time was more important than an event at a later point”. We have also seen that similarly for Polsby (1984: 13) “a search for the genesis of policy innovations is bound to prove fruitless, since it is so difficult to settle definitively on the exact point in time at which any particular innovation emerged”.

The above quotes were brought into the analysis in our discussion of the critical juncture with the purpose of refuting the idea proposed above that the origins of a policy cannot be specified. The cases of student and patient mobility do demonstrate the opposite when we have a point in time from which an important decision was made.

As argued in chapter two the critical juncture is a point in time where a choice is made between alternative paths locking in the future trajectory of the policy. Pollack (2003: 5) when referring to the committee system of the US Congress argued that some alternatives are considered to be as “permissible or impermissible”. In the cases of student and patient mobility, the impermissible paths were those on the free movement of students and patients while the permissible ones were those of organised student mobility and emergency patient mobility. For this reason, it has been argued that critical junctures are characterised by openness and permissiveness when compared to the closed and coercive nature of the path-dependence stage, as we will see below.

More specifically, in the cases of student and patient mobility, it has been possible to detect the critical juncture stage when the decision was made to exclude the idea of free movement for students and patients. In particular, the 1960 report of the interim committee on the establishment of the European University and the adoption of Regulations 3 and 4 in 1958 were not dramatic events. They were small events that lasted for a brief moment of time resulting in bounding decisions for the future since they limited future Community scope.

Thus, when the six member-states met in the late 1950s to bargain on the policies concerning students and patients they had three alternatives on the matters, thus the openness and permissiveness of the political agenda: they had the option of making no decisions at all with regards to student and patient mobility; they had the option to decide to promote the free movement of students and patients by thinking how this could be achieved and they had the

option to exclude the option of free movement from the political agenda and search for other alternatives which is what they decided to do.

The alternatives chosen were those of organised and emergency mobility for students and patients respectively, alternatives that did not reflect the fundamental Community principle of the free movement of persons. The reason for doing this is simple: the decision to promote the idea of free movement could eventually lead to student and patient influxes towards the most powerful states of the Community. In the case of student mobility, these would be France, Germany and Britain while in the case of patient mobility it would be France (Gordon and Jallade, 1996: 136; Van Der Mei, 2005: 222; Van Der Mei, 2003: 268 and Association Internationale De La Mutualité, 1991: 142).

At this stage it seems necessary to refer to Pierson (2000a: 477-478) who argues that political actors may have short-time horizons, choosing, according to their policy preferences, alternatives on the basis of what is appropriate rather than on what is effective but they can also be purposive and instrumental and make far-sighted and intentional choices. In relation to this argument we can add that in the later political logic choices are not always the effective ones. The choices politicians make when they think purposively and instrumentally can still be considered as satisficing. What this means is that from the politician's viewpoint the choices made are appropriate on the basis of the means possessed. Evidently, political choices express the policy preferences of the actors involved during the crucial stage of agenda-setting whilst behind the policy preferences lay their policy interests.

By applying the above theoretical argument to the cases of student and patient mobility with the purpose of clarifying the policy preferences and consequently the interests of the member-states that would be mostly affected by a free movement policy in both cases we see that the political actors were purposive and instrumental in character making thus far-sighted decisions. In particular, in the case of student mobility it is highly possible that initially France and Germany were aware that if they had to promote the idea on the free movement of students, in the future, there would be student influxes towards those member-states. After the entry of Britain into the Community student influxes would also affect this member-state since France, Germany and Britain were the most popular poles of attraction for foreign students. During the stage of agenda-setting Germany and France took decisions which reflected their policy preferences concerning the issue of student mobility. The decisions they made demonstrated that they did not want to leave the Community principle intact. At the same time, they had to take into consideration their interests concerning the future evolution of the policy on student mobility. Therefore, the policy preferences of Germany and France during agenda setting focused on the choice of alternatives that would not enable the facilitation of a free movement policy. Those

member-states preferred to see a policy on the organised mobility of students developing at some future point rather than seeing as a result a policy in relation to the free movement of students. Despite the fact that Britain was not yet a member-state, nonetheless, the path-dependent nature of policy development that would follow would find this member-state in agreement with the decisions made during agenda-setting.

As far as the case of patient mobility is concerned, France was the member-state with the highest interest when compared to the interests of the rest of the member-states. In the future, France would receive the highest number of prior-authorizations because of the quality of its hospital infrastructure. What this means in practice is that if the member-states adopted a policy on the free movement of patients France would be affected more than the other member-states. As with the case of student mobility, it was during the stage of agenda-setting that the member-states had to make their far-sighted decisions. The six recognised from the start that if they facilitated the movement of patients even for emergency purposes they would demonstrate their political will to promote the human face of Europe. It seems that France dominated the negotiations especially when the Commission submitted its policy proposal on the issue. France had to explain its exact policy position and preferences in order to make aware the Commission and the other member-states on the long-term consequences of a free movement policy. There was an alliance between all the political actors who were involved during the stage of agenda-setting in order to avoid the risk of making a non-rational decision. The policy preferences of France were therefore those that related to the avoidance of a decision, which would enable a free movement policy for patients to develop in the future without, however, preventing the possibility of a policy for emergency care only.

In discussing the potential of path-dependence for policy studies, Greener (2005: 68) argues that “we must be able to demonstrate that a number of viable alternatives existed for the development of the policy in question”. In particular, Greener attempted to apply morphogenetic social theory on path-dependence in order to close the gap between structure and agency which has been the major limitation of the approach. As he argued “in stage one of the morphogenetic cycle, we analyze the structural and ideational influences present in a political system, before considering how these interact with human agency in stage two, and the result of those interactions in stage three” (Greener, 2005:65). Thus, at the moment we are in stage one of Greener’s framework because attention is given to the ideas that floated in the primeval soup during the early years of the integration process. In stage two attention will be given to the interaction between those early ideas and the way they have been employed first by the Commission and second by the court.

The important point to be made is that when the six and the Commission negotiated the original Community proposals attention could have been given to the more specific problems of free student and patient mobility. In other words, rather than immediately excluding the idea of policies on the free movement of students and patients attention could have been given on how such policies could have been materialised and relevant proposals adopted. If this had happened the result would have been completely different and possibly policies for both categories of persons would have been created. However, as we have seen, the literature on critical junctures insists that once a choice is made this choice will have tremendous effects in the future. For example, if during those early years the choice was made to promote the free movement of students it is highly possible that Erasmus would not have been created.

It suffices to mention that the Bologna Process could have started during the very early days of the Community if there was the political will on the part of the six. The 1960 report of the interim committee refers to the differences between the degrees attributing to those differences the impossibility of taking further steps regarding the free circulation of students. If the content of the Bologna Process on the shortening of the degree period and on the restructuring on the content of the degrees so as to become relevant for the labour market but also comparable had been adopted back then, today we would have a policy on the free movement of students. Similarly, in the case of patient mobility a policy on the free movement of patients would have emerged if from those very early stages the right to receive free access to the healthcare system of another member-state had been granted. Again, if this had happened, the final outcome would have been completely different with policies adopted both with regards to planned and emergency movement if a policy on patient mobility is understood to mean the abolition of the prior authorization procedure.

In chapter two it was also discussed what occurs during the process of agenda-setting. We saw that policies emerge following a group-government interaction with the result being different policy outputs and that the activities that take place during this stage are the activities aggregation, organization and representation. We saw that during the first activity individuals are gathered together from within society and subsequently organized in order to address their problems to government. Following this, they will seek representation in government in order to alleviate a distressing concern through the production of a new policy. In liberal intergovernmentalism those activities take place below the Community level, at the domestic level, when the Community is about to become involved with a policy issue. Finally, in chapter two it was argued that another concept that can be synthesised with liberal intergovernmentalism is the concept of problem definition, which is the joint activity between groups and government to interpret a social problem. This activity may take place during the

preference formation stage and during the stage of bargaining at the Community level where the autonomy of the governments of the member-states becomes crucial.

On the basis of this discussion on agenda-setting, it seems reasonable to begin with the activities of aggregation, organization, representation and problem definition in order to examine whether all those activities occurred in the cases of student and patient mobility or which activity occurred specifically.

With regards to the activities of aggregation, organization and representation none of those took place at the Community level. As we saw earlier, those activities involve the access and influence of groups into the policy-making process. As a consequence, those activities, if they occur, render valid the observation on the pluralist image of a domestic political system but they also render valid the widely assumed perception on the pluralist image of the EU polity which stands at the core of the policy networks approach, the approach of advocacy coalitions, the theory of multiple streams, since policy entrepreneurs interact with interest groups, and the punctuated equilibrium theory. Pluralism at the Community level is not shared within the approach of liberal intergovernmentalism as in the later approach groups are seen to influence the Community policy-process via domestic channels.

Since the focus of this study is not on history-making decisions, we may regard that, the activities of aggregation, organization and representation especially between the dominant interests and their governments took place below the Community level during the first preference formation stage of liberal intergovernmentalism and before the six bargained at the Community level. For example, Moravcsik (1995: 613) is clear on this point by stressing that “the formation of preferences analytically (though not always temporally) precedes bargaining, which in turn precedes delegation”. This observation allows us to clarify the relationship between pluralism and liberal intergovernmentalism concerning the pluralist nature of the democratic domestic political systems of the Community, the pluralist nature of the polity, which as we saw in chapter two had become a matter of controversy within the literature.

Here, the first policy-process theory applied to the Community, the policy networks approach, becomes relevant. As we saw in chapter two this approach sees the outputs of the policy-process to be the result of an interaction between interest groups and the bureaucracy, the so-called policy community, with their relationship evolving over a long period of time. As argued by Rhodes and Marsh (1992: 1) “network analysis emphasizes continuity in the relations between interest groups and government”. As opposed to the approaches of advocacy coalitions and punctuated equilibrium, this approach does not consider policy change despite the existence of issue networks, which involve a larger number of participants. Again with regards to issue

networks it is stressed that “stability and continuity are at a premium”. In the theory of multiple streams policy change is not examined either since the focus is agenda-setting and how the policy entrepreneur succeeds in bringing a new issue into the political agenda.

In chapter two we saw that in the area of technology policy Peterson (1992) discovered the existence of a policy community dominated by producer interests. In theory we would expect the involvement of interest groups perhaps in the form of a policy community in the areas of student and patient mobility concerning the preparation of the 1960 report of the interim committee and the preparation of the policy proposals on Regulations 3/58 and 4/58. We would also expect the stability of the relationship between the Commission and the CRE in the area of student mobility and between the Commission and the Standing Committee of European Doctors in the area of patient mobility to construct and preserve the policy image of the issue. However, no interest group involvement emerged during the preparation of the above-mentioned proposals. Secondly, we would expect the emergence of issue networks around the issues of student and patient mobility composed perhaps of interest groups, student and patient organizations, consultants and researchers. However, as stressed above in both cases we would expect continuity in the relationships emerging.

In particular, the activities of aggregation, organization and representation would have taken place only if CRE’s seat was not based in Geneva but in Brussels the moment the decision was made to exclude the idea on the free movement of students from the menu of future political options. In chapter three we saw that the Liaison Committee of EEC rectors moved to Brussels in 1973 long after the decision was made to promote the organised mobility of students and it was during this stage that the committee stated to the Commission DG on Research, Science and Education that “le comité désire, à cet effet, un contact étroit avec les organes des Communautés Européennes” (CRE Information, 1973a: 98 & CRE Information, 1975a: 8).

Similarly, in the case of patient mobility those activities would have taken place if the Standing Committee of European Doctors was also based in Brussels. The Standing Committee of European Doctors was established in 1959 but its seat was in Amsterdam. As we noted in the theoretical analysis on agenda-setting, the approach of liberal intergovernmentalism follows the same logic in order to refute the claim that the SEA was the outcome of an alliance between pressure groups and the Commission and to stress the decisive role played by France, Germany and Britain. In this regard, liberal intergovernmentalism is extremely helpful in explaining the policy-making process when contrasted to the policy networks approach. The fact that the Liaison Committee moved to Brussels may challenge some to argue that the policy networks approach could explain the adoption of the Erasmus programme. On the other hand, there are those who argue and find interesting the fact that Erasmus was adopted in the absence of interest

group representation (Greenwood, 1997: 145). Furthermore, no issue networks emerged during this period to set the agenda on the issues of student and patient mobility.

The other approaches that become relevant at this stage are the approaches of advocacy coalitions and the theory of multiple streams. With regards to the first approach what we observe is the absence of a dominant coalition in both the case of student and patient mobility composed of a variety of actors, namely, interest group leaders, researchers, bureaucrats, elected individuals and even journalists (Sabatier, 1998: 103). Finally, with regards to the theory of multiple streams we observe again the absence of interest group intermediation, which is considered crucial when the policy entrepreneur makes his policy proposals during the agenda-setting stage. As argued by Kingdon (1995: 49) “when we say that interest groups are important in agenda-setting, we might conclude that they are promoting new agenda items or advocating certain proposals” which are in turn considered by the policy entrepreneur.

