

**European Educational Policy
related to Academic Mobility**

Walter Demmelhuber

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For my family

M^a Carmen
M.Q.A.Y.M.Q.M

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Preface

Being of German nationality I discovered soon enough during my academic education of European Studies at the University of Essex, Great Britain, that political and social integration of European citizens often ends when money is to be spent by governmental institutions for non-economic purposes. Having been turned down for maintenance support both by the German and the British government on the grounds that in both countries neither incoming nor outgoing students of another EU-Member State who study on a full-time basis are entitled for grants I started my research and lobbying on this issue.

After seeking information from British and German officials, complaints to the European Commission and the European Parliament, and the study of cases brought to the European Court of Justice, I discovered that the present interpretation of national and community law cannot eliminate the problem if there exists no political will to improve the *status quo* of not supporting incoming or outgoing European students. The Commission recognised this problem by recommending the elimination of the principle of territory in relation to state maintenance support for students in its recently published Green Book 'Obstacles to border-crossing Mobility' and Recommendation 'Mobility within the Community for Students, Persons undergoing Training, Volunteers, Teachers and Trainers'.

I hope to contribute to the political debate with my research since there still exists a severe lack of literature and information on this issue and I wish that future European students might get the support which is so much needed to create mutual understanding of the people of Europe. I would also like to take the opportunity to say 'thank you' to all who supported me in my quest for relevant material and information:

To Prof. Dr. Klaus Busch, my supervisor at the University of Osnabrück, Germany, who saw the importance of further research into this subject and supported me during my doctoral studies.

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15th March, 2003

Walter Demmelhuber

Abbreviations

BAföG	Bundesausbildungsförderungsgesetz (Federal Law on Student Finance)
CCC	Conseil de la Coopération Culturelle Council of Cultural Cooperation
CEDEFOP	Centre Européen pour le développement de la formation professionnelle (European Centre for the development of the Professional Training)
CEEPUS	Central European Exchange Programme for University Studies
CEO	Chief Executive Officer
CERI	Centre for Educational Research and Innovation
CoM	Council of Ministers
COMETT	Community Action Programme in Education and Training for Technologies
COREPER	Committee of Permanent Representatives
DAAD	Deutscher Akademischer Austauschdienst (German Academic Exchange Service)
EC	European Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EMU	European Monetary Union
EP	European Parliament
ERASMUS	European Action Scheme for the Mobility of University Students
EU	European Union
EU-Student, 'Free Mover'	Student, who moves to another Member State of the EU to pursue complete academic studies there; excludes explicitly exchange programmes
EuryDice	Education Information Network in Europe
FORCE	Formation Continuéée en Europe (Action Programme for Continuous Training)
GD	General Directorate
GNP	Gross National Product
HRK	Hochschulrektorenkonferenz (Conference of University Vice-Chancellors)
NARIC	National Academic Recognition Information Centre
OEEC	Organisation for European Economic Cooperation
OECD	Organisation for Economic Cooperation and Development
PPP	Purchasing Power Parity
SEA	Single European Act from 28.02.1986
SOCRATES	European Educational Programme which includes i.e. ERASMUS, COMENIUS, GRUNDTVIG, etc.
TeC	Treaty establishing the European Community (Consolidated Version)
ToR	Treaty of Rome

1. Introduction

In the preamble of the Treaty of Rome signed in 1957, which followed the European Community of Coal and Steel, among other issues it was listed that the creation of a new economic community, the economic and social progress of the Member States and the dismantling of barriers to the integration should be promoted. The Treaty of Maastricht, which introduced the European Union in 1992 with far-reaching innovations in economic, political and social areas, promised a new chapter in the process of European integration, a strengthening of economic and social cohesion, the support of economic and social progress for its people and the implementation of policies to ensure that not only economic integration but also the overall European system would be going to experience additional assimilation¹.

It should have be clear from this process that the Community therefore not only presented a new type of legal order but also followed a certain purpose of uniting an increasing number of independent nation states into one big Union which in most affected areas would act as a kind of decentralised 'super state'. Originally these areas mainly covered economic issues but over time political fields also started to dominate debates at the European level.

Increasing demand for academically educated professionals who have also pursued part of their education abroad had a significant impact on student needs². Therefore student mobility has become one of the major concerns in the European Union with the introduction of the ERASMUS and ECTS-programmes to facilitate the unrestricted movement of students in Europe. As defined in the SOCRATES Action programme the European dimension in education and the transnational access to it should be strengthened with a strong focus on improving language abilities and academic co-operation. To achieve these goals student exchanges are supported financially up to 12 months, academic recognition of credits is voluntarily regulated within the European Credit Transfer System and academic staff is

¹ Clive H. Church, 1994: p. 53

² OECD, 1997: p. 79

given the opportunity to teach and research at foreign tertiary institutions.

Is the EU reacting to an increasing student demand of gaining short-time experience abroad for professional reasons or were these programmes mainly introduced for political reasons opening the door for future European citizens?

Mobility in education has a long history, although for a variety of reasons. When the first academic institutions were established in the Middle Ages mobility was a basic pre-condition for the clerical and political elite due to geographical limitations since only a reduced number of academic centres were available. At the same time craftsmen – after finishing their apprenticeship – were expected to take up a journey lasting several years to gain work experience in many places before they were allowed to open up their own shops³.

More recently student mobility came as a result of limited study places that caused student flows to other countries. On the one hand this can be state-regulated as in the case of Luxembourg where the government actively supports student mobility since no complete tertiary programme exist within the country or on the other hand privately oriented as in the case of Greece where a strict *numerus clausus* puts harsh limits on the availability of study places within the country borders.

What both examples have in common is that students go abroad to pursue there complete academic studies and therefore do not fall under the ERASMUS-programme. Secondly, as in the case of Austria and Ireland and to some extend France, mobile students choose countries as their academic destination where their own mother language is spoken. Such an inter-language mobility can reach up to 75% of all students choosing to go abroad and therefore limits somewhat the improvement of the European and linguistic dimension in education. Additionally it needs to be mentioned that the ERASMUS programme only covers a relatively limited number of mobile students since more than double the number of mobile students in Europe are presently pursuing complete studies abroad without being covered by ERASMUS or any other national exchange programme.

³ Søren Kristensen, 1999: p. 26

Although as it seems obvious it needs to be mentioned nevertheless that mobility in itself is the wrong term to use. Student mobility inside one country is a common phenomena in most states and does not receive special attention although it can easily include distances of up to 1.000 km to ones own city of origin⁴. In the case of Belgium and to some extend in Spain and Great Britain this can even mean a change of language within the country. On the other hand academic border crossing can only be a few kilometres away from ones own city and a foreign university might actually be the nearest available. In the case of Germany this kind of daily short-distance border-hopping to i.e. Austrian, Dutch or French tertiary institutions has always been covered under its national loan & grant system (Bafög)⁵ and has the advantage that i.e. in the case of Austria not even the language is different.

Looking at figures and the history of student mobility in Europe during the last couple of decades, short-time student mobility is actually a more recent phenomena mostly triggered by EU-programmes and before was mainly organised by specific student exchanges. Most mobile students – as still is the case nowadays – go abroad to pursue complete degrees for a variety of reasons, i.e. limited study places and limited degrees in their home country or a better academic reputation in the host state. For these students EU-programmes did not improve their situation, and mobility rights still have to be derived from national and European legislation and jurisdiction.

To many it is not clear that a ‘free movement of students’ still does not really exist in Europe. Compared to mobile workers, mobile students - also called EU-students or ‘free movers’ – do only have limited rights regarding their legal, political and social situation in the host state. I.e. different to workers, students have to prove their financial situation since a minimum income is necessary to obtain a residence permit. Their social security or access to state benefits are also not only lesser or non-existent in comparison with their national counterparts but they additionally run the risk of loosing support in the areas of health insurance and pension schemes.

⁴ Statistisches Bundesamt, Press Conference ‚Hochschulstandort Deutschland‘, 24.06.1997

⁵ Bafög 2001 § 5 (1)

Another issue directly concerned with student mobility is the academic and professional recognition of degrees obtained abroad. In most cases academic credits and diplomas are only recognised by other tertiary institutions based on their own internal regulations and only recently rules have been drawn up for some state regulated professions to allow graduates to pursue their activities all over Europe. In the private sector it is up to the employer's discretion to decide how to validate foreign diplomas. This can be of specific importance in the case of salary and the comparison of different levels of academic titles. Is i.e. an English BA lasting three years plus a MA lasting one year the equivalent of a German diploma since both degrees allow the graduates to pursue a doctoral title afterwards? Or should such comparisons rather be based on the number of hours spend in academic teaching or, as it is nowadays handled more and more, using academic credits under the ECTS?

The General Attorney of the European Court of Justice, Sir Gordon Slynn, hinted in one of his closing arguments⁶ about student mobility and costs at the fact that even the highly protected state health insurance programmes balance their expenses at the European level and that such a system should be required for tertiary education as well to avoid that specific Member States suffer too much from incoming EU-students. Academically attractive countries like i.e. the UK should not have to burden the whole costs of maintaining their academic standard that together with the popularity of English causes such a significant academic mobility towards Britain.

Possibly one of the major concerns students might have during their academic career is how to finance their living expenses. No European cooperation in financing tertiary institutions exists and the same is true for state maintenance grants and loans. Apart from the limited support from the ERASMUS-programme students have to rely on national support schemes, which are designed according to national priorities, and private resources coming from their family or employment during vacation and term periods.

This research paper and the investigation contained should contribute towards highlighting the difficult position EU-students find themselves

⁶ Belgium vs. René Humbel and Marie-Thérèse Edel - case 263/86 – decided 27.09.1988: p. 5380

in. First an approach using political theory will be used to determine how integration movements might have shaped any European Integration Policy. Such policies can be either based intentionally on programmes or legislation enacted by the European Commission or sentences taken by the European Court of Justice to soften discriminatory national legislation. A specific focus will be placed on European and national approaches that were introduced to facilitate European academic mobility. This should allow the creation of further innovative proposals at the European level in combination with the abolition of mobility barriers. Student's rights will be investigated both at the national as well as EU-level to determine problematic areas, national and European approaches to academic mobility and the development of a common consensus. Additionally a specific focus will be put on the European Court of Justice because a long list of cases might strengthen the assumption that with precedence cases a judicial approach to educational integration might have taken place during the 1980s.

As a result this investigation should help the reader to understand better the development of student mobility in Europe, the behaviour of national governments and European institutions to approach the issue, the special case the ECJ played to improve the legal situation of EU-students and to identify easily still problematic areas of legal barriers to academic mobility.

2. Theoretical Models to determine the Evolution of a European Education Policy

The political issue of Higher Education Policy within the EU with its separate sub sectors of mobility, financing, state grants and loans for student maintenance, regulations for access to university, etc. is still mostly left to the autonomy of the individual Member States. There - depending on the legal and political priorities of the government - these sub sectors might be again assigned to regional or local authorities which spreads the responsibility and variety of the content even further.

Empirical data available for the possible forecasting of the results of ballots and the behaviour of delegates during the voting procedure in the case of topics related to higher education at the European level are only available to a very small extent. Nevertheless a combination of theoretical models combined with information sources and behavioural patterns of other areas might be helpful to determine the future assessment of political positions and common statements of Member States. The most important part of the applicability of such a theoretical system is the expectation that, by using the model, additional information is provided which would not have been available without this approach. The detour into the theoretical field should therefore provide us insights which are neither empirically achievable or might provide us a second opinion.

Especially because of the secrecy during the process of coming to an agreement between the Member States in the Council of Ministers any theoretical model has to limit itself to an absolute minimum of input variables to avoid uncertain or unsafe contributions to the model as long as exact insider information about the process of the negotiations is not available. Nevertheless in the case of a European Education Policy with the use of the theoretical model discussed in chapter 2.2 it is possible to determine likely outcomes or present positions in the mentioned areas as long as the points of departure of single Member States are known or available⁷.

⁷ Bruce Bueno de Mesquita, 1994: p. 102

But while evaluating or interpreting possible outcomes, one still has to keep in mind that an integral part of European policy in voting procedures still states that hardly anything takes place if some specific resistance from one or more Member States exists. They might refuse discussions of issues at the European level for different reasons but the result stays the same: a rational approach does not necessarily bring around the expected outcomes. Here a theoretical model should be capable to take account of such individual preferences as well.

But before the voting behaviour between Member States at the European level is discussed any further, a model based on logic might be able to show us that already for a long time individual countries are not capable anymore to present their own ideas and solutions in higher education. They were forced by the ECJ and national decisions of other Member States to follow a certain 'party line' which is compulsory for them. Such an involuntary pressure from outside obliges them into certain patterns, which - in the case of non-compliance - leads to a higher financial cost for their national state budget. A free-rider procedure forces Member States to introduce study fees or similar measures if other Member States have established such regulations and at the same time stimulate their students to study abroad.

The result of this discussion should be used to show that in certain areas of higher education, decisions cannot be taken autonomously anymore and intentions to keep student mobility to a minimum level causes actually higher costs overall. It should be questioned if this is the aim of European politics if at the same time it is agreed that academic experience abroad is to the benefit of both the student and the economy.

2.1. Limitations on the Design of National Higher Education Policies due to the Case of 'Françoise Gravier'

In the Articles 126 and 127 of the TeC whatever kind of harmonisation of legal or administrative regulations in the education sector at the European level is excluded to avoid the dismantling of national sovereignty in educational questions. Nevertheless up to a certain level a national autonomy is only illusory in this area since European legislation with spill-overs into the educational sector or autonomous decisions of other Member States might influence national policies significantly. These consequences could reach such an extent that Member States might be obliged to reach decisions contrary to their own intentions to avoid additional costs caused by incoming EU-students.

The following model is going to analyse the process of decision-making and prove that certain options are not available anymore at the national level for Education Ministries and their choices might also depend on policies of other Member States.

As investigated more profoundly in Chapter Four some Member States of the EU charge study fees from national and foreign students for the admission into their higher education system, whereas in others such academic degrees are offered free of charge. Additionally, some Member States offer their students the possibility to study abroad either for several semesters or to pursue complete academic degrees with the financial help from their country of origin. Nonetheless the sentence of the ECJ in the case of 'Françoise Gravier'⁸ prohibits higher education institutions inside the EU to charge higher fees from EU-students if national students are offered the courses free of charge or with reduced fees.

But a well-known and documented dilemma - in academic text-books also known as 'prisoners' dilemma' and now modified for this specific issue of European student migration - will lead us to the conclusion that the influx of students into academically interesting countries might cause the introduction of study fees in these countries or the extension

⁸ Françoise Gravier vs. Stadt Lüttich – case 293/83 – decided 13.02.1985

of the national grant system to cover other Member States. It has to be emphasized again that such decisions were not voluntarily taken by these states but forced onto them by developments of the higher education sector in other countries of the EU.

During the first period, before the decision in 'Gravier' in 1985 was taken, individual Member States of the EC were able to determine their own financing policy of higher education institutions and courses autonomously both for grant systems and study fees. The transfer of state grants to other countries to pursue studies could be offered, but was not compulsory from the state side. To avoid an additional financial strain on national higher education systems due to the influx of foreign students, these foreign students could be charged (higher) study fees to obtain a supplementary income for the state or university budget. Consequently it was possible for each country to decide and design the budget for higher education independently.

On the other hand in academically attractive countries, the decision in 'Françoise Gravier' had caused a change insofar as that these Member States could not autonomously charge (higher) study fees from EU-students anymore. But they were also obliged to protect their own higher education system from an excessive inflow of foreign students by either introducing study fees for all students including their own national ones or to make an extra effort and send their own students abroad to relieve their national academic institutions at least partially. In this model two countries are used as a starting point. Each one of the countries offers its students a higher education system without charging study fees, has no system of limiting entrance to academic courses like i.e. a *numerus clausus* and although studying abroad is possible, it is not supported by the national government financially via a possible transfer of benefits abroad and therefore not commonly done. Both countries show the expenditure of financing the operation of the higher education sector in their national budget as HEF, any income from EU-students, who are charged additional study fees as SGS and expenditure on the national grant and loan system as SFF. The following basic assumptions are used for the model:

- Students, who have access to higher education and to the grant and loan support system in their own country only rarely go abroad to study if it is not possible to transfer the financial state support to the host country;

- Students tend to avoid the payment of study fees if possible;
- The possibility for students to study (complete) academic courses in other host countries saves the country of origin money in their higher education budget⁹;
- Study fees charged by host countries are not reimbursed in most cases by the country of origin. On the other hand no Member State charges real-cost study fees and even an reimbursement of the sending state would mean a saving in comparison to the provisioning of study places in their own country;
- Some Member States have a higher academic attractiveness than others;

Table 1 presents the situation before the judgement in 'Françoise Gravier' took place. Then due to national political and financial reasons one country takes the decision to permit its students to transfer financial maintenance support for academic studies to any host state (Country 2). In the upper left corner both countries do not raise study fees from their national students, have hardly any revenues from study fees of foreign students and average expenses on the state grant and loan system. If Country 1 introduces unilaterally the transferability of state grants, which is reflected by a movement from s_1 to s_2 , and loans for studies in Country 2 this will lead to the reduction of state expenses HEF on the higher education system in Country 1 and increase the revenues from fees of foreign students in Country 2. Whatever existing imbalance in the higher education budget caused by an unequal distribution of mobile students between the two countries - even when a grant & loan transferability is introduced in both countries - is compensated financially via study fees¹⁰ of foreign students which automatically generate additional income for the government. Therefore studying abroad constitutes a decision to finance its own education by the individual student which could happen for personal

⁹ Greece limits the availability of study places in their own country strongly and Greek students present the largest group of foreign students in the EU (Centre for Educational Research and Innovation, 1997: p. 67 co., 176)

¹⁰ here it is possible not only to charge the marginal costs of one additional student, but demand a level of fees which covers the real cost plus possibly an economic profit as well

reasons like expecting a better education abroad or having a greater choice of courses.

Table 1

		Country 1		
		S ₁ (Transfer not possible)	S ₂ (Transfer possible)	
Country 2	S ₁	Country 1	∅ HEF ∅ SFF -- SGS	- HEF ∅ SFF -- SGS
		Country 2	∅ HEF ∅ SFF -- SGS	+ HEF ∅ SFF - SGS
		Country 1	+ HEF ∅ SFF - SGS	∅ HEF ∅ SFF - SGS
		Country 2	- HEF ∅ SFF -- SGS	∅ HEF ∅ SFF - SGS

(0 =none, -- =hardly, - =below average, ∅ =regular, + =increased, ++ =very high)

If a strong mobility of students exists between both countries then governments are able to subsidize their own higher education budget via revenues generated by foreign students whereas the number of national students might also decrease because since some of their own students might also choose to study abroad. Consequently since no fees are charged from national students it would actually be a financial benefit if national non-paying students would go abroad and paying foreigners would take up their studies nationally. Both countries are able to make their own autonomous decisions which do not have negative effects on their neighbouring countries except for a possible increase in foreign students and accompanying revenues and economic turnover.

Table 2

		Country 1		
		S ₁ (Transfer not possible)	S ₂ (Transfer possible)	
Country 2	S ₁	Country 1	∅ HEF	- HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS
		Country 2	∅ HEF	+ HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS
	S ₂	Country 1	+ HEF	∅ HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS
		Country 2	- HEF	∅ HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS

(0 =none, -- =hardly, - =below average, ∅ =regular, + =increased, ++ =very high)

Table 2 presents the situation directly after the decision of the ECJ in the case 'Françoise Gravier'. The revenues of individual Member States gained as study fees from EU-Students sank dramatically either to the level charged from national students or to zero if the national higher education system was provided free of charge. A unilateral transfer of state grants and loans for studies in the other country reduces state expenses in the country of origin due to diminishing national student numbers but the host country does not receive any additional income from the increase of foreign students since it cannot charge these students additional fees. Because of this legal change host countries experience an increase of financial expenses in the higher education sector which used to be financed either by foreign students or were born by the country of origin of the migrating student due to specific national regulations.

If both countries introduce a scheme of transferability of state grants and loans to other countries and if an identical academic attractiveness is assumed - although doubtful - the budgets on higher education expenses of both countries stay balanced since the outgoing national students are replaced by incoming EU-students receiving the same financial treatment as their national counterparts. The only and

possibly substantial financial loss is presented by the abolition of (higher) study fees for EU students and hence 'Gravier' resulted in a net financial gain for EU-students, decreased income for state budgets due to the loss of study fees specifically from foreigners and possibly in an increase of student mobility due to the reduced study expenses abroad.

In Table 3 the effect of migrating students to other countries will be increased even more if Country 1 charges study fees¹¹ from its own students but at the same time makes transferability of state grants and loans available for the commencement of studies abroad. Even at the starting point - without transferability - an increased number of students from Country 1 will go abroad to avoid fees whereas at the same time Country 1 will receive less EU-students due to its loss of attractiveness because of the study fees which are certainly also charged from incoming students. Hence introduced fees have both an increasing effect on the outgoing migration of national and a limiting effect on incoming foreign students.

Since an introduction of transferability of state grants and loans from Country 1 to Country 2 took place, an immediate increase of incoming EU-students is experienced in the second country. Naturally the host country of EU-students can react to such changes in the academic policy of other countries by introducing a transferability itself but it has to be noted that this would happen as a case of self-defence rather than as an academic improvement of its higher education sector. The marginal benefit will be rather low anyway in such a case since Country 1 charges study fees from everybody whereas study fees do not exist in Country 2 and even if a transferability of state grants and loans is available in Country 2, students will rather stay at home and study free of charge than become EU-students in Country 1 to avoid additional costs except if Country 1 possesses a substantially higher academic attractiveness due to other reasons.

Table 3

¹¹ a similar effect can have the introduction of a *numerus clausus* or the limitation of the availability of courses as happened in France which might partially explain the high numbers of French students in Belgium (Centre for Educational Research and Innovation, 1997: p. 178)

		Country 1		
		S ₁ (Transfer not possible)	S ₂ (Transfer possible)	
Country 2	S ₁	Country 1	- HEF	- HEF
			- SFF	∅ SFF
			-- SGS	-- SGS
	Country 2		+ HEF	++ HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS
Country 2	S ₂	Country 1	- HEF	- HEF
			- SFF	∅ SFF
			- SGS	- SGS
	Country 2		+ HEF	+ HEF
			∅ SFF	∅ SFF
			0 SGS	0 SGS

(0 =none, -- =hardly, - =below average, ∅ =regular, + =increased, ++ =very high)

Even when Country 2 offers a transferability of state grants and loans to permit studies in other countries, the only possibility to achieve a lesser academic attractiveness and deter foreign students is the introduction of study fees. On the one hand such an approach puts off foreign students who tried to avoid such costs in their own country in the first case, and on the other hand might reduce the national student number as well by tempting students to go abroad to pursue more attractive foreign options there which would consequently also lead to an additional national saving. Such a point of view is presented in Table 4.

Table 4

		Country 1		
		S ₁ (Transfer not possible)	S ₂ (Transfer possible)	
Country 2	S ₁	Country 1	- HEF	- HEF
			∅ SFF	∅ SFF
			- SGS	- SGS
	Country 2		+ HEF	- HEF
			∅ SFF	∅ SFF

	0 SGS	- SGS
(0 =none, -- =hardly, - =below average, Ø =regular, + =increased, ++ =very high)		

Finally it can be argued that national higher education policies which are unregulated at the European level and include characteristics like (the recent introduction of) study-fees or transferability of state grants and loans to study in other countries might have a great impact on the policies of other countries as well. As the model discussed above shows it would be wrong to assume that the absence of European regulations goes hand in hand with national autonomy.

SUMMARY

A migration of national students into other countries of the EU with the financial help of the country of origin does not have to be concentrated in one foreign country although a country survey in a later chapter will show that quite a substantial number of students prefer some specific countries mainly due to linguistic priorities. It is understandable that i.e. a migration to Belgium, where a *numerus clausus* for medical studies does not exist, or Germany, where study fees are not raised from foreigners, can also have some direct effects. These countries suffer mainly from free-riders since they do not charge fees from their students or do not promote mobility to other states amongst them.

As an excellent example England could be discussed where up to 1998 a BA degree was offered to national and EU-students without paying any study fees since the Local Education Authority (LEA) bore the costs of a first academic degree but did not offer financial support for complete university courses abroad.

Empirical evidence in form of statistics¹² shows quite clearly that especially England radiates a great academic attractiveness and appeals to a large number of foreign students. Until 1985 and up to the decision in 'Gravier' foreign students had to pay up to approx. € 13.000¹³ for undergraduate courses per year. Since 1998 study fees have been introduced for all national and EU-students of up to approx.

¹² Centre for Educational Research and Innovation, 1997: p. 182

¹³ Hortense Hörburger, 1996: p. 53

€ 1.500/year¹⁴ which depend on the social and financial situation of students and their families.

Here it could be argued that finally all national students have to suffer and bear the financial loss caused by the decision in 'Gravier' and the increased mobility of foreign students towards England which might also partially be based on the *numerus clausus* and study fees in their home countries. The only form of self-defence against increased expenses, a sovereign country in the EU is able to take under the present supranational legal situation, is to charge all students instead of only foreign ones who actually caused such additional expenses in the first place. Certainly countries are perfectly capable of resisting such rational choices but they might have to carry additional and unexpected expenses.

In rational choice theories, which we could apply to some extent to the educational sector since it seems to be heavily driven by rational cost-savings intentions, countries will be mainly driven by their wants and goals that express their preferences. They act within specific, given constraints and on the basis of the information that they have about and on the conditions under which they are acting. As it is not possible for countries to achieve all of the various things that they want, they must also make choices in relation to both their goals and the means for attaining these goals. Rational choice theories hold that these countries must anticipate the outcomes of alternative courses of action and calculate what will be best for them. Rational countries therefore choose the alternative that is likely to give them the greatest satisfaction which under the present situation of reducing state budgets is the introduction of study fees¹⁵.

Many arguments are raised in favour and against the introduction of study fees but obviously such decisions do not depend solely on internal criteria but are also influenced by higher education policies of other Member States. Only a financial transfer system for expenses related to study fees from sending to host countries might compensate for such financial losses in academically attractive countries and therefore dismantle these financial obstacles to mobility again.

¹⁴ Department for Education, 09/1997: p. 4

¹⁵ Alan Carling, 1992: p. 27

2.2. Theoretical model for the Interpretation of Attitudes of the Council of Ministers in Relation to a European Education Policy

The European Union as an incorporation of several sovereign nation-states is dominated by a political quality that is almost incomparable with other known unions in the world. Here the EU presents itself in the economic sector as a well-established union that also includes all relevant political decisions formerly handled by national and regional governments. In the majority of sectors in which the union is acting, a definition as an amalgamation of individual Member States and their legal framework is used to explain the functioning of the co-operation. As a direct consequence the legislative arm at the national level has experienced a diminishing role and a great variety of decisions are taken by supranational institutions¹⁶. But at the same time the political cooperation of Member States i.e. in the areas of domestic and foreign policy is based on the rights of sovereign nation states and any collaboration there has still its origin in an international and bi- or multilateral framework.

The both most important and central decision makers in the EU are the European Commission and especially the Council of Ministers. Additionally the European Council presents itself as a regular instrument of heads-of-states of the individual Member States to give the EU a political direction and determination particularly in difficult internal situations or political dead-locks to offer reasonable solutions which would not be feasible at lower levels due to insufficient competences.

It can be assumed as very probable that an introduction and possible harmonization of a European Higher Education Policy would become its first impetus in the European Council as an expression of a political will. This could happen on the one hand via an inclusion of future political intentions in a new Treaty as it happened already in the Treaties of Rome, Maastricht and Amsterdam but it could also come into being via a more or less formal declaration of objectives aimed at

¹⁶ George Tsebelis, 2000: p. 5 co.

the European Commission and the Council of Ministers during one of its sessions¹⁷.

Individual Member States have a chance of pursuing their own personal preferences every 7 ½ years at the moment since each Member State takes over the presidency for 6 months at a time and is then able to try to develop their own strategies of how to shape specific political issues. Here it could be reasonably assumed that if it were in the interest of one Member State to further integrate a European Policy concerning Higher Education it could use its leadership of the EU to push forward this issue. But this does not automatically mean that remarkable changes can be achieved. It still depends on the other Member States to proceed in the mentioned area but without some enthusiastic support in the presidency it might never come so far anyway.

But nevertheless the daily process of running and designing the EU and the accompanying decisions are taken up by the European Commission and especially the Council of Ministers where individual participating ministers in the Council also have to comply with the expectations and handicaps set by their national governments since ministers different to the Commissioners do not have to act independently from the interests of their national country.

Since the foundation of the European Communities the European Commission is positioned directly in the centre of the events as an institution. The Commission presents on the one hand a supranational administration at the European level, but on the other hand possesses additional rights and privileges which at a national level are usually reserved to national or regional parliaments. In comparison with the EP, the European Commission holds the right to suggest future legislation and develops legal proposals. Additionally the Council of Ministers has the possibility to urge the Commission to investigate areas of interest and propose new pieces of legislation under Article 208/TeC. This opens a door for the Council of Ministers to occupy not only the executive but also the legislative area and is therefore able to determine greatly the development and integration of the EU. Such a mixture of executive and legislative fields presents a big culmination of rights that in itself is not found in other democratic states up to this

¹⁷ European Council, 2001: p. 1

extent. A democratic deficit was often lamented and if these areas are not separated and the legislative powers handed over to the EP and the executive possibly to the European Commission, then an optimal functioning of the democratic system at the European level could continuously be criticised¹⁸.

At the European Commission individual General Directorates dispose as departments of the possibility to propose new areas of interest and further develop legislative pieces which they consider as important. Here it is of great interest to the Commission to include as much outsider knowledge as possible from i.e. consultants, academics, national civil servants etc. to avoid the impression that Brussels with its European institutions is completely disconnected from national and regional necessities and to meet realistic requirements as closely as possible. After the initial phase such projects of new pieces of legislation find their way via superiors and the cabinets of individual commissioners into the reunions of the European Commission. Here it is decided if these internal projects are accepted for further investigation, considered for their development as legal pieces or their termination if deemed as not relevant by a majority of Commissioners¹⁹. It has to be noted that legal texts accepted by the European Commission do not automatically become valid legislative pieces. Rather it needs a decision by the Council of Ministers and up to a certain level the consent of the EP for the actual introduction of a new piece of law. It can be determined here clearly that at the European level new pieces of law are neither developed nor passed by the only institution which is responsible in most democratic states, namely the parliament²⁰. Additionally it can be assumed that also the European Commission is not likely to waste time and resources for new legal projects if it is not clear in the beginning already that there will exist at least a minimum of interest between the Member States in the Council of Ministers²¹.

¹⁸ Ramón Tamames, 1996: p. 80

¹⁹ Neill Nugent, 1994: p. 94

²⁰ Although it is possible that individual national ministers, who compose the Council of Ministers, are elected directly for their assignment at the national level they are nevertheless delegated for their task in Europe by their national governments and therefore not direct representatives of the people.

²¹ Ramón Tamames, 1996: p. 84 co.

When the European Economic Community was founded with the Treaty of Rome in 1958, it was assumed that the role and importance of the Council of Ministers would diminish in the medium or long term and that its task would be taken over by the European Commission acting somewhat as a European supranational government. At the same time the EP would develop itself from the European assembly it was in the beginning to a real functioning parliament taking over the powers of controlling the government and developing and introducing new pieces of legislation once the confidence and trust of the national governments were big enough to create a political union²².

But national self-interest and the protection of national and regional independence and sovereignty by the Member States actually even increased the powers of the Council of Ministers. This is obviously present in the behavioural voting characteristics one can see in the Council. Because of the persistence of France in 1965 and due to the agreement of the Compromise of Luxemburg a kind of veto was introduced for Member States in the Council of Ministers to permit that, when the national vital interests of one country were jeopardized because of a majority decision, this one country was able to block the decision. The definition of 'national vital interests' was left to the individual country and lead to the situation that basically in every voting based on majority the ministers tried to agree on a consensus between all of the states or - except in the cases where deadlines had to be kept like i.e. in budgetary agreements - negotiations dragged on and on without any visible result. To avoid disagreement and a veto by one or more ministers was therefore of utmost importance and consequently even majority decisions were then based more or less on a common understanding to reach at least some form of consistency²³.

The development in the voting behaviour led both in the European Commission and the Council of Ministers to a hesitation to press forward with innovative but controversial proposals since they were considered unfeasible if they affected the 'national interests' of one of the Member States. At the same time it has to be noted that especially for the Council of Ministers the possibility of a veto might have been in

²² Neill Nugent, 1994: p. 123

²³ Neill Nugent, 1999: p. 168

their own interest since the Council, contrary to the Commission, presents the interests of individual states and is more sceptical by nature when it comes to integration issues or further harmonization interests. The Council of Ministers was hence often able to avoid euronational impacts presented by the Commission or the EP using the veto as a potential threat for difficult issues. Any further development and integration of the Community was consequently often based on the sovereignty of individual states and their multilateral cooperation. But such cooperations between single Member States lead mostly to compromises defined on the smallest common denominator available. This certainly had a significant impact on the form and speed of the European integration when the first strong support for the Community slowed down after its creation. It is possible to observe that during the 70's and early 80's after the fading away of the original founding enthusiasm and the introduction of the veto in the Luxemburg compromise a significant drop in the cooperation was noted and national strongholds in certain political positions were not transferred to the supranational level²⁴.

Basically all important or decisive political and legal proposals needed the consent of the Council of Ministers. Although the EP gained additional rights and was able to influence the legal process up to a certain extent, a close examination of the separation and distribution of political powers in the EU shows quite clearly that in certain areas the EP established itself as a legal democratic institution, but when looking at the EU as a whole its importance is still at a very low level compared to the Commission and the Council of Ministers²⁵.

Another main characteristic of the Council of Ministers and its voting system is that - different to other democratic institutions - it is not customary to publish voting results, legal and political discussions and how it came to the decision to accept a new piece of legislation. This makes it very difficult for outsiders to forecast political decisions since Ministers are able to present one political version at home and pursue different ideas in the EU without informing the public correctly. For electoral reasons it is very likely that Ministers present themselves very firm on their own position while they speak to the public whereas on

²⁴ David Weigall, 1992: p. 114

²⁵ Josephine Shaw, 1993: p: 69

the other hand especially when it comes to majority voting, compromises and package deals have to be accepted internally²⁶. Such a procedure takes away the legal process from public scrutiny and diminishes the democratic supranationalism of the EU since voting behaviour in general elections cannot be based on the true performance of politicians at the European level.

At the same time the Council of Ministers is not formed by a fixed group of Ministers either which could be assumed by the used wording. To be more precise, depending on the topic of issues at stake, Ministers from different portfolios are called in to discuss areas for which they are responsible in their national government. Depending on the importance of the subject area - whereas we can distinguish between importance ratings at the European and national levels, since not all national political subjects are (completely) included at the EU level - it comes to meetings up to 14 times a year in the sector of agriculture while only two meetings take place in the education sector²⁷.

One should not to forget in this context as well the importance of the committees which are used to inform and advise the Council of Ministers on difficult or specialist issues. I.e. the Committee of Education works to help the Council of Ministers when meetings concerning educational issues are summoned and the Education Ministers from the different Member States are called in. The function of the Committee is to council and advice the ministers and is normally formed by national civil servants of all Member States to assure that national priorities are properly taken into account.

So what procedures are provided for the Council of Ministers in the case of a proposal for a new piece of legislation by the European Commission? Normally the Council of Ministers first installs a working group and examines the proposal under the light of possible consequences and impacts on national issues to determine the usefulness of the proposal. While examining the proposal, the national delegates of the Member States in the working group put a strong focus on the consequences for their own country to assure that new legislation will not be contrary to national attitudes. If important, but not

²⁶ David Weigall, 1992: p. 116

²⁷ Neill Nugent, 1994: p. 126 co.

vital²⁸ national interests are affected by the newly proposed legislation the national delegates will already try to influence the development and direction of the legal text in the working group to limit the possible negative impact as much as possible at this lower bureaucratic level. Of specific importance here is naturally the voting procedure used in the Council of Ministers. If unanimity is foreseen, then the form used to limit any damages to national interests will concentrate mainly on the possibility to find the lowest common denominator and an agreement with other Member States. In the case of large discrepancies between the Member States negotiations can last for a very long time until a consensus is reached or the decision is made by the Commission to abandon the project. If on the other hand a simple or qualified majority is foreseen then the negotiators do need a much more diplomatic intuition to avoid unwanted passages in the proposal and try to change or amend such parts insofar that they are at least acceptable to the affected states. Is a proposal for a variety of reason not desired but the state does not see its national interest in danger it can always try and mobilize as many like-minded Member States as possible and try to form a blocking minority²⁹. This is especially likely in ballots with a qualified majority when 25 votes³⁰ are enough to let the voting process fail and therefore cause the abandoning of the legal proposal.

After the working group has eliminated as many conflicting passages as possible in the proposal but also if it had come to a stand-still because of incompatible opinions between the experts and civil servants in the working group they have the possibility to refer the issue and their proposed results, if any, to COREPER³¹, which acts as a kind of filter between the Council of Ministers and the working groups.

At this stage COREPER disposes of several options of how to proceed. First, if the working group has already reached a common

²⁸ which would allow a possible veto by the Member States as defined above

²⁹ Neill Nugent, 1994: p. 135

³⁰ with 62 votes out of 87 it means that two big countries like France and Germany with 10 votes each are still not capable to accumulate the votes for such a blocking minority

³¹ composed of the Permanent Representatives of the Member States to the EU and meeting weekly COREPER acts primarily as a filtering agency between the Political Committee and the General Affairs Council

agreement, but also if the situation is very difficult and needs high level attention, COREPER can submit the issue for further discussion to the Council or, if a bargain or deal has already been agreed on, COREPER can recommend to the Council a vote on the issue immediately. Secondly in the case of a stand-still of the working group COREPER also has the possibility to try and solve the conflict itself since because of the composition and ranking of the committee it has a higher functional authority than the working groups. These higher competences it can also use to nudge the working group into certain directions and urge it to come to a mutually acceptable agreement³². Unanimity in the ballots of the Council of Ministers was basically the precondition for reaching an agreement between the Member States for a long time. This does not mean that unanimity was decreed by the relevant applying regulations but in order to avoid unnecessary conflicts and, as a consequence the threat of a possible veto, a common agreement was the desired option in most cases. In the meantime the SEA and the Treaties of Maastricht, Amsterdam and Nice have significantly reduced unanimity as a prerequisite in ballots and it only plays now an important role mostly in the second and third pillar of the EU structure although some exceptions continue to exist. The simple majority is mainly used in areas of technical regulations and more recently for anti-dumping and anti-subsidy measures as well. The qualified majority is used in a majority of cases which fall into the first pillar. Here the participation of the EP plays a more important role, too³³.

In spite of all these changes to improve the situation at the decision-making level it can still be observed that controversial pieces of new legislation are not forced upon Member States who have a strong aversion to a supranational approach in specific areas. Negotiations between affected parties should clarify the reasons for the resistance and possibly a longer period of time for the implantation of the regulation might already be a desired step into the right direction. Confrontations between the Member States on a regular basis would not only make cooperation much more difficult at the European level but would also poison the public attitudes at national and regional

³² David Weigall, 1992: p. 199

³³ Neill Nugent, 2000: p. 120 co.

levels and possibly create an air of resentment which could be much more harmful in the long run anyway.

At the European level decision-making with the result of introducing new legal pieces is therefore a lengthy and complicated process including many more institutions and committees one normally finds at the national level. Additionally a great deal it is based on the mutual understanding of Member States and covered to some extent by the secrecy applied in the Council of Ministers.

A theoretical model to forecast possible decisions of Member States in the Council of Ministers and the related introduction of a European Education Initiative should therefore probe, clarify and define the position of each Member States and determine as exactly as possible, which positions are taken and what this might signify for the voting process. What does one expect from the application of a mathematic-theoretical model to determine the settlements of proposals at the political level, which experts in the proper fields could define via an assessment and forecasts as well basing their results on empirical evidence and their proper experience?

The application of a theoretical model could reflect the analytical approach of the participants in the decision-making process while perhaps with an assessment of experts it is not always possible to argue and define reasonably the decisions taken by the Council. Especially in the case of very complex decisions, where a variety of voting participants contribute towards a final pronouncement, field experts are only able to draw conclusions and forecasts based on their long experience in the subject. Therefore they cannot base their expectations so much on definable details, which could be argued individually, but more on their intuition and experience drawn from other similar, but similar, events.

Hence for obvious reasons it is very difficult to provide an assessment for a proposal concerning a European Educational Policy and considering the specific national starting points from all Member States and at the same time relate such positions and their changes to each other without too much guess-work. An approach using a theoretical model on the other hand could portray the course via the in- and output of information and variables and therefore permits the reader to logically reconstruct the agreement and the process of how and why the final decision in the ballot had been taken. Input and variables can

be taken from different sources as long as they have been determined under similar conditions.

Admittedly, when a mathematic-theoretical model is used, it is of the utmost importance to assure that the information provided is of a very exact nature to come to an accurate and realistic result. In the assessment of the model of Bruce Bueno de Mesquita by A. F. K. Organski and Samuel Eldersveld an exactness of 97% is proven in their chosen areas³⁴ but at the same time the importance of the exactness of empirical input is stated again. Such a model then can help experts to canalise their information in an area of great complexity and mutual dependency and allows them to demonstrate and reconstruct the interdependences which caused the final decision in the ballot. Additionally a theoretical approach allows the user to come to a definite result which after the input of information produces an exact or in the case of shaky information approximate answer whereas expert opinions are normally marked by 'if' and 'when' which leaves room for further interpretation.

In the case of decisions which affect the education and (professional) training of students both in the higher education system and vocational training we find references in the Articles 149 and 150/TeC related to the decision-making process whereas a qualified majority is used in the Council of Ministers while making use of the EP as defined in Article 251. Nevertheless the possibilities of integrating and harmonising (higher) education are considerably limited since the Treaty of Maastricht in the view of the fact that any harmonisation efforts affecting legal and administrative regulations in the Member States are explicitly excluded in both Articles 149 & 150³⁵.

At the moment the EU is composed of 15 Member States whereas due to the high quantity of input this will both influence a theoretical model as well as expert opinions. In the case of a larger quantity of variables a higher variety of options is possible and the reconstruction process becomes more complex. As one can determine further down the large

³⁴ Bruce Bueno de Mesquita, 1994: p. 233

³⁵ In the case 'Donato Casagrande vs. Landeshauptstadt München' (case 9/74 – decided 03.07.1974) the ECJ denied the State of Bavaria its autonomy regarding regional legal and administrative issues for educational matters if they are discriminating against EU-citizens. A certain level harmonization is therefore possible under a specific framework.

number of voting delegates, who are characterised by their individual political and cultural background, form a large spectrum of opinions in the Council of Ministers. In this sense the Council might be unique as a decision-making organ in comparison with other similar institutions. The input variables for the theoretical model developed by Bruce Bueno de Mesquita in the field of 'European Educational Policy and Harmonisation and Integration' depend on the following information:

- the number of Member States and the distribution of votes in the Council of Ministers as defined in Table 5;
- the priorities for solving a conflicting situation and the readiness of Ministers to accept a compromise;
- the advantage or usefulness each Member State allocates for each individual national proposal to calculate a net benefit or loss.

The distribution of votes according to the ballot for a qualified majority allocates 87 votes in total whereas each Member States receives their allocation according to a distribution key relatively to their geographical size although this is not strictly done in a proportional way. Article 205 of the TeC distributes the votes as presented in Table 5 and defines a 'Qualified Majority' consisting of at least 62 votes. If the legal project has not been submitted by the European Commission then at least 10 Member States and 62 votes have to support the proposal.

Table 5

Member States	Votes in Council of Ministers	C	Citizens Mio.	Proportion of Votes per Mio. Citizens
Germany	10	0,115	81,00	8,10
France	10	0,115	57,80	5,78
Italy	10	0,115	57,10	5,71
Great Britain	10	0,115	48,40	4,84
Spain	8	0,092	40,50	5,06
Belgium	5	0,057	10,10	2,02
Greece	5	0,057	10,50	2,10
Holland	5	0,057	15,40	3,08
Portugal	5	0,057	9,90	1,98

Austria	4	0,046	8,00	2,00
Sweden	4	0,046	8,70	2,18
Denmark	3	0,035	5,20	1,73
Finland	3	0,035	5,10	1,70
Ireland	3	0,035	5,10	1,70
Luxembourg	2	0,023	0,39	0,20
TOTAL	87	1	363,19	Ø 3,21

(Source: Treaty of Amsterdam 1999, Microsoft Encyclopaedia 1998)

At this point the political imbalance relatively to the percentages of votes in the Council of Ministers has to be compared. This is of importance insofar as an imbalanced distribution of votes might have an impact on the characteristic of how decisions are formed in the ballots meaning relatively over-represented countries might have different opinions and might therefore be able to influence decisions to their advantage.

C in Table 5 presents the prioritisation of individual Member States in relation to the distribution of votes overall whereas the sum of votes is expressed as the numerical value of 1 which will be used in the theoretical model further down. It can be established that the variable C is the only exogenous information which is drawn from the institutional framework. At present the distribution of votes is fixed in the Council of Ministers and it seems that it will only be revised once new members are admitted into the EU or if it is considered that due to the imbalance based on the populations' bigger countries should receive more votes relatively to their population³⁶.

Additionally each legal proposal $a \in (a/M=\{a,b,c, \dots m\})$ and the attitude the Member States has towards the issue receives a certain priority. An assumption of the model is that proposals do not have the same importance and priority to each Member States. It is understandable that decisions in i.e. the agricultural sector are of more importance for France than for Luxembourg whereas at the same time proposals concerning banking issues have a very high priority for a

³⁶ i.e. after the reunion of Eastern and Western Germany in 1990 its seats in the EP were increased to 99 due to a population increase of 20% but its votes in the Council of Ministers remained the same

country like Luxemburg or Austria who act to some extent as money heavens in Europe.

Such a priority is defined as S whereas S_{ia} demonstrates the importance of the issue a for the Member State i and S covers the numerical distance between $0 \leq S_{ia} \leq 1$.

The information to determine the variables are taken from:

- readiness to solve issues concerning educational issues at the European level;
- priority, which is assigned to higher education and its financing at the national level. This may range from financial to quality and quantity measures;
- flexibility of the national system towards European openness.

Proposals are defined as X_{ia}^* whereas X_a presents a proposal in the thematic area of $a \in (a/M=\{a,b,c, \dots m\})$ of the Member State $i \in \{1, 2, 3, \dots 15\}$ and $*$ of X_a highlights the proposal which is considered as the favoured solution.

Whatever kind of proposal from other Member States presents a certain usefulness for each negotiating partner. The usefulness U is determined by using the following sources of information:

- financial burden to the national budget caused by an open European Higher Education System;
- additional burdens caused by a net migration of EU-students into its own country;
- effect on the quality of the education system.

The utility U of country i for the proposal X_a of country k as defined in $U^i X_{ka}$ can be presented as the difference between the utility for country i in comparison with its own preferred proposal X_{ia}^* to proposal X_{ka} .

The further away the proposal of Member State k , meaning X_k , is from the proposal which is preferred by Member States i , defined as X_i^* , the lower is the utility of the proposal k in comparison with i . Formula 1 defines the utility as a function whereas U^i for the Member State i is defined by the distance between the proposals X_k to X_i^* .

Formula 1

$$U^i X_k = f | X_k - X_i^* |$$

It is assumed that each Member State always tries to achieve a maximum utility considering its own proposal and comparing it to the ones prepared by other countries. If it appears to be impossible to achieve that the own preferred proposal X_i from country i is used for the further legal development then Member States will try to adapt their proceedings as closely as possible to other competing proposals which reflect most of their own ideas.

For each national proposal Member States define for themselves a value which reflects their own assessment of other proposals in comparison with their own ideas. Overall it is assumed that individual Member States always try to maximise their own utility in each negotiation round. In this theoretical model two proposals are always compared with each other and as a result it will be determined which one has a higher chance to proceed. Using this procedure it is possible to compare all proposals, determine the positions of all Member States and compare them with each other.

By using these newly defined variables and Formula 1, a new function is developed which represents the vote of the Member State i and the position V in the ballot in comparison with the proposal X of the countries j and k in the legal area a .

Formula 2

$$\left(V_{ia}^{jk} | X_j, X_k \right) = \left(C_i \right) \left(S_i \right) \left(U^i X_j - U^i X_k \right)$$

The expression of the variables C , S and UX in the numerical field of $(C, S, UX \in |N)$ ranging from $0 \leq C, S, UX \leq 1$ allows that the mathematical result is allocated around 0 and a positive or negative outcome then presents the support or rejection of the proposal respectively.

As it is displayed in Formula 3, V presents the sum of all votes given by the Council of Ministers whereas in this case $n = \{1, 2, 3, \dots, 15\}$ a positive or negative numerical value presents the result of the ballot for the support of the proposals j and k .

Formula 3

$$V^{jk} = \sum_{i=1}^n V_i^{jk}$$

The first decision of the Council of Ministers, which is going to be simulated by using Formula 2 and 3, is related to a case brought to the European Court of Justice. This approach has the advantage that this issue is well documented and the positions of the Member States participating in the case are well-known, too. As discussed in Chapters 2.1 and 5, the ECJ decided in the case of 'Françoise Gravier' in 1985 that EU-students going abroad to study in other Member States cannot be charged higher fees than nationals and any discrimination related to the access to higher education should be prohibited.

In this and following cases information can easily be taken from statements, Member States made in the ECJ and while taking into account other significant components like i.e. importance and design of higher education systems, percentage of foreign students, etc. as well it is possible to come up with the following results in Table 6 whereas a negative V_{ka}^i supports an administrative flexibility without discrimination of EU-students in regards to national students and positive values present a mainly national utility achieved by discriminating against foreigners. UX_1 reflects in this case the status quo of higher study fees for EU-students and UX_2 the equal treatment without charging any additional costs from foreign mobile students.

As expected it can be determined quite clearly in Table 6 that opinions were divided whereas 5 countries with a relative weight in votes of 0,295 in V_{ka}^i wanted to maintain the status quo and continue with the discrimination and 4 countries with a V_{ka}^i of (-) 0,307 wanted to abolish such biased behaviour. As it seems obvious such a controversially discussed topic would not have achieved the unanimity needed for

decisions in the Council of Ministers and would therefore not have been dealt with at the ministerial level either. Controversial issues can obviously be handled barely in the pluralistic institutional framework of the EU under the most difficult of circumstances and can only be put into action by using the undemocratic institution of the ECJ which is obliged to come to a conclusion after accepting such a case for sentencing. It can be assumed that without the ECJ, EU-students would still be charged higher fees up to even nowadays when it is taken into consideration that most likely positions defined in Table 6 have not changed greatly since that time.

Table 6

Member States	C	S ₁	UX ₁	UX ₂	V _{ka} ⁱ
Germany	0,159	1,00	0,500	0,500	0,000
France	0,159	1,00	0,100	0,900	-0,127
Italy	0,159	1,00	0,300	0,800	-0,080
Great Britain	0,159	1,00	1,000	0,100	0,143
Belgium	0,079	1,00	1,000	0,100	0,071
Greece	0,079	1,00	0,100	1,000	-0,071
Holland	0,079	1,00	1,000	0,700	0,024
Denmark	0,048	1,00	1,000	0,700	0,014
Ireland	0,048	1,00	1,000	0,100	0,043
Luxembourg	0,032	1,00	0,100	1,000	-0,029

In the second example the proposal for the transferability of state grants from a home to a host Member State shall be investigated³⁷. This issue was investigated in the green book 'Obstacles to border-crossing Mobility' and the theoretical model should help us to specify the positions of the Member States correctly and determine if the European Commission should press on with proposals and suggestions in this area. UX_1 is used here to reflect the recommendations of the green book and UX_2 for similar recommendations but with an additional modification that EU-students would receive supplementary financial help (a kind of mobility support) from the budget of the EU.

Here again a great division can be detected between the positions of the Member States. With a relative weight of votes defined in V_{ka}^i as a numerical value of 0,073 seven Member States support the proposal of the European Commission and at the same time in V_{ka}^i with a value of (-) 0,077 five countries would prefer to pay out a financial support from the EU-budget. In comparison with the first example under current legal conditions set out for voting rules, unanimity would not be necessary anymore to achieve a decision in this area.

³⁷ DG XXII, 1996: p. 31

Table 7

Member States	C	S₁	UX₁	UX₂	V_{ka}ⁱ
Germany	0,115	0,750	0,600	0,300	0,026
France	0,115	0,900	0,900	0,700	0,021
Italy	0,115	0,400	0,700	0,600	0,005
Great Britain	0,115	0,200	0,200	0,100	0,002
Spain	0,092	0,750	0,200	0,800	-0,041
Belgium	0,057	0,750	0,750	0,850	-0,004
Greece	0,057	0,500	0,200	0,800	-0,017
Holland	0,057	0,750	0,500	0,300	0,009
Portugal	0,057	0,400	0,200	0,800	-0,014
Austria	0,046	0,750	0,200	0,100	0,003
Sweden	0,046	0,900	0,900	0,700	0,008
Denmark	0,035	0,900	0,700	0,700	0,000
Finland	0,035	0,900	0,900	0,900	0,000
Ireland	0,035	0,200	0,200	0,300	-0,001
Luxembourg	0,023	1,000	1,000	1,000	0,000

Already when the input variables were determined it was quite obvious that from part of the Member States there was a certain reluctance to transfer rights in the sector of higher education to Brussels since education in many countries is not even the responsibility of the national government but regional institutions. Such hesitation is expressed in the variables S and UX_1 and leads to lower numerical values in the results. An interest for additional measures to support the European idea can mainly be observed when countries who normally act as net-receivers from the European budget see another opportunity to gain additional funds from the EU and therefore improve even more their cash-flow. This is especially obvious for countries which have a very poor national grant system for students and European support would then lead to an improvement of the local education sector as well.

In relation with the priority or intensity which is used at the European level to push forward issues in the educational sector in comparison with other areas like i.e. economics or at a lesser extent political

issues, the higher education sector has to be separated to achieve correct results while applying a theoretical model. Although individual Member States might be aware of the importance to push forward the issue of harmonisation and integration in the educational sector, this does not automatically mean that a shift towards a common approach will be achieved soon. This is caused by the institutional form of the original community which was principally based on the assumption that an economic integration should have the highest priority and integration and approximation in other areas would be bound to happen as a result of economic integration anyway³⁸. Therefore it is comprehensible that individual countries and governments are willing to accept a mutual approach in the educational sector - up to a certain extent - as something necessary or desirable but at the same time the necessary impetus or kick-off is missing to gain the obligatory momentum to force an educational reform throughout the European institutions.

This sometimes baffling slowness in the education sector might actually be one of the last national bastions which remain to be defended as so-called national cultural heritages since this sector is still left to national institutions with hardly any influence by the EU. Here a much quoted point is the protection of the cultural identities of Member States without taking into account that the harmonisation of regulatory issues or financial politics does not automatically have to influence the content or academic liberty of their studies. At the same time a harmonisation in the higher education sector is not considered as important enough at the moment for a further integration step of the EU due to other pressing issues like the future geographical extension of the EU, foreign affairs, common defence policy, etc. and therefore it is lacking the necessary support from high-level politicians with an extraordinary stamina to coordinate and get through with such an innovative proposal in the educational sector. Comparisons with the customs union, the free movements of goods, capital and people and the monetary union show quite clearly that Member States are able to achieve such goals and abolish their sovereign rights although this might be against their legal autonomy if only some clear positive effects can be drawn or some external effects like the aftermath of the

³⁸ Derek W. Urwin, 1995: p. 78 co.

Second World War or the end of the Cold War demand immediate and drastic changes and improvements.

SUMMARY

Because of the decision of the ECJ in the case of 'Françoise Gravier', Member States only dispose of a limited freedom of action in the area of higher education and there specifically in the determination of financial structures. Although European Common Law does not influence the design and content of national higher education policies, the decision by the Court put Member States under a certain level of pressure either to introduce voluntarily a transferability of state grants from the country of origin to host states within the EU or, which has been proven much more popular, to introduce study fees both for their own national and for EU-students with the aim to protect themselves from a large inflow of EU-students.

At present Member States face a dilemma whereas additional regulations introduced at the European level may cause the reduction of an already achieved mobility of students and actually support unintentionally the introduction of (higher) study fees in European countries. Hence only a planned and commonly organised establishment of an educational system including administrative and financial issues at the European level can allow for social justice in the educational sector up to a certain level and avoid that free-riders exploit well-financed academic frameworks in neighbouring countries without participating with their own financial resources (as i.e. to a great extent in the case of Luxembourg).

The theoretical model to assess the decisions made by the Council of Ministers shows that the positions of the Member States are strongly divided and it can be determined that the European continent is separated between the North and the South. In most cases higher education systems in the northern part of Europe are based on a very high level of flexibility which includes short- and long-term stances abroad for students (if so wished) and these are often supported financially with the possibility to transfer state grants and loans abroad. The southern part of the EU often limits the possibility of studying mainly to their own countries and well-developed grant or loan systems are rarely present. Additionally it can be seen from the input variables that Member States see the educational sector as a national issue

mainly, even when the European approach would bring along objective advantages both for the state, the economy and the students.

3. Legal Foundation of a European Education Policy

In a political climate of progress, integration and harmonisation in the EU which is and was strongly marked by economic interests and a great variety of national opinions and approaches, it does not surprise that the presentation and development of a European higher education policy with the approach to adapt national standards to a European model does not receive the highest priority within the European political framework.

An educational policy that is oriented towards the European level should focus the efforts of individual Member States in the Council of Ministers and the European Commission on the idea to support student mobility with the necessary flexibility in the academic as well as administrative area and ease present restrictions. To achieve this, a European educational policy can be based on the following two foundations.

European primary legislation - the Treaties founding and extending the Community - and secondary legislation based on regulations, decisions, etc. form the legal base of the EU. Although there did not exist a direct reference in primary legislation that European legislation would override national laws, the ECJ had determined in the case 'Simmenthal vs. Commission'³⁹ that national legal frameworks have to stand back in cases where European law enters and extends its existence into new areas. Therefore it is not necessary to introduce new explicitly defined rights into national laws since European law can – but not always - be directly applicable. In 'Van Gend en Loos'⁴⁰ the ECJ had explained that European law and decisions give their citizens rights and obligations which have to be accepted by national courts in their proceedings. Hence national parliaments and courts are therefore normally not able to ignore European legislation in their proceedings or interpretations or try to abolish established European laws with a new contradictory introduction of national legislation⁴¹. European law

³⁹ Simmenthal vs. Commission – case 92/78 – decided 06.03.1979

⁴⁰ Van Gend en Loos - case 26/62 – decided 05.02.1963

⁴¹ as in the case of the British 'Merchant Fishing Act' (Merchant Shipping Act 1988 (c. 12)) the ECJ overrode British national legislation in the judgement: The Queen

is therefore presented as an autonomous legislative system which provides to Member States and its citizens rights and duties and creates limits to a certain level especially to the sovereignty of formerly autonomous states⁴². Should the Council of Ministers, the European Commission or the ECJ take decisions in the higher education sector, then - depending on the form selected - they are most likely to be directly applicable in all Member States.

Initiatives of the European Commission are based on the same legal foundations but since the Commission can hardly act independently in new areas, she largely depends on the cooperation and approval of the Council of Ministers and up to certain level on the influence of the European Parliament. As happened in 1987 the European Commission presented the ERASMUS-programme and in 1995 the SOCRATES-programme to the Council of Ministers, which then were accepted as Decisions 87/327/EWG and 819/95/EG respectively. Different to most other major harmonisation efforts in Europe is that these initiatives are not legally binding for higher education institutions and do not oblige them to participate actively or passively in the exchange of students if not so desired. Rather a voluntarily network to support student mobility is created which then depends solely on cooperation of academic institutions willing to participate.

'The Bologna Declaration on the European Space for Higher Education' prepared by the Confederation of EU Rectors' Conference and the Association of European Universities and signed by the European Ministers of Education of 29 countries⁴³ on 19th of June 1999 tries to establish the opening of the European higher education system on a voluntary basis and promote increased mobility both for students and academic⁴⁴ personnel by trying to abolish administrative and academic barriers.

The declaration has as its aim the voluntary reform of national higher education systems in Europe within one decade and asks each

vs. Secretary of State for Transport, ex parte: Factortame Ltd and others – case 213/89 – decided 19.06.1990

⁴² Neill Nugent, 1994: p. 218 co.

⁴³ which includes all Member States of the EU

⁴⁴ interestingly enough for students only the access to higher education is promoted, for academic staff on the other hand also the 'recognition and valorisation of periods spent ... without prejudicing their statutory rights'. The authors possibly valued their own rights more than the improved mobility of students.

participant to modify and improve its own education system to achieve an overall European convergence. This goal should be reached by 'Any pressure individual countries and higher education institutions may feel from the Bologna process could only result from their ignoring increasingly common features or staying outside the mainstream of change'⁴⁵. To achieve such a commonly set goal until 2010 and introduce a European space for higher education a set of specific objectives were proposed as a common standard:

- a common framework of readable and comparable degrees
- undergraduate (not less than 3 years) and postgraduate levels in all countries
- ECTS-compatible credit system
- European dimension in quality assurance
- Elimination of remaining obstacles to a free academic mobility

Such a voluntary approach might therefore be able to cause a slow change in areas where a compulsory imposition by the European Commission could have met a vehement resistance from Member States and/or their academic institutions.

Empirical research will show nevertheless that by introducing European primary and secondary legislation the mobility of students was facilitated but it can only be talked of a European Higher Education Policy if the European Commission can establish a universal network of cooperation in higher education to achieve a coordination of some outstanding regional and national efforts in this area.

⁴⁵ 'The Bologna Declaration: An Explanation': European Commission, 1999

3.1. Initiatives of the European Commission

The European Commission sees itself quite limited in its competences by the foundation and upgrading treaties of the EU regarding the introduction of a possible higher education policy. Article 149 of the TeC can be quoted here as 'while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity' and presents clearly the limits of the European Commission and allows the Member States to block advancing proposals in the higher education section basing their resistance on the grounds of subsidiarity both for academic and administrative issues and national independence for educational aspects⁴⁶.

Since the Treaty of Rome and up to the 1980's a common education policy and related issues only had a very low priority compared to i.e. the harmonization of the economic sector and hence no real change could be noted here. Up to the case of 'Gravier' the European Commission was even of the opinion that differentiated study fees for national and EU-students were compatible with European legislation and judgements, and based on this opinion, the Commission did not pursue any integrative steps to abolish academic discrimination either⁴⁷. Only when the academic exchange programme ERASMUS was introduced a change of opinion and a more active support of student issues in the European Commission could be noted.

EUROPEAN EDUCATIONAL PROGRAMMES

Since 1987 the European Commission tries to support and strengthen the European factor in the education sector via a variety of voluntary programmes. Financially speaking in the period of 1995-1999 expenses of about € 850 Million⁴⁸ were included in the budget of the EU to support educational topics. For the higher education sector

⁴⁶ National Agency for Higher Education, 1997: p. 125 co.

⁴⁷ Vincent Blaizot vs. University of Liège and others – case 24/86 – decided 02.02.1988

⁴⁸ A simple calculation should show that not a significant financial commitment was made available for this programme. If the WHOLE budget of the programme SOCRATES were made available for the mobility grants of the subprogram ERASMUS only then each of the participating 100.000 students/year would receive € 1.700 as a mobility grant.

important is the sub-programme ERASMUS which since 1995 is included in the general educational programme SOCRATES. ERASMUS is then split again into two sectors whereas one focuses mainly on the support of student mobility (principally) within the EU and on the other hand a part is defined which organises and coordinates the cooperation of participating higher education institutions. Student mobility is promoted and supported via a network of participating institutions in the student exchange and by offering financial grants to cover travel expenses. Student participation in ERASMUS is limited to 12 months but this can be used for different academic institutions and countries.

In the EU there are about 11 Million students registered at approximately 5.000 higher education institutions⁴⁹. From 1987 until 1999 about 640.000 students have participated in the exchange programme ERASMUS and nowadays about 100.000 students make use of this mobility programme annually. The original idea of the programme was to offer up to 10% of the academic population in Europe to participate in an organised student exchange. Due to the high demand by interested students this aim had to be reduced to 5% and the financial value of the mobility grants had to be downgraded⁵⁰. Due to the limits in the EU-budget the financial support to cover the costs of student mobility (travel costs to and from the host state, linguistic preparation and a balancing factor for the difference in maintenance expenses)⁵¹ had to be reduced to such an extent that students have to burden additional costs if they want to go abroad for studying. National grants and loans available for studies abroad could soften the financial disadvantages mobile students experience, but empirical evidence in Chapter Four shows quite clearly the national differences in financial support, countries grant their mobile students and therefore do not serve as a European solution to the issue. This might explain partially why Germany, France and Great Britain, which all three offer their students a quite generous national support during their ERASMUS-stance abroad, provide a great part of all ERASMUS-students, too⁵².

⁴⁹ Europäische Kommission, 1997: p. 5

⁵⁰ Ulrich Teichler, 1996: p. 8

⁵¹ Europäische Kommission, 1997: p. 9

⁵² Jean-Pierre Jallade, 1997: Table 4

Additionally it has to be criticised that 12 months of studying abroad might be too short to gain valuable experience abroad; especially when stances should cover several countries to gain more linguistic abilities. Some countries have already recognized the importance of studying in more than one foreign place. Possibly special financial programmes should support such an extensive mobility and take account of the specific social duress as well, such students are exposed to.

To support higher education institutions the ERASMUS-programme offers a voluntary network of cooperation with the aim to facilitate and promote the student exchange and to achieve a European and international approach to higher education to allow for more open educational systems⁵³. Here the European Commission supports the interested academic institutions financially and administratively in the creation of new infrastructure and the provision of additional measures to facilitate the incorporation of the programme. It has been achieved by now that most higher education institutions in the EU do participate in the SOCRATES-programme and are interconnected via the voluntary exchange network. Hence the cooperation to facilitate the academic exchange of students with the only criteria of offering available temporary study places abroad can be considered as being achieved. This signifies the facilitation of the mobility of students because of reduced and harmonised exchange guidelines and regulations but does not automatically support students financially nor abolish a great variety of administrative barriers.

ECTS

One of the main barriers to short and medium-stance student mobility - meaning organised as well as individually planned stances abroad, but within the EU - is the recognition of foreign academic examinations or certificates for the further use in the university of origin. Stances abroad in one or more host countries which can be organised via the ERASMUS-programme or in a free-mover environment might prolong the duration of the studies greatly if the student is not offered recognition of his academic performance acquired in a foreign country;

⁵³ Europäische Kommission, 1997: p. 8

without taking into account in this context foreign diplomas which will be considered later on.

Because of this problem which can be acting as a direct barrier to student mobility the European Commission started already in its first ERASMUS-programme in 1988-1995 a pilot project in which about 146 higher education institutions participated voluntarily in the beginning to allow students to have their foreign academic performance recognized by the home university. Now the ECTS-programme already includes more than a 1.000 institutions which is about 20% of all higher education institutions in Europe⁵⁴.

To achieve such a transparency of academic tables of contents in higher education institutions and to allow for a comparability of academic education at the European as well as national levels certain common parameters had to be provided. Additionally to the national scales of marks used to assess students, an ECTS-standardized scale was introduced to allow for an easier and more transparent recalculation of marks at the national level. ECTS-credits express here the time used for each passed study period because national institutes value study efforts differently as well⁵⁵. This allows mobile students also to determine what kind of assessment they will receive before the official recalculation takes place at the home university.

Looking at long-term effects the possibility of having their time spent and study certificates achieved abroad recognized by the home institution will have a greater impact on the mobility of students than a financial subsidy programme like ERASMUS, which only distributes greatly reduced scholarships nowadays anyway and therefore does not really act as a stimulation for student mobility anymore.

Studies abroad are considered as an important experience in the job market nowadays and only an ECTS-programme can assure that when students go abroad to one or more host institutions studies are not prolonged too greatly by inflexible recognition procedures at the home university and therefore studies abroad are not an extension of national diplomas but an integral part of it⁵⁶.

⁵⁴ Ulrich Teichler, 1997: p. 162

⁵⁵ European Commission, July 2000: p. 65

⁵⁶ Juliane List, 1995: p. 25 co.

Although the development of the ECTS-programme can be considered as a great success, to achieve this progress it took a very long time and it seems that it fails to continue at the moment. Already twelve years ago the programme was introduced into the higher education landscape and since then it still depends on the voluntary cooperation of the participants which causes a slow and possibly imbalanced recognition of foreign academic performances. Students cannot insist on the automatic recognition of academic performance but depend solely on the criteria defined in the cooperation agreements which were set up by the European Commission and the participating institutions.

Hence it is possible as well that academic performance is even assessed on a different basis by various universities of one single country. The European Commission tries to harmonise the assessment in this area basing its efforts on the voluntary cooperation of higher education institutions but does not have the competence to introduce a European or nation wide common marking system. A harmonised system for all institutions would be of great benefit both for students and the higher education institutions allowing for more comparability and security in the case of student mobility. It appears contradictory that in the economic aspects of the EU a harmonised and integrated legal and administrative system should assure the functioning of the Community and on the other hand a mere cooperation should allow for the improvement of the situation in the educational sector.

SUMMARY

Both programmes, ERASMUS as well as ECTS, show quite clearly the capacities and limits of the European Commission in the area of higher education and the mobility of students. The Commission can act in some areas as a partner for coordination where a disposition to cooperate between the academic institutions does exist. Possible is as well that voluntary processes of integration kick-started by the European Commission force less enthusiastic institutions to participate, too, because otherwise the negation to be involved might lessen the academic attractiveness of the institution with all its negative consequences.

The voluntary and now almost European-wide participation of academic institutions in the ERASMUS-programme shows clearly the interest and necessity of universities to coordinate themselves at the European level and facilitate the administrative mobility of students. On the other hand the ECTS-programme is already perceived more as an intrusion into national academic autonomy because it could limit their academic freedom for curricular content and marking. Since national universities are very often independent in some of their actions from the national government it appears very unlikely that European legislation can solve such possible failures at the national level - although solutions might be desired, they are not valued highly enough in comparison with academic independence.

The financial support by the EU in the area of student mobility has slowly reached its limits since any further increases in favour of ERASMUS mobility grants would not be covered by the SOCRATES-budget anymore. This is in clear contrast with the ever-increasing demand by students for mobility grants which should not only last for longer periods than 12 months but also be distributed over several countries. Because of its limited budget structure the European Commission is not able to support the student mobility financially on a long-term basis at present and therefore might have to depend largely on the generosity of national educational ministries to support (their own) students during their mobility. Here Chapter Four will show that within the EU the Member States value the mobility of students differently which then also has a quite large impact on the financial support of such mobile students as well.

3.2. Residence and Mobility of Dependents of Migration Workers and EU-Students

It is to be assumed that a Europeanisation of the academic education system in the EU is generally considered as a very difficult and critical issue which is not easily opened up for a combined European approach. Not even the activities of the European Commission in the area of ERASMUS etc. will lead to an automatic compulsory internationalisation of national systems and therefore do not trigger an additional progress for the mobility of students either. On the other hand certain minimum requirements were necessary at the European level to assure and safeguard the mobility of migration workers and their families. Due to the general reluctance to cooperate on educational issues it seems to be obvious that a certain standard of flexibility was not achieved by opening up national educational systems influencing national legal and academic bodies directly, but by giving rights to dependants of migrant families and allowing them to have non-discriminatory access to educational institutions. It could be open for discussion if the integration of children of migration workers into higher education plays as an important role at the European level as general student mobility. But statistics prove that more than half of all student mobility existing in Europe is done outside organised academic exchange programmes and children of migration workers present some part of these students⁵⁷.

The following Regulations and their quoted articles were established to make sure that migration workers could have the same rights and obligations as national workers in the host state. This should assure that migration workers as well as their families have the best chance to be integrated in the social and cultural system of their host country at their disposal. The, most likely not foreseen, side-effect of these Regulations were that not only children of migration workers but also independent EU-students tried to claim state grants or loans in the host countries for their academic studies under the Regulations created for migrant workers. Within a certain area such maintenance support was also made available for dependants of migration workers whereas

⁵⁷ EuryDice, 1999: p. 106 co.

independent EU-students had their own limits set quite vigorously by the European Court of Justice.

Regulation of the Council of Ministers 1612/68

Article 7(2)

He [the migration worker] shall enjoy the same social and tax advantages as national workers.

Article 7(3)

He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

The definition of having access to educational institutions can be interpreted very widely and as it will be discussed further down such interpretations do not automatically include state grants and loans of host countries where EU-students have access to the educational system but do have to argue about the social maintenance support. Very concrete criteria have to be fulfilled which can be achieved i.e. with a former employment contract in the host country. Such an employment contract can be of a very short period of time and as a consequence access to state maintenance grants and loans will be immediate if the migrant worker was involuntarily dismissed⁵⁸. As the general attorney Sir Gordon Slynn noted in the case 'Steven Brown'⁵⁹ study fees are seen as a financial barrier for individual students if nationals of the host country either do not have to pay such fees or if they are reimbursed by the local government retrospectively in some form or other. State grants or loans for the maintenance of students are possibly a pre-condition for the successful carrying out of academic studies but are not related enough with the point of discussion of having access to higher education to be considered as an effective barrier for foreign students at present⁶⁰.

⁵⁸ EuryDice, 1999: p. 107

⁵⁹ Steven Malcolm Brown vs. Secretary of State for Scotland – case 197/86 – decided 21.06.1988: p. 3230

⁶⁰ Additional financial grants for handicapped students or similar measures are nevertheless considered as reducing discrimination and therefore the discussion is contradictory to the arguments brought forward by Sir Gordon Slynn.

In this context one of the critical points of discussion is very often the interpretation of the following expressions: 'social advantages', 'vocational schools and retraining centres' and 'by virtue of the same right and under the same conditions ... have access to ...'.

The expression 'vocational school' and 'retraining centre' and the use of different official languages in the EU have already caused problems and misunderstandings from the very beginning. One of the main questions was if universities can be seen as 'vocational schools' in a very wide context. Already in the case 'Lair vs. Universität Hannover'⁶¹ general attorney Sir Gordon Slynn expressed that in his opinion the use of various official languages can cause a wide interpretation in the context of educational institutions. In the case of the German version of the Regulation the expression 'Berufsschule' (vocational school) cannot be used in a wider interpretation for the institution of a university. 'Berufsschulen' in Germany form an integral part of the dual-education system and present the state contribution in the apprenticeship system. Because of its inherent characteristics 'Berufsschulen' are incompatible with the system of academic institutions. Additionally the Regulation included an appendix with a list of a great variety of institutions representing examples in the category of 'Berufsschulen' in all the Member States but universities were not included for this purpose.

The ECJ came nevertheless to the conclusion in the case of 'Brown vs. Secretary of State for Scotland' that an academic education can be evaluated as a professional training or education if the academic title leads to a very specific employment which could not be achieved otherwise; but he was still hesitant to accept that academic institutions would provide professional education on a general basis. Hence studies like medicine, law, some forms of engineering, etc., which are all regulated by the state and cannot be accessed otherwise, were automatically seen as professional training whereas others were considered as general training and therefore not automatically relevant for further employment. This narrow interpretation of the professional training at academic institutions has changed over time and in several cases (see also Chapter 5) the ECJ came ultimately to the conclusion that practically all university studies can be considered as professional

⁶¹ Sylvie Lair vs. Universität Hannover – case 39/86 – decided 19.11.1985: p. 3184

training since they are normally always of at least some use for future employment. This development then finally opened up the doors for the present mobility of students in Europe which is still hampered by administrative barriers but at least the indiscriminate financial access regarding study fees was solved to the advantage of migrant workers who chose to continue their academic career.

Regulation of the Council of Ministers 1612/68

Article 10(1)

The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

- a) *his spouse and their descendants who are under the age of 21 years or are dependants;*
- b) *...*

Article 12

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

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.

Summarizing the content of the two Articles, they allow the spouses of migration workers, their children and certain dependants to enjoy the same rights of residence and the free access to the education system for the children in the host country.

It is interesting to note that in Article 12 family members like spouses or children older than 21 are not named for the general access to the educational system. Such an approach to the integration of migration families would then effectively exclude older dependents from the state-supported higher education system since in Article 11 children were defined as being younger than 21 years.

This exclusion of mature students was investigated in the case of 'Lubor Gaal'⁶² and the ECJ came to the conclusion that the limitation of 21 years for the state-supported access to higher education could

⁶² Landesamt vs. Lubor Gaal – case 7/94 – decided 04.05.1995

not be upheld since this could possibly lead to the effective exclusion of mature children of migration workers in the academic sector. Here it was argued as well that the entrance age for students has risen substantially and it is not uncommon to commence studies during ones early 20s.

Additionally in the case of 'Di Leo'⁶³ the ECJ interpreted Article 12 insofar as that children of migration workers can pursue their academic studies outside the borders of the host country and even receive state-supported maintenance grants or loans from the host state and transfer it to their place of study if this is possible for nationals of this specific host country as well. This can then also include studies in countries where the student either holds the citizenship or was raised before coming to the new host country. The argument that the country of origin would then be responsible for the education and financial maintenance of the student according to its own national requirements is not valid insofar as, by definition, the host country has to provide the same opportunities to the dependants of migrant workers as it offers to its own national students. The access to the common educational system therefore includes all incentives and opportunities which are offered to nationals and cannot be restricted for foreign students to the territory of the host country.

Article 6⁶⁴ - TeC

Within the scope of application of this Treaty ... any discrimination on grounds of nationality shall be prohibited.

Article 6 was used in almost all cases of the ECJ which are related to the argumentation of access to higher education and student mobility. Whatever negation of access to academic institutions and state maintenance grants and loans resulted in some form of discrimination regarding the rights and obligations of mobile EU-students. Nevertheless it is important to determine here if such kind of discrimination falls into the application of primary legislation of the EU-Treaties.

⁶³ Carmina di Leo vs. Stadt Berlin - case 308/89 – decided 13.11.1990

⁶⁴ in the Treaty of Rome: Article 7

If this is not the case the responsibility for the discrimination falls back into the sovereign authority of the individual country which caused the discrimination via its exclusive national legislation originally anyway. As it was shown in Chapter 2.1 & 5 quite clearly, the access to higher education in itself falls into the application of primary legislation and whatever discrimination based on nationality is therefore considered contrary to European legislation. State maintenance grants and loans on the other hand fall into the area of social benefits which are not included explicitly in primary legislation so far.

To the objective and reasonable reader it might appear contradictory that since the Treaty of Maastricht the EU dedicated itself verbally to the 'Encouraging mobility of students' (Article 126.2.2) but this pronouncement does not apply automatically to the rights of mobile EU-students. Even the right of transferability of state grants and loans cannot be derived from such statements since the ECJ decided in 'Van Gend en Loos' and other cases that only specifically named rights can be taken and applied from primary legislation. In other cases such dedications and statements only present a guidance for the institutions themselves of how to design and pursue future politics in the EU⁶⁵.

As can be established, the mentioned regulations were not explicitly created for the improvement of the situation of EU-students and their access to tertiary institutions anyway. But in its conclusions the ECJ came to the decision that the access of mobile students to higher education institutions in other Member States of the EU does fall into the responsibility of European legislation and cannot be left to the arbitrariness of national legislation which might follow single-minded approaches to issues which can only be solved by all Member States working together. The resistance of individual Member States to the intrusion of European institutions into the national educational policies might be understandable since they have created Regulation 1612/68 themselves in the Council of Ministers. It can be strongly assumed that they did not have in mind to deliver further arguments for mobile students with this Regulation and to allow EU-students to ask for equal treatment regarding study fees and either the transferability of maintenance grants or to claim such a financial support in the host state.

⁶⁵ Neill Nugent, 1994: p. 219

Consequently it is very likely that Member States watch the doing of the ECJ with great reservation since it can introduce new European law via precedence cases without the legal or administrative confirmation or acceptance of Member States. One of the main critics against the Court is caused by its creation since it is neither formed nor controlled by any democratically elected supranational institution. On the other hand, claims that the European Commission and the Council of Ministers are burdened with the same problem cannot be negated either since European citizens are not able so far to express their political opinions directly in elections neither for the Commission nor the Council⁶⁶.

The concept of subsidiarity was and is also widely used by the Member States to protect themselves from further advances of European harmonisation and integration by saying that state maintenance subsidies do not fall into the responsibility of European legislation since European primary law does not cover such social benefits. Member States argued several times in front of the ECJ that access to national state maintenance systems for mobile students could be interpreted as a right derived from European harmonisation and thus would be contrary to the idea of subsidiarity and as a result decisions concerning the welfare of EU-students should remain with individual national legislation. On the other hand it can be argued that subsidiarity is concerned with the execution of rights at different levels and not necessarily the decision of the necessity to introduce such proceedings. The only alternative to a European programme is national action but not the ignorance of the issue at stake⁶⁷. Therefore Member States should not be allowed to loose the European perspective when subsidiarity is claimed and applied. Only constructive national policies can replace European action and single states cannot be allowed to remain behind because this would then endanger a coherent European approach.

On the other hand especially the resistance of Member States to allow for a European educational policy and flexibility of the mobility of EU-students triggers the intrusion of the ECJ into this area since it appears that there exist some contradictions which are caused by an unwilling

⁶⁶ Neill Nugent, 2000: p. 230

⁶⁷ Nicolas Bernard, 06/1996: p. 8 co.

national legislative. Here either parliaments push forward and solve difficult issues before they become effective as legal pieces at the national level or it is left to the ECJ to decide where rights of EU-citizens were restricted or discriminated against.

Possibly financial reasons are the main point of resistance for the establishment of a European educational policy which would permit the transferability of state grants and loans to other EU-states and have all the accompanying consequences for an increased student mobility. Up to now students who are not able or do not want to participate in one of the European exchange programmes, i.e. because they were not able to enter into academic institutions in their home country in the first place or staying abroad for only twelve months due to the limit in ERASMUS in their opinion is not sufficient, do have to finance their maintenance costs mostly themselves. A European harmonisation in this area would most likely cause additional expenses for state budgets which then would replace the expenses of mobile students who did not have their European studies and mobility financed up to now⁶⁸. Therefore any new financial approach would mean a transfer of private to state expenses and would then have to be counter-financed by additional or rerouted taxes.

⁶⁸ Andreas Köpke, 10/1997: p. 8

3.3. Right to Residence for Studies in the EU

The free movement of goods, persons, services and capital was not only a very important goal in the European Union which should have been achieved by the introduction of the common market in 1993. Already when the European Economic Community was founded with the Treaty of Rome one of the basic assumptions of a functioning community was a flexible mobility of these four factors to assure a fruitful cooperation of the Member States.

Although the free movement of goods and services - capital was only mobile up to specific limits - already gained a relatively strong and unhindered mobility in the early beginnings, the free movement of persons was well defined and limited by only conceding this option mainly to workers and tourists. Persons were able to move to other Member States without having to prove their status as migration workers even for longer stances but were depended here on national laws concerning the status of aliens with all the individual legal loopholes and specific criteria national legislation could provide⁶⁹.

It was left to the ECJ to determine in a variety of cases⁷⁰ that students had a right to residence in other states inside the EU and based their arguments on European legislation. It was also stated that national governments abused their own legislation - old or amended - to limit the mobility of EU-students and therefore influenced student mobility to their own advantage. Additionally the definition by the ECJ of a right to residence for students and the decision in the case 'Jean Noël Royer'⁷¹ is a clear proof that EU-students who do not even possess an official residence permit enjoy the same rights as registered students since a residence permit as an official document only expresses their status but these rights were already transmitted by their being there and not by the official expenditure of a residence document.

Nevertheless the official procedures for the attribution of a residence permit to EU-students were not regulated at the European level. As it

⁶⁹ Søren Kristensen, 1999: p. 24

⁷⁰ G.B.C. Echternach and A. Moritz – combined case 389+390/87 - decided 15.03.1989

V.J.M. Raulin - case 357/89 - decided 26.02.1992

⁷¹ Jean Noël Royer - case 48/75 - decided 08.04.1976

can be seen in Chapter 4.2, the possible implications for maintenance grants and loans in a host state were a regular cause of dispute between students and the administration in charge and thus foreign students were tried to be excluded by the relevant ministries to limit national educational expenses. Another issue at stake was if access to health insurance should be regulated and provided by the host state or country of origin since this presented a certain financial threat to academically interesting countries due to higher social security expenses. Therefore it was possible that students had to pay contributions towards the student health insurance in the host country while being insured at the same time automatically in their home country i.e. with their parents due to their status as students or minors. The status of students related to social security had to be determined as well since in most cases financial parental support is only considered if parents live with students in the same country. EU-Students who live alone in the host state might be more likely to receive full state support since no relatives can be made responsible to provide some sort of financial support. Therefore a common European solution has to consider a large number of possible outcomes.

In the Directive 93/96/EWG of 29th October 1993 on the 'Right of Residence for Students' Member States tried to introduce an overall solution and satisfy the needs arisen from an increased European mobility of students. Nevertheless some aspects could be critically considered insofar as that Member States had much more in mind to safeguard their own national sovereignty which was curtailed by the decisions of the ECJ and to protect their own national social security systems since they saw the mobility of students as a possible threat to their individual grant and loan systems. In this case it had to be criticised that the welfare of mobile students was inferior to other interests like national autonomy and limited educational expenses.

In the first Article of the Directive it is determined that a right to residence is conceded to all EU-citizens who are interested in a full-time degree at a foreign academic institution and hence it should assure the non-discriminated access to professional or academic education outside the home country of the mobile student. The right to a residence permit for mobile students is extended as well to matrimonial partners and their children. Excepted in this regulation are

relations who are not recognized by a state as legally binding. Since it can be assumed by looking at the age structure of students that the majority of them is not married such a definition presents a clear discrimination against non-married couples if the partner wants to join the student during the stance abroad and is not able to find an employment in the host country during that period. If this is not possible and a residence permit based on an employment contract cannot be obtained then the partner will have to rely on the Directive of residence permits which covers '... Nationals of Member States who do not enjoy this right under other provisions of Community law and to members of their families ...'⁷² and prove to the host state that a student has a personal financial income or other means to assure that the partner will not be depended on social services of the host country.

To prove that the social services of the host country do not have to cover foreign students it has to be shown to the relevant national authority that the student (or in the case of couples partners as well) will not exploit such services. The expression '...the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent ...' (Article 1) can be used to achieve a great variety of interpretations. Member States like Great Britain do not automatically insist on a registration of EU-students and services like health insurance, a right to vote in the community or to the EP, the registration of automobiles, etc. can be done as well without any residence permit or registration at the home office⁷³. Spain on the other hand demands the physical presence of a yearly Spanish minimum income deposited at a national Spanish bank to assure that the applicant has the money at his disposal⁷⁴. It is easy to understand that for many students it will be very difficult to provide such a great amount of money at the beginning of their studies since state grants or loans are often paid out monthly or quarterly. Since in the original proposal of the European Commission it was talked about a 'Proof of Sufficient Means of Existence'⁷⁵ it can only be argued that the Spanish procedure is way above what was recommended in the final Directive and is mainly used

⁷² Council Directive 90/364/EEC of 28 June 1990 on the Right of Residence

⁷³ Information letter of the Home Office, London, 1999

⁷⁴ Information letter of the Ministry of Foreign Affairs, Madrid, 1999

⁷⁵ KOM(00)723

as a one-sided tool to assure that mobile students bring their income already with them before commencing their studies. This behaviour came under the scrutiny of the European Commission and in the Recommendation on the Mobility of Students (2001/613/EC)⁷⁶ in Article 3d Member States were asked to facilitate such proof from the country of origin.

Additionally it does not seem reasonable that students who seem to dispose finally of the same social rights as migrant workers due to the Regulation (EG) 307/1999 are excluded explicitly from the payment of social financial support as could be claimed by any national or migrant worker. The European mobility of students should actually not present a higher risk for host countries and their social systems than the later mobility of migrant workers.

In one case the ECJ had the possibility to determine if it was possible for Member States to ask prospective students to prove that they had a certain personal minimum income at their disposal and would not depend on the social safety net of the host state. In 'European Commission vs. Belgium'⁷⁷ the Commission complained to the Court among other things that Belgium asked its foreign students from the EU to show that they had a minimum income of 12.000 BF/month⁷⁸ available at their personal disposal. The state of Belgium claimed on the other hand that such a 'reasonable and modest sum' would not pose an excessive burden on a student from a foreign country since in his plans to go abroad he would certainly foresee a certain minimum of expenses which would most likely be above the level the Belgium government asks for. If a student would not be able to provide such a minimum guarantee it would show only that his financial plans for studying abroad were not thought through well enough and could end most likely in the social dependence on the host state.

Unfortunately the ECJ did not have to come to a conclusion on this topic since the whole case was rejected on the grounds that the European Commission was acting outside its legal authority and

⁷⁶ Recommendation of the European Parliament and of the Council of 10th July 2001 on 'Mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers' (2001/613/EC)

⁷⁷ Commission of the European Communities vs. Kingdom of Belgium – case 293/85 – decided 02.02.1988

⁷⁸ approx. € 310

therefore the Court decided not to comment on the topic of the minimum income either. This is insofar very unfortunate as a decision of the Court on the legality of such financial requirements could have had a very interesting political impact if it were considered to be in contrary to European legislation.

It also appears not to be logical why in Article 4 the residence permit loses its validity once the student finishes his course successfully (or decides not to continue). Since on a general basis there is a certain time span between graduating from university and commencing an adequate employment it does not seem a reasonable idea that former EU-students lose their right to residence immediately⁷⁹. It would be much more adequate to include an automatic extension once the degree is completed like i.e. six months to find work in the host country which then again will be the base for a further extension of the permit linked to the rights of migration workers.

Also Article 3 excludes explicitly the right of an EU-student to a maintenance grant or loan in the host country. This should possibly prevent that in the long run the ECJ could come to the conclusion that due to the increased student mobility a right of access to state grants and loans could be derived from the Directive.

The introduction of the Directive on residence for mobile students in the EU did not bring any obvious advantages for the European student community. The actual access to having a student residence permit was already created by the ECJ and the Member States who were directly concerned by these sentences did already have to adapt their legislation accordingly. In the area of social security no real improvements were introduced but actually more limits and obligations for students had been defined which were mainly based on the compulsory safety net provided by the country of origin. Also the 'assurance of means of existence' was left way too much to the host countries to assure that mobile students do not pose a financial threat to their social security or educational budgets. It would possibly have been more reasonable that the country of origin would already check the financial situation of the student which could also include the support via state grants and loans. Then it could incorporate in its administrative certificate that the student is covered by a valid health

⁷⁹ Dieter Dohmen, 1995: p. 137

insurance and issue a kind of European student identity card. Such a European student card could therefore be used as the sole requirement for registering one's residence in the host state. This procedure could then also allow the mobile student to finish certain administrative obligations already before going abroad. Being able to do such preparatory work is usually easier in the country of origin where administrative procedures are easier to fulfil due to local standards and language requirements.

The recent admission of future members to the EU in SOCRATES poses an additional problem for the mobility of students. Students from i.e. Eastern Europe are able to participate fully in the ERASMUS-exchange and choose freely between participating institutions all over Europe. At present ERASMUS scholarships are very low so students depend either on family support or additional income from work. For students from Eastern Europe the EU is a high-cost area but since these students do not come from the EU directly they do not have the chance to apply for a work permit like other EU-students so they can only depend on savings, family support and scholarships. For these students, once they are accepted into the ERASMUS exchange an automatic concession for a work permit for the duration of the exchange should be included if so required by the student.

What Member States might have in mind when they talk about limiting the free mobility of students is that they want to avoid that such students present an additional burden on their national education and social budget. It has to be highlighted that it is talked about social benefits and not access to maintenance grants for students in the host state. Both in the Directive regulating the right to residence of EU-students and in several cases decided by the ECJ it was made clear that EU-students, who only come to a host state to pursue their studies, are not able to raise claims under the national student maintenance scheme at the moment. Therefore the actual presence of the student does not pose a direct threat to the state budget anyway. Additionally in the recent Recommendation (2001/613/EC) concerning this issue the Council of Ministers is actually promoting the idea of grant transferability from the home state⁸⁰ which would reduce the social responsibility of the host state.

⁸⁰ Article 1 c – second paragraph

If the student interrupts his studies or is not able to pass his exams with the consequence of being exmatriculated then he will lose automatically his status as an EU-student and his student residence permit will become nil and void⁸¹. The argument goes that a student should not be allowed to continue his stance without the status of a student although this is a contradiction in itself. To obtain the residence permit for students one has to prove that he is correctly registered at a university in the host state and that he has a certain minimum income at his disposal. It does not seem logical that the first criteria causes the loss of the residence permit as long as he can prove that he will not depend financially on the host state. As an additional counter-argument it could be said that such mobile students should not apply for a student resident permit but for a residence permit covering 'Right of Residence'⁸² where they only have to prove their financial status, health insurance and nothing else. Reading all the clauses carefully nothing would prevent a student from applying for this specific residence permit and therefore avoid additional paperwork. Additionally this would present the benefit of not having an automatic limitation of one year of a student residence permit but a minimum of two (standard five) years. Furthermore the residence permit does not depend on the results of one's academic career and once the degree is finished the permit is not terminated automatically.

Another argument is that the student – or in this case failed student – only has to pursue some professional activity as an employee and will be immediately recognised as a migrant worker with all its benefits. As it was shown in 'Levin' this does not even have to be a full-time employment since the ECJ decided that almost any form of regular part-time work will lead to the recognition as a migrant worker.

As a summary it can be concluded that Directive 93/96/EEC regulates the administrative issue on student residence permits but does not facilitate and provide for an improved mobility of students as would be required by the newly created European academic space. Especially in the area of social security gaps still can be noted at the European level and it is left to national legislation of how to assure that students do not fall through the social safety net while studying abroad. If the

⁸¹ Directive 93/96/EEC - Article 2.1

⁸² Council Directive 90/364/EEC of 28th June 1990 on the right of residence

same criteria were used for migrant workers, too, it would not be surprising that hardly anybody would take a chance. Should this be an indication for the desired student mobility in the future?

3.4. Residence Permits and Professional Access of Academic Personnel

The mobility of teachers and lecturers is an integral part of the new European approach to higher education. To assure a comprehensive exchange of academic ideas and to intensify the cooperation of academic institutions academic personnel not only has to meet up with their foreign counterparts in conferences, etc. but also should experience such cooperation in other tertiary institutions. This can have the form of short and long-term exchanges but also the permanent migration of teachers and lecturers to other Member States. Especially for the large majority of non-mobile students it is a goal to bring to them foreign academic content by employing academic personnel from abroad instead of taking these students to external tertiary institutions⁸³.

In this context issues at stake are the mobility of academic personnel which was limited by Member States for a long time insofar as in the majority of the Member States lecturers and professors at higher academic institutions had the status of civil servants and Article 48(4) TeC explicitly excludes the public administration from the free mobility of workers inside the EU. Regulation 1612/68 and Article 48 of the Treaty of Rome give certain rights to migration workers in Europe but it seemed uncertain for a long time if such rights could and should be applied to certain sectors of mobile civil servants as well.

Certainly the allocation of civil servants depends highly on the circumstances found in each Member State and whereas in some states the number of civil servants is still very high and the allocation widely spread, other countries only employ civil servants on a minimal basis and in state-relevant areas. Hence it would not be reasonable to limit the mobility towards countries where there exists a high level of public administration and on the other hand allow nationals from such countries to occupy jobs in other states that would be unavailable for EU-citizens in their country of origin.

Member States argued in several cases that any employment in the public sector would confer the exercise of powers inherent to public

⁸³ CRE, 2002: p. 8

law and the responsibility for safeguarding the general interests of the state to the civil servant and therefore the employment of EU-citizens in such areas was considered as in breach with Article 48(4) TeC. It was argued by some Member States in such a way that even the lowest of the lowest civil servant (in some cases even people sweeping the streets are employed with a civil servant status) would have the potential to disturb the public security greatly and only nationals who do not feel morally depended on their country of origin would not abuse such great powers⁸⁴.

The arguments used to defend the national status of civil servants and the possible abuse of powers by European foreigners became nil and void anyway when one considers objectively the potential influence large foreign companies can have on the economic and sometimes even political well-being of sovereign nation states. For the sake of the argument starting with CEOs of large companies like Microsoft, Daimler & Chrysler, Siemens, etc. such companies and holdings might have more economic and political influence than some politicians. Then to argue that foreign nurses in hospitals pose a threat to national health and security becomes completely irrelevant if one takes a reasonable and objective approach.

In the end the discussion had to focus on the argument if the approach towards the employment of EU-citizens in the public sector of other countries has to be either institutional or functional. Institutional would mean that any employment contract signed by the state and with the characteristics of a civil servant would exclude foreigners automatically under Article 48(4) TeC. A functional approach would open up the employment opportunities in the public administrative sector and only exclude specific posts (or levels) where the exercise of powers inherent to public law and the responsibility for safeguarding the general interests of the state has to be upheld.

⁸⁴ Sotgiu vs. Deutsche Bundespost – case 152/73 – decided 12.02.1974
Commission vs. Belgium – case 149/79 – decided 17.12.1980
Commission vs. France – case 307/84 – decided 03.06.1986
Lawrie-Blum vs. Land Baden-Württemberg – case 66/85 – decided 03.07.1986
Commission vs. Italy – case 225/85 – decided 16.06.1987
Alluè and Coonan vs. Università degli Studi di Venezia – case 33/88 – decided 30.05.1989

The interpretation of such limited applications must then be left again to the ECJ since Member States would interpret these levels with different outcomes according to their national interests. According to the European Commission a mutual understanding exists insofar as the mobility of lecturers and professors is available for teaching and research and unhampered by national legal restrictions⁸⁵.

The issue turns out to be complicated again when it comes to the promotion of academic personnel within the higher education sector. The higher a civil servant rises in his career the more likely it is that his decisions might affect the political direction of the state or at least important areas. In the higher education sector it is obvious that a lecturer does not have the same influence towards the ideological or political orientation of his institution as the head of a department or the chancellor of a university might have. Here limits are still set by community jurisdiction and principally by the above mentioned precedence cases of the ECJ. It is not possible for EU-citizens to rise above the level of professor in a department and become i.e. the chancellor of a university without changing his nationality if a Member States intends to limit these posts to its own nationals⁸⁶.

Here it might be important to note that the Supreme Court of the United States argued in the case 'Ambach vs. Norwick'⁸⁷ to the contrary at already much lower professional levels. In that case the question was presented whether a State, consistent with the Equal Protection Clause of the Fourteenth Amendment, may refuse to employ, as elementary and secondary school teachers, aliens who are eligible for United States citizenship but who refuse to seek naturalization. New York Education Law 3001 (3) (McKinney 1970) forbids certification as a public school teacher of any person who is not a citizen of the United States, unless that person has manifested an intention to apply for citizenship.

The Court saw a strong connection between the nationality or at least intention of a teacher to apply for citizenship and the impact this sense of belonging might have on the quality of teaching in such specific cases. Important to note here is that the plaintiffs in this case both

⁸⁵ European Commission, November 2001: p. 1

⁸⁶ Exceptions exist in Member States where academic employees do not have the status of civil servants. I.e. in the UK no limits exist at all.

⁸⁷ Ambach vs. Norwick – (1979) 441 US 68

fulfilled the preconditions to apply for US-citizenship without any legal hindrance. Nevertheless they had refused to do so on several occasions for a variety of personal reasons and the Court argued that such behaviour leads to the conclusion that such aliens refuse to oblige to US political rule and beliefs and hence prefer to preserve their loyalty towards their state of origin. Such power and responsibility of the State applies not only to the qualifications of voters but also to persons holding state elective or important non-elective executive, legislative, and judicial positions. Officers and civil servants who participate directly in the formulation, execution, or review of broad public policy and perform functions, that go to the heart of representative government, must also be strongly related to the ideas of the state.

The state argued that the refusal of an offer to become a citizen of the United States represents not only a rejection of the national belonging to the host state but also a negation of national political and moral values of the country in question. The argument goes that as a teacher or lecturer, it is one's obligation to transmit nationally accepted standards, moral and values to the pupils and students. By becoming a citizen the person in question has to take an oath which should bind her to the standards represented by the host country. The state argued – and the Court followed – that any refusal of such an offer leads directly to the negation of such values. Since a teacher is responsible for the future well-being of the state by giving his students an education based on national standards such behaviour cannot be accepted and therefore a discriminatory exclusion is considered as legally correct.

In comparison with most of the countries in the EU one important difference must be noted nevertheless. Because of its quota system and relatively quite open immigration procedure the US permits possible residents to convert themselves quite easily to US citizens. A popular saying defines it this way: 'Europeans consider anybody with very suspicious eyes who wants to gain their citizenship; US-Americans are distrustful of people who do not want to be like them'. In the end the result might be the same. In Europe it was impossible to become a teacher (or civil servant) because it was very difficult to change one's citizenship. In the US somebody cannot be a teacher when one does not want to change the nationality (as described in the case above and possibly lose the original one).

In any case it could be argued that nowadays especially in the academic community the education of students should be as broad as possible which is also reflected in the popularity of exchange programmes. If foreign professors are to be considered as harmful for the education of ones pupils and students, then one should also consequently not allow for student exchanges either since by participating in such programmes students could suffer under the 'bad' influence of foreign opinions as well. Arguing this way it becomes clear that the mistrust placed on foreigners was only mainly used to keep the civil servant sector free from aliens.

Besides legal barriers, which prevent lecturers from entering civil servant posts, language abilities of mobile academic personnel might be considered as one of the criteria to disallow mobile academics to take up employment abroad. At first sight it might sound irrational to argue that the language of the host country should not be considered a necessary prerequisite to be allowed to teach but two important arguments have to be taken into account.

Nowadays it is quite common at many universities, that whole or part of the teaching process takes place in English as the *lingua academica*. Hence not knowing the local language is more of a private problem of the mobile teacher than a question of the quality of his services to the students.

Another conflict occurs when a mobile lecturer enters a country where there exists more than one official state language as it happens in Luxembourg⁸⁸, Ireland⁸⁹, Spain⁹⁰, and other Member States. Is it legal to demand from mobile workers that they not only speak one but several national languages or does this not effectively prevent the entry of European citizens in specific host countries where such a linguistic variety exists?

In the case of 'Anita Groener'⁹¹ the ECJ had to decide if a foreign lecturer can be asked not only to speak English as a means of teaching but also Irish which is the first official language of the state and English only being the second. The plaintiff argued rightly that Irish is not used

⁸⁸ Luxembourgesse, French, German

⁸⁹ Irish, English

⁹⁰ Castellano, Catalán, Valenciano, etc.

⁹¹ Anita Groener vs. Minister for Education and City of Dublin – case 379/87 – decided 28.11.1989

in her post to teach and thus should not have been considered as a prerequisite. Additionally English is spoken virtually by the whole population and her lack of speaking Irish would not prevent her from socially integrating permanently in the country.

The counter-argument goes that Irish is not only compulsory for foreigners but also for national applicants and additionally linguistic exceptions can be made for interested foreign parties if the post cannot be filled by any equally qualified national applicant. Although the language might not be necessary to actually comply with the requisites of the post in question Irish is the first state language in Ireland and publicly employed lecturers should not only be able to speak a language which might only be the second to a certain part of the student population but also be able to hold conversations in their principal language. Although fluency in English might be expected from virtually all the students, a fluency in their first language is an important medium for a social interaction and therefore improves the quality of service.

Especially the linguistic situation of Ireland had to be considered since Irish was a suppressed language during British rule and the declaration of Irish as the first state language was done on a political basis as well to rescue an historic linguistic heritage which was on the point of being forgotten⁹². Thus the active promotion of the language and therefore active discrimination – as known from other areas as well – must be considered as something desirable and should be promoted in all areas.

Hence the Court decided that the knowledge of the first national language can be made compulsory; especially if this is a prerequisite both for nationals and EU-citizens. Additionally in favour of the defendant the fact was highlighted that an exception could be made for migrant workers if no equally qualified Irish speaking lecturer was available. For nationals such an exception did not exist and therefore migrant workers could actually enjoy a privileged position in some cases. Therefore academic mobility can be made dependent on the knowledge of a variety of languages if the national government decides to do so.

⁹² Article 8 of the Irish constitution

The mobility of academic personnel will be hampered as long as state regulations do not allow for an indiscriminate access to European tertiary institutions. In one of the most liberalised academic job markets, namely in Great Britain, academic institutions act like individual companies when drawing up their criteria for employing academic personnel⁹³. Supply and demand steers the employment market and criteria are laid down for each post individually. Only in these cases a flexible employment market covering the needs of each position can guarantee that too general regulations set by the state are interfering with the European mobility of teachers and lecturers.

⁹³ Universities Advertising Group, 2001: p. 1

3.5. Recognition of Diplomas and Certificates in Professional and Academic Sectors

The recognition of academic titles and certificates of other Member States possesses a double importance for graduates from foreign academic institutions. On the one hand whatever kind of academic degree transfers a certain professional qualification to its bearer which then will permit him to search for and choose an adequate or improved professional employment. On the other hand the additional academic title achieved in a certain country should allow the bearer to continue his studies by either qualifying for similar or different studies in another country or to use his title as a prerequisite for more advanced studies like a Master or a PhD.

With the recognition of academic titles a two-fold handling can be determined within the EU which is furthermore even regulated differently at national levels. On the one hand there exists the problematic situation of mobile workers with academic titles in the EU whom should be permitted to travel and search freely for employment in the EU by having qualified for such employment with higher education diplomas acquired in any of the Member States. One cannot talk about a free choice of higher education institutions and academic degrees within the EU if it is not assured for the respective EU-student that when he returns to his country of origin or any other Member State he will not be able to use his newly acquired foreign qualifications or is underlying a strenuous procedure of academic or professional recognition and/or homologation.

Already in the 60s the European Commission tried to introduce and enforce a sectorially and vertically defined recognition of professional and academic titles⁹⁴ at the European level but had to discover that such an approach was bound to fail due to the high variety of educational degrees both at the academic as well as the professional level. Since then, any approach was rather based on the introduction of a very flexible and comprehensive approach which should assure

⁹⁴ Sectorial recognition: Titles of certain areas like medicine are covered by a specific and direct approach
Vertical recognition: Professional titles from the lowest to the highest educational level are covered

that according to frame agreements a general recognition of virtually all educational degrees should be covered without having to go into detail over each individual title⁹⁵.

Such a general approach is known from the economic sector where permanent quarrels about the national safety and security standards were continuously used to avoid that EU-products could move freely from one Member States to the next and the ECJ had to interfere on a permanent basis to make sure that Member States would not effectively erect trade barriers again and therefore block one of the basic concepts of the EU. In the case 'Cassis de Dijon'⁹⁶ the ECJ established that the standards defined by each Member States with only few exceptions should be enough and therefore have to be mutually recognized.

Such an automatic mutual recognition in the education sector could perhaps also be enforced by the ECJ with the result of an automatic recognition of academic titles. It could be argued that the resistance to do so is rather caused by a lack of political will than by the actual feasibility since experience has already been gained in other sectors. Present standards used to allow for recognition of higher education studies distinguish between regulated and non-regulated professional qualifications and professions. Regulated in this context signifies that owning a specific academic title is a legal pre-requisite to pursue a certain professional activity. To assure the basic principle of free choice of establishment, occupation and professional mobility the Directive 89/48/EEC of 21st December 1988 'On a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration' and the Directive 92/51/EEC of 18th June 1992 'On a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC'⁹⁷ were introduced. However the introduction of these Directives did not lead to an automatic acceptance of foreign academic titles. Depending on the respective profession a permission to pursue the occupation in the host state can

⁹⁵ Enforced again by the 'Prague Ministerial Conference' on Higher Education (May 2001)

⁹⁶ Rewe-Zentral AG vs. Bundesmonopolverwaltung für Branntwein – case 120/78 – decided 20.02.1979

⁹⁷ extended again by the Directives: 94/38/EC, 95/43/EC, 97/38/EC

be granted within four months of applying if such a title allows the owner to pursue the same activity in his country of origin in the EU. In the case of a negative outcome by the relevant state institution in charge or if the four-months deadline is exceeded the applicant is able to take the issue to the courts in the host state⁹⁸ and is therefore always burdened with the proof of evidence.

Additionally there is a list of professional occupations⁹⁹ for which a whole range of Regulations are available. These lead to an automatic recognition of academic titles as long as the applicant fulfils the necessary minimum requisites for the professional training of one of these professions. It can be i.e. the case that the shorter education of lawyers in some countries has to be counter-balanced by a certain period of professional experience before they are capable to establish themselves in other Member States.

At the same time there exists the mobility of students, postgraduates and PhD-students who should be able to move freely within the EU to continue with their academic education and should enjoy a recognition of their already achieved academic titles and degrees in other Member States: The recognition of such academic performance from other Member States must be a basic principle to assure that on the one hand an easy exchange of students is promoted during their studies and also to permit the continuation of academic careers (either at graduate or postgraduate level) without undue bureaucratic hindrances. This should not be confused with the acceptance of marked academic certificates gained during short or medium stances abroad as partially regulated in the ECTS since these do not reflect academic diplomas and do therefore not allow the bearer to hold a specific academic title.

Since the signature of the Treaty of Maastricht Article 149.2.2/TeC primary law talks about '... encouraging the academic recognition of diplomas ...', but in 149.4.1 '... excluding any harmonisation of the laws and regulations of the Member States ...' limits the area of activity of European institutions insofar as they are only able to announce

⁹⁸ Article 8, 89/48/EWG and Article 12, 92/51/EWG

⁹⁹ Medical Assistant, Teacher, Engineer, Lawyer, common and specialised Doctor, Pharmacist, Dentist, Midwife, Veterinarian, Nurse, Architect.
Information of the European Commission: <http://citizens.eu.int>

Recommendations in the education sector which are not binding for the Member States.

Hence the basic influence rests with the national educational organs which are in many Member States often the individual higher education institutions themselves¹⁰⁰. This then allows universities to define their own principles of recognition of other academic titles since they are autonomous organisations and carry the responsibility for study contents and the convocation of academic titles with no further national interference¹⁰¹.

With the exception of Denmark and Ireland all Member States have signed the Treaty of The Hague from 5th October 1961. This Treaty had the purpose of establishing a mutual recognition of authenticity for academic titles and permits the bearers of these degrees to obtain the necessary legal stamp and use it as a proof of genuineness for legal recognition in the host state. This does not mean that the host institution is obliged to recognise the academic degree but is only used to prevent fraud with academic diplomas. Therefore this Convention is much more about protecting host institutions from the use of forged titles than helping students with their international mobility since it actually causes additional administrative burdens and costs on them. Depending on national law and regulations the student also has to supply a (legally certified) translation of the title and the academic transcript to obtain a recognition although the European Commission is of the opinion that a normal translation (done by the bearer) should be enough since the student could be held responsible for linguistic inaccuracies in the case of discrepancies¹⁰².

Here the EUROPASS-approach regulated by the Council Decision 'On the promotion of European pathways in work-linked training, including apprenticeship'¹⁰³ shows clearly that a community-wide recognised standard using a multi-language document to portray professional training from different Member States facilitates the transferability and homologation of such gained experience¹⁰⁴ since the main problem are different procedures at national levels for the recognition of titles

¹⁰⁰ i.e. in Germany the 'Hochschulrektorenkonferenz'

¹⁰¹ Heiko Walkenhorst, 1997: p. 89 co.

¹⁰² Information letter European Commission, January 1999

¹⁰³ 99/51/EC – 21.12.1998

¹⁰⁴ BMBF, 1999: p. 8

and the time needed for fulfilling all the administrative requirements and procedures.

Another possibility especially designed for academic certificates and diplomas would be the Diploma Supplement which is a pilot-project developed by the European Commission, the Council of Europe and UNESCO/CEPES in order to facilitate transparency and recognition of qualifications for academic and professional purposes. The model includes both personal achievements of the graduate and a description of his/her national higher education system. A project on the implementation and dissemination of the Diploma Supplement at national and institutional levels was carried out from September 1999 to June 2001 by the Confederation of European Union Rectors' Conferences¹⁰⁵ on behalf of the European Commission, DG Education and Culture¹⁰⁶. Such a supplement would mainly facilitate the administrative process by providing a standardized and multi-language document easily understandable by different institutions. On the other hand since the higher education system of the bearer is described individually in each document there might be the chance that tertiary institutions in the host state evaluate these documents on an individual basis instead of recognizing the whole academic structure of another country on a general basis.

As a second point the question of financial costs caused by legal and linguistic expenditures should be considered as well since mobility can effectively be slowed down by excessive administrative and financial burdens. It does not appear logical why the recognition of professional titles is not offered either free of costs or, on the other hand, the mobility of students – a social group recognized to be financially dependent – is hindered by further administrative and financial barriers. A solution to different standards and languages in academic diplomas could therefore be either a European supplement as stated in Article 2c of the Recommendation on Student Mobility (2001/613/EC) establishing a certain standard for the design of university diplomas – not academic content – or recommend on a voluntary basis certain criteria for individual institutional designs. What was established successfully in other European documents, i.e.

¹⁰⁵ now the European University Association, EUA

¹⁰⁶ DG Education and Culture, 2002: p. 2

passport, driving licence, state health insurance (E111), etc. should be reused to avoid that different standards hamper the exchange of documents.

To assure that the ideas of Article 149 of the Treaty of Maastricht are respected a possibility would also be the coordination and facilitation of the recognition of academic titles and degrees for the use of further studies within the ECTS-system which is already specialised in transferring academic values within the EU as recommended in Article 2a (2001/613/EC). As done in the original ECTS-system, universities could participate voluntarily in such a cooperation which would then have the following points as its aim:

- The certification of authenticity is not demanded anymore on a general basis. In the case of realistic doubts about the genuineness a standardized inquiry within the ECTS to the university which has issued the certificate should be established;
- The translation of diploma and academic transcripts is not requested anymore since the content, values and marks are already known via ECTS or via a supplement;
- Via ECTS-credits requirements for further academic studies like MA or PhD are already defined.

Such a new procedure would shorten the administrative workload and speed up the process to the benefit of both students and institutions and therefore actively support the mobility in the higher education sector. Only by improving the co-operation between higher education institutions at the European level a basic foundation can be created for an improved exchange of students and for an increased variety of academic degrees.

Nevertheless what also has to be considered are developments which, caused by legal loopholes and economic demand and supply, distort the European comparability of diplomas and qualifications. The German private academy Allfinanz in Hamburg, which offers not state-recognised courses and certificates related to insurance business, established a partnership with the British University of Wales. The agreement was as such as that all 'students' finishing the two-year distance learning course in Germany would then automatically obtain a British state-recognised MBA. This diploma, since it is issued by a public university, would then have to be recognised as well as an

academic title in Germany due to European common standards although most of the participating 'students' did not possess neither the equivalent of A-levels (Abitur) nor other academic studies which are normally a prerequisite for such a MBA.

Since six German states refused to accept an academic degree which in principle is so much against the idea of post-graduate studies the European Commission is in the process of taking these states to Court to find some sort of guidance if states can individually evaluate foreign official state-recognised diplomas although in principle there might be some justification behind the rejection¹⁰⁷.

Since the German Allfinanz is a private institution with 'students' that have to pay hefty study fees for the course any service rendered has to fall under the free mobility of services established in the EU. Diplomas issued by state universities on the other hand have not yet been considered as services since the EJC stated repeatedly that given that state education is normally subsidised by governments it cannot be considered as a commercial service¹⁰⁸. Hence the outcome of this case is going to have a significant impact on diploma design and recognition in Europe especially for private institutions because academic cooperation would then improve their academic status and value.

¹⁰⁷ Bärbel Schwertfeger, May 2002: p. 2

¹⁰⁸ see also the case of 'Stephan Max Wirth' for further insight

3.6. Social Security

Regarding a social security network which would also cover mobile students, EU-students were for a long time subjected to national laws from both the host state as well as the country of origin. This had as a result that a social security network was not automatically available for these students in other Member States and therefore mobile students were obliged to either care for their own social safety with private means or run a permanent risk of being excluded from the areas of health insurance, social security or pension funds.

Only since the 90s a certain standard regulated at the European level is slowly formed whereas the most important issue at stake is health insurance for students while being abroad. Regulation (EG) Nr. 307/1999 of the Council of Ministers from 8th February 1999 intends to level the social rights of migrant workers with EU-students but the main issue is clearly a comprehensive health protection under the respective national schemes.

But it can be stated that the implications of these Regulations cannot be evaluated completely yet since in some areas it is still not clear to what extent there might be further legal side-effects. For example the Regulation does not consider enough social security of students while being abroad. Secondly, contributions towards pension funds are not considered although in some countries time spent at university might have an impact on pension contributions as well.

SOCIAL SECURITY

Both Article 4(4) of Regulation (EWG) 1408/71 as well as Article 1 of the Directive 93/96/EWG exclude the access of mobile students to social security payments in the host country to avoid that well-established social systems do not attract unduly students from abroad. As an additional burden students have to guarantee a certain minimum income if they want to apply for a residence permit while abroad. On the other hand in case of emergencies migrant workers have the same rights to social security as nationals of the Member States and therefore still enjoy a higher standard of social protection. Only a further legal interpretation of Regulation 307/1999 by the ECJ could clarify this point and strengthen the position of EU-students because

the idea of a social safety net should principally be the provisioning of an insurance in case of unforeseeable circumstances for all mobile EU-citizens and not only for migrant workers¹⁰⁹.

HEALTH INSURANCE

Health protection can be considered as one of the most important kinds of social security which should also be made available to students while studying abroad to provide for a risk-free experience in the host state. Such coverage can be provided via a state health insurance, private insurers or a certain standard provided by the state which is then extended via an additional private health insurance to i.e. reach the same standards as in the country of origin of the student.

Until 1971 it was recommended to students who wanted to go abroad for short or long-term studies to get additional health protection via a private insurer even if their choice of study was within the borders of the EU (this is still recommended for all studies outside the EU). A right to a refund of costs in the case of medical treatment was regulated by national regulations concerning foreigners in general. On the one hand this meant that foreigners were able to enjoy the same health insurance privileges as nationals in the case of Great Britain where merely by physically being present in the country an automatic coverage was provided by the National Health Service (NHS)¹¹⁰. On the other hand, as it was the case i.e. in Belgium any medical treatment provided by doctors or hospitals were charged individually to the patient¹¹¹.

This system could cause an increased strain on the students budget since they might have been obliged to continue paying the (national) health insurance in the country of origin to avoid being without health insurance cover during short stances at home – visits, term breaks,

¹⁰⁹ In a letter of the Bavarian Ministry of Social Affairs from 18.04.2000 it stated that EU-students are not entitled to social security because their studies enable them theoretically to claim student maintenance support (Bafög) that cannot be combined with social security. That another article of the same law then excludes EU-students from maintenance support because of their nationality is not relevant in their opinion since the original entitlement is based on the choice of studies.

¹¹⁰ National Health Service, 2001: p. 18

¹¹¹ Department of Health, 2001: p. 24

etc. – and pay either a private or, if compulsory, the local national health insurance to be covered in the host country as well¹¹².

By introducing Regulations (EWG) 1408/71 and 574/72 of the Council of Ministers the social protection concerning mainly the health insurance of migration workers, their families and dependants during their term of employment and afterwards were regulated to assure that no additional costs would hinder mobility and to avoid that migration workers would run the risk of degenerating to a socially unprotected workforce. The Regulations named above created an administrative institution which then designed certain forms for health protection abroad which were of benefit to students as well. Health insurance certificates like the E111 (for short stances abroad) and the E109 (for studies abroad) provided students the possibility to ask the national health insurance in their country of origin to cover the costs of medical emergencies while being abroad.

This created a minimum standard for students but the limitation to medical emergencies was established due to the concern that since national health insurances in Europe can differ greatly with their benefits and medical cover, a kind of 'medical tourism'¹¹³ could take place as a consequence. To avoid additional costs for medically generous countries treatments not urgently requested by the patient or at least not defined as an emergency had consequently to be performed either in the country of origin or be covered via an additional private insurance. Nevertheless the introduction of the E109 and E111 combined with an additional private insurance caused a significant reduction of costs for the student since topping up already existent national systems was much more economical financially than having to pay for the full coverage.

Finally with the Decision Nr. 165 of 30th June 1997 it was taken into account that especially during longer stances abroad students should not only have access to paid emergency treatment but also dispose of the possibility to have certain precautionary services available like dental revisions or cancer check-ups according to national standards.

¹¹² Akademisches Auslandsamt, 2000: p. 3

¹¹³ Alessandra Bosco, July 2000: p. 24

Decker and Kohll – case 120/95 & 158/96 – decided 28.04.1998

Anne Kuusijärvi vs. Riksförsäkringsverket – case 275/96 – decided 11.6.1998

Geraets-Smits and Peerboom – case 157/99 – decided 12.07.2001

It would not be reasonable to assume that the mobile community in Europe should not be permitted to look after their health needs and therefore run the risk of being more vulnerable on social standards.

But these advances in the health sector and the financial coverage by state-regulated health insurers do not mean that a final solution has been reached to the satisfaction of everybody. To facilitate the European-wide accountancy of treatment claims made by its mobile community it was decided that i.e. the 'E-health insurance certificates' used while being abroad are only valid for treatments in the host country which are available under the same conditions to nationals of that country, too. This might lead to the situation that treatments, one receives while being abroad, can be either below or above the level one is accustomed to in his country of origin. I.e. a German student in the UK would be able to receive free vaccination (yellow fever, malaria, etc.) for which he would have to pay in his own country but at the same time a student pursuing his courses in Spain would have to pay for virtually all dental care himself whereas a Spanish student in Germany could enjoy a free dental treatment covering the specifications and limitations regulated by German health insurers. Even at that stage of the European harmonisation in health protection only an additional private health insurance can cover all the financial risks of treatments which are not covered by the host state's national insurance system. Contributions towards the health insurers (regulated by the state) depend in many countries on the income and/or the status of the insured person whereas it is certainly possible that students may enjoy reduced tariffs. But the dilemma can occur that if a student is not registered as a student in his country of origin because he is pursuing his studies abroad a national insurer at home might negate him the special tariff as a student since these reduced options might be limited to national academic institutions and by definition he would not be considered as a student there¹¹⁴.

The development of the adaptation and harmonisation of national health insurances to the needs of a mobile community within the borders of the EU has taken almost 40 years until it has now reached the level of a complete protection made available in the host country. Here it has to be critically remarked that for short and medium term

¹¹⁴ depending i.e. on the individual AOK-constitution

stances abroad full health coverage was already available for mobile workers since the 70s but was not extended to mobile students until now.

PENSION SCHEMES AND ENTITLEMENTS

It is to be assumed that students do not regard their future pension schemes with the same importance as middle-aged workers would do since the actual event of receiving such benefits can still be almost half a century away. Nevertheless it is important to consider that time spent at educational (higher) institutions is contributing – depending on national regulations – towards the later calculation of the financial support received from the state pension scheme. If a student is registered at a university in his country of origin there will be no difficulty to prove his periods of entitlement since registration certificates can be used as a proof for the pension scheme¹¹⁵.

Problems might occur for students who pursue their whole studies in a foreign country since either national regulations do not include stances abroad in their calculation for pension schemes or the recognition of foreign stances causes administrative problems. Regulation (EG) Nr. 307/1999 of the Council of Ministers of 8th February 1999 effectively includes students in the social protection of Regulation (EWG) Nr. 1408/71 which already granted mobile workers and their dependent families for thirty years certain social benefits in the host state. It was already made clear in the Regulation from 1971 that entitlements to recognised periods can be accumulated from different countries as long as they are not claimed from two or more countries at the same time. In the case of Germany i.e. presently 3 years are calculated as a contribution towards the pension scheme if one studies at a higher education institution but at least 5 years of contribution towards the pension scheme have to be proven to obtain a minimum pension there¹¹⁶.

For that reason in the case of Germany foreign students from the EU have to work at least 2 more years in Germany – or less and obtain some more periods of entitlement from other countries – and then would be already able to claim a minimum pension once they reach

¹¹⁵ Information letter: Verband der Rentenversicherungsträger, 1999

¹¹⁶ BfA, 2001: p. 89

the retirement age. In the end minimum years of contribution depend on the pension scheme where finally the pension is claimed. Then contributions from all the countries where one has worked during his lifetime are accumulated but in the case of Germany three more years are automatically included for having received further education if the migrant worker has taken up employment there as well for some time. According to the 'Bundesanstalt für Arbeit' (Federal Institution of Employment) Germany is the only country in the EU at the moment which includes further education as valid periods towards the pension claim of individuals. Migrant workers who first work and then retire in Germany or elsewhere in the EU see their higher education time included in the valid periods achieved by working in Germany even if such studies were completely pursued abroad.

At the same time German students who have pursued their complete studies within Germany but can only claim pension scheme contributions made in other Member States of the EU without ever having worked in Germany see their time in further education excluded from the relevant contribution periods. An inclusion of educational periods for Germans working abroad¹¹⁷ would only be possible if he worked for at least one year within the German borders and therefore would effectively contribute towards the national pension scheme financially.

Hence the German national pension scheme gives away to any EU-citizen in any country of the EU three years of additional time to calculate one's life-time employment which is then used as a base to determine the pension entitlements. The precondition is that one year of effective financial contribution via an employment can be certificated in Germany.

SUMMARY

Especially since the 90s it can be noted that the administrative, social and legal barriers have been reduced to allow for a more agile student mobility. The European Commission has contributed to this development insofar as short stances abroad have been financially supported and administratively facilitated via the creation of a co-operative network. The social protection for students has been

¹¹⁷ At present a maximum of three years is considered

improved as well with a special emphasis on the availability of national health insurances which then offered financial advantages and a greater social security for mobile students.

Nevertheless longer stances, either due to studying more than two semesters abroad or with the aim to pursue complete undergraduate or postgraduate titles, are still hampered with legal and administrative loopholes. EU-students move in a grey area where on the one hand they give up their social rights in the country of origin but on the other hand do not obtain full legal and more importantly social protection in the host state. Additionally – and very important for mobility – the transferability of academic title is not yet completely clarified and might cause problems both for students who want to return to their country of origin once they have finished their studies abroad or for migrant workers who want to make use of their academic titles and degrees in other Member States.

The individual states of the EU and their responsible institutions – either academic or administrative – have to acknowledge that academic autarky comes to its limits once it touches administrative issues because this might lead to an effective blockade of education in the EU. But this argumentation is not automatically in contrast with the intentions of some Member States to internationalise their educational policy above the absolute minimum and reach certain European or international standards. A common denominator should be found which leads national developments away from their individualism and permits a higher and improved mobility of students in Europe overall.

4. Internationalisation of Academic Education Policies at National Levels

As it could be determined in the preceding chapters the intensification of the internationalisation or Europeanisation of a higher education policy at the European level is only slowly moving forward and in steps interrupted by long periods of inaction. Caused by a – possibly misinterpreted – retention in the area of harmonisation or at least adaptation of administrative regulations and educational (exchange) programmes, it is very often left to individual states of how to proceed. At national levels, depending on internal structures, very often autonomous higher education institutions have to adapt themselves to the needs of a modern international industrial world where necessities regarding the education of graduates have changed time and again over decades¹¹⁸. It should be a contradiction in itself if individual Member States or educational institutions are able to block a latter European mobility of the workforce hindering via administrative and academic regulations a flexible access to educational institutions in the EU.

Additionally since no financial cooperation exists between Member States to compensate for a net migration of students in one direction it is only reasonable in some cases to accept the complaints of Member States who experience an increased foreign student population¹¹⁹. Therefore if these countries do not take into account net benefits of a foreign student population like i.e. incoming capital, exportation of national knowledge, international reputation, etc. they will never understand the additional benefits of educational internationality and hide themselves behind obstructive regulations.

As was discovered before, higher study fees and the non-access to social services are one of the more visible barriers students have to overcome if they want to gain foreign academic experience. Possibly one of the strongest barriers to mobility which ever existed in the EU was the exclusion of foreign students based on a percentage of the overall national student population¹²⁰. The main reason to limit such

¹¹⁸ BMBF, June 1999: p. 12

¹¹⁹ Education at a glance, 1997: p. 179

¹²⁰ Commission vs. Belgium – case 42/87 – decided 27.11.1988

an immigration of EU-students in ones own country was the financial expenditure this could cause the education ministry due to higher financial burdens in academic institutions. Belgium tried to maintain such a barrier by effectively limiting the foreign student population to 2% and asked students who were surpassing this quota to pay additional study fees.

It is interesting to discover that Member States still try to make a difference between people who are searching employment and persons who are preparing themselves for future employment. Since the ECJ has defined virtually any kind of academic studies as professional training¹²¹ the argument could be used that any mobile student in training should be considered as a migrant worker in preparation of future employment. It is difficult to distinguish between workers in professional training who work on a weekly basis and go to a professional training centre maybe once or twice a week, or always work certain periods and then return to school for various weeks, or students who work during the term breaks and possibly partly during the term as well.

Here is it of importance that work has to occur on a weekly basis or do the yearly days or hours count as well? It is sometimes difficult to understand why somebody, whose employment is interrupted several times, is still considered as an employee whereas a student who perhaps works the same number of hours during his vacations is not considered as a worker with all its accompanying financial and social advantages. This argumentation becomes more and more important when we look at developments where an effective higher education is combined with employment in companies at the same time.

As it is the case in Germany such combinations can be found at 'Berufsakademien' (professional academy), 'Fachhochschulen' (college) and in some cases even at universities. Students receive an industrial sponsorship, work during their vacations and spend their compulsory practical training periods in the same company and sometimes have to work at this company for several years after finishing their studies. It would not be comprehensible why such students or more likely *workers in education*, if they come from abroad, would be excluded from social rights which normally are of benefit to

¹²¹ see i.e. 'di Leo'

migrant workers; especially because their income derived from industrial sponsoring obliges them to pay taxes and social contributions in the host state. And again why should these contracts give foreign students a different status if others work during their vacations but change the employer every time due to market conditions.

At the European level great differences can be determined in the structures of higher education systems and the financial support students receive from the state to maintain themselves whereas this might have as a cause political and historical reasons which then determines specific priorities. It can be distinguished between the internationalisation of the administrative system and the content of education, its structures and application. A north-south slope reflects the differences in the financial support of students and higher education institutions; a slope depending on size and residents reflects a more flexible system regarding mobility in favour of students from smaller Member States.

This Chapter should give an overview and report on relevant details of the present situation concerning the internationalisation of higher education in Europe and the flexibility of financial support for EU-students whereas a generally valid spectrum of Europeanisation (i.e. student mobility, state maintenance support, study fees, etc.) is investigated. An additional country report will highlight and discuss special achievements or outstanding barriers.

This should facilitate the reader an overview and comparison of the states of the EU and allow drawing conclusions from former theoretical chapters with the empirical evidence provided further down. Information about the educational system and their specific characteristics have been mainly obtained via publications made from EuryDice (European Commission), OECD and UNO. Furthermore experts and delegates from different embassies in Brussels were asked in meetings to provide additional highlights.

For the investigation of higher education systems in individual Members States of the EU several priorities can be defined which then might explain to a certain extent the importance a Europeanisation and possible intents of harmonisation of study systems play in each Member State.

Higher education in general and its orientation towards Europe and the international community is defined quite differently in most of the states whereas it can range from chronic under-financing and very limited openness to well-functioning and internationally oriented institutions. Especially in the case of short stances or one year post-graduate degrees it is quite often of importance for EU-students that classes are also provided in other languages (i.e. English in Holland or Scandinavia), if a internationally recognized or known structure of academic titles exists (i.e. BA, MA, PhD) and if it is possible to get obtained academic certificates recognized in ones university (or country) of origin. As a financial aspect it is important as well if mobile students can count on maintenance and study fee support from the country of origin which can cover the expenses up to complete degrees and therefore allow students a free choice of academic services within the EU.

The distribution of EU-students over the EU is not regular and especially in some academically and linguistically attractive countries a significantly larger foreign student population can be noted in comparison with other states. It seems only reasonable that individual Member States have a different attractiveness for students as potential host states for their studies. Motives like i.e. the common knowledge of the language (i.e. English or French), study fees in general, organised student exchanges and internationally recognized degrees and reputation play an important role. One can also determine specific reasons for leaving ones own country which could be caused by i.e. a *numerus clausus* for certain degrees (France → Belgium) or a commonly limited availability of courses or possibilities to study (Luxembourg or Greece), which tempt students to migrate to other countries to pursue full-time degrees there. Additionally one has to consider as well the population of children of migrant workers (also from outside the EU) which reside with their parents in the host state and might receive a full education including compulsory schooling and voluntary tertiary education.

A later summary then should permit the reader to compare newly gained insights and to be able to develop new approaches for the solution of present hindrances and a kind of harmonisation especially in the administrative area. Harmonisation in this context does not automatically have to signify that suddenly Member States have to

accept whatever new standard of Europeanisation in their education policy. It is much more of importance to present the *status quo* and declare their intentions of harmonisation based on the lowest common denominator whereas it should always be possibly to allow further advanced countries to maintain their higher levels of internationalisation and push forward individual agreements if they are of benefit for the further opening of the academic market. By sustaining a permanent approach to facilitating the free movement of students administrative hindrances should be dismantled which still effectively block the intra-European mobility of students.

4.1. Study Fees

Although study fees are not a recent phenomena, after the 'student uprising' in the seventies higher education systems were opened and made available to the general public with in most cases a relatively high financial support by the state. But in recent years study fees were seen again as an integral part of the financing of universities and a private financial participation has become once more an increasing strain on students and their families' budget¹²². Several Member States still offer access to universities free of charge for both nationals and foreigners but it can be observed that discussions arise on a regular basis to introduce such charges which are also a sign of chronic under-financing of higher education institutions and restructuring the state budget in general. In several countries like i.e. Germany (Berlin and Baden-Württemberg), Portugal and Great Britain, in recent years changes and restructuring took place on several occasions with the partial introduction of study fees at different levels¹²³.

The discussion about the introduction or increase of study fees is normally based on several arguments which are interchangeable in most Member States. Study fees should be a financial participation by the student for some form of further education which is not obligatory by the state and therefore causes additional expenses for a limited class of society¹²⁴. By defenders of this argument furthermore it is brought forward that completed degrees upgrade the job perspective and future income of graduates, better their standard of living and therefore the financing should not be carried by the common public. The natural counter-argument would be that other forms of professional training which are not compulsory either have always been provided free of charge by the state (i.e. the school part of the dual system in Germany & Austria) and in most countries people with higher incomes not only pay a higher numerical value of taxes but also contribute over-proportionally due to increased tax rates.

Secondly in countries were study courses take a very long time and no intermediate titles can be obtained it is argued that the introduction of

¹²² David Throsby, 1999: p. 17

¹²³ HRK, 08. April 2000 – press release

¹²⁴ OECD, 1997: p. 85

study fees would speed up the process of obtaining a degree because students would then be specifically interested in relatively short degrees. Nevertheless Spanish and Italian students suffer under long study times although academic institutions there ask them for quite substantial study fees with no obvious direct effect on both duration and quality¹²⁵. In many cases it is not only student behaviour which causes delays in their career but also the university system might have an impact on the duration by not coordinating well enough the supervision of students, availability of courses, exams, and lecturers, etc. In Spain an approach was made to redefine the degrees and shorten their duration by a study reform of the state¹²⁶ but left mainly untouched the inherent problems caused by a bureaucratic system. Another major issue is the ever increasing student numbers in higher education¹²⁷ due to new demands of the industry which oblige the state to invest steadily and increasingly in higher education and if a government is not willing to improve its education budget it might decide to partly counterbalance it with additional study fees. In Europe one can principally detect four different forms of financing higher education systems and additional related expenses. Firstly, and which is actually retreating slowly from most Member States, the relevant ministry and tax payers in general carry the financial burden of tertiary education and guarantee a relatively open and free common access to the academic system. Secondly students have to participate partially, which can – depending on the level of study fees requested – create a substantial additional income for higher education institutions and act as a significant deterrence for entrance already. Such partial participation can be raised by registration or semester fees and it is a political decision to determine the percentage to which extent students have to contribute towards the financing of their courses. Thirdly students have to contribute (additionally) for obligatory subsidies towards health insurances, student unions, student associations, etc. or additional fees for the issue of diplomas, exam fees or any other related administrative acts. Fourthly students could be required to fork out the real expenses which are caused by

¹²⁵ CERI, 1998: p. 58 co.

¹²⁶ Law of Study Reform (LOGSE), 1/1990 (Boletín Oficial del Estado 04.10.1990)

¹²⁷ CERI (Education at a glance), 2001: p. 146 co.

their studies as we know it from private universities and more commonly from the higher education system in i.e. the USA. Real study costs are not required to be paid by any of the Member States of the EU and since the decision in 'Gravier' such financial demands have not been required to be paid out by EU-students either. Some Member States still do permit to charge real costs from students from outside the EU; especially if their academic institutions pursue an international proliferation and/or such fees increase the university's income directly and therefore increase the interest of these institutions to extend due to the commercial interest in their international orientation¹²⁸.

In some countries higher education institutions leave the state academic sector more and more and see themselves increasingly as international educational service institutions. Therefore they enter the international competition for students where these are evaluated as another source of income for them (either via study fees claimed from the students directly or from additional subsidies from the state which are determined on the number of students registered). Students become consumers of education and hence are able to express their free choice over their academic requirements if they have the necessary resources to finance their career.

On the other hand in several Member States students can receive a (partial) reduction of their study fees if they fulfil certain social criteria (i.e. England, Spain, Italy). In some cases students do not have to pay fees if they were granted a state maintenance subsidy which is already a proof of being below the minimum income necessary for subsistence as a student (i.e. Spain). Also the income of parents or spouses might be considered to evaluate the financial situation of students. At the same time some Member States concede tax allowances if families have to maintain their children as students (Germany, England). Such benefits are certainly difficult to be transferred to other countries as long as the European tax system is not harmonised yet. Due to the costs of pursuing studies in different countries it is also difficult to argue if tax allowances or state subsidies should be obtained in the country of origin or the host state. It seems to be obvious that the specific conditions of the student in the host state should be considered to

¹²⁸ OECD, 1997: p. 59

evaluate the financial impacts on the student's family. I.e. it might be that the system in the country of origin does not consider sufficiently the additional costs caused by studying abroad like study fees not charged at home or increased maintenance costs.

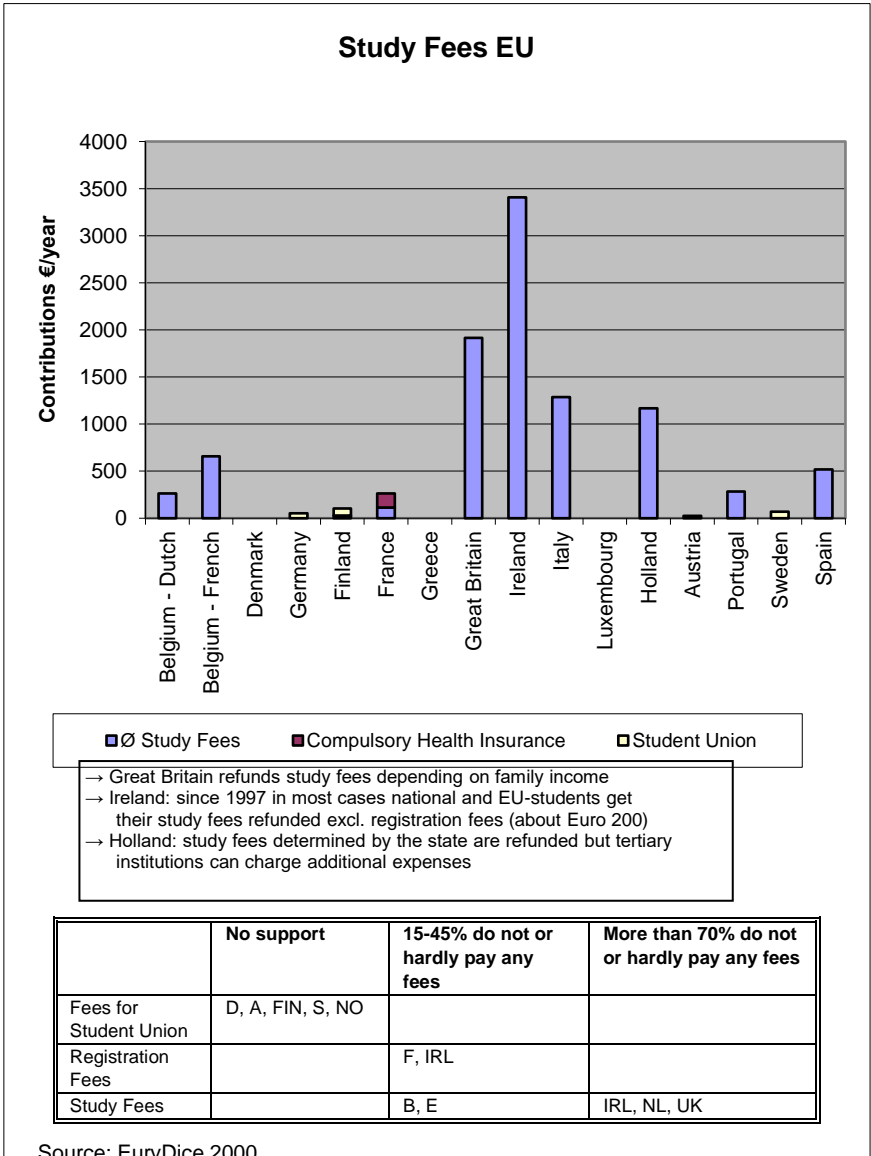
The Netherlands have lost a case at the ECJ with 'Raulin' when they tried to exclude EU-students from the national grant system. The Dutch system pays out a certain lump sum which includes a maintenance grant as well as an allowance to cover study fees charged directly by the academic institutions. Such direct benefits represent an additional income for students as tax reductions would do as well for parents. It would therefore not necessarily be logical to exclude tax benefits from the host country for the family in the country of origin.

Another issue at stake are benefits which are directly related to the status of the student's family. I.e. in Spain children of the state's civil servants did not have to pay any study fees up to the early 90s which can be quite substantial and represents an additional financial benefit for a social class which is already privileged by their status¹²⁹. No direct reference has been found which could have clarified the question if children of civil servants who came to Spain as mobile students could have claimed such privileges as well or if this was limited to nationals only.

Some Member States offer their students additional benefits if they want to go abroad by subsidising expenses related to study fees or other costs caused by studying abroad. This is of particular importance if these maintenance or study costs are significantly higher than in the home country.

¹²⁹ Constitution of Spanish Universities, 1990

Table 8



At the same time it can make perfect sense for individual Member States to support their students abroad since it was determined before that no Member States charge real study expenditure from their students. Hence sending a significant number of students abroad can limit the actual financial burden on their own national institutions and create a positive surplus compared to a national system of educational monopoly on higher education.

Especially Luxembourg is using this approach and sends the majority of its students abroad since due to internal (mainly economic) reasons it is not willing to provide study opportunities for its students at home. Such an approach is of increased financial benefit for the Luxembourg state if their students go to countries like Germany where they do not have to pay fees anyway.

Some Member States like Germany or Scandinavian countries also support short and medium term student mobility outside the ERASMUS-programme by refunding study fees which can also include postgraduate courses which are otherwise already included in the national long-term study degrees.

When study fees are demanded from students it has not to be overseen what percentages of students receive a reduction or exemption from the payment of such fees. Although such fees can be quite high the lower social classes can be either actively supported to participate in higher education or be financially discriminated to such an extent that they are excluded from the academic sector. Here some countries, i.e. the Netherlands¹³⁰, Ireland and Great Britain also automatically consider the financial situation of EU-students even if their families reside abroad. It can be assumed that this is actually to the disadvantage of the student because in most cases if their own and only income in the host country were considered they might be able to fall below certain social standards by portraying their real low income or by hiding additional incomes in their country of origin. On the other hand if family-specific criteria lead to financial subsidies in the host country it seems to be difficult that such benefits are actually transferred to the EU-students family in the country of origin. For example in Belgium students who receive state maintenance grants or

¹³⁰ due to the case 'V. J. M. Raulin'

are close to the border of qualifying for it receive substantial reductions with their payments of study fees. Since EU-students there do not have the possibility to apply for maintenance grants from the Belgium state no financial evaluation of the students or their family takes place and therefore they are actively excluded from such a reduction of fees.

SUMMARY

In comparison with the United States of America study fees in the EU are relatively low and only play a minor role in the financing of the higher education sector. In the most expensive cases of undergraduate studies something like 40% of the real costs are taken to finance ones individual study place whereas in most cases the financial participation of students ranges between zero to 10 % of these costs. Some Member States (i.e. England, Scotland, Ireland) also make a distinction between undergraduate (BA level) and postgraduate (MA level) degrees which are already included in other Member States – sometimes free of charge – in long-time study degrees (i.e. Germany, Austria, Italy, Spain).

The unbalanced distribution of raising study fees within the EU presents the dissimilar approach to determine the financial necessities of higher education and the importance of academic education within the society. This can mean the limitation or effective exclusion of certain social classes from higher education or the manipulation of national or incoming European student numbers.

With the increasing number of mobile students in Europe it has to be thoroughly considered if not the country of origin of the student in question has to take up a certain financial responsibility for the financing of the higher education abroad since such a migration of students might have a quite large financial impact on some country's educational system. It is not reasonable to expect that countries like i.e. Luxembourg or Greece use the present mobility system to send their students abroad and actually expect other Member States to burden the costs of these guest students. A common budget for mobile students could be a solution which then should distribute the budget according to the EU-students percentages in the individual countries.

4.2. State Maintenance Grants and Loans

Although we can find proof of governmental maintenance grants with roots back to the 17th century which lead us to the state of Liechtenstein¹³¹ the general access to such socially distributed financial support for broad masses enabling them to gain access to higher education was much more a phenomena coming up after the Second World War and especially the student revolts of the late 60s caused this change of opinion in most of the EU. Before this time student support was already available to some extend but oriented itself towards the intellectual elite and did not consider the financial background of students as a criteria to determine the neediness to pursue academic studies¹³².

Nowadays virtually every state of the EU offers some form of maintenance grant or loan system for the financial support of what is considered to be needy students. An issue important to clarify is to establish nevertheless what percentage of students is actually receiving such a support. This can either show us a low amount/low percentage approach which we see mostly in Mediterranean countries in comparison to a high amount/high percentage combination which is applied in Scandinavian countries although there the proportion of loans relative to grants is higher as well.

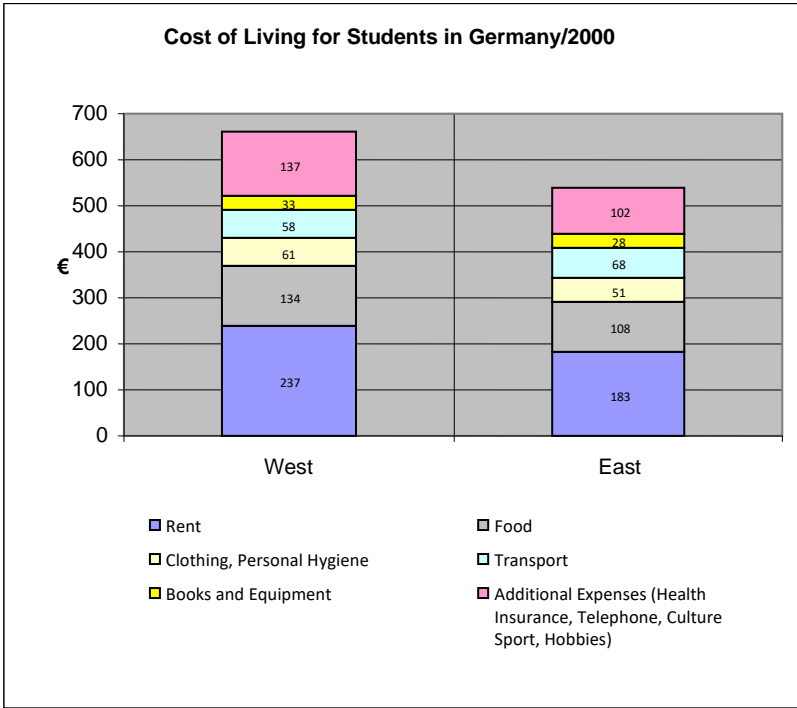
The need to support students during their academic career is visualised quite clearly in Table 9 with the example of Cost of Living for students in Germany. Expenses for students living outside of their parental home is actually quite substantial and income has to come from many resources to makes ends needs¹³³ whereas by combining parent support and employment up to 82% of student support is actually privately funded.

¹³¹ Christine Ferrari-Breur, 1993: p. 17

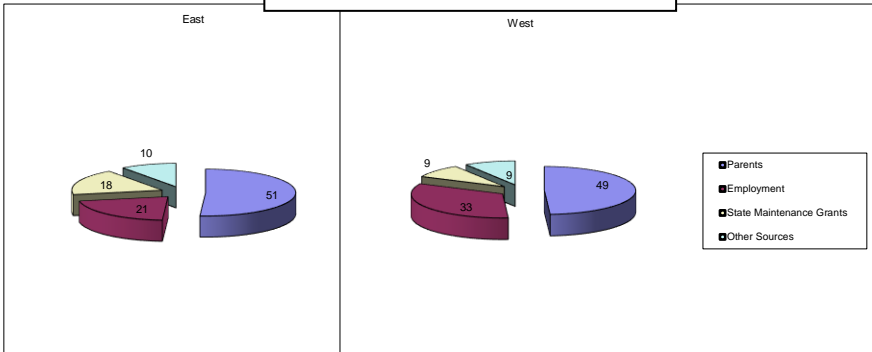
¹³² EuryDice, 1999: p. 125

¹³³ Over 1/3 of the expenses are spent on rent already which again shows the clear need for cheap student accommodation

Table 9



Sources of Income for Students - %



Source: Deutsches Studentenwerk/2002

What might come as a surprise as well is that if the expenses rent, food and clothing & personal hygiene are summed up, the result of € 432 is actually lower than an individual would receive from social security with € 516¹³⁴.

This is a clear indication that state student maintenance support is chronically short of funds in many senses since social security is supposed to cover only the basic needs allowing a life in dignity¹³⁵. It should be questioned therefore, and this could clearly be the case in other countries of the EU as well, that students often live below of what the state defines as minimum standard of living and therefore additional sources of income are a quintessence for students to maintain themselves. Moreover a 35% slice covering housing expenses, that as shown in Table 10 lies well above € 200 in most cities in Germany, shows a clear lack of economical student accommodation since reasonably priced accommodation especially in metropolitan universities would reduce student expenses significantly. Additionally if Table 10 is taken into consideration living expenses do vary greatly depending on the geographical location of the university. If the highest amount available from the German Federal Law on Grants & Loans (Bafög), which amounts to 585 €¹³⁶, is taken into consideration¹³⁷ only 7 out of the 355 academic locations¹³⁸ would be affordable for students without additional incomes from employment or private resources. Although similar statistical material at such a detailed level is not available for all Member States of the EU, careful conclusions can be drawn from Table 9 and 10 nevertheless that students all over Europe face serious constraints on their disposable income and rely heavily on additional resources besides state support.

¹³⁴ Transport, books and equipment and additional expenses can be claimed extra depending on the circumstances (Tacheles e.V., Wuppertal: 2002)

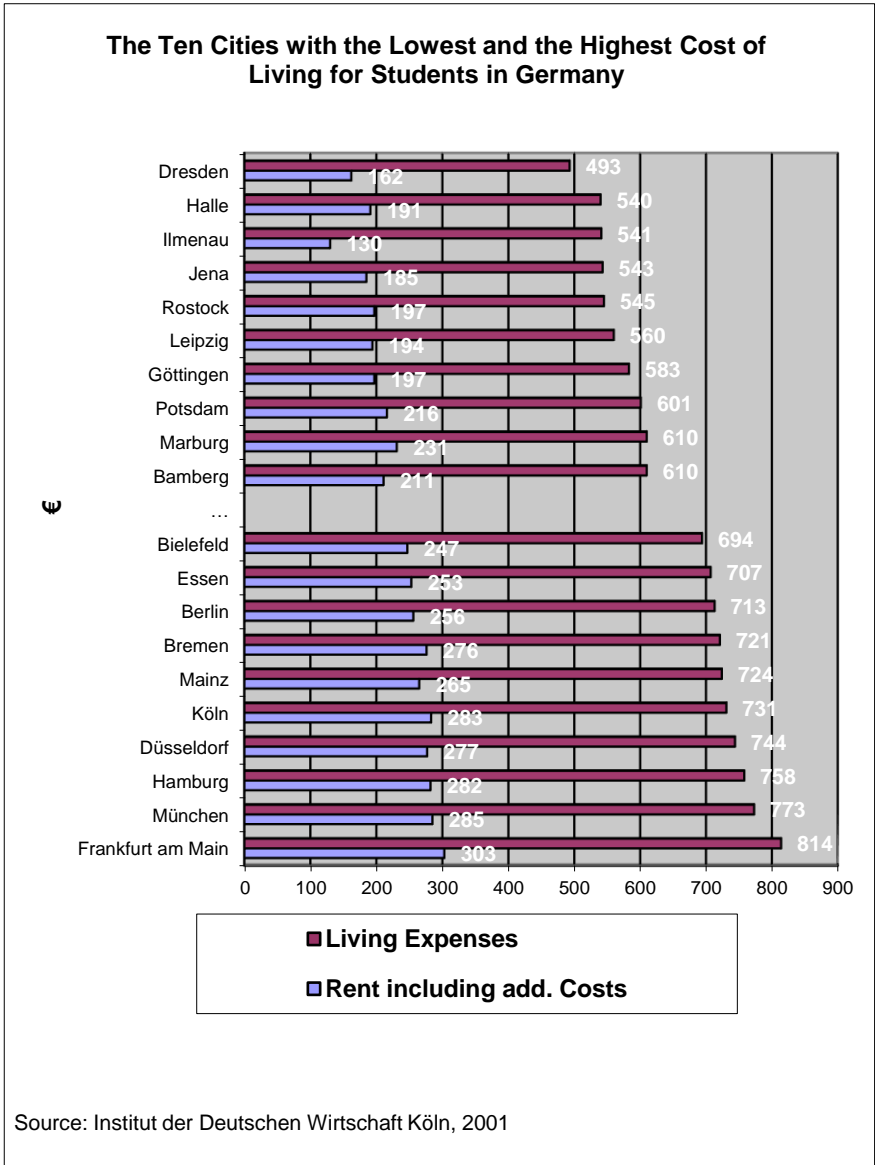
¹³⁵ § 1, German Federal Law on Social Security (Bundessozialhilfegesetz)

¹³⁶ BMBF, 2001: p. 11

¹³⁷ see also Table 11: only a very limited number of students receive state support. Additionally only a low number of students receives the maximum. Average student support of rightful claimants is 326 €/month (press release: Statistisches Bundesamt, 26.07.2001)

¹³⁸ Statistisches Bundesamt Online, 2002

Table 10



What might be worth mentioning as well is that employment during term and vacation time might not only prolong academic studies and therefore increase costs both for the student and the state but also limits the students' possibility to participate in job-enhancing national and international training programmes since the main focus will be placed on well remunerated employments instead.

As one can see in Table 11, with the exception of Great Britain, which reformed its state maintenance and grant system in 1997¹³⁹, three more Member States support more than 75% of the students financially and in two additional states more than half of the students still receive maintenance benefits from the government. In the remaining nine Member States (excluding Luxembourg for lack of information) only 20% of students or significantly less receive state support. Hence it can be concluded that in the majority of Member States financing academic studies and covering maintenance expenses is actually an issue for the students themselves or their families in most cases.

Also the maximum amount of money a student can claim as benefits can be limited to such an extent that realistically state support does not automatically guarantee the student to be able to study without having to work or depend on other sources of incomes like family, etc. either. In none of the Member States annual state grants higher than 3.500 PPP/ECU are available and therefore do not offer the student the possibility to make ends needs without other benefits. Even if the state system offers the possibility to take out loans only one country passes the 6.000 PPP/ECU frontier significantly as seen in the Table below and therefore might enable its students to pursue their studies by only depending on state support. Virtually all other states with the possible exception of Luxembourg do not provide their students with a sufficient amount of money to pursue their studies without some additional help from other sources. As a conclusion it must be remarked that even the socially weakest student would not be able to enter higher education if they were only depended on the state support and it must also be taken into account that, as Table 12 will show later on, the percentage of students who are supported by the state is rather a political priority and not an objectively determined number.

¹³⁹ Department of Education, 1996: p. 5

With the exception of Germany the state maintenance grant & loan systems are normally designed in such a way that grants and loans are separate issues and some countries even break this up institutionally. So it is left to students or their social and financial situation to decide if they want to make use of grants, loans or both at the same time. Tendencies in statistical evidence point in the direction that students try to avoid loans during their studies and do not want to start their life in debt as it is known from the US higher education system¹⁴⁰. Students in Europe try to find financial alternatives which might come from additional sponsoring like i.e. the family, from work in vacation time, part-time employment during the academic year or even interruptions of their studies to work full-time during a certain period. A more recent phenomena as well is industrial sponsoring where companies determine their human resources demand in the long run and try to bind future graduates as early as possible during their academic career to their future employers by financing part of the student's expenses and study fees¹⁴¹.

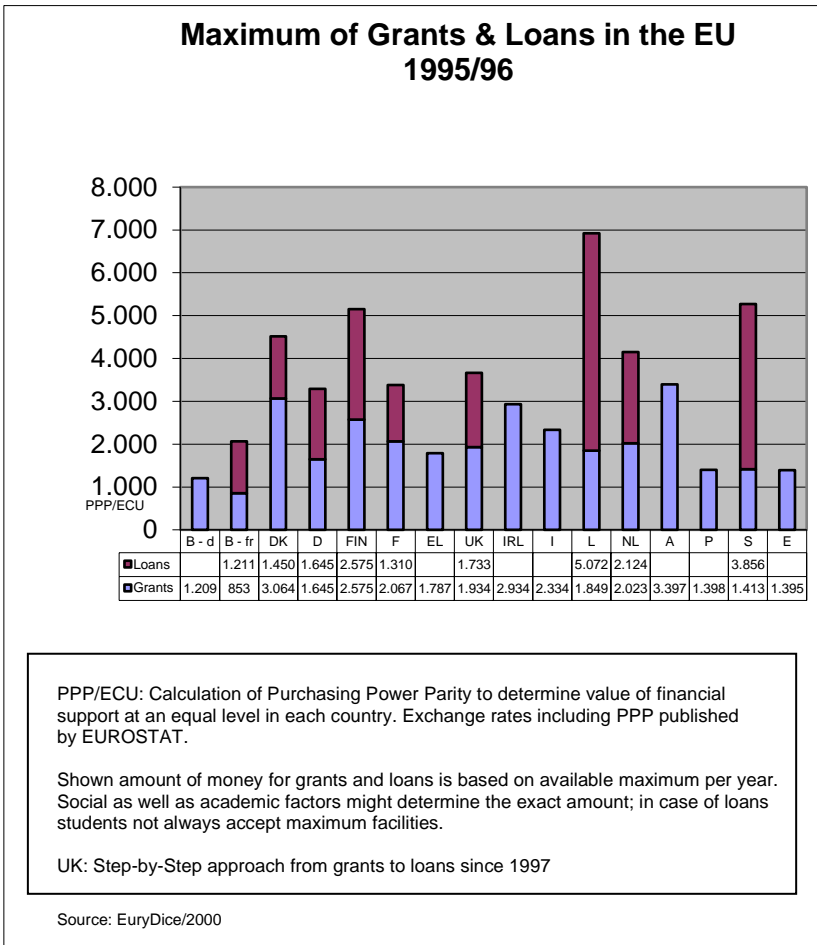
This can have a great impact especially in flexibly designed higher education systems as we can find them i.e. in Germany, Italy, Austria and Spain since students are able to delay part of their studies to continue obtaining income from some form of employment during the semester and vacation time on a full or part-time basis¹⁴². Although the flexibility of such study systems was often claimed to be to the benefit of students since it allows a freer choice of options, in reality it seems rather that it could be the cause of prolonged studies due to the inadequacy of the students financial condition.

¹⁴⁰ CERI, 1998: p. 60

¹⁴¹ Ahrens & Behrendt, 2002: p. 3

¹⁴² CERI, 1998: p. 71

Table 11

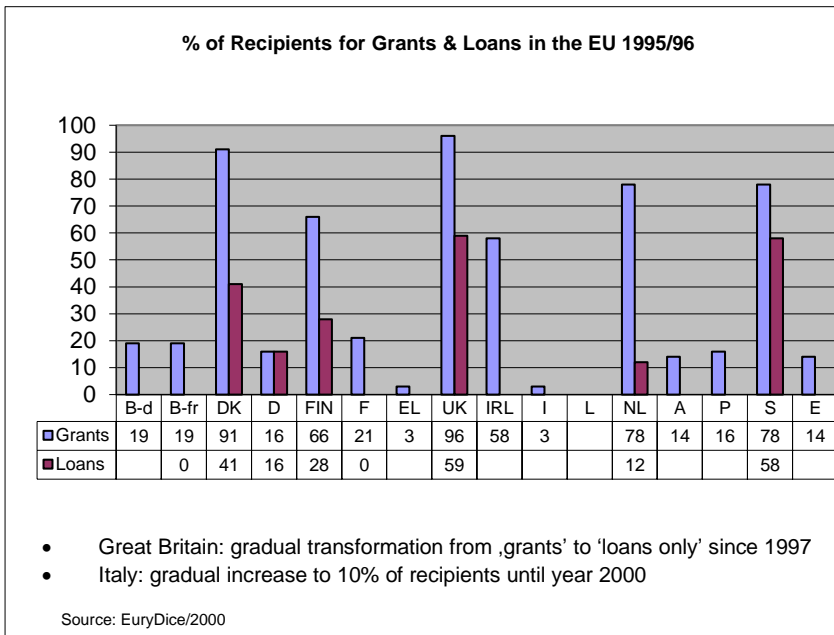


Nevertheless it can be noted that the obligation of a single Member State to support their incoming EU-students financially with the national state and loan maintenance programme might possibly lead to some form of student tourism. Countries which have already a quite high foreign student population at their disposal like i.e. Austria, the UK, Belgium, Germany and France and at the same time provide their

own students with a rather socially adequate maintenance system could attract even more (foreign) students.

Although it was evaluated as an option too unrealistic to consider in Chapter 3 it is nevertheless an assumption with a high probability that financial benefits in the host country would attract large numbers of EU-students. If – for legal or political reasons – foreign students could have access to these benefits it would either have an almost instant effect on the national design of grant systems and its availability both for national and European students or Member States would try to come to an agreement for a common European academic budget.

Table 12



SUMMARY

Financial benefits from the state for the maintenance support of students in the form of grants and loans are on average rather the exception than the rule in the EU. In hardly any case the available sum obtainable by the individual student is sufficient to make ends need

during the academic career. Additionally, in most of the countries, students experienced a decrease of the possible number of receptionists during the last couple of decades and the real stagnation or reduction of the financial value of the maximum support available. As additional measures many countries have introduced loans to improve the availability and level of support or to replace grants to reduce their actual expenses.

With the exception of academic studies in Scandinavian countries (and some political statement from Portugal to offer a minimum income for needy students) in reality higher education is a financial decision made either by the students family or his own choice to obtain additional income from employment. Parents of students are in most cases means tested and financial support independent from the family are rather the exception.

4.3. Financial Support of EU-Students

Academic education outside the home country of students who are financially supported by the state with maintenance and/or study fee grants and loans appeared first in countries where the geographical size or linguistic limitations made it very difficult for the state to provide a sufficiently wide-spread higher education system (i.e. Luxembourg or Belgium). Another motive often was that a certain cultural identity lead to bilateral cooperation in more than one sector and as a logical consequence spread to the educational field as well (Belgium & Holland, Austria & Germany, Ireland & Great Britain). In such cases academic border crossing was possible on the basis of students going abroad permanently during their academic career as well as students crossing borders on a daily basis to some nearby areas.

Student migration is possibly one of the biggest mobility issues in Europe besides tourism. In comparison, one can find a much higher mobility percentage in students than in workers although their legal framework to allow for this mobility is much less regulated at the European level and therefore more difficult to exercise. Countries like Luxembourg send about 75% of their student population abroad whereas more than 11% of the students in Austria come from a foreign country. One has to keep in mind nevertheless that countries with a very restrictive naturalization law, i.e. Austria and Germany, also have a large foreign student population of 2nd and 3rd generation foreigners included in their figures who are permanently living in the host country nevertheless. But statistical figures available from 1993/94 show that already at that time on average 73% of all foreign students were truly mobile ones (free-movers). This ranged from about 35% in Holland and 43% in Germany at the lower end to higher proportions in countries, namely Spain, Finland, Greece, Portugal, United Kingdom and Sweden, which host a large share of the mobile academic community in Europe. The European average is likely to rise since migrations of workers and their dependants are rather stable in a European context whereas the mobility of students is actually on the rise¹⁴³.

¹⁴³ Jean-Pierre Jallade, 1997: Table 2

If one excludes Luxembourg because of its very unique special situation, students from third countries and if students covered under the ERASMUS-programme are not considered, academic mobility reaches already a percentage of 2,1% of all students which is similar to the number of migration workers and therefore shows, since not all mobile students are included, that their political weight should be much higher due to their significant numbers. Nevertheless they are at a disadvantage when it comes to social protection, recognition of their academic performance or general problems caused due to their mobility. The main problem is that most of the applied sets of laws, except for access to higher education, still depend on individual national laws and administrative regulations which can differ greatly from one state to the next whereas labour migration is regulated directly by European legislation¹⁴⁴.

STATE FINANCED STUDIES ABROAD

Some of the Member States of the EU offer their students the possibility to pursue part or complete studies abroad for a variety of political and educational reasons. Such a support while being abroad can be based on certain conditions set by the national government of the EU-students' home country.

Several countries offer the option to pursue complete long-term studies abroad; others limit the time period, kind of higher institution or study degree for such stances in a foreign country. Germany is the only country which – outside the student exchange of the ERASMUS-programme but with national maintenance support (i.e. in Germany 'