

STATEMENT BY THE BFUG DELEGATIONS OF FINLAND, GERMANY, ICELAND, NETHERLANDS, NORWAY, UNITED KINGDOM and UNITED KINGDOM/SCOTLAND

26/11/2021

Following the statement by the delegation of the Holy See, distributed to the BFUG on 23 November, we wish to state that we have a somewhat different interpretation of the situation with regard to Co-Chairing arrangements outlined by the Holy See delegation.

The EHEA is built around, and strives to achieve, consensus and unanimity. This is, however, not always possible. Therefore, the Rules of Procedure adopted by the BFUG at its meeting in April 2021 specifies that “In exceptional circumstances the BFUG may decide to take a decision through vote” (p. 8 Functioning of the BFUG meetings). Providing for decisions to be made by voting in exceptional circumstances is also in line with previous practice. Notably, the BFUG held a vote at its meeting in Riga in March 2015 to decide whether Belarus should be invited to acceded to the EHEA. Not providing for decisions to be made by voting, and therefore requiring unanimity for every decision, would imply running the risk of the BFUG being unable to make decisions on important issues where issue cannot be resolved through consensus.

We consider that deciding on and modifying the order of Co-Chairmanships is not a decision which requires ministerial approval but is clearly within the competence of the BFUG. Contrary to questions of membership of the EHEA, which are the competence of Ministers, the arrangements for co-chairing are for the BFUG to decide.

This is borne out by the following elements:

- The only reference to the current arrangements for co-chairing in Ministerial Communiqués, is the 2009 Leuven/Louvain-la-Neuve Communiqué which stipulates that the BFUG be co-chaired by “the country holding the EU presidency and a non-EU country” without stipulating how the non-EU Co-Chair should be identified.
- The decision by the BFUG at its meeting in Stockholm on 28 – 29 September 2009, where the BFUG decided that the order of non-EU Chairmanships be by alphabetical order but also stated that after the 2012 Bucharest Ministerial conference, adjustments could be made to this arrangement.
- The acceptance by the BFUG of four modifications of the order of non-EU Co-Chairmanship. In the 2012 – 15 period, the Holy See requested a modification that would enable it to co-chair with Italy. This modification would have meant that Iceland would have had to co-chair the BFUG at the same time that it would chair the Nordic Council of Ministers, and a further modification was made to avoid this coincidence of Chairmanships. In the 2018 – 20 work program, the United Kingdom was included, in the course of the period, as a non-EU Co-Chair as a consequence of

Brexit. It was also decided that Albania would not co-chair the BFUG during the 2021 – 24 period because, as host of the 2024 Ministerial conference, it will be Vice-Chair of the BFUG and provide the Secretariat.

- The order of Co-Chairmanships was decided by the BFUG at its meeting in April 2021, under item 6 Rules of Procedure.
- As underlined in the background document for this item, as there is no provision in the Rules of Procedure for a qualified majority – and much less a requirement for unanimity - for proposals to establish or modify the order of Co-Chairmanships, the decision is to be made by simple majority.

Through the decisions and precedents outlined above and presented in greater detail in the Appendix, with references to the relevant Ministerial Communiqué and BFUG decisions, the competence of the BFUG to decide on and modify co-chairing arrangements is clearly established. While the competence to admit new EHEA members clearly lies with the Ministers, the one reference to the present co-chairing arrangements in Ministerial communiqués (Leuven/Louvain-la-Neuve 2009) as well as the lack of any reference to Ministers acting on the advice offered by the BFUG on these arrangements at its meeting in Stockholm in September 2009 in subsequent communiqués, including the 2010 Budapest/Vienna Declaration, clearly indicate that establishing and modifying the order of non-EU Co-Chairs falls within the competence of the BFUG.

It should be recalled that for the current work period, the order of Co-Chairmanships was decided by the BFUG at its meeting in April 2021, under item 6 Rules of Procedure. The proposal to suspend the Co-Chairmanship of Belarus is therefore a proposal that the BFUG modify its own decision of April 2021. We would find it incoherent to argue that while the BFUG may decide on the order of Co-Chairmanships for a given period, it may not subsequently modify its own decision.