Given that a free policy on student and patient mobility would be in direct opposition to the interests of France and Germany - Britain had not become a Community member yet - the only activity that took place at the Community level was the one of problem definition when the governments of the six decided to meet and set the agenda for future action on the new issues, issues that did not have a legal base in the Treaties. As we saw in chapter two, liberal intergovernmentalism argues that when there is no legal base in the Treaties the raising of new issues remain the prerogative of the member-states.

Therefore, during the negotiations the six realised the importance of the issues of student and patient mobility and their political feasibility as to what could be done following the centrality of the free movement principle for the European project. On the other hand, they attributed to the problems of student and patient mobility a very specific meaning, a meaning that was not consistent with the Treaty principle of the free movement of persons. As we saw earlier, problem definition is a matter of social interpretation between groups and government. Thus, the issue of student mobility was defined as organised movement while the issue of patient mobility was understood to mean healthcare access only in cases of emergency while in another member-state with the difference that no groups were involved during this crucial agenda-setting stage.

Following liberal intergovernmentalism, the above argument demonstrates the autonomy of the nation-state because there was no legal base in the Treaties but also the principal-agent relationship between groups and governments at the domestic level. With regards to the latter it seems that when meeting at the Community level the six, had the discretion to choose the alternative of free movement for students and patients. This could have happened because

according to liberal intergovernmentalism we should expect a diffuse pattern of societal interests, and therefore greater governmental discretion, as opposed to systematic political bias given that the policy areas of health and education concern the provision of public goods.

Yet, if we study Rhodes and Marsh (1992: 13) who argued that at the domestic level policy-making on those policy areas is made between closely tight policy communities then we may assume that in the cases of student and patient mobility the political leaders of the six enjoyed no discretion at all at the Community level and they were simply obeying the preferences of the dominant groups operating at the domestic level. As we saw in the case of student mobility the rectors threatened their governments that if they went ahead with the creation of a classical type university they would sabotage its establishment. In addition, the rectors had decided that they would only accept an organised type of mobility as far as student mobility was concerned in order to provide a European spirit into their universities. As a consequence, the result was the Erasmus programme and the European Institute in Florence. Something similar might have happened in the case of patient mobility because without the support of European Doctors the implementation of a policy on the free movement of patients was likely to fail domestically.

In chapter two, it was mentioned that liberal intergovernmentalism introduced the elitist approach to the case of European integration. This was argued because according to liberal intergovernmentalism interest group intermediation at the domestic level during the stage of agenda-setting leads to systematic political bias. Systematic political bias has two main meanings. First it means that forces are created at the domestic level to construct and preserve the policy image of the issue at the supranational level rejecting therefore the bypassing of domestic channels by interest groups. Secondly, and in contrast to pluralism, that not all groups have equal access to the policy-making process with the exception of the well organised and financially strong groups. The analysis then focused on the argument of Peter Bachrach and Morton Baratz, the proponents of the elitist approach in an effort to show how the latter can be synthesised with liberal intergovernmentalism. We argued that non-decision making is the choice of one alternative over another and that in most cases an authority relationship exists between actors A and B.

Concerning the cases of student and patient mobility we can say that an authority relationship between the Commission and the Council seem to have begun when the choice was made to exclude free student and patient mobility from the menu of future political options. This does not render the Commission futile, redundant and counter-productive; on the contrary, it shows that the Commission was a rational actor over the choice of the feasible alternative by the member-states. This became evident when formulating the interim report on the creation of the European University in 1960 and where the idea of free student mobility was ruled out and

when formulating Regulations 3 and 4 concerning patient mobility in 1958 where the idea of free patient mobility was equally ruled out.

For example, if there has been a power relationship between the Commission and the Council then the above institutions would not have been adopted. The Council would have threatened to impose sanctions, or could have actually invoked sanctions, upon the Commission to explain why those alternatives were the feasible ones. In other words, under the presence of a threatening Council, the Commission had no choice than to comply with the wishes of the Council. Thus, it would be futile for the Commission to attempt to put into the political agenda the issues of free student and patient mobility. What we observe therefore is that there were no distinct preferences between the Commission and the Council at this stage. As we saw in chapter two, principal-agent analysis would expect to observe a competitive relationship between the Commission and the Council and as a consequence distinct preferences with the Commission pushing for more integration and with the Council opposing deepening. Thus, it may be argued that following Pollack (2003: 8) during the agenda-setting stage the law of anticipated reactions took place between the Commission and the Council explaining the absence of sanctions at this stage. In other words, the participation-based monitoring role of the member-states during the preparation of the interim report on the creation of the European University in 1960 and of Regulations 3 and 4 in 1958 was of no use since the Commission did not put forward proposals that were against the interests of the six governments.

As a result, the decision to remove the idea of free movement for students and patients from the menu of future political options was a non-decision because as we saw earlier alternative courses of action were available. The fact that lock-in during the critical juncture leads to non-decisions is equally supported by Pierson (2000a: 491-493). When compared to the idea of organised student mobility and emergency patient mobility, the idea of free movement was an unsafe issue for the six and for Germany and France in particular. Thus, the choice of the safe issues points clearly to the existence of vested interests on the two issues and as a consequence to the mobilization of bias in the EU setting but from a different perspective. According to Thelen (1999: 391), we cannot simply invoke the concept of vested interests without demonstrating who in particular is invested in a certain institution and how that institution is maintained over a long period of time.

What all the above mean for the EU policy-making process is that because of the absence of transnational groups at the Community level the mobilization of bias took place first and foremost at the domestic level in other words at the first preference formation stage of liberal intergovernmentalism which took place in the late 1950s. With regards to the authority relationship that emerged between the Commission and the Council at the same period this has

become mostly evident during the second bargaining stage of liberal intergovernmentalism where the interests of France and Germany determined the outcomes of the negotiations by manipulating the meaning of the principle of free movement. As Bachrach and Baratz (1970: 18) argued, nondecision-making is the “the practice of limiting the scope of actual decision-making to ‘safe’ issues by manipulating the dominant community values, myths, and political institutions and procedures”. Theoretically, if a policy on the free movement of students and patients had to be emerged then those policies should have been adopted on the basis of article Article 3 (c) of the EEC Treaty. The article provided for the creation of an ever closer union among the people of Europe and the abolition of obstacles to freedom of movement for persons.

Agenda-Setting	Student Mobility	Patient Mobility
Member-States	The ‘six’ amongst them France and Germany negotiated the adoption of the 1960 report on the European University which included proposals on student mobility.	The ‘six’ amongst them France negotiated the adoption of Regulations 3/58 and 4/58 which included proposals on patient mobility.
Commission	The Commission made the above-mentioned proposal and thus an authority relationship was built with the Council. The law of anticipated reactions operated with no distinct preferences emerging.	The Commission made the above-mentioned proposals and thus an authority relationship was built with the Council. The law of anticipated reactions operated with no distinct preferences emerging.
ECJ	The ECJ played no role during the agenda-setting stage.	The ECJ played no role during the agenda-setting stage.
Interest Groups	No interest group involvement in the preparation of the proposal. Groups had an influence via domestic channels.	No interest group involvement in the preparation of the proposals. Groups had an influence via domestic channels.

Table 5-1 Summary of the agenda-setting process

5.3 The stage of path-dependence

In this section, the purpose is to explore the second stage, the stage of path-dependence, by focusing on the role played by the member-states, the Commission and the court in the form of strategic interaction between the three actors. Following liberal intergovernmentalism we will be looking at the ‘codification’ and ‘cementing’ of the decisions made during the stage of agenda-setting by the Commission and the ECJ. To return to some of the critiques of liberal

intergovernmentalism we will be examining the claims that “supranationalism is regarded as a controlled means of implementing intergovernmental bargains” (Wincott, 1995a: 602) and that “the institutions function as ‘obedient servants’, only fulfilling functions entrusted to them by the member-states” (Tallberg, 2000: 844).

For analytical purposes, the role played by the European Parliament is not covered in the framework of strategic interaction even if as we saw in chapter four it played an important role in the road towards the adoption of the health card through the publication of various resolutions. In particular, in March 1981 the European Parliament adopted the Hooper resolution into which it stressed the need for the adoption of a directive on an emergency the health card; in November 1983 the Pruvot report suggested that patients should have the right on the free choice of a doctor proposing in other words a policy on free patient mobility urging the Commission to propose the adoption of a European Charter on Patient’s Rights; finally in November 1984 the European Parliament adopted the Parodi report which proposed again the adoption of an emergency health card.

However, as opposed to the Commission the parliament does not have the right of initiative. Its resolutions can be seen therefore as an effort to hasten the policy-process by putting pressure upon the Commission to make relevant proposals. As we saw in chapter four the Commission’s recommendation on an emergency health card came only after the adoption of the Hooper resolution and of the Pruvot report in December 1983. As opposed to the European Parliament, which stressed the need for a policy both on emergency and free patient mobility, the Commission decided to propose a policy only with regards to the former. Therefore, the purpose of this section is to argue that even without the presence of the Commission and the ECJ, the Erasmus programme and the European Health Insurance Card would have been adopted by the member-states themselves. The supranational institutions played a role only at the margins assisting the member-states to produce the policies they wanted to see emerging and as a consequence the intended policies of the critical juncture stage. To recall the statement made by Bachrach and Baratz (1963: 632) the power of the institutions should not be taken to mean the ability to produce intended effects. Thus, in order to measure the power of the Commission and the ECJ we have to consider whether they succeeded in producing policies that were not intended.

To begin with what the cases of student and patient demonstrate is increased supranational activity. Both the Commission and the ECJ were active while the policy-process was evolving. However, their actions did not manage to alter the choice made during the agenda-setting stage. In other words, the Commission and the ECJ, were simply following the preferences of the member-states by paying careful attention to the interests of the member-states that would be

mostly affected by a free movement policy. The right of initiative from the part of the Commission to propose Erasmus and its adoption does not mean that Erasmus would not have been adopted even in the absence of the Commission as an actor in the policy-process. The same holds true for the adoption of the European Health Insurance card. The member-states wanted those policies to emerge, as a result of the free movement principle, and they did emerge with the help of both the Commission and the ECJ. We saw that for the governments of the six the free movement principle meant organised student mobility and emergency patient mobility.

What we also observe is that, when in the 1970's the Commission begun making its proposals on the issues of student and patient mobility, it was evident that it would not achieve a change in policy, meaning that it would not be able to change the course of action chosen during the stage of agenda-setting, because the agenda concerning student and patient mobility was set by the six governments long before the Commission intervened in the process. As we saw in chapter two, one of the aims of the actors who come first is to bind their successors. This was the purpose of the governments meeting in the late 1950s.

As a result, even if the Commission had wished a change in policy, in other words, a change in the course of action chosen during agenda-setting, it would have failed because the Commission was actually constrained by the taking of the previous decisions. At the same time, it can be argued that the Commission's concern was not to change the policy but to maintain it by bringing forward the relevant proposals in particular the adoption of the joint programmes of study and of the European health card. In other words, the small events that took place in the late 1950's were remembered. In analyzing the meaning of path-dependence, Pierson (2000c: 263) mentions that small events are remembered and they can have large and enduring consequences.

When discussing the agenda-setting literature it was argued that an authority relationship had emerged between the Commission and the Council on the basis of both actors' rationality. Both the Commission and the Council were in agreement as to what could be achieved in the future with regards to patient mobility and, as a result, the alternative of free patient mobility was ruled out. Both actors had understood that a policy on the free movement of patients was impossible. As a consequence, Regulations 3 and 4 were adopted and from which the idea of free movement was excluded to ensure that this decision would not change in the future.

It is important to examine whether this authority relationship persisted, meaning that the Commission's and the Council's preferences remained the same or whether over time the relationship between the Commission and the Council shifted and became one of conflicting preferences with the Commission pushing for a policy on the free movement of patients, which

meant the abolition of the prior-authorisation procedure, and with the Council opposing such a policy with various means. It is also important to examine the strategy followed by the Commission in producing the intended policy before considering the role played by the court and the role of patients and students.

What we observe is that in the early 1970's the issue initiator on a public health policy, including a policy on patient mobility, was the Commission. In 1973, long before the first meeting of Health Ministers at the EEC level, the Commission proposed possible scope of Community action in the health sector seeking therefore a change in policy, which as we saw in the previous chapter related mainly to the area of health and safety at work, by proposing a scheme with a few number of issues which could be initially considered by the member-states and eventually lead to a coherent policy framework which would probably embrace a policy on patient mobility.

As far as patient mobility is concerned, in 1973, the Commission made indirectly patient mobility a matter of concern when it mentioned to the member-states the need to adopt policies concerning migrant workers and their families. As we saw in the previous chapter, in 1963 Regulation 36/63 was adopted allowing frontier workers free access on both sides of the border while the provisions of the regulation were considered as unjust for the rest of the EU citizens. It is highly possible that if at this stage the Health Ministers had convened a meeting with the purpose of adopting policy proposals on migrant workers and their families, then, the possibility of functional spillover followed by cultivated spillover might have led to a policy on a free movement policy for all Community citizens. The need to adopt policies on migrant workers and their families might have led to the need to adopt policies on the free movement of patients. Also, at this stage the Commission might have encouraged the creation of patient organizations in order to develop such a policy.

On the other hand, if the Commission had presented the ministers with policy proposals on a free movement of patients for all Community citizens then possibly the Health Ministers would threaten the Commission and as a result block any future proposals on the matter since their original decision was to remove the path of free patient mobility from the menu of future political options. Perhaps, the reason the Commission became concerned with the free movement of patients from such an early phase was to assure the governments of the member-states that such a policy would never become a reality. For this reason when the Commission made proposals on patient mobility in 1977 it proposed the adoption of a health record card.

The fact that the Health Ministers did not feel ready to meet and to hold a discussion in the early 1970's shows not only their unwillingness to co-operate on health issues, beyond health and

safety, but it also shows how they were able to silence and block any Commission proposal concerning a public health policy including a policy on the free movement of patients for a number of years even if the Commission's intention was not to promote a policy on the free movement of patients. This long gap between the moment the Commission called for a meeting at the Community level and the actual meeting of the Health Ministers shows that the real issue initiators and therefore the dominant actors in the policy-process as far as patient mobility is concerned was not the Commission but the French and British Health Ministers. This was because it was the French and the British Health Ministers who set the Council agenda in 1977 when the nine met for the first time at the EEC level as far as patient mobility was concerned.

In contrast to the Commission who put the issue of patient mobility under the general theme of migrant workers and their families, the French and the British Health Ministers discussed the item under the title of the economic aspects of health. It was in 1977 that the issue of patient mobility was discussed for the first time. However, it was discussed only indirectly with the Commission making proposals concerning the introduction of a European health card. What we observe here is that the Commission did not want to put at risk the authority relationship that had been built with the Council because there was the fear that the member-states would not adopt the proposal on a European health card either.

The Commission avoided making proposals on the abolition of the prior-authorization, a proposal that would not only alter the authority relationship between the Council and the Commission, but if adopted would also lead to a policy on the free movement of patients. It only informed the member-states that it was looking into the feasibility of introducing the health card, which was actually the alternative course of action, the safe issue, the issue that was innocuous to the interests of the Council and of France in particular. This explains why in 1986 the Council adopted a resolution following the Commission's proposal on the European emergency health card. Thus, to return to an earlier comment made by the proponent of liberal intergovernmentalism concerning the influence of the Commission in the policy-process, in particular, that "demonstrating influence requires more than the claim that supranational actors were active and negotiations were subsequently successful in a given case" (Moravcsik, 1999: 299) we see that the Commission was active but had no influence at all because the final outcome was in consistence with the decision made during the agenda-setting/critical juncture stage. As a consequence, we could argue that the Commission would have exerted influence or power if it had succeeded in making the member-states to adopt a policy on the free movement of patients. As argued again by the proponent of liberal intergovernmentalism "it is insufficient to observe that a supranational entrepreneur - I shall continue to use the Commission as an

example - has made a proposal and something akin to it was eventually accepted” (Moravcsik, 1995: 616).

Nonetheless, the authority relationship between the Commission and the Council began to change and to become one of power when the Commission took the initiative to propose twice the abolition of the prior-authorisation procedure, a proposal that would lead to the free movement of patients and which was the alternative course of action that was ruled out in the late 1950s. As we saw in chapter four in 1990 the Commission stated that, “consideration could therefore also be given to revising the provisions in the sense of getting rid of the need for authorisation” (European Commission, 1990b: 10 & Hermesse, Lewalle and Palm, 1997: 9). In 1994, the Commission argued that the prior authorization procedure was “too restrictive and no longer appropriate to today’s requirements” (European Commission, 1994: 28). It was during this time that the ECJ was called to decide whether prior-authorisation was an obstacle to the free movement of patients.

At this stage, it is important to recall the three policy-process theories reviewed in chapter two in particular the approach of advocacy coalitions, the punctuated equilibrium theory and the theory of multiple streams. Furthermore, it is important to explore the limitations of principal-agent analysis when referring to the interaction between the Commission and the ECJ. What we observe is the absence of an adversarial advocacy coalition in the terms provided by the framework in other words composed of interest group leaders, researchers, bureaucrats, elected individuals and journalists. We only observe the tactic employed by patients themselves to find receptive the court to their policy ideas with the purpose of changing the policy image of the issue of patient mobility and therefore the relevance of the punctuated equilibrium theory. However, as opposed to the theory of punctuated equilibrium which is concerned with policy change we saw that the ECJ decided in the end that the prior-authorisation would continue to exist for hospital treatment. Thus, the ECJ not only defended the interests of France, it has also intervened when the debate on a free movement of patients was growing among policy experts and Commission officials. Thus, the Kohll and Decker rulings did not lead to a different policy, and therefore to policy change, and as a consequence they were not path-breaking. They led to the adoption of the European Health Insurance Card, which was exactly what was decided in the late 1950s.

To further understand why the ECJ intervened too late in the policy-process it is important to consider how differently the process would have evolved had the ECJ intervened earlier, in particular, before the Commission made its proposal on the health card. The court’s intervention prior to the Commission’s proposal for a recommendation in December 1983 on a European health card could have caused path deviation. As a result, the court could have ruled that

patients were free to move to receive medical treatment without the need of obtaining prior authorization. The fact that the ECJ intervened too late explains why the Kohll and Decker rulings were not overturned. Thus, in considering the argument made in principal-agent analysis concerning the autonomy of the ECJ and its power of interpretation when contrasted to the Commission's power of initiative, we observe that the judgements reflected the preferences of France, the member-state that would be mostly affected by a free movement policy. In other words, if the Kohll and Decker rulings had brought such dramatic consequences for the member-states they would have been overturned. Although this would require a unanimous decision, making it thus difficult for the rulings to be overturned, nonetheless it may be argued that the Kohll and Decker rulings were in the interests of Luxembourg, which has a limited medical infrastructure. However, the fact remains that the Kohll and Decker rulings did not lead to a policy on a free movement of patients and thus did not affect the interests of France. As a result, there was no reason for the rulings to be overturned. If the ECJ had ruled that patients should be granted the right to receive hospital treatment without the need of obtaining prior-authorization then all the member-states would have agreed that the Kohll and Decker rulings should have been overturned since such a ruling would affect the financial balance between the member-states.

It is also important to examine the Commission's strategy in reinforcing the selected path of emergency patient mobility and making the excluded path to become completely lost and to consider how this action relates to Kingdon's theory of multiple streams. For instance, Kingdon (1995: 123) argues that policy entrepreneurs and more specifically civil servants are motivated by a variety of factors. They are motivated by non material rewards such as a direct concern for a policy problem but also by material rewards such as the expansion of a bureaucracy's activities. What the theory ignores is that the bureaucracy may be motivated by the need to protect certain interests since the role of outside interests plays an important role in the theory of multiple streams.

Thus, the Commission by making proposals first on the selected path and then on the excluded path of free patient mobility just before the court intervened shows that it was motivated by the need to protect the interests of France as this was the member-state that would be mostly affected by a free movement policy concerning patients. The decision by the Commission to reinforce first the selected path of emergency patient mobility further shows that its concern was not to make an original contribution to the policy-process. If this has been the Commission's primary concern then the Commission would have begun by attempting to propose and persuade governments to adopt policies that facilitated the free movement of patients. However, the Commission's effort to go against the intended policy would have met with opposition and

subsequently failure. The above steps were taken before the widely assumed path-breaking Kohll and Decker rulings. They were 'necessary' (Bachrach and Baratz, 1970: 42) to foreclose the possibility that when the ECJ intervened the right on the free choice of a doctor would not be given to patients.

Turning to the case of student mobility, similar observations with the case of patient mobility become evident. As with patient mobility, the process concerning student mobility was path-dependent in the sense that the final outcome, the Erasmus programme which was adopted in 1987, did not differ from the original preferences of the six member-states in the early 1960s. As we saw in chapter two in discussing the problem of infinite regress, Pierson (2004: 68) observes that until the beginning of the period of reproduction, in other words the period where governmental institutions seek to maintain the existing policy, there will be a significant interval. This was the case with student and patient mobility because it took a long period of time until the moment that Health and Education Ministers met for the first time at the Community level. With regards to patient mobility, it took eighteen years whereas in the case of student mobility it took eleven years.

It may be argued that the formulation of the interim report was not the agenda-setting or critical juncture stage because the report was not adopted. However, Capoccia and Kelemen (2005: 21) argued that the term critical juncture does not necessarily refer to the adoption of a policy. From their point of view, when actors come very close in adopting a policy proposal, as was the case with student mobility, but in the end they do not, it still constitutes a critical juncture only if a choice is made between alternative paths. This is what happened in the case of student mobility. The alternative paths of doing nothing or of proposing a policy as to how the spontaneous mobility of students could be encouraged was ruled out from the early days of the Community. The path selected was that of organised student mobility. Thus, the period where the interim report was drafted constitutes the agenda-setting or critical juncture period.

Despite the rejection of the interim report, an authority relationship had been established between the Commission and the Council, as was the case with patient mobility from these early days. The issue of student mobility became an agenda item with the purpose of stressing the importance of organised mobility for the European project. At this stage, it would be irrational from the Commission's point of view to propose or to insist on the creation of a policy on spontaneous mobility because some member-states would be affected mostly from others and the Commission was aware of this.

During this particular point of time, those who would be mostly affected would be Germany and France while Britain would follow after its admission to the Community. As argued by liberal

intergovernmentalism the initial bargains initially reflected the preferences of France and Germany and later on of France, Germany and Britain. Overall, what France and Germany were not willing to accept was a policy on the harmonization on the content of degrees and on a common admissions policy that would greatly facilitate the mobility of those students who would decide to undertake a whole degree in another member-state of the Community but also the mobility of those students who after following post-graduate education in a host institution would like to return to their home countries. The purpose was not to adopt a policy that would lead to student influxes among the member-states but to adopt a policy that would expand the knowledge and cultural horizons of undergraduate students.

As with patient mobility, in the case of student mobility the Commission was willing to maintain the course of action selected during the stage of agenda-setting in order not to destroy the authority relationship with the Council and turn it into a power relationship. This is shown by the fact that the Commission proposed the establishment of the education committee in order to co-operate and strengthen the relationship with the member-states. As an example of the Commission's wish not to develop a power relationship was the fact that the Commission took into consideration only marginally Janne's proposals concerning the issue of student mobility, in particular the proposal on the financial assistance to students who would move within the joint programmes of study. As argued by Corbett (2003: 322) "Dahrendorf and Jones had been horrified by the mention of harmonization". While the Commission was the issue initiator at this particular stage, and irrespective of whether the Commission found the Janne proposals appealing, nonetheless, the Commission was bound from the previous decision, in particular, the non-decision of the late 1950s, not to put forward proposals that would encourage the free movement of students.

Thus, despite the importance of Janne's proposals on a policy concerning the free movement of students, in particular the shortening of the degree period and the altering on the content of degrees, the establishment of European delegates as well as the creation of a special chamber within the ECJ, the Commission has not been able to take into account those proposals when it submitted to the Council its own proposals because they were doomed to fail.

Judging from the final outcome, that is the Erasmus programme, the member-states would block any of the above proposals because they were leading to the harmonization of higher education policies and as a result, a power relationship would emerge between the Council and the Commission if the Commission proposed the Janne proposals. Probably the Council would threaten the Commission and the policy would not proceed any further either with regards to organised or spontaneous student mobility. Consequently, the result was the adoption of the

joint programmes of study in order to encourage the organised mobility of students, as was the case with the adoption of the European health card.

However, the authority relationship between the Commission and the Council began to change when at the Munich conference the Commission attempted to explain what was really meant by the term student mobility. The Commission had distinguished between the different types of student mobility in its 1974 communication, but no policy proposals were made on student mobility during this time. As we saw in its first policy proposals, the Commission did not take into account the Janne proposals and did not make policy proposals on student mobility. It only proposed the collection of statistical data.

There is no doubt that for the Commission the adoption of the joint programmes of study, the predecessors of the Erasmus programme, was a big achievement for the progress of European integration, but at Munich the Commission stressed that student mobility could be actually defined as spontaneous movement. The later was the unsafe issue for the member-states, thus the significance of the agenda-setting stage, because, if the Commission's understanding was accepted by the member-states then Janne's proposals would become the constituent parts of a policy on the free movement of students. It seems that this is not what the Commission and the member-states desired. Actually, the 1978 communication, which makes proposals on free student mobility, does not refer to the Janne proposals on the same policy issue. It mainly focused on admission policies and the proposals were rejected. Here we see again the relevance of principal-agent analysis. The member-states were actively involved in this part of the policy-process leading to the rejection of the proposals with their participation-based monitoring role. It is also interesting to observe that the Commission threatened the member-states on the relevance of Community law to the field of education, an observation that became evident in the case of patient mobility when the Commission proposed the abolition of the prior-authorization.

Overall, up until the intervention of the ECJ in the policy-process, the only change that has been made on the joint study programmes was the financial assistance to students but the joint programmes of study did not comprise a comprehensive exchange programme. The Fontainebleau European Council on the creation of a People's Europe stressed the need for such a new programme but this was not materialised until after the Gravier case where Erasmus was adopted. Similar to the cases of Kohll and Decker the Gravier case did not provide a path-breaking ruling. Even if the case was concerned with the free movement of students, the issue was not brought back into the political agenda. In both cases and after the ECJ rulings the idea of free student and patient mobility became completely lost.

