

Chapter 6

How Open Can It Be? The Promise of Open Systems and Open Science Under Siege



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Introduction

During the past decades, the internationalization of higher education has been spurred by increasing openness. Countries opened their territorial and administrative borders, consequently, higher-education systems gradually opened up, allowing growing mobility of students, researchers, scientific knowledge, data, and funding, thus creating optimal conditions for universities to enlarge their resource basis in terms of both human and financial capital, to compete, to collaborate, as well as to address global challenges and to contribute to the global common or public good.

Universities are seen as core institutions of an open society, a condition and foundation for open, democratic, fair and sustainable societies, by nurturing human talent and independent knowledge creation and dissemination (EU, 2022a; Utrecht University, 2021). They increasingly subscribe to the principles of open science as a way to conduct research in open connection with society.

However, openness cannot any longer be taken for granted in the changing geo-political context. Rising geo-political tensions, security concerns, and illiberal trends jeopardize institutional autonomy, academic freedom and potentially weaken universities' ability to fulfill their role as described.

The question "*How open can it be?*" addresses the growing tensions between openness, institutional autonomy, academic freedom and (national/European) security interests and looks at how in open systems the national capacity (sovereignty) to coordinate higher education may be jeopardized.

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The European Context: Paramount Openness Challenged

Questions around openness are particularly relevant in the context of the European Union (EU), known as a strong proponent of open borders, open systems, and open science. However, it is uncertain at this point whether and how the EU will be able to sustain these principles and, in fact, to protect its higher-education sector in response to the growing tensions around as well as within the old continent and the challenges these pose to its internal cohesion. What can be the role of the EU, in relation to the Member States, and based on which competences will it be able and allowed to act?

When speaking about the EU today (summer 2022), we may wonder where it ends and where it stands. In terms of where it ends, its borders are shifting indeed. Shortly after losing the UK as a Member State over Brexit in 2020, unexpected expansion eastward was announced in June 2022, by granting the status of candidate country to Ukraine and Moldova – as well as Georgia as pending on specific priorities of the European Commission (EC) regarding its membership application – thus adding potentially three more countries to the list of five which already have such status.¹ This was a clear and extremely rapid response to Russia’s invasion of Ukraine only 4 months before.

With this new war, Europe’s borders are back. The idea of the world as a global village has already been suffering for several years, and Europe’s idea (I) of open borders – that is, opening internal borders without sufficiently protecting the external ones – has been called (and proven) naïve. Indeed, in Europe, too, we realize that borders in geographical/territorial, as well as political/ideological sense do exist and may be contested. What’s more, we see that European borders can be “bloody borders.”²

As to where the EU stands, at this point it seems to stand more united than perhaps expected in defending its values and its security. Member States were quickly united in their decisions to file economic sanctions against Russia in early March 2022, followed by a series of increasingly heavier packages since. This is remarkable for the EU, since foreign policy is not its strongest competence, mostly based on diplomacy and cooperation, but, for serious decisions, dependent on the agreement of all EU countries (EU, 2022b). Its economic competences (its mandate in trade, see below) are much stronger, and the sanctions on Russia are indeed mostly in this domain (economic sanctions, export control). As we will discuss below, these sanctions, and more broadly, the EU’s actions based on its trade mandate, are impacting higher education in Europe. In particular, they may affect institutional autonomy and academic freedom as key values and pillars for its role in a democratic

¹EU Candidate countries are: Albania, the Republic of North Macedonia, Montenegro, Serbia and Turkey. Potential candidates are: Bosnia and Herzegovina and Kosovo (EC, 2022a).

²This term was coined in Huntington (2000), referring to the clash between Islamic and non-Islamic civilizations. In the current conflict on Europe’s eastern border it could relate to Orthodox Christianity, fundamental to Russia’s history, revived after the fall of communism, as a basis of its Eurasian ideal and part of its ideological rage against the west. See also Snyder (2018).

and open society. Meanwhile, the EU is confronted with the fact that its values are externally not shared as widely as the Union may have thought, as well as with the challenge to sustain these values internally. How is it operating in this arena, with what consequences for its Member States and its higher-education sector?