In the four cases in which the order of Co-Chairmanships has so far been modified, there was broad agreement within the BFUG, even though we see that Iceland had objections to the modification originally proposed for the 2012 – 15 work period and that these concerns were met through a further modification.

The BFUG could therefore make the pertinent decisions without taking a vote. This does, however, not mean the BFUG would be unable to decide on a modification of the order of Co-Chairmanships by a vote if consensus were to be impossible. It must clearly be within the competence of the BFUG to decide on issues that falls within its competence by voting if unanimity is cannot be achieved. As underlined in the background document for this item, as there is no provision for a qualified majority for proposals to establish or modify the order of Co-Chairmanships, the decision is to be made by simple majority.

Beyond the formal arguments, we would, however, also underline that it would be highly unreasonable and detrimental for the BFUG to put itself in a position where it could not react to and decide on urgent issues. The forthcoming Co-Chairmanship of Belarus is such an urgent issue because if the Co-Chairmanship of Belarus is upheld, Belarus will become of member of the Board as of January 2022. The issue therefore needs to be decided in

December 2021. If consensus cannot be achieved, this is an “exceptional issue” for which the Rules of Procedure foresee that a vote may be taken.

This is a case in which the BFUG not only *can* but *should* take measures that fall within its competence. Contrary to questions of membership of the EHEA, which are the competence of Ministers, the arrangements for co-chairing are for the BFUG to decide. This is not an issue of “enforcing decisions against a minority” but of enabling the BFUG to protect the integrity of the EHEA by a vote of a majority of its members.

APPENDIX

OUTLINE OF RELEVANT BFUG DECISIONS

Co-Chairing in Ministerial Communiqués

The current arrangement for Co-Chairing emanates from the 2009 Leuven/Louvain Communiqué, which stipulates (para. 24):

The present organisational structure of the Bologna Process, characterised by the cooperation between governments, the academic community with its representative organisations, and other stakeholders, is endorsed as being fit for purpose. In the future, the Bologna Process will be co-chaired by the country holding the EU presidency and a non-EU country.

While the Communiqué stipulates that one Co-Chair be the country holding the EU presidency, it stipulates that the other Co-Chair be simply “a non-EU country” without stipulating how this country will be identified.

BFUG considerations of Co-Chairing arrangements

Establishing the arrangements

Since the Ministerial Communiqué did not prescribe further arrangements for identification of the non-EU Co-Chair, this was left to the BFUG. The first meeting of the BFUG after the Leuven/Louvain-la-Neuve conference was held in Stockholm on 28 – 29 September 2009. Under item 5.2 Co-Chairing of the Bologna Process, the meeting report records:

In line with the majority of the answers to the questionnaire to BFUG members on the co-chairing of the Bologna Process, the BFUG agreed on the following advice to be given to the Ministers on the co-chairing arrangement for the Bologna Process:

- *Both Chairs will act on equal footing*
- *For the Chairs from the non-EU countries the alphabetical order will be followed, starting with Albania from 1 July 2010 onwards.*
- *The representation of the EU troika + 3 elected countries will be replaced by the two troikas of current, incoming and outgoing EU and non-EU Chairs.*

The following order of countries will be established until the Ministerial meeting of Bucharest in 2012, after which adjustments (e.g. if a non-EU country joins the EU in the meantime) can be made to the arrangement, if necessary. [This is followed by an overview of Co-Chairs for the period 2010 – 12; the Co-Chairing arrangements took effect as of 1 July 2010]

Two observations should be made in relation to this decision:

- While the BFUG “agreed on the following advice to be given to the Ministers on the co-chairing arrangement for the Bologna Process”, no further reference to the co-chairing arrangements can be found in the 2010 Budapest-Vienna Declaration (adopted by the Ministerial conference to which the BFUG’s advice was directed) nor in any subsequent Communiqué. It must therefore be assumed that Ministers were satisfied that the practical Co-Chairing arrangements are within the competence of the BFUG to decide, within the limits of the Leuven/Louvain-la-Neuve Communiqué.
- The decision establishes that non-EU Co-Chairmanships be by alphabetical order. However, the decision also stipulates that after the 2012 Ministerial Conference, adjustments may be made to this arrangement. The case of a non-EU country joining the EU is mentioned as an example of a situation in which adjustments would be required, but this is explicitly mentioned as an example (“e.g.”). By definition, an example does not constitute an exhaustive list, and the BFUG therefore considered that other reasons could also lead to reconsidering the co-chairing arrangements.

The first adjustments

The first adjustments to the Co-Chairing arrangements were made already in the 2012 – 15 work period, when the Holy See asked for a modification to enable it to co-chair with Italy. This modification would, however, have implied that Iceland would co-chair the BFUG while simultaneously chairing the Nordic Council of Ministers, which would have been a demanding task. A further change was therefore made, so that the order of Co-Chairs was changed also between Iceland and Kazakhstan.

The report of the BFUG meeting held in Copenhagen on 19 – 20 March 2012 records that:

The BFUG Secretariat informed the audience on a request from the Holy See to change the BFUG chairing order, so that they chair together with Italy in the first semester of 2013 and Greece with Iceland in the second semester. All four concerned EHEA members have agreed to this solution. The proposal was accepted by the BFUG and the co-chairing order will be changed accordingly on the EHEA website.

Rather than a BFUG decision, the report stipulates that the BFUG Secretariat “informed the audience”; the information was presented under Any other business, an item under which no decisions are normally made, and there does not seem to have been a document for this issue.

There was, however, a decision at the subsequent meeting of the BFUG, in Nicosia on 28 – 29 August 2012, which was the first meeting of the BFUG after the Bucharest Ministerial Conference and therefore in the 2012 – 15 work program. Under (part of) item 4, the report records that:

The Head of the Bologna Secretariat introduced the main revisions made in “the Information on the Bologna Follow-up Group (BFUG) Proceedings” document, which was approved in 2011 in Gödöllő. In the chapter of the document describing the functions of the BFUG meeting (page 6, line 232), the new chairing order proposed during the BFUG Copenhagen II meeting was presented. In this context, the representative of Iceland underlined that they had agreed to that change informally, but the final confirmation had not been received yet. They also informed the BFUG that Iceland would be chairing the Nordic Council of Ministers

during the entire year of 2014. Taking into account the small staff working for higher education, Iceland requested the BFUG Secretariat to investigate the possibility of arranging its Chairmanship during another period.

Subsequent modifications

In other words, the BFUG accepted it has the competence to decide on and modify co-chairing arrangements. This was confirmed in two further cases in the 2018 – 20 work period, when first the United Kingdom – as a consequence of Brexit – was accepted as a non-EU Co-Chair in autumn 2020 and it was then decided that Albania – as host of the 2024 Ministerial conference and therefore Vice-Chair throughout the 2021 – 24 work program – would not simultaneously co-chair the BFUG during part of this period. The minutes of the Kyiv BFUG (4 – 5 March 2020) record that:

The request from Germany in regard to its Autumn 2020 BFUG Co-chairmanship with the United Kingdom was approved via electronic consultation and they are now incoming Co-chairs. The BFUG should discuss the procedures to follow in the case of an EU country wanting to host the BFUG Secretariat and Ministerial Conference during the period it also holds the Presidency of the Council of the EU.

The “request from Germany” refers to an issue raised under Any other business at the preceding BFUG meeting, held in Helsinki on 12 – 13 November 2019:

Germany asked the BFUG to address the issue of co-chairing arrangements of the BFUG after the Rome Ministerial conference starting in the 2nd semester of 2020. Depending on the fate of the Brexit, Germany would co-chair with Albania or with the UK. Considering the need to clarify and start work for their semester, Germany asked the BFUG to approve their request to co-chair with the UK. The BFUG decided that the decision of the next co-chairs will be taken according to the written procedure and the decision should be made after electronic consultations. In addition, the question was raised how to deal with the situation that would develop if a country applying to host the 2023 Ministerial Conference will have a Co-Chairing responsibility during the same period. This question needs to be revisited in the next BFUG meetings.

Excerpt of the report of the BFUG meeting held in Riga on 24 – 25 March 2015, item 8 BFUG opinions on the applications to the EHEA accession (*sic*)

With regard to the EHEA accession application of Belarus, Mr. Sjur Bergan (CoE) reminded the BFUG that the country is a party to the European Cultural Convention thus fulfilling the first criterion for the EHEA membership. Therefore, the BFUG needed to consider the second criterion, i.e. the extent to which Belarus complies or intends to comply with values, goals and key policies of the EHEA. The analysis of the Belarusian application for the EHEA accession prepared by the ad-hoc committee was based on the application of the country as well as the alternative report submitted by the Belarusian Independent Bologna Committee.

Afterwards, the BFUG was informed about the visit, organised by the CoE, by members of the BFUG to Minsk on 3-4 March 2015. The visit comprised a seminar on the EHEA for the members of the Belarusian academic community on 3 March and a series of meetings on 4 March. The BFUG delegation was composed of the representatives from the Bologna Secretariat, CoE, EC, ESU, Germany, the Holy See, Latvia and Poland. Initially it was planned that the EI would also participate in the meeting, however the EI representative was unable to participate in the end.

The findings of the visit including the prospects and consequences of the decision on the application by Belarus are available in the report presented by the CoE inserted below:



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Report_Visit by the B

The Chair, Ms. Una Strand Viðarsdóttir (Iceland) suggested that the best way to take the discussion on the EHEA accession of Belarus forward was to work in relation to the document "BFUG_LV_IS_45_8c_Belarus-options paper for the BFUG". The option paper draws on 1) documents submitted (official Belarus application and the alternative report by the Belarusian Independent Bologna Committee, submitted to the BFUG Secretariat on 10 December 2014), 2) evaluations of the ad-hoc committee, 3) findings of the mission to Minsk.

Moreover, this document presents 3 options (these options were agreed by the BFUG during its meeting on 26-27 January 2015 in Riga) for the EHEA accession of Belarus to be considered by the BFUG, which are as follows:

1. Rejection of the application
2. Membership
3. Conditional access, which could take one of the two forms. Either:
 - a) Commitment to future accession: Permitting access at a future date on condition of the completion of the key reforms set out in the roadmap. In the meantime, Belarus would be invited to participate in all appropriate peer learning activities and to observe the proceedings of the BFUG.
 - b) Accession now, accompanied by a commitment by the Belarusian authorities to agreeing the roadmap with the BFUG and implementing it over the next three years.

The deliberations that followed revealed that none of the BFUG members were for the options 1 and 2. Therefore it was agreed to organise a secret ballot for the eligible 47 EHEA member countries and the EC in order to identify whether the BFUG would recommend option 3a or 3b to the EHEA Ministers.

Moreover, it was stressed that the BFUG was informed that at this very meeting the BFUG would make its recommendation to the EHEA Ministers concerning the EHEA accession application of Belarus, however no information was received from the countries absent regarding their position on this issue.

Furthermore, the BFUG was reminded that each member country and the EC would have two votes and two ballot slips would be provided for this purpose. The outcome will be based on a simple majority of the number of votes cast.

Thus, after the voting, the Chair, Ms. Una Strand Viðarsdóttir (Iceland), announced that 76 ballot papers were distributed and 73 votes were received. For the option 3a 27 votes were received while for the option 3b 46 votes were received. Thus, based on the results of the voting the BFUG would recommend option 3b to the EHEA Ministers. Moreover, no discussion would follow the result of the voting.

(Bold in the original)