As with patient mobility, the only theory that becomes relevant with regards to the court is the punctuated equilibrium theory. Gravier attempted to change the policy image of the issue of student mobility by bringing the issue of spontaneous student mobility onto the political agenda. Had the ECJ intervened prior to the proposal on the joint study programmes it is highly possible that the court could have ruled that non discrimination applied not only to fees but also to admission requirements and to maintenance grants. Again as with patient mobility, the fact that the ECJ intervened too late explains why the ruling was not overturned. The Gravier ruling affected only Belgium and as a result, the ECJ did not go against the wishes of France, Germany and Britain. As with patient mobility if the ECJ had ruled that the principle of non-discrimination applied to admission requirements and maintenance grants then all the member-states would have agreed to overturn the ruling.

With regards to the theory of multiple streams, we observe that as with the case of patient mobility the Commission was motivated by the desire to protect the interests of France, Germany and Britain. Evidence that the Commission had the opportunity to reinforce the path of free student mobility, prior to proposing the joint study programmes constitutes the Janne report. It was only after the governments adopted the joint study programmes that the Commission begun formulating proposals on the excluded path of spontaneous student mobility. The second communication of 1978 combined policy proposals on organised student mobility with policy proposals on spontaneous student mobility. For the first time the Commission provided numerical evidence on how many students had moved to another member-state to pursue whole degrees. The Commission by invoking the scope of spontaneous student mobility justified why future action should be undertaken in relation to the organised mobility of students.

As we saw in chapter three the Commission's communication concerned the creation of rights for the future Erasmus students and for the 21,000 students who were studying in another member-state. The Commission's proposals concerning part-course students were accepted whereas those for the truly mobile students were rejected. As we saw, truly mobile students were not given new rights. They would not be entitled to maintenance grants and host institutions would maintain the right to request foreign students to pass additional tests and examinations that national students did not have to pass. By contrast, part-course students were given the right to transfer their maintenance grants, to be exempted from numerical limitations and, upon insistence of the German government, to be exempted from the payment of fees for up to a year. Similar to patient mobility, the above decisions concerning mobile students, prior to the Gravier case, were necessary in order to foreclose the possibility of a policy emerging on the free movement of students.

Supranational Institutions, Path Dependence and EU Policy Development: The Cases of Student and Patient Mobility

Path-dependence	Student Mobility	Patient Mobility
Member-States	The member-states agreed to adopt the Commission's proposal on the joint study programmes in order to facilitate the organised mobility of students. However, they were not willing of accepting policy proposals with regards to the free movement of students. The agenda was dominated by the German government who decided to allow part-course students to be exempted from the payment of fees for a year.	The member-states agreed to adopt the Commission's proposal on a European Health card but rejected any propositions on the abolition of the prior-authorization procedure. The Council agenda was dominated by the French and British Health Ministers who brought the issue of patient mobility into the political agenda.
Commission	The Commission proposed the adoption of the joint study programmes in 1974. Two years later the proposal on the joint study programmes was adopted. After its adoption the Commission begun making proposals on the spontaneous mobility of students of which only the payment of higher fees was not foreclosed.	In late 1983 the Commission proposed a recommendation on the adoption of European health card. Two years later the European health card is adopted in the form of a resolution. After the adoption of the health card the Commission begun making proposals on the free movement of patients all of which were rejected by the Council.
ECJ	In its Gravier ruling the ECJ ruled that mobile students should not have to pay higher fees than national students. The key decision that emerged following the ruling was the adoption of the Erasmus programme. A policy on the free movement of students would be detrimental to the interests of France, Germany and Britain.	In its Kohll and Decker rulings the ECJ ruled that Community citizens had the right to move freely only for the purchase of medical products and for non-hospital treatment. The key decision that emerged following the rulings was the adoption of the European Health Insurance Card. A policy on the free movement of patients would be detrimental to the interests of France.
Interest Groups	No interest group involvement in the preparation of the proposal concerning the joint programmes of study, the 1978 communications on the rights of mobile students and part-course students and on the Erasmus proposal. Groups had an influence via domestic channels.	No interest group involvement in the preparation of the proposal concerning the European health card, the communications concerning the abolition of the prior authorization procedure and the European health insurance card. Groups had an influence via domestic channels.

Table 5-2 Summary of path-dependence stage

5.4 Conclusions

The purpose of this chapter has been to compare the policy-processes to the cases of student and patient mobility. The method of pattern-matching was used in order to compare the data from the two previous chapters and to explain why the policy alternative of free student and patient mobility has not been realized. The central concept elaborated in this chapter was the concept of path-dependence in order to show its utility as far as the policy-process is concerned and as a result that both policy-processes were path-dependent. What this means is that the path chosen during the critical juncture/agenda-setting stage did not alter until the adoption of the Erasmus programme and of the European Health Insurance Card even if this stage has been characterised by openness and permissiveness concerning the choice of alternative policy paths. The answer given as to the question of why the idea of free movement became lost is because there were interests and in particular the interests of France, Germany and Britain. The supranational institutions, in particular, the Commission and the ECJ, were active but not influential, as the decisions to promote the organised mobility of students and the mobility of patients only in cases of emergency have been made before those actors intervened in the process.

Chapter 6

Concluding Observations

6.1 Major finding

The main aim of this study has been to compare the processes that led to the adoption of the Erasmus programme and of the European Health Insurance Card concerning the mobility of students and patients within the EU respectively. The reason behind the comparative aspect of this study has been the claim that to generalize about the EU policy-process will be probably futile because of the presence of different actors in each policy sector and because of the complexities of the policy issues the EU deals with. However, the absence of interest group intermediation in both case-studies at the EU level makes us believe that the EU may not be as pluralist as other writers on the EU policy-process have found.

In the introductory chapter it has been argued that the theoretical literature on EU policy-making not only disproves the making of generalizations concerning the policy-making process but that it also takes as given the pluralist nature of the EU polity. As we saw in the second chapter, this was an assumption that was introduced to the study of the EU by neo-functionalism and which led later to the introduction of policy studies approaches disproving therefore the approach of liberal intergovernmentalism. In particular, in chapter two it has been discussed how the approach of policy networks, the approach of advocacy coalitions and finally the approach of multiple streams and punctuated equilibrium were all applied to the case of the EU. All of them prove in accordance with the approach of neo-functionalism the generalization that the EU is a pluralist political system. However, in the present study it has not been possible to support the pluralist image of the EU. On the contrary, the comparison between the cases falsifies the above generalization and stresses the power of France, Germany and Britain as far as the cases of student and patient mobility is concerned.

If there is one approach that does not confirm to the above generalization made on the EU is the approach of liberal intergovernmentalism and the approach of principal agent-analysis. The use of principal-agent analysis was ruled out because it does not pay attention to the interaction between the Commission and the ECJ, in other words the interaction between law and politics, and from the perspective of this study this interaction was very important in order to substantiate the development of the theoretical argument. We have to remember that it was Wincott who firstly argued that EU scholars had completely ignored such an interaction when studying the politics of the EU. This does not mean that principal-agent analysis could not be used in the case-studies but the result would be different concerning supranational entrepreneurship. In particular, by approaching the case of student mobility from the perspective of principal-agent analysis it could be argued that the existence of the Education Committee would allow the Commission to play a more influential role in the policy-process. In the case of patient mobility the decisions made by the ECJ would also allow the ECJ to play a more influential role because its rulings would require unanimous overruling.

The above analysis was made in order to justify why it has been chosen to rely on the approach of liberal intergovernmentalism to explain the adoption of the Erasmus and of the European Health Insurance Card. Even if liberal intergovernmentalism does not focus on the policy-process nonetheless the approach was extremely helpful in explaining the two outcomes, meaning that it made it possible to pose a question that with the other approaches could not be posed. The question was: why in the late 1950s the alternatives of organized student mobility and emergency patient mobility were chosen when other paths were also available? The explanation given was because there were interests and in particular there were the interests of Germany, France and Britain, the latter after joining the Community.

Thus, in choosing to examine the policy-making process from a modified liberal intergovernmentalist approach it became possible to create a model into which a synthesis between liberal intergovernmentalism and theories of policy studies as far as the agenda-setting is concerned was made. Following this, and because liberal intergovernmentalism is not concerned with the interaction between the Commission and the ECJ in a sequence of events I turned to the concept of path dependence in order to describe the strategic interaction between the Council, the Commission and the ECJ and to show that the supranational institutions defended the interests of those member-states that would be mostly affected by a free movement policy. As a result and in accordance with rational-choice historical institutionalism it was shown that the Commission and the ECJ acted as inhibiting factors as opposed to dynamic

agents for the prevention of policy change at the EU level (Thelen and Steinmo, 1992: 3, March and Olsen, 1984: 738 & Hall and Taylor, 1996: 937).

6.2 Supranational activity

Initially, the case-studies seemed to lead to different conclusions concerning supranational activity. For example, it would be possible to detect a more influential role by the Commission in one case-study and a lesser influential role in the second case study or a lesser influential role by the Commission and a more influential role by the ECJ in a single case-study following principal-agent analysis (Tallberg, 2000). However, as the research process was advancing with the collection of more empirical data and with the help of the methods of process-tracing and pattern-matching it became evident that the two cases shared similar characteristics as far as supranational activity is concerned. In both cases the Commission and the ECJ were active in the process but when they became actively involved during the path-dependence stage they were not able to alter the choices made during the stage of the critical juncture. This observation let us believe that even without the presence of those actors in the policy-process the policy outputs would be exactly the same as the institutions were following the preferences of the most powerful member-states.

6.3 Avenues for future research and limitations

The argument developed in this study can be falsified by applying theories of policy studies on the same case-studies with the necessary empirical evidence opening therefore themes for future research and perhaps the supranational/intergovernmental debate. In particular, the adoption of Erasmus could be easily seen as the outcome of deliberations for a long period of time between a policy community that is the Commission and the CRE. Similarly, the adoption of the European health card could be seen from the perspective of an epistemic community between the Commission and policy experts or from the perspective of punctuated equilibrium with patients striving to change the policy image of the issue of patient mobility by approaching different institutional venues namely the Commission, the ECJ and the European Parliament. If applied to the case of EU all the above approaches would confirm its pluralist image. With regards to the limits of this research it has to be noted that it covered very specific historical periods. In the case of student mobility the period covered started in the late 1950s and ended in 1987. With regards to patient mobility it covered the period from the mid-1950s until 2003.

6.4 The EU policy today

Today the EU is daily dealing with the policy issues examined in this study. Of importance are the various initiatives undertaken recently with regards to the mobility of students. The first concerns the adoption, in 2006, of a European Quality Charter for Mobility, which aims at eliminating the obstacles to the mobility of students by ensuring amongst others the portability of grants and loans as well as the recognition of the study period (Council of Ministers, 2006). A more encouraging initiative has been the adoption of a recommendation, in 2001, on the mobility of students, persons undergoing training, young volunteers, teachers and trainers. The Commission observed that mobility rates within the EU remain very limited and as a result this recommendation calls the member-states to ensure that a number of conditions are fulfilled in order to promote the mobility of students. In particular, it calls the member-states to use the ECTS for the recognition of the study period, to ensure that the recognition of the study period is made within a reasonable timescale and to encourage the use of the Diploma Supplement for the recognition of the qualification. The member-states are required to inform the Commission every two years on the implementation of the recommendation (Council of Ministers, 2001). Finally, the Commission adopted an Action Plan for Mobility in 2000, which supplements the 2001 Recommendation. The plan proposes forty-two measures with the aim of increasing student mobility and removing the remaining obstacles. For instance, the member-states are called to promote the training of the foreign language before the study period is undertaken; to increase the mobility budgets by co-operating for example with the private sector and to consider the possibility of establishing European loans in order to facilitate student mobility (Council of Ministers, 2000). Of tremendous importance is the need to define the concept of mobility in Europe an initiative that has been undertaken by the Commission in 1976 in Munich as we saw in chapter three. A contradiction of the Action Plan for Mobility is that on the one hand it aims at increasing mobility in Europe but on the other it encourages the promotion of another form of mobility, called virtual mobility, which does not necessitate movement among the member-states. Finally, it has to be noted that all the above initiatives do not concern the spontaneous mobility of students as the Community's objective was not one of promoting this form of mobility from the very early days.

As far as the mobility of patients is concerned in 2004 the Commission published a communication as a response to the high level process of reflection which begun in 2002. The high level process of reflection brought together Commission representatives, health ministers, representatives of patients and professionals and proposed nineteen measures in order to ease the mobility of patients within the Union. Among the Commission's recommendations was the need to provide patients with clearer information about their rights; to improve information on

the specializations of health professionals across the EU in order to aid patients comparing standards; to consider the implications of the directive 95/46/EC on data protection for the mobility of patients; to develop a strategy on e-health to allow patients receiving better information on their health and finally to set up a High Level Group on Health Services and Medical Care to increase co-operation at the European level (European Commission, 2004b). The High Level Group on Health Services and Medical Care was established in July 2004. It brings together representatives from all the member-states and its work focuses on seven main areas. One of them is patient safety, which led to the creation of an EU patient safety network in 2008 with the purpose of protecting patients who seek healthcare in another member-state (European Commission, 2008a). Also in 2004 the Commission proposed to the Council an e-health action plan (European Commission, 2004c). This led to the adoption of a declaration in 2010 by the member-states that has as its scope the improvement of policy co-ordination in areas where e-health can have an impact on patient's health (E-Health Ministerial Declaration, 2010). Finally, in 2008 the Commission proposed to the Council a directive on the application of patient's rights in cross-border healthcare (European Commission, 2008b). All the above initiatives can be seen as the first steps towards a policy on the free movement of patients. However, a proper policy on the free movement of patients cannot be achieved unless the prior-authorization procedure is abolished.

6.5 A policy on the free movement of students and patients

Concerning a free movement policy in the case of students it is important to explore the main elements of such a policy. In chapter three we saw that the main elements of such a policy were included into the Janne proposals of 1973. Into this document we also see the foundations of the Bologna Process of June 1999, which provides for the homogenization of degrees by requiring the shortening of the degree period to three consecutive years (European Commission, 2003a). Following the British education system, the shortening of the degree period to three years should lead to the comparable content of the degrees perhaps to their homogenization enhancing therefore the free movement of students towards all the member-states of the Community and not only to the three main poles of attraction. Unfortunately, however, the Bologna Declaration constitutes a purely intergovernmental document, which was adopted outside the EU institutional framework making thus its implementation not only voluntary but also difficult.

However, the problem with a policy on the free movement of students begins from the education systems of the member-states and in particular from the secondary education system which differs across the member-states. More uniform secondary education systems would greatly enhance the free movement of students since they would ease the admission procedures

towards the host institution. We saw earlier that the main reason the Commission's admission policy has not been adopted was because of the differences between the secondary education systems of the member-states. We have furthermore seen that in the French and German case school leavers were required to prove to the host institution that they have attained the same level of attainment with the school leavers of the host country. Thus, a uniform secondary education system across the member-states would not require the establishment of European Delegates of Admission within each university or within embassies not even the creation of a special chamber within the ECJ to deal with admission disputes, proposals which, as we saw, were made by Janne but rejected by the Commission and the Council.

An EU policy on the free movement of students should finally lead to a common language taught across European universities. At the moment it is extremely difficult for a foreign student to pursue a whole degree in another member-state because of language ignorance and difficulties. While the EU is working towards the objective of making European citizens aware of at least two foreign languages, by encouraging the member-states to introduce the learning of foreign languages as early as possible, nonetheless, a common language taught across the European universities would certainly enhance the free movement of students from all the Community's member-states. As a final remark greater free student mobility would be encouraged by allowing foreign students to receive maintenance grants in the host state or to export maintenance grants from the home state. We saw above that in 1980 the Council rejected the possibility of awarding maintenance grants to foreign students while article 3 of directive 93/96 makes also the same point. Recent case-law from the ECJ seems to imply that foreign students are now eligible to receive maintenance grants while studying in a foreign institution. In reality, however, the ECJ ruling in the *Martínez Sala* and *Grzelcyk* rulings only mean that foreign students cannot be refused maintenance grants because of their nationality.

Clearly, the central objective of a policy on the free movement of patients would entail the abolition of the prior-authorization procedure so every Community citizen would be able to make use of the healthcare services of other member-states. As we saw in chapter four at the moment only frontier workers enjoy the right of free access to the healthcare system of another member-state. We have also seen that the Pruvot report recommended that patients should have the right to the free choice of doctor, if they wanted to be treated in another member-state.

The way with which a free movement policy could be achieved with regards to patients is by abolishing the prior-authorization procedure and use the Kohll and Decker method with regards to the reimbursement of costs. This means that the patient aided by advancements in the technological sector concerning patient information and quality standards across the Community's hospitals will be able to request the reimbursement of the costs applicable in his

home country rather than at the tariffs applicable to the host state which might be more expensive. Certainly, patients nowadays are more educated and informed than in previous times and this can lead to what is called as 'mobile care' (European Commission, 2003c:3). Finally the introduction of a computerised health card which was considered by the Council in 1987 would allow doctors to read the patient's data from all the Community's member-states enhancing thus the free circulation of patients.

References

Books, Journals and Journalistic Documents

Alter, K. J. and Meunier-Aitsahalia, S. (1994) "Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision", *Comparative Political Studies*, 26 (4): 535-561.

Anderson, C.W. (1971), "Comparative Policy Analysis: The Design of Measures", *Comparative Politics*, 4 (1): 117-131.

Armstrong, K. (1995) "Regulating the Free Movement of Goods: Institutions and Institutional Change", pp. 165-191 in Shaw, J. and More, G. (eds.) *New Legal Dynamics of European Integration*, Oxford: Oxford University Press.

Ashford, D.E. (1978) (ed.), *Comparing Public Policies-New Concepts and Methods*, London: Sage Publications.

Association Internationale De La Mutualité (AIM), Cross Border Health Care within the European Community, *Study carried out for the European Commission, DG Social Affairs and Employment*, April 1991.

Bachrach, P. and Baratz, M.S. (1963), "Decisions and Nondecisions: An Analytical Framework", *American Political Science Review*, 57 (3): 632-42.

Bachrach, P. and Baratz, M.S. (1970) *Power and Poverty: Theory and Practice*, Oxford: Oxford University Press.

Banks, J. (1982) "European Co-operation in Education", *European Journal of Education*, 17 (1): 9-16.

Barblan, A. (1982) "University Co-operation in Europe: Some Useful Lessons", *European Journal of Education*, 17 (1): 27-35.

Barblan, A. (2001) "Academic Co-operation and Mobility in Europe: How it Was, How it Should Be, *Special Issue of Higher Education in Europe*, available at www.eua.be/eua/jsp/en/upload/CEPES_30thAn.1069322899147.pdf

Barclay, S. and Birkland, T. (1998) "Law, Policymaking and the Policy-Process: Closing the Gaps", *Policy Studies Journal*, 26 (2): 227-243.

Baumgartner, F.R. and Jones, B.D. (1991) "Agenda Dynamics and Policy Subsystems", *The Journal of Politics*, 53(4): 1044-1074.

Beukel, E. (2001) "Education Policy: Institutionalization and Multi-Level Governance", pp. 124-139 in Andersen, S.S. and Eliassen, K.A. (eds.) *Making Policy in Europe*, London: Sage.

Borbrow, D.B., Eulau, H., Landau, M., Jones, C.O. and Axelrod, R. (1977) "The Place of Policy Analysis in Political Science: Five Perspectives", *American Journal of Political Science*, XXI (2):415-433.

Bosco, A. (2000), "Are National Social Protection Systems under Threat? Observations on the Recent Case Law of the Court of Justice", *Notre Europe – Groupement d'Études et de Recherches*, European Issues No. 7: 1-29.

Bulmer, S. (1994) "Institutions and Policy Change in the European Communities: The Case of Merger Control", *Public Administration*, 72: 423-444.

Burley, A.M. and Mattli, W. (1993) "Europe Before the Court: A Political Theory of Legal Integration", *International Organization*, 47 (1): 41-77.

Busse, R., Wismar, M., Berman, P., (2002) *The European Union and Health Services: The Impact of the Single Market on Member States*, Amsterdam: IOS Press.

Capoccia, G. and Kelemen, D.R. (2005), "The Study of Critical Junctures: Theory, Narrative and Counterfactuals in Institutional Theory", *Paper presented at the APSA Annual Convention, 1-4 September 2005, Washington DC*, available at http://www.asu.edu/clas/polisci/cqrm/APSA2005/Capoccia_Theory_Narrative.pdf

Cerych, L. (1978) "The Development of Admissions Policies", *European Journal of Education*, 13 (1): 89-105.

Cerych, L. (1989) "Higher Education and Europe after 1992: The Framework", *European Journal of Education*, 24(4): 321-332.

Cobb, R.W. and Elder, C.D. (1971), "The Politics of Agenda-Building: An Alternative Perspective for Modern Democratic Theory", *Journal of Politics*, 33: 892-915.

Corbett, A. (2002) *Ideas, Institutions and Policy Entrepreneurship in European Community Higher Education, 1955-1995*, University of London – London School of Economics & Political Science, PhD Thesis.

Corbett, A. (2003) "Ideas, Institutions and Policy Entrepreneurs: Towards a New History of Higher Education in the European Community", *European Journal of Education*, 38(3):315-330.

Corbett, A. (2005) *Universities and the Europe of Knowledge: Ideas, Institutions and Policy Entrepreneurship in European Union Higher Education Policy, 1955-2005*, Basingstoke: Palgrave Macmillan.

Costa, O. (2003) "The European Court of Justice and Democratic Control in the European Union", *Journal of European Public Policy*, 10 (5):740-761.

Cram, L. (1993) "Calling the Tune Without Paying the Piper? Social Policy Regulation: The Role of the Commission in European Community Social Policy", *Policy and Politics*, 21(2): 135-146.

Dalichow, F. (1987) "Academic Recognition within the European Community", *European Journal of Education*, 22 (1): 39-58.

De Witte, B. (1989) *European Community Law of Education*, Nomos: Baden-Baden.

Dearlove, J. (1973), *The Politics of Policy in Local Government*, New York: Cambridge University Press.

De Witte, B. (1989) *European Community Law of Education*, Nomos: Baden-Baden.

Dimitrakopoulos, D. (2001a) "Unintended Consequences: Institutional Autonomy and Executive Discretion in the European Union", *Journal of Public Policy*, 21 (2): 107–131.

Dougan, M. (2005) "Fees, Grants, Loans And Dole Cheques: Who Covers The Costs Of Migrant Education Within The EU?", *Journal of Contemporary European Research*, 1 (1): 4-29.

Drettakis, E.G. (1978) "Greek Students in Foreign Universities", *Paedagogica Europea-Journal of Educational Research in Europe*, XIII (3): 85-106.

Dudley, G. and Richardson, J. (1999) "Competing Advocacy Coalitions and the Process of Frame Reflection: A Longitudinal Analysis of EU Steel Policy", *Journal of European Public Policy*, 6 (2): 225-248.

Easton, D. (1965), *A Systems Analysis of Political Life*, New York: John Wiley & Sons.

E-Health Ministerial Declaration (2010), EU Ministers Outline 2020 Vision for E-Health, 15/03/2010.

Elkin, S.L. (1974) "Political Science and the Analysis of Public Policy", *Public Policy*, Vol. 22: 399-422.

EurActiv (2006), *Doctors Are Opposed to Inclusion of Health in Services Directive*, Tuesday 4 April 2006.

European Voice (1997), *ECJ Cases May Bolster Health Insurance Claims*, 11 September 1997.

Feldman, E.J. (1978), "Comparative Public Policy: Field or Method?", *Comparative Politics*, 10 (2): 287-305.

Field, J. (1998) *European Dimensions-Education, Training and the European Union*, London: Jessica Kingsley Publishers.

Franchino, F. (2005), "The Study of EU Public Policy", *European Union Politics*, 6 (2):243-252.

Garrett, G. (1992) International Co-operation and Institutional Choice: The European Community's Internal Market, *International Organization*, 46:533-560.

Geyer, R.G. (2000) *Exploring European Social Policy*, London: Blackwell Publishers.

- Gobrecht, J. (1999), "National reactions to Kohll and Decker", *Eurohealth*, 5 (1): 16-17.
- Gordon, J. And Jallade, J.P. (1996) "Spontaneous Student Mobility in the European Union: A Statistical Survey", *European Journal of Education*, 31 (2): 133-151.
- Gourevitch, P. (1978) "The Second Image Reversed: The International Sources of Domestic Politics", *International Organization*, 32 (4): 881-912.
- Greener, I. (2005) "The Potential of Path Dependence in Political Studies", *Politics*, 25 (1): 62-72.
- Greenwood, J. (1997) *Representing Interests in the European Union*, London: Macmillan Press.
- Haas, E.B. (1958) *The Uniting of Europe*, Stanford: Stanford University Press.
- Haas, E.B. (1961) "International Integration: The European and the Universal Process", *International Organization*, 15 (3): 366-392.
- Haas, E.B. (1964), *Beyond the Nation-state: Functionalism and International Organisation*, Stanford: Stanford University Press.
- Haas, E.B. (1968) *The Uniting of Europe: Politics, Social and Economic Forces 1950-1957*, 2nd ed., Stanford: Stanford University Press.
- Haas, P. (1992) "Introduction: Epistemic Communities and International Policy Co-ordination", *International Organization*, 46 (1): 1-35.
- Hackl, E. (2001) "Towards a European Area of Higher Education: Change and Convergence in European Higher Education", *EUI Working Paper 2001/09*, available at http://www.iue.it/RSCAS/WP-Texts/01_09.pdf
- Hagen, J. (1987) "University Co-operation and Academic Recognition in Europe: the Council of Europe and the Communities", *European Journal of Education*, 22 (1): 77-83.
- Haigh, A. (1970) *A Ministry of Education in Europe*, London: George G. Harrap & Co. Ltd.
- Hall, P.A. and Taylor, R.C.R. (1996), "Political Science and the Three New Institutionalisms", *Political Studies*, XLIV: 936-957.
- Hantrais, L. (1995) *Social Policy in the European Union*, Basingstoke and New York: Palgrave Macmillan and St Martin's Press.

Hatzopoulos, V. (2000), "Recent Development of the Case Law of the ECJ in the Field of Services", *Common Market Law Review*, 37: 43-82.

Hecló, H.H. (1972), "Policy Analysis", *British Journal of Political Science*, 2 (1): 83-108.

Heidenheimer, A.J., Hecló, H. and Adams, C.T. (1990) (3rd. ed.) *Comparative Public Policy: The Politics of Social Choice in America, Europe and Japan*, New York: St. Martin's Press.

Hermesse, J. and Lewalle, H. (1993) *L'Accès aux Soins en Europe – Quelle Mobilité du Patient ?*, Louvain-la-Neuve : Academia-Erasme.

Hermesse, J., Lewalle, H., and Palm, W. (1997) "Patient Mobility within the European Union", *European Journal of Public Health*, 7 (3): 4-10.

Hill, M. (1997), *The Policy Process in the Modern State*, (3rd.ed.) London: Prentice Hall.

Hix, S. (1999), *The Political System of the European Union*, Basingstoke: Palgrave Mcmillan.

Hoffmann, S. (1966) "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe", *Daedalus*, 95: 862-915.

Hogwood, B.W. and Gunn, L.A. (1984), *Policy Analysis for the Real World*, Oxford: Oxford University Press.

Holland, W. and Mossialos, E. (1999) (eds.) (with Belcher, P. and Merkel, B.) *Public Health Policies in the European Union*, Aldershot: Ashgate.

Janne, H. (1973) For a Community Policy on Education, *Bulletin of the European Communities*, Supplement, 10/73.

Jenkins-Smith, H. C. and Sabatier, P.A. (1993), *Policy Change and Learning: An Advocacy Coalition Approach*, Boulder: Westview Press.

Jones, C. O. (1977), "Is Policy Analysis a Case Study?", *American Journal of Political Science*, XXI (2): 427-430.

Jones, C. O. (1984), (3rd. ed.), *An Introduction to the Study of Public Policy*, California: Brooks/Cole Publishing Company.

Jorens, Y., and Schulte, B. (2001), "The Implementation of Regulation 1408/71 in the Member-States of the European Union", *European Journal of Social Security*, 3 (3): 237-255.

Kassim, H. (1994) "Policy Networks and European Union Policy-Making: A Sceptical View", *West European Politics*, 17(4): 15-27.

Kay, A. (2003) "Path Dependency and the CAP", *Journal of European Public Policy*, 10 (3): 405-420.

Kay, A. (2005) "A Critique of the Use of Path Dependency in Policy Studies", *Public Administration*, 83 (3): 553-571.

Kesteloot, K. Poceschi, S. Van Der Schueren (1995) "The Reimbursement of the Expenses for Medical Treatment Received by Transnational Patients in EU-Countries", *Health Policy*, 33:43-57.

Kingdon, J. W. (1995), *Agendas, Alternatives and Public Policies*, Boston: Little Brown.

Kuile, B.H., Pré, F.M., and Sevinga, K. (1992) "Health Care in Europe After 1992: The European Dimension", pp. 8-21 in Hermans, H.E.G.M., Casparie, A.F., and Paelinck, J.H.P. (eds.), *Health Care in Europe After 1992*, Aldershot: Dartmouth.

Κυριόπουλος, Γ. & Γείτονα, Μ. (1995), *Η Διασυνοριακή Ροή Ασθενών στην Ελλάδα και την Ευρώπη*, Αθήνα: Εξάντας.

Leibfried, S. and Pierson, P. (1995) (eds.) *European Social Policy: Between Fragmentation and Integration*, Brookings Institution Press.

Leichter, H.M. (1979), *A Comparative Approach to Policy Analysis-Health Care Policy in Four Nations*, Cambridge: Cambridge University Press.

Lenaerts, K. (1995) "Subsidiarity and Community Competence in the Field of Education", *Journal of European Law*, 1 (1): 1-28.

Lonbay, J. (1989) "Education and Law: The Community Context", *European Law Review*, 14:363-387.

Mahoney, J. (2003), "Strategies for Causal Assessment in Comparative Historical Analysis", pp. 337-371 in Mahoney, J., and Rueschemeyer, D., (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press.

March, J.G., and Olsen, J.P. (1984), "The New Institutionalism: Organizational Factors in Political Life", *The American Political Science Review*, 78 (3): 734-749.

Marks, G., Hooghe, L. and Blank, K. (1996) "European Integration from the 1980s: State-Centric v. Multi-Level Governance", *Journal of Common Market Studies*, 34 (3): 341-378.

Mattli, W. and Slaughter, A.M. (1995) "Law and Politics in the European Union: A Reply to Garrett", *International Organization*, 49 (1): 183-190.

Mattli, W. and Slaughter, A.M. (1998) "Revisiting the European Court of Justice", *International Organization*, 52 (1): 177-209.

May, P.J. (1986), "Politics and Policy Analysis", *Political Science Quarterly*, 101 (1): 109-125.

Mavridis, P. (1996), "Le Citoyen Européen Peut-Il Se Faire Soigner dans l'État de Son Choix ? ", *Droit Social*, No. 12 : 1086-1094.

Mavridis, P. (1998), "Libéralisation des Soins de Santé en Europe: Un Premier Diagnostic", *Revue du Marché Unique Européen*, 3 : 145-196.

Mazey, S. (1998) "The European Union and Women's Rights: From the Europeanization of National Agendas to the Nationalization of a European Agenda?", *Journal of European Public Policy*, 5(1): 131-152.

Mazey, S. And Richardson, J. (2006) "Interest Groups and EU Policy-Making: Organizational Logic and Venue Shopping", pp. 247-268 in Richardson, J. (3rd. ed.), *European Union: Power and Policy-Making*, Abington: Routledge.

McKee, M., Mossialos, E. and Baeten, R. (2002) (eds.) *The Impact of EU Law on Health Care Systems*, Brussels: Peter Lang.

McMahon, J. A. (1995) *Education and Culture in European Community Law*, London: The Athlone Press.

Meehan, E. (1993) "Citizenship and the European Community", *Political Quarterly*, 64: 172-186.

Moravcsik, A. (1989), "Negotiating the Single Act: National Interests and Conventional Statecraft in the European Community", Harvard University – Department of Government and Centre for International Affairs, *Working Paper Series #21*.

Moravcsik, A. (1991) "Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community", *International Organization*, 45 (1): 19-56.

Moravcsik, A. (1993) "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach", *Journal of Common Market Studies*, 31 (4): 473-523.

Moravcsik, A. (1995) "Liberal Intergovernmentalism and Integration: A Rejoinder", *Journal of Common Market Studies*, 33 (4): 611-628.

Moravcsik, A. *et al.* (1997) "Does the European Union Represent an n of 1? ", *ECSA Review*, Vol. X, No. 3: 1-5).

Moravcsik, A (1999) "A New Statecraft? Supranational Entrepreneurs and International Co-operation", *International Organization*, 53 (2): 267-306.

Moravcsik, A. and Schimmelfennig, F. (2009) "Liberal Intergovernmentalism", pp. 67-87 in Diez, T. and Wiener, A. (eds.) *European Integration Theory*, Oxford: Oxford University Press.

Moschonas, A. (1998) *Education and Training in the European Union*, Aldershot: Ashgate.

Mossialos, E. and McKee, M. (with Palm, W., Karl, B. and Marhold, F.) (2002) *EU Law and the Social Character of Health Care*, Brussels: Peter Lang.

Mossialos, E. and Palm, W. (2003) "The European Court of Justice and the Free Movement of Patients in the European Union", *International Social Security Review*, 56(2): 3-29.

Neave, G. (1984) *Education and the EEC*, Trentham Books.

Nelson, B.J. (1984), *Making an Issue of Child Abuse-Political Agenda Setting for Social Problems*, Chicago: The University of Chicago Press.

Nourissat, C. (1999) "Quand panacée rejoint Europe ou comment la Cour de Justice consacre la liberté des soins dans la Communauté", *La Semaine Juridique*, Edition Générale, II 10002.

Nugent, N. (2003) "Policy Processes", pp. 331-365, in Nugent, N. (5th. ed.), *The Government and Politics of the EU*, Basingstoke : Palgrave.

O'Reilly, D. And Stone-Sweet, A. (1998) "The Liberalization and European Reregulation of Air Transport", pp.165-184 in Sandholtz, W. and Stone-Sweet, A. (eds.) *European Integration and Supranational Governance*, Oxford: Oxford University Press.

Palayret, J.M. (1996) "A University for Europe: Pre-history of the European University Institute in Florence 1948-1976", Presidency of the Council of Ministers, Department of Information and Publishing.

Parry, G. and Morriss, P. (1974) "When Is a Decision not a Decision?", in *Ivor Crewe, ed., Political Sociology Yearbook*, Volume 1, pp. 317-337, Croom Helm: London.

Patton, M.Q. (2002), *Qualitative Research & Evaluation Methods*, London: Sage Publications.

Peters, G.B. (1992) "Bureaucratic Politics and the Institutions of the European Community" pp. 76-121 in Sbragia, A.M. (ed.) *Euro-Politics: Institutions and Policy-Making in the 'New' European Community*, Washington, DC: Brookings Institution

Peters, G.B. (1997) "Escaping the Joint-Decision Trap: Repetition and Sectoral Politics in the European Union", *West European Politics*, 20 (2): 22-36.

Peters, G.B. (1998), *Comparative Politics: Theory and Method*, Basingstoke: Palgrave.

Peters, G.B. (2001) "Agenda-Setting in the European Union" pp. 78-92 in Richardson, J. (2nd ed.) *European Union: Power and Policy-Making*, London: Routledge.

Peters, B. G., Pierre, J., and King, D. S. (2005) "The Politics of Path Dependency: Political Conflict in Historical Institutionalism", *The Journal of Politics*, 67 (4): 1275-1300.

Peterson, J. (1992) "The European Technology Community: Policy Networks in a Supranational Setting", pp. 226-247 in Rhodes, R.A.W. and Marsh, D. (eds.) *Policy Networks in British Government*, Oxford: Clarendon Press.

Pierson, P. (2000a) "The Limits of Design: Explaining Institutional Origins and Change", *Governance*, 13(4):475-499.

Pierson, P. (2000b) "Not Just What but When: Timing and Sequence in Political Processes", *Studies in American Political Development*, 14: 72-92.

Pierson, P. (2000c) "Increasing Returns, Path Dependence, and the Study of Politics", *American Political Science Review*, 94(2): 251-267.

Pierson, P. (2004) *Politics in Time: History, Institutions and Social Analysis*, Princeton: Princeton University Press.

Pierson, P. (2005) "The Study of Policy Development", *Journal of Policy History*, 17 (1): 34-51.

Pollack, M.A. (2001), "International Relations Theory and European Integration", *Journal of Common Market Studies*, 39 (2):221-244.

Pollack, M.A. (2003) *The Engines of European Integration: Delegation, Agency and Agenda-Setting in the EU*, Oxford: Oxford University Press.

Pollack, M.A. (2005), "Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance? ", *Annual Review of Political Science*, 8:357-398.

Polsby, N.W. (1984), *Political Innovation in America-The Politics of Policy Initiation*, New Haven: Yale University Press.

Pratt, J. (1974) "Education in the EEC", *Higher Education Review*, 6 (2): 51-64.

Randall, E. (2000) "European Union Health Policy with and Without Design: Serendipity, Tragedy and the Future of the EU Health Policy", *Policy Studies*, 21(2): 133-164.

Randall, E. (2001) *The European Union and Health Policy*, Basingstoke: Palgrave Macmillan.

Ranney, A. (1968) (ed.), *Political Science and Public Policy*, Chicago: Markham Publishing Company.

Richardson, J. (1969), *The Policy-Making Process*, London: Routledge and Kegan Paul.

Richardson, J. (2001) "Policy-Making in the EU: Interests, Ideas and Garbage Cans of Primeval Soup" pp. 4-26 in *European Union Power and Policy-Making* (2nd. ed.), London: Routledge.

Rhodes, R.A.W. and Marsh, D. (1992) (eds.), *Policy Networks in British Government*, Oxford: Clarendon Press.

Rocheffort, D.A. and Cobb, R.W. (1993), "Problem Definition, Agenda Access and Policy Choice", *Policy Studies Journal*, 21 (1): 56-71.

Rosamond, B. (2000) *Theories of European Integration*, Basingstoke: Palgrave.

Rüegg, W. (1993) "Division et Unité de l'Europe : Le Rôle des Universités *Relations Internationales*", 73 : 27-42.

Rueschemeyer, D. and Stephens, J.D. (1997) "Comparing Historical Sequences – A Powerful Tool for Causal Analysis", *Comparative Social Research*, Vol. 16: 55-72.

Ryba, R. (2000) "Developing the European Dimension in Education: The Roles of the European Union and the Council of Europe", pp. 244-261 in Swing, E., Schriewer, J. and Orivel, F. (eds.) *Problems and Prospects in European Education*, London: Praeger.

Sabatier, P.A. (1998) "The Advocacy Coalition Framework: Revisions and Relevance for Europe", *Journal of European Public Policy*, 5 (1): 98-130.

Sandholtz, W. and Zysman, J. (1989) "1992: Recasting the European Bargain", *World Politics*, 42 (1): 95-128.

Sandholtz, W. and Stone-Sweet, A. (1998) (eds.) *European Integration and Supranational Governance*, Oxford: Oxford University Press.

Sandholtz, W. (1998) "The Emergence of a Supranational Telecommunications Regime", pp. 134-163 in Sandholtz, W. and Stone-Sweet, A. (eds.) *European Integration and Supranational Governance*, Oxford: Oxford University Press.

Sbragia, A.M. (1992) (ed.) "Thinking about the European Future: The Uses of Comparison", pp. 257-291 in Sbragia, A.M. (ed.) *Euro-Politics: Institutions and Policy-Making in the 'New' European Community*, Washington, DC: Brookings Institution.

Schlager, E. (1999) "A Comparison of Frameworks, Theories and Models of Policy Processes", pp. 233-260 in Sabatier, P.A. (ed.), *Theories of the Policy-Process*, Boulder: Westview Press.

Slapin, J.B. (2006), "Who is Powerful? Examining Preferences and Testing Sources of Bargaining Strength at European Intergovernmental Conferences, *European Union Politics*, 7 (51).

Smith, A.T. (1969), "Toward a Comparative Theory of the Policy-Process", *Comparative Politics*, 1 (4): 498-515.

Sprokkereef, A. (1995) "Developments in European Community Education Policy", pp. 340-347 in Lodge, J. (ed.) *The European Community and the Challenge of the Future*, London: Pinter Publisher.

Stein, E. (1981) Lawyers, Judges and the Making of a Transnational Constitution, *American Journal of International Law*, 75: 1-27.

Sweet, A.S. and Sandholtz, W. (1997) "European Integration and Supranational Governance", *Journal of European Public Policy*, 4 (3): 297-317.

Sweet, A.S. and Caporaso J.A. (1998) "From Free Trade to Supranational Polity: The European Court and Integration", pp. 92-131 in Sandholtz, W. and Sweet, A.S. (eds.) *European Integration and Supranational Governance*, Oxford University Press.

Tallberg, J. (2000) "The Anatomy of Autonomy: An Institutional Account of Variation of Supranational Influence", *Journal of Common Market Studies*, 38 (5): 843-864.

Taylor, P. (1983) *The Limits of European Integration*, London: Croom Helm.

Thelen, K., and Steinmo, S. (1992), "Historical Institutionalism in Comparative Politics", pp. 1-33 in Steinmo, S., Thelen, K., and Longstreth, F., (eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis*, Cambridge: Cambridge University Press.

Thelen, K. (1999), "Historical Institutionalism in Comparative Politics", *Annual Review of Political Science*, 2: 369-404.

Van Der Mei, A. P. (2003) *Free Movement of Persons Within the European Community: Cross-Border Access to Public Benefits*, Oxford: Hart Publishing.

Van Der Mei, A. P. (2005) "EU Law and Education: Promotion of Student Mobility Versus Protection of Education Systems", pp. 219-143 in Spaventa, E. And Dougan, M. *Social Welfare and EU Law*, Oxford: Hart Publishing.

Van Dyke, V. (1968) "Process and Policy as Focal Concepts in Political Research", pp. 23-39 in Ranney, A. (ed.) *Political Science and Public Policy*, Chicago: Markham Publishing Company.

Webb, C. (1977) "Introduction: Variations on a Theoretical Theme", pp. 1-29 in Wallace, H. Wallace, W. and Webb, C. (eds.) *Policy-Making in the European Communities*, London: John Wiley & Sons.

Wallace, H. and Wallace, W. (1996) *Policy-Making in the European Union*, (3rd. ed.), Oxford: Oxford University Press.

Weiler, J. (1982) "Community, Member-states and European Integration: Is the Law Relevant?", *Journal of Common Market Studies*, 21: 39-56.

Wendon, B. (1998) "The Commission as Image-Venue Entrepreneur in EU Social Policy", *Journal of European Public Policy*, 5(2): 339-353.

Wincott, D. (1995a), "Institutional Interaction and European Integration: Towards an Everyday Critique of Liberal Intergovernmentalism", *Journal of Common Market Studies*, 33 (4): 598-609.

Wincott, D. (1995b) "The Role of Law Or The Rule of the Court of Justice? An Institutional Account of Judicial Politics in the European Community", *Journal of European Public Policy*, 2 (4): 583-602.

Zito, A.R. (2001) "Epistemic Communities, Collective Entrepreneurship and European Integration", *Journal of European Public Policy*, 8 (4): 585-603.

Agence Europe

Agence Europe (1973), From First of April, 2.5 Million People Throughout the Community Will Benefit from the Regulation on the Social Security of Migrant Workers, Friday 30 March 1973, No. 1255.

Agence Europe (1974), The Commission is to Propose an Action Programme in the Field of Education to the Council, Wednesday 6 March 1974, No. 1472.

Agence Europe (1977a), Franco-British Proposal for a Council of Health Ministers, Tuesday 12 April 1977, No. 2195.

Agence Europe (1977b), Health Ministers to Meet for First Time Tomorrow, Tuesday, Monday 12 December 1977, No. 2347.

Agence Europe (1978a), Commission Proposes to Introduce A System of Grants and Measures to Facilitate Movement of Students within Higher Education, Monday 25 September 1978, No. 2525.

Agence Europe (1978b), Health: EEC Ministers will Meet on 16 November, Thursday 9 November 1978, No. 2557.

Agence Europe (1980a), Education: EEC Ministers will on Friday confine themselves to exchanges of views without decisions – Denmark's position, Wednesday 25 June 1980, No. 2936.

Agence Europe (1980b), Health: European Commission is now Working on its Priority Action Programmes, Monday 27 October 1980, No. 3008.

Agence Europe (1981a), Health: The E.P. is in Favour under Certain Conditions of the Creation of a European Health Card (Voluntary), Wednesday 13 October 1981, No. 3228.

Agence Europe (1981b), Environment and Health: Mr. Richard Wants Ministers to Meet Soon to Discuss Health Matters, Thursday 12 November 1981, No. 3248.

Agence Europe (1983), Health: Parliament Wants Ad Hoc Council Meeting Before Defining Genuine Community Policy, Friday 15 April 1983, No. 3589.

Agence Europe (1984a), Health: Pruvot Report Proposes European Patient's Charter, Friday 6 January 1984, No. 3762.

Agence Europe (1984b), European Health Card: Parliament Approves, Friday 16 November 1984, No. 3971.

Agence Europe (1984c), Health: Satisfactory Outcome of Informal Meeting of Ten, Thursday 29 November 1984, No. 3980.

Agence Europe (1985), Informal Meeting of Health Ministers: In Venice the Ten Discuss the Developments in Health Costs, the Fights against Drug Abuse, Emergency Health Card – Mr. Sutherland Appeals for EEC Co-operation, Saturday 4 May 1985, No. 4083.

Agence Europe (1986a), Education: Ministers of the Twelve and Mr Marin Examined the Erasmus Programme and Directions for Future Community Action, Wednesday 21 May 1986, No. 4322.

Agence Europe (1986b), Education Council: Erasmus Programme (Student's Mobility) to be the Focus on Debated this Friday – Several Problems to be Resolved and Obstacles to Overcome, Friday 28 November 1986, No. 4439.

Agence Europe (1986c), Education Council: Agreement on Aims of Erasmus Programme but Differences of Opinion over Budget Allocation Persist – Towards Complementary Education Action Programme, Monday 9 June 1986, No. 4335.

Agence Europe (1986d), Education Council: Budgetary Difficulties could Compromise the Adoption of the Erasmus and Comett Programmes, Friday 6 June 1986, No. 4334.

Agence Europe (1986e), Education: The Ministers of the Twelve to Have an Informal Exchange of Views on Community Action in the Field of Education, Court of Justice Judgements and the Erasmus Programme, Tuesday 13 May 1986, No. 4317.

Agence Europe (1987a), Education: The Belgian Presidency Relaunches the Debate on Erasmus, Friday 13 March 1987, No. 4509.

Agence Europe (1987b), Education: Contents, Objectives, Functioning, Financing and Importance of the Erasmus Programme for Student Exchange in the EEC which Comes into Force on July Next, Wednesday 20 May 1987, No. 4554.

Agence Europe (1994), EC/Health: EC Doctors Present European Commission with their Views and Desires on Health-Care Policy, Standardization of Medical Equipment, Access to Medical Studies, ETC – For a Permanent Dialogue, Brussels 17/02/1994, No. 6173.

Agence Europe (2004), Bertie Ahern and Romano Prodi Welcome Forthcoming Introduction of European Health Insurance Card, 29/03/2004.

Bulletin of the EEC

Bulletin of the European Economic Community (1961), Statement Issued by the Heads of State or Government Meeting in Bonn on 18 July 1961, No. 7 /8 August 1961.

Bulletin of the European Economic Community (1969), Europeanization of Universities, Mutual Recognition of Diplomas, Research and Youth in Europe, No. 12/1969: 80-82.

Bulletin of the European Economic Community (1970), The Summit Conference at the Hague-Statements made by the Heads of State or Government on 2 December 1969, No. 2/1970: 30-53.

Bulletin of the European Economic Community (1985a), Adonnino Committee Report to the European Council-Milan 28 and 29 June 1985, No. Supplement 7/1985: 18-30.

Bulletin of the European Economic Community (1985b), Conclusions of the Milan European Council, No. 6/1985: 13-16.

Council of Europe

Council of Europe (1953), European Convention on the Equivalence of Diplomas leading to Admission to Universities, 11 of December 1953.

Council of Europe (1956), European Convention on the Equivalence of Periods of University Study, Paris, 15 of December 1956.

Council of Europe (1959), European Convention on the Academic Recognition of University Qualifications, 14 of December 1959.

Council of Europe (1964) Standing Conference of European Ministers of Education, 4th Session - London, United Kingdom, 14-16 April 1964.

Council of Europe (1971) Standing Conference of European Ministers of Education, 7th session - Brussels, Belgium, 8-10 June 1971.

Council of Ministers

Conseil de la Communauté Economique Européenne (1958a), Règlement No 3 concernant la Sécurité Sociale des Travailleurs Migrants, Journal Officiel des Communautés Européennes, L 561/58, 16.12.1958.

Conseil de la Communauté Economique Européenne (1958b), Règlement No 4 Fixant les Modalités d'Application et Complétant les Dispositions du Règlement no 3 concernant la Sécurité Sociale des Travailleurs Migrants, Journal Officiel des Communautés Européennes, L 597/58, 16.12.1958.

Comité Intérimaire Pour L'Université Européenne, "Rapport du Comité Intérimaire aux Conseils de la Communauté Économique Européenne et de la Communauté Européenne de l'Energie Atomique", Florence, le 27 Avril 1960.

Council of Ministers (1971), Council Regulation (EEC) No 1408/71 of 14 June 1971 on the Application of Social Security Schemes to Employed Persons and their Families Moving within the Community, Official Journal of the European Communities, L 149, 05/07/1971.

Council of Ministers (1972), Council Regulation (EEC) No 574/72 of 21 March 1972 Fixing the Procedure for Implementing Regulation (EEC) No 1408/71, on the Application of Social Security Schemes to Employed and Self-Employed Persons and their Families Moving within the Community, Official Journal of the European Communities, L 74, 27/03/1972.

Council of Ministers (1975), Report to Ministers by the Education Committee, Brussels 5 December 1975, R/2948/75, EN 124: 2-28.

Council of Ministers (1976), Resolution of the Council and of the Ministers of Education, Meeting within the Council of 9 February 1976 Comprising an Action Programme in the Field of Education, Official Journal of the European Communities, C 038, 19/02/1976: 0001 – 0005.

Council of Ministers (1978), Summary of Decisions Taken by the Council (543rd Meeting) and the Representatives of the Governments of the Member-States Meeting within the Council on 16 November 1978 (Health Questions), Brussels 22 November 1978, T/928/78 (SOC): 1-8.

Council of Ministers (1980a), Draft Minutes of the 648th Meeting of the Council and of the Ministers for Education Meeting within the Council on Friday 27 June 1980 in Brussels, Brussels 8 July 1980, 8539/80: 1-5.

Council of Ministers (1980b), General Report by the Education Committee, Brussels, 11 June 1980, 7787/80: 1-48.

Council of Ministers, (1981), Resolution on a European Health Card, Official Journal of the European Communities, C 287/32, 9/11/1981.

Council of Ministers (1984), Decision No 123 of the Administrative Commission of 24 February 1984 concerning the Interpretation of Article 22 (1) (a) of Regulation (EEC) No 1408/71 with regard to Persons Undergoing Renal Dialysis Treatment, Official Journal of the European Communities, C 203/13, 2/08/1984.

Council of Ministers (1986a), Draft Minutes of the 1085th Meeting of the Council and the Ministers for Education Meeting within the Council held in Luxembourg on Monday 9 June 1986, Brussels 19 June 1986, 7515/86: 2-7.

Council of Ministers (1986b), Corrigendum to Draft Minutes of the 1085th Meeting of the Council and the Ministers for Education Meeting within the Council held in Luxembourg on Monday 9 June 1986, Brussels 18 September 1986, 7515/86 COR 1.

Council of Ministers (1986b), Corrigendum 2 to Draft Minutes of the 1085th Meeting of the Council and the Ministers for Education Meeting within the Council held in Luxembourg on Monday 9 June 1986, Brussels 22 September 1986, 7515/86 COR 2.

Council of Ministers (1986c), Draft Minutes of the 1125th Meeting of the Council and the Ministers of Education Meeting within the Council held in Brussels on Friday 28 November 1986, Brussels 16 December 1986, 10778/86: 1-12.

Council of Ministers (1986d), Draft Minutes of the 1081st Meeting of the Council and the Ministers for Health, Meeting within the Council, Held in Brussels on Thursday 29 May 1986, Brussels 19 June 1986, PV/CONS 25.

Council of Ministers (1986e), Resolution of the Council and of the Representatives of the Governments of the Member States, Meeting within the Council, of 29 May 1986 concerning

the Adoption of a European Emergency Health Card, Official Journal of the European Communities, C 184/4, 23/07/1986.

Συμβούλιο των Ευρωπαϊκών Κοινοτήτων (1987a), Ψήφισμα των Υπουργών Παιδείας με Ημερομηνία 16 Νοεμβρίου 1971 για τη Συνεργασία στον Τομέα της Εκπαίδευσης, σελ. 11, στο Κείμενα σχετικά με την Ευρωπαϊκή Πολιτική στον Τομέα της Εκπαίδευσης, Τρίτη Έκδοση (Ιούνιος 1987), Λουξεμβούργο: Υπηρεσία Επισήμων Εκδόσεων των Ευρωπαϊκών Κοινοτήτων, ISBN: 92-824-0470-6.

Συμβούλιο των Ευρωπαϊκών Κοινοτήτων (1987b), Συμπεράσματα του Συμβουλίου και των Υπουργών Παιδείας Συνερχομένων στο Πλαίσιο του Συμβουλίου της 2ας Ιουνίου 1983 για την Αύξηση της Κινητικότητας στην Τριτοβάθμια Εκπαίδευση, σελ. 97-100, στο Κείμενα σχετικά με την Ευρωπαϊκή Πολιτική στον Τομέα της Εκπαίδευσης, Τρίτη Έκδοση (Ιούνιος 1987), Λουξεμβούργο: Υπηρεσία Επισήμων Εκδόσεων των Ευρωπαϊκών Κοινοτήτων, ISBN: 92-824-0470-6.

Council of Ministers (1987c), Council Decision of 15 June 1987 Adopting the European Community Action Scheme for the Mobility of University Students (Erasmus), Official Journal of the European Communities, L166/20, 25 June 1987: 20-24.

Council of Ministers (1987d), Draft Minutes of the Council and of the Ministers for Health Meeting within the Council, Held in Brussels on Friday 15 May 1987, Brussels 24 June 1987, PV/CONS 26.

Συμβούλιο των Ευρωπαϊκών Κοινοτήτων (1989a), Απόφαση του Συμβουλίου της 14ης Δεκεμβρίου 1989 η οποία Τροποποιεί την Απόφαση 87/327/ΕΟΚ για τη Θέσπιση του Κοινοτικού Προγράμματος Δράσης Σχετικά με την Κινητικότητα των Φοιτητών (ERASMUS), σελ. 109-113, στο Κείμενα σχετικά με την Ευρωπαϊκή Πολιτική στον Τομέα της Εκπαίδευσης, Συμπλήρωμα της Τρίτης Έκδοσης (Δεκέμβριος 1989), Λουξεμβούργο: Υπηρεσία Επισήμων Εκδόσεων των Ευρωπαϊκών Κοινοτήτων, ISBN: 92-824-0768-3.

Council of Ministers (1994a), Proposal for a European Parliament and Council Decision Setting Up the Community Action Programme Socrates, Official Journal of the European Communities, C 128, 09/05/1994: 479-503.

Council of Ministers (1994b), Amended Proposal for a European Parliament and Council Decision Establishing the Community Action Programme Socrates, Official Journal of the European Communities, C 164, 16/06/1994: 8-23.

Council of Ministers (1998), Decision No 819/95/EC of the European Parliament and of the Council of 14 March 1995 Establishing the Community Action Programme Socrates, pp. 119-134, in *Statements on Education, Training and Young People*, Supplement No. 3 to the Third Edition (1993-1997), Luxembourg: Office for Official Publications of the European Communities, ISBN: 92-824-1597-EN-C.

Council of Ministers (2000), Resolution of the Council and the Representatives of the Governments of the Member-States, Meeting within the Council, of 14 December 2000, concerning an Action Plan for Mobility, Official Journal of the European Communities, C 371, 23/12/2000.

Council of Ministers (2001), Recommendation of the European Parliament and the Council of 10 July 2001 on Mobility within the Community for Students, Persons Undergoing Training, Young Volunteers, Teachers and Trainers, Official Journal of the European Communities, L 215, 9/08/2001.

Council of Ministers (2003), Decision No 189 of 18 June 2003 Aimed at Introducing a European Health Insurance Card to Replace the Forms Necessary for the Application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 as regards Access to Health Care during a Temporary Stay in a Member State other than the Competent State or the State of Residence, Official Journal of the European Communities, L 276, 27/10/2003.

Council of Ministers (2006), Recommendation No 2006/961 of the European Parliament and of the Council of 18 December 2006 on Transnational Mobility within the Community for Education and Training Purposes: European Quality Charter for Mobility, Official Journal of the European Communities, L 394, 30/12/2006.

CRE Information

CRE Information (1973a), Création d'un Comité de Liaison des Conférences Nationales de Recteurs, No. 22, Avril 1973: 98.

CRE Information (1973b), Access to the University in Belgium by Gerlo, A., No. 22, April 1973: 5-7.

CRE Information (1973c), Selection or Open Access by Vandepitte, D., No. 21, January 1973: 27-38.

CRE Information (1975a), Communautés Européennes : Le Nouveau Comité pour les Problèmes de l'Éducation, No. 29, 1^{er} Trimestre 1975: 8.

CRE Information (1975b), Council of Europe – C.H.E.R. Meeting in Luxembourg, No. 31, 3rd Quarter 1975: 63-67.

CRE Information (1976), Mobility of Students and Mutual Recognition of Diplomas in the European Community, No. 34, 2nd Quarter 1976: 29-37.

CRE Information (1987) EEC Sources of Support for Higher Education and Research in 1988 by Luttkholt, H., No 80, 4th Quarter 1987: 83-91.

European Commission

European Commission (1972), Fifth General Report on the Activities of the Communities, 1971, Brussels-Luxembourg, February 1972.

European Commission (1973), Report on the Development of the Social Situation in the Community in 1972, Brussels-Luxembourg, February 1973.

European Commission (1974a), Education in the European Community, COM (74) 253 final, 14 March 1974.

European Commission (1974b), Report on the Development of the Social Situation in the Community in 1973, Brussels-Luxembourg, 1974.

European Commission (1975), Report on the Development of the Social Situation in the Community in 1974, Brussels-Luxembourg, 1975.

European Commission (1978a), Admission to Institutions of Higher Education of Students from other Member-States, COM (78) 468 final, 22 September 1978.

European Commission (1978b), Education Action Programme at Community Level: A European Community Scholarships Scheme for Students, COM (78) 469 final, 22 September 1978.

European Commission (1978c), Report on the Development of the Social Situation in the Communities in 1977, Brussels-Luxembourg, April 1978.

European Commission (1979), Report on the Development of the Social Situation in the European Community in 1978, Brussels-Luxembourg, April 1979.

European Commission (1980), Report on Social Developments – Year 1979, Brussels-Luxembourg, April 1980.

European Commission (1981), Academic Recognition of Diplomas and Periods of Study, COM (81) 186 final, 29 April 1981.

European Commission (1983), Draft Council Recommendation concerning the Adoption of a European Emergency Health Card, Brussels 16 December 1983, COM (83) 750 final.

European Commission (1984), A People's Europe-Implementing the Conclusions of the Fontainebleau European Council, COM (84) 446 final, 24 September 1984.

European Commission (1985a), Proposal for a Council Decision Adopting Erasmus: The European Community Scheme for the Mobility of University Students – Submitted by the Commission to the Council, COM (85) 756 final, 20 December 1985.

European Commission (1985b), Report on Social Developments – Year 1985, Brussels-Luxembourg, April 1986.

European Commission (1986), Communication from the Commission to the Council – Problems of Social Security, Areas of Common Interest, Brussels 24 July 1986, COM (86) 410 final.

European Commission (1987), Erasmus – An Investment in the Future of the Community, Social Europe, 3/87, Directorate General for Employment Social Affairs and Education, 34-37.

European Commission (1988), Erasmus Programme – Annual Report 1987, COM (88) 192 final, 15 April 1988.

European Commission (1990b), Communication from the Commission on the Living and Working Conditions of Community Citizens Resident in Frontier Regions with Special Reference to Frontier Workers, Brussels 27 November 1990, COM (90) 561 final.

European Commission (1992), Social Security for Persons Moving within the Community, Directorate-General for Employment, Industrial Relations and Social Affairs, 3/92, ISSN 0255-0776.

European Commission (1994), European Social Policy – A Way Forward for the Union, Brussels 27 July 1994, COM (94) 333 final.

European Commission (1996), European Health Cards – Information Paper, Brussels 31 October 1996, SEC (96) 1959.

European Commission (2000b), Proposal for a Decision of the European Parliament and of the Council Adopting a Programme of Community Action in the Field of Public Health (2001-2006), Brussels 16 May 2000, COM (2000) 285 final.

European Commission (2001a), The Internal Market and Health Services – Report of the High Level Committee on Health, 17 December 2001.

European Commission (2003a), Implementation of the 'Education and Training 2010' Programme, Brussels 11 November 2003, SEC (2003) 1250.

European Commission (2003b), Report on the Application of Internal Market Rules to Health Services – Implementation by the Member States of the Court's Jurisprudence, Brussels 28 July 2003, SEC (2003) 900.

European Commission (2003c), Health Telematics Working Group of the High Level Committee on Health: Final Report, April 2003.

European Commission (2004b), Communication from the Commission: Follow-up to the High Level Reflection Process on Patient Mobility and Healthcare Developments in the European Union, COM (2004) 301 final.

European Commission (2004c), Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: E-Health-Making Healthcare Better for European Citizens: An Action Plan for a European E-Health Area, COM (2004) 356 final.

European Commission (2008a), Report on the Work of the High Level Group in 2008, HLG/2008/5 final, 13/10/2008.

European Commission (2008b), Proposal for a Directive of the European Parliament and of the Council on the Application of Patient's Rights in Cross-Border Healthcare, COM (2008) 414 final.

European Court of Justice

European Court of Justice (1985) *Gravier v City of Liège*, Case C-293/83.

European Court of Justice (1988) *Vincent Blaizot v University of Liège and others*, Case 24/86.

European Court of Justice (1989) *Commission of the European Communities v Council of the European Communities – European Community Scheme for the Mobility of University Students – Action for Annulment*, Case 242/87.

European Court of Justice (1998a), *Decker V Caisse de Maladie des Employés Privés*, Case C-120/95

European Court of Justice (1998b), Kohll V Union des Caisses de Maladie, Case C-158/96.

European Court of Justice (2001), B.S.M. Geraets-Smits and Stichting Ziekenfonds VGZ and between H.T.M. Peerbooms and Stichting CZ Groep Zorgverzekeringen, Case C-157/99.

European Parliament

European Parliament (1980a), Motion for a Resolution Tabled by Mr. Ghergo, Mr. Giavazzi, Mr. Sassano and Mr. Lima, Doc. 1-110/80.

European Parliament (1980b), Motion for a Resolution Tabled on behalf of the Socialist Group, Doc. 1-184/80.

European Parliament (1981), Report drawn on behalf of the Committee on the Environment, Public Health and Consumer Protection on a European Health Card, Rapporteur Miss. G.D. Hooper, 12 March 1981, Document 1-960/80.

European Parliament (1983), Report drawn on behalf of the Committee on the Environment, Public Health and Consumer Protection on a European Charter on the Rights of Patients, Rapporteur Mrs Marie-Jane Pruvot, 4 November 1983, Document 1-970/83.

European Parliament (1984a), Report drawn on behalf of the Committee on Youth, Culture, Education, Information and Sport on the academic recognition of diplomas and periods of study, Rapporteur Mr. O.Schwencke, 13 February 1984, Document 1-1354/83.

European Parliament (1984b), Report drawn on behalf of the Committee on the Environment, Public Health and Consumer Protection on the proposal from the Commission of the European Communities to the Council for a Draft Recommendation concerning the Adoption of a European Emergency Health Card, Rapporteur Mr. Eolo Parodi, 7 November 1984, Document 2-956/84.