Academic Values and Freedom Under Pressure

Academic freedom is a fundamental right, as laid down in Article 13 of the Charter on Fundamental Rights of the EU (CFREU): “the arts and scientific research shall be free of constraint and academic freedom shall be respected” (CFREU, 2012, Article 13). According to the Global Academic Freedom Index 2020, EU countries enjoy a relatively high level of academic freedom. However, it also shows that the EU is surrounded by countries with a somewhat or even substantially weaker level (AFI, 2020). It is more widely acknowledged that while academic freedom is fundamental to the quality of education and research, and is recognized in many official documents, it remains poorly understood, and is under attack in many places (Global Public Policy Institute, 2021). Empirical research provides evidence of the impact of illiberal trends on academic freedom, especially in countries not tightly linked to world society or liberal international order (Schofer et al., 2022). Such concerns led to the relaunch of the Magna Charta Universitatum, also in 2020. The document, initially signed in 1988 by rectors, gathered at the occasion of the nine-hundredth anniversary of Europe’s oldest university in Bologna, defines the principles of academic freedom and institutional autonomy (Observatory Magna Charta Universitatum, 2022a). At its tenth anniversary an observatory was installed to monitor the implementation of these principles, acknowledging that Europe had changed since the fall of the Berlin Wall in 1989 and the new political situation of an open territory in which national borders were less and less important (Observatory Magna Charta Universitatum, 2022b). After a widely consulted review process, the 2020 version re-states that for universities “Academic freedom is their lifeblood; open enquiry and dialogue their nourishment” (Noorda, 2021).

Research on values in the European Higher Education Area (Jungblut et al., 2020) confirms that the mean level of academic freedom has decreased across the EHEA in the last decade, especially in participating non-EU Member States, observing divergence rather than convergence with respect to key values. EUA, IAU, Scholars at Risk all report the same trend: the Old Continent faces rising populism and illiberal attitudes toward institutional autonomy and academic freedom.

That this may also be the case *within* the EU was notably demonstrated by the case of Hungary against the Central European University (CEU) and its Academy of Sciences (Krull & Brunotte, 2021). The EU responded by triggering an Article 7 disciplinary procedure against Hungary for undermining democratic rules and breaching the values referred to in Article 2 of the Treaty on the European Union. The European Parliament prompted a Recommendation in Defense of Academic Freedom, and the European Court of Justice ruled in 2020 that expelling the CEU

was incompatible with the CFREU's articles on academic freedom and the WTO GATS provisions on the free movement of services (Court of Justice of the European Union, 2020). This ruling is seen as important case law, expected to set precedent in strengthening academic protections across Europe (van der Wende, 2021).

Hence the importance of the 2020 Bonn Declaration on Freedom of Scientific Research, signed by the relevant ministers of the EU Member States (and the EU Commissioner for Innovation, Research, Culture, Education and Youth), stipulating the role and responsibility of their governments in the protection of freedom of scientific research. It underlines the importance of ethical standards and integrity and declares that academic freedom entails the right to share, disseminate and publish research results openly (Bonn Declaration on Freedom of Scientific Research, 2020).

The EU's Openness Revised

These trends are obviously not what was hoped for in 1998/99 when at first four (the Sorbonne Declaration) and consequently 29 (the Bologna Declaration) European countries engaged in the process of creating the European Higher Education Area (EHEA), followed by the initiative on the European Research Area (ERA) in 2000. Both are considerable successes, leading to the world's largest multi-country public spaces for higher education and research, including 28 EU countries (ERA) and even 49 EU and non-EU countries for the EHEA (as counted before Brexit and the suspension of Russia's membership of EHEA upon its invasion of Ukraine). The EU supports them with massive budgets of over 30 billion euros for Erasmus+ and over 90 billion for Horizon Europe for 2021 to 2027.

All of this was built on the EU's ambitions to invest in higher education, research, and innovation, and its strategy of *openness*, which had always been situated as 'a cornerstone' in its 'cooperation with the rest of the world' (EC, 2021), as illustrated in 2014 by opening up the ERASMUS+ and Horizon2020 programs to the world. The introduction of Open Science followed in 2016. Quickly after, however, the EU's openness was challenged by weakened multilateralism, resulting from the 2016 US elections and the Brexit referendum, by security threats felt from illiberal states such as China and Russia, and by what in fact seems to be a shifting globalization paradigm.

A recent study on Eurasian relations in higher education (van der Wende et al., 2020) analyzed how Western globalization was based on the paradigm of openness: open borders, open (free) trade areas, open Internet, open innovation, open access, open science. This is underpinned by the liberal values of an open society, the great promises of an open Internet for liberal democracy, as much as by the (neo-)liberal logic for economic growth, but perhaps taking the inherent values of freedom, including academic freedom, and security (personal, national, and cyber) for granted. Meanwhile, especially China's divergent value-mix was promoting an alternative globalization paradigm with preference for economic growth and security over openness and freedom (van der Wende, 2020, pp. 59–60).

The study demonstrated how the changing geo-politics, China's rise in higher education and science research, and the growing tensions between the US–China resulted in a shift in EU–China relations. After an almost 30-year period of growing dialogue, partnership and increased openness in R&D and higher-education cooperation, the EU turned away from China as its “most important strategic partner” in 2018, labelling it only 1 year later as a “systemic rival promoting alternative models of governance” (Ibid., p. 11). These changing relationships between the US, China and the EU would have their impact on higher education and research collaboration. Consequently, the China–EU study delivered the question: “How open can it be” with respect to the EU's global higher education and R&D strategies and with respect to Open Science in particular.

In response to these geopolitical changes, the EU's global strategy quickly shifted from “open to the world” to “strategic autonomy” (Council of the European Union, 2016). This concept, promoted by the then (2017) newly elected French President Emmanuel Macron, is borrowed from security and defense policy and refers to the “capacity to act autonomously when and where necessary and with partners wherever possible” (Ibid., p. 2). It became part of the EU's Global Strategy doctrine to improve its defense capabilities, including the setting up of a European Defense Fund in 2017, and central to the next European Commission led by Ursula von der Leyen, which started in 2019. This “geopolitical commission” saw the need to complement soft power (with typical instruments such as cultural and academic exchange) with a harder power dimension. It announced that collaboration should be regarded as a tool of union policy and that specific actions will be limited to Member States only if this serves the EU's strategic interests. With these and other actions, the EU actually started to reduce its openness. Strategic autonomy was widened in 2020 to include technology, research and innovation (Borrell, 2020; van der Wende, 2022; Zubaşcu, 2021) and developed even further in the aftermath of the Covid-19 crisis.

Consecutive actions were taken to erect barriers for participation in EU research projects against Chinese and US companies to avoid unwanted knowledge and technology transfer (2020). Non-EU scientists, especially from non-associated countries, were to be excluded from sensitive Horizon projects; awareness grew of foreign interference in research, funding conditions and regulation on dual-use export controls were enhanced, including internal compliance requirements for universities (EU, 2021). A toolkit to help mitigate foreign interference in research and innovation was presented (EC, 2022c).

These actions clearly put the EU's openness, including its open access and science approach, and the conditions for international cooperation of universities in a different context and perspective..³ The EU's acknowledged in 2021 (EC, 2021, p. 1) that

³It should be noted that these measures are “country agnostic” vis-a-vis third countries. Not only China and Russia but the US may also be concerned, for instance in relation to its Big Tech companies. They are thus not only meant to protect universities against foreign interference by

the openness in cooperation that characterizes EU action is taking place in a transformed global environment. Other major science powers are now spending more on science than the EU as a percentage of gross domestic product, geopolitical tensions are rising and human rights and fundamental values such as academic freedom are being challenged. [...] The EU should more assertively promote a level playing field and reciprocity to respect fundamental values and principles.

Protecting Autonomy, Freedom, and Security in the EU's Multi-Level Governance Context

Further analysis (van der Wende, 2022) indicates that the notion of a more assertive role of the EU was supported by Member States' requests for it to level the global playing field for scientific cooperation, to protect knowledge dissemination against foreign interference from countries where academic freedom, research integrity, data security, and intellectual property rights would not be at EU standards, or in cases where it may be used also for military purposes (dual use), or infringe human rights. On their side, European universities, referring to the CFREU, had urged governments and public authorities to protect their autonomy and academic freedom, against illiberal threats from within as well as from outside (ALLEA, EUA and Science Europe, 2019).

A call on the EU makes sense in relation to the CFREU as well as for its weight as a regulatory force in the global arena. But how could the EU actually respond given its rather limited competencies in higher education? Or could it perhaps use its more potent competencies in other domains? According to the Treaty on the Function of the EU (TFEU, 2012), one can identify three different levels of competences of the EU (2022b). For policy action in the field of education, the EU only has a (rather weak) *supporting* competence, meaning that the EU can only intervene to support, coordinate or complement the actions of EU member states (TFEU, art. 6). In the field of research, the EU has a (somewhat stronger) *shared* competence with the member states of the European Union. This means that the EU and the member states are both able to legislate and adopt legally binding acts (TFEU, art. 4). The EU has an *exclusive* competence in the area of 'common commercial policy' (trade policy) (TFEU, art. 3), which implies that the EU alone is able to legislate and adopt binding acts (Member States are able to do so themselves only if given the powers by the EU to implement these acts).⁴ Based on its (overall) subsidiarity principle, it could be

surveillance states, but also by threats from "surveillance capitalism", regarding data that should be safeguarded in the public domain (see UWN, van der Wende, 2022; Maex & Bakker, 2022).

⁴In addition, there are the special competencies of the EU where it can take measures to ensure that Member States coordinate their economic, social and employment policies at EU level, which include common foreign, defence, and security policy (EU, 2022a, b).

expected that it would only use its stronger competences; in case this would be more effective than action taken at national, regional or local level.

The recently enhanced EU regulation on dual-use export controls is an interesting example of how the EU is using its (strongest) exclusive trade competence,⁵ where it may affect areas where it only has (weaker) shared or supporting competences, namely in research and education, and where it could thus potentially interfere with the sovereignty of the Member States in these areas. Dual-use export control regulates the international transfer of items, including knowledge, which could serve both civilian and military purposes and was recently enhanced in the light of increased geo-political tensions.

Recent research (Stalenhoeft et al., 2022) is looking into its implications for research organizations, in particular universities and individual academics working therein, since the regulation may limit academic activity in the open dissemination of knowledge (both in teaching and research), when seen as posing security risks, and may consequently give rise to intricate tensions with the protection of academic freedom and the institutional autonomy of universities. This tension was acknowledged in the related guidance provided by the European Commission (EC, 2020):

academic freedom is a fundamental right guaranteed by the CFREU, however, not exempting researchers and research organizations from complying with regulations that are established to safeguard the security interests of the EU and of its Member States. [Here] research disciplines within Science, Technology and Engineering are more likely to be affected by dual-use export controls than academic activities in Humanities, Social Sciences and Economics.

It should be noted in this respect that in principle no freedom is unlimited or absolute. The CFREU recognizes in this regard that (CFREU, 2012, art 52.1):

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

On this basis, the Dual-Use Regulation identifies the safeguarding of international and national security as a legitimate basis for restricting academic freedom.⁶ However, and on the basis of the same article, it is important that its essence be respected, restrictions be provided by law, and the principles of proportionality and subsidiarity be taken into account when curtailing academic freedom.

Our study suggests that its impact on academic freedom would therefore depend on national implementation, since it is in the end up to their authorities to decide whether or not an export license is granted. Consequently, it will be important to see

⁵Regulation (EU) No 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (EU, 2021).

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the policies and rules adopted by the Member States concerning the practical consequences, especially in relation to institutional autonomy and academic freedom. Variation can be expected here, because countries' compliance with CFREU Art. 13, may vary. This was demonstrated before with respect to the case of Hungary. But there is wider group of countries (including Belgium, Cyprus, Poland, and the Netherlands) that were seen to be only in 'partial compliance' (Beiter et al., 2016).

To illustrate: academic freedom is as such not anchored in the Dutch Constitution, but referred to in its Higher Education and Research Act (2022) (WHW article 1.6), stating "Academic freedom is respected at higher-education institutions and teaching hospitals." Nevertheless, what should be understood as 'academic freedom' is not specified in this Act.⁷ The Royal Dutch Academy of Sciences attempted to address this lacuna in a report on academic freedom, where it was defined as "the principle that staff of academic institutions are free to perform their scientific research, disclose their findings and teach" (KNAW, 2021). Its modest aim was to provide an initial impetus for further exploration and discussion, without, however, seeking further grounding in CFREU or national legislation.

The Netherlands, known for its open economy, open higher-education system, and strong advocacy of open science, but increasingly also aware of security risks, introduced National Knowledge Security Guidelines (2022). These refer to the legal frameworks provided by the EU dual-use regulation and by international sanction regimes, as well as to national codes of good practice and research integrity. It underlines that academic freedom and institutional autonomy are guaranteed in the Dutch Higher Education and Research Act, however, and, as mentioned, without further specification or definition (Ibid., p. 41).

Similar security measures at a national level have recently been implemented in a range of other countries, including Denmark, Finland, Germany, Sweden, and the UK. In various contexts, the paradigm shift from openness to security led to concerns about university autonomy being at risk and threats to academic freedom (Myklebust, 2022a). Moreover, universities may be struggling with the related compliance requirements, which seem difficult to scope in terms of breadth, as they may also imply the obligation to exercise due diligence on possible human rights violations resulting from dual use exports (Myklebust, 2022b).⁸

Further research could shed light on how national authorities view the impact of these dual-use export-control regulations on universities in the light of the competences of the Union, on the one hand, and those of the Member States, on the other. In other words, it could explore a possible 'competence creep' in the area of education and research and look further into what has been called the EU's "competencies conundrum" (Garben, 2015), also seen as regulating universities "through the backdoor."

⁷As is also the case in the CFREU (2012, art 13).

⁸For more details, see: Stalenhoef et al. (2022).

The different types of legal provisions for protecting security, on the one hand, and academic freedom, on the other, show the complexity of the multi-level governance context of the EU. At the same time, definitions of academic freedom tend to be vague and the ways in which it is, or should be, protected may vary across Member States, while the EU does not seem to have adequate competences in the relevant areas in order to effectively protect it. Weaknesses in this protection may thus occur, in line with increasing reporting that academic values are under pressure and academics are facing threats regarding their academic freedom from both state and non-state agents. A situation also acknowledged by the European Commission (EC, 2022b).

Tensions Between Freedom and Security: A Balancing Act?

The above illustrates the challenges to openness as an enabling condition for universities to thrive in a global context, and it reveals the rising tensions between freedom and security. In a balancing act, the EU is seeking to find its way to “Open Strategic Autonomy.”⁹ On the one hand, regulating for security, while realizing that universities have to remain competitive on a worldwide scene, and, on the other, calling on Member States “to strengthen and respect university autonomy in its various dimensions and to promote and protect academic freedom and integrity.” Stressing that both “academic freedom and institutional autonomy are under pressure,” and that the former cannot be isolated from the latter (EC, 2022b, p. 3). As set out in the previous sections, academic freedom is a fundamental right and a core principle of the EU and as such is anchored in the CFREU; however, it is not directly supported by sufficient legal competencies at the EU level to actually protect it. It is therefore no surprise that the EC calls on the Member States in these matters.

The politicized nature of this balancing act and the complexity of the EU’s multi-level governance context were further demonstrated upon the EU’s *economic* sanctions on Russia’s upon its invasion of Ukraine. The EU Commissioner responsible for research named it a threat to open research, stressing that: “European research and innovation programmes have a tradition of openness, but geopolitical changes put this at risk” and immediately banned Russia and Belarus from EU-funded research projects (O’Malley, 2022). This was quickly followed by a majority of Member States which included science and technology in their list of *economic* sanctions on Russia and consequently expected (or instructed) their universities to suspend collaboration with Russian universities. But despite the seemingly

⁹The question mark in the headline refers to the debate on whether the tension between security and academic freedom should be considered as a balancing act at all. Various authors (e.g., Furedi, 2016, Chap. 9, and Fukuyama, 2022b) point in this respect to the threats to academic freedom coming from within (e.g., academic capitalism, postmodernism, illiberalism, intolerance for different views, cancel culture, woke, etc).

overwhelming consensus behind these decisions, questions were raised whether this was not questionable from an academic freedom and institutional autonomy perspective.

Notably the Secretary General of the League of European Research Universities (LERU) challenged the EU's capacity in this respect and commented¹⁰:

The EU does not have a legal basis to protect universities against governments which violate the basic rules on academic freedom and institutional autonomy. The European Court of Justice had to use the General Agreement on Trade in Services of the World Trade Organisation to act against Hungary because it had no other mechanism in place to punish the Hungarian government for forcing the Central European University to move from Budapest to Vienna. [...] Let's clean up the situation in the EU first before preaching to the rest of the world."

Whether, and under which circumstances, the EU, or even national governments, actually have the authority to command their universities to cut such ties (as with in this case Russian partners) is a discussion that also arose in various national rectors' conferences, as it is seen to interfere with institutional autonomy.

The Dutch universities eventually agreed with the formulation that they decided to freeze ties "[a]t the request of the government [...] while keeping opportunities open for peer-to-peer collaboration when appropriate," thus upholding the principles of institutional autonomy and academic freedom (Universities of the Netherlands, 2022a).¹¹ Such careful consideration is not only legal in nature, but also in line with the first principle of the Magna Charta Universitatum (2022a), which states that "research and teaching must be intellectually and morally independent of all political influence and economic interests".

The case demonstrates how the EU is indeed using its exclusive trade mandate while attempting to balance freedom and security. The case also reveals how such measures can jeopardize our own fundamental principles and values. The risk of insufficiently respecting and protecting European values by taking measures that would infringe institutional autonomy and academic freedom and for which we criticize countries such as China, also emerged from the China–EU study referred to above. We are shooting ourselves in the foot and thus the call "to clean up the situation in the EU first before preaching to the rest of the world" seems justified. However, this requires action not only at the European or national levels; universities should also be aware of the risk that compliance with new security regulations may affect their integrity and the rights, wellbeing, and safety of their own academics (and other employees) and students. Compliance protocols should be in line with good governance, thus balanced with the rights of all parties involved, and accompanied by moral compass and counsel. Over-compliance and consequent risk avoidance for sensitive research areas or self-censorship should be eschewed.

¹⁰LERU's Secretary General, Kurt de Ketelaere (March 2022) quoted in Zubaşcu (2022).

¹¹This was after a letter was published by the Russian Union of Rectors backing the Kremlin's official line on Ukraine, which was a turning point also for other rectors conferences in Europe, as well as the EUA (Universities of the Netherlands, 2022a).

Protecting Values in a Free Trade Context: GATS Back on Stage?

Further research in this area will be undertaken, guided by the question: How can the university, its institutional autonomy and associated duty to protect academic freedom, be upheld and enhanced in a world in which openness is being challenged and the core values of an open society are under siege?¹²

More specifically, its legal-policy dimension will focus on what role and responsibilities institutions at various levels of governance in the EU (European Commission, Council, Member States) have in this respect and how these are divided and coordinated. Is the EU sufficiently equipped to protect the university, its institutional autonomy, and in particular academic freedom as it is enshrined in the CFREU (2012, article 13), against both internal and external threats?

As discussed above, the ECJ ruling on the case of the Hungarian government against the CEU was partly based on this article and is considered important case law, which is hoped to strengthen academic protections across Europe. It is certainly relevant in this respect, but it was also based on WTO trade law, and this may thus bring GATS back on the higher-education stage at the same time. We already heard about GATS in higher education around 2000, when the US proposed bringing higher education as a tradable service under GATS (to be negotiated under the Doha Round). This idea was strongly rejected, especially in Europe, where higher education was not seen a tradable service, but as a public good (van Vught et al., 2002; Vlk et al., 2008). Yet we now see the trade context for higher education coming back, after all, for ruling against foreign infringement, in export control, as part of economic sanctions, and – who knows – for a post-Brexit agreement in higher education between the UK and the EU. It would fit the EU’s “Open Strategic Autonomy” concept by which it aims to advance EU values through EU trade agreements and internal regulations (and reform the WTO). But how will it be received by the European higher-education sector this time around?

Openness Challenged from Within

The trends discussed in the previous sections, mainly concerned pressure on the EU’s openness as coming from outside, and how this is urging the EU to stand together more than perhaps expected beforehand. However, external factors are not the only threat to open systems and open borders. The EU’s openness is also being challenged from within.

¹²Research on “*Openness Challenged: The University at Risk?*” will be undertaken as part of Utrecht University’s strategic research theme “*Institutions for Open Societies*” and will also include a historical and educational dimension (Institutions of Open Societies, 2022).

Open borders and students' rights as EU citizens to study in any *EU country* under the same conditions as nationals of that *country* have greatly supported internationalization in terms of the much-desired student exchange (or short-term credit mobility). However, it has also generated, upon the implementation of the Bologna Process, increasingly uneven flows of degree students, which may represent a burden for especially small and mostly publicly funded higher-education systems.

I have theorized these challenges for open higher-education systems by combining Ansell's (2010) higher-education trilemma (cost, quality, and access) with Rodrik's (2017) globalization trilemma (globalization, democracy, and national sovereignty), illustrating the consequent challenges for effectively steering open higher-education systems, with potentially the fueling of neo-nationalism and anti-internationalization trends (van der Wende, 2021, 2022; see also Bovens, 2020, p. 11).

Based on insights from system theory, it postulates that when (social) systems are positioned openly to their (global) environment, internal conditions may be affected by the flows across the system's boundaries. If there is a need to achieve or maintain a desirable condition (balance) within the system, it is necessary to control or manage the flows across its boundaries. In maintaining an equilibrium in a higher-education system, governments face the well-known trilemma of balancing access, cost, and quality. In open higher-education systems, governments also face the "globalization trilemma," balancing national sovereignty, (hyper) globalization, and democracy. In an open higher-education system, these two trilemmas thus interact, implying that achieving or maintaining an equilibrium is a complex task, because the national steering capacity (sovereignty), needed to balance access with the costs and quality of higher education, is being reduced.

This is especially the case in the EU, where students' rights (free mobility) are not necessarily in line with the legal instruments of national or regional authorities, or higher-education institutions, to regulate the consequent cross-border flows. This makes especially open systems in smaller countries with attractive, i.e., high-quality, affordable, and internationalized higher-education provisions vulnerable to anti-internationalization and neo-nationalist trends. Such trends can be found in Austria, Belgium, Denmark, and the Netherlands, and were also part of the turn away from the EU context by the UK and Switzerland.¹³

Ministers are then caught between national goals for economic growth requiring highly skilled immigrants for R&D performance and other labor-market demands, on the one hand, and pressures from nationalist-populist parties, emphasizing national identity, cultural traditions and the national language, on the other. In such polarization, universities in turn can become easy targets of populist critique on internationalization as "elitist cosmopolitanism" and other anti-globalization discourse promoting higher education as a welfare state arrangement "for our own

¹³Not an EU or EEA member, but previously connected to EU programs such as ERASMUS and Horizon.

citizens first.” A kind of discourse that may also find buy-in from within universities among both students and academics.

In the Netherlands, this situation has become problematic: data for 2021/22 show that almost a quarter of all higher-education students and even 40% of freshmen in research universities are internationals (CBS, 2022). Especially the total number of international students from Europe has surged in recent years (to 76% of all internationals in 2021/22). This is likely in part a post-Brexit effect, although the number of German students (the largest group) remained mostly stable around 25,000 for more than a decade. EU students pay fees equal to those for domestic students and thus require an equal amount of governmental funding.¹⁴ The overall higher-education budget has been increased but did not keep pace with the actual growth in enrolment, and thus the per capita funding has decreased by some 20% over the last two decades (Universities of the Netherlands, 2022b). Consequently, quality is at stake.

This case clearly demonstrates how the internal equilibrium can become disturbed in an open system. Despite various calls for more control and pressure from across the political spectrum (legislative proposals to make Education in Dutch compulsory gained a majority in Parliament), both the government and the universities failed so far to find sustainable solutions.¹⁵ Reluctance to further regulate admissions, which would affect Dutch as much as any other EU applicant, or to reduce teaching in English (about one third of bachelor and three quarters of master programs are taught in English at Dutch research universities (Nuffic, 2022), result in continued and uncontrollable growth of universities – some of them, as it seems, unwillingly attaining sizes of over 40,000 to 50,000 students, far beyond their capacity to keep teaching quality and research performance in balance, with mounting complaints about work pressure as a consequence. With this, not only the system is out of control, a number of Dutch leading research universities are as well.

Besides opposing political stances, the public debate around these problems seems to be suffering from confusion regarding the costs and benefits of international students. One criticism is that the aspiration that universities would attract international students for income collapses, given the negative trend in per capita funding sketched above. Even those (non-EU) who pay full fees can hardly be seen as cash cows, considering the substantive costs of developing and running bilingual programs and campuses, or even switching completely to English, with consequences for also all administrative staff, administrative processes, and campus arrangements. This in contrast with English-speaking countries where international students can be enrolled on a marginal cost basis. Economic arguments concerning their contribution to the Dutch economy need to be refined with respect to fields of study; demand for STEM graduates is more substantial than for those from SSH fields. Specification of numbers relevant for undergraduate and graduate levels are

¹⁴Annual fee for EU students was 2143€ p.a. in 2021, governmental funding per student around 15,000€ for the same year. Non EU/EEA students pay in principle full fees.

¹⁵They were halted by Senate and withdrawn by a new Minister after elections in 2021.

often lacking. This situation is unhelpful given the Dutch political context where anti-immigration, nationalist and anti-EU discourse is never far away, not only at the national level, but also locally where shortages in student housing are worsened by the strong influx of international students. This is an argument easily used against them by certain student parties.

Our theory demonstrated why restoring equilibrium in an open system is complex, but this is not an excuse for ignoring or neglecting the consequences of uncontrolled growth when quality, work pressure, and the role of universities in their society is at stake. At the same time, the benefits of an open system and internationalization are essential for the sector (around 40% of its faculty is international, with peaks between 50–70% at the PhD level in STEM) and proper to the history and character of the country and should be cherished. Hence, the government and institutions should face the situation as a shared responsibility to adjust the conditions for admission and student enrolment to the characteristics of an open system.

These problems may also occur in other small and open systems, as was recently reported from Norway (not an EU but EEA country, where students basically enjoy the same rights as in the EU). Here, too, the question whether universities can have too much internationalization is on the table, although the situation is less unbalanced than in the Netherlands. The University of Oslo thus reported some 15% international students, and the in- and outgoing flows of students seem to be more balanced. Nevertheless, internationalization at Norwegian universities is seen as to have reached a tipping point, and here, too, the argument of protecting the national language against the influx of English as the lingua franca tends to add fuel to an already heated debate. It focuses on tension between the university as a central institution in the nation state and the inherently international character of its main functions. Especially when international professors are in the majority, academia's role in serving society and contributing to democracy would be jeopardized (Gornitzka and Stolen, 2021). This brings us back to the beginning of our chapter: universities as core institutions of an open and democratic society. Does openness put that role at risk?

From an EU perspective, the social role of universities and the notion of citizenship are not bound to national borders (EC, 2022b, p. 1, 10):

Excellent and inclusive universities are a condition and foundation for open, democratic, fair and sustainable societies as well as sustained growth, entrepreneurship and employment. [...] Universities are key to promote active citizenship, tolerance, equality and diversity, openness and critical thinking for more social cohesion and social trust, and thus protect European democracies. Universities have an active role to play in preparing graduates to be well-informed European citizens. By teaching and awareness raising actions, they support anchoring European values in society.

The question is precisely what values are meant here, since “European values” vary across countries, communities, and generations within the EU (Atlas of European Values, 2022). Given the current divergence and tensions, open borders could therefore both contribute to as well as challenge this aim. At the same time, the overall context should be clear: “Europe needs thriving universities to contribute

implementing the European Union political agenda, as they cut across many different key initiatives taken recently for recovery and resilience” (Ibid., p. 1).

It can be said that internal differences or tensions between a national and European levels and roles are part and parcel of the European project, which is based on democratic values after all (despite the democratic deficits seen in the functioning of the Union itself). Yet beyond that, universities are also expected to address global challenges and to contribute to the global common or public good. Tensions seem to be on the rise there as well. Especially their ambitions for global reputation have been criticized for “jeopardizing universities’ national mission and relevancy in the societies that give them life and purpose” (Douglass, 2016). Others have called them “footloose cosmopolitan academic jet sets” (Bovens, 2016).

Universities seem torn between two lovers: the nation state as the main provider of legitimacy and resources, on the one hand, and the open European and wider international space for additional opportunity and relevance, on the other. An open system ideally combines these two, but as this chapter has illustrated, maintaining with openness also their internal equilibrium – and thus the legitimacy of their universities as providers of public good – requires a careful and complex balancing act. The fragility of open systems cannot be denied in this respect, especially in a changing global context in which liberalism and democracy have not been embraced as widely as once expected by the West. Or when in fact liberal democracy is in decline and the core values of an open society are increasingly under siege.

We shall see whether and how open systems will stand, with the EU as their particular testing bed. Will it be more EU, a return of the nation state, or should the “logic” of open systems be revised? (See further, van der Wende, 2022, pp. 35–36). With a view to the complexity of the combined trilemmas, the globalization trilemma in particular as it entails the risk of reducing national sovereignty, as a condition to control internal redistribution of higher education as a welfare-state arrangement (Ibid, p. 25).

That could meet Fukuyama’s (2022a) turn to the argument that the national state is inescapable with respect to the social contract with its people whose liberal rights, even though they may be universal, are meaningless if they cannot be enforced by a state. And thus, that liberalism needs the nation, after all.¹⁶ He acknowledges the tension between national identity and liberal universalism and holds that a liberal state is perfectly justified in granting different levels of rights to citizens and non-citizens, because it does not have the resources or the legal powers to protect rights universally.

We noted the complexity of this principle in the EU context, where such differentiation is basically not allowed and levelling the rights of EU students becomes a daunting task if this implies the weakening of domestic privileges. Fukuyama (2022b) sees the EU, which was created as an antidote to the nationalism

¹⁶A turn to liberal nationalism also emerges in recent work by Nussbaum (2019), seeking a middle way between the nation state as a practical site for realizing cosmopolitan goals and the largest unit to play a fundamental moral role for human autonomy.

that led to twentieth-century world conflicts, in that respect as a success beyond all hopes. However, acknowledging that liberalism may be at a crossroads with Russia's invasion in Ukraine. This war is a clear sign that the post-WWII global liberal order, with which the rise and success of open systems was strongly intertwined, has become fragile. Illiberal trends affect higher education, possibly driving it into more nationalist or instrumentalist directions (Schofer et al., 2022). The debate on the role of the nation state has been re-opened. The EU is at the test for protecting the values of open systems.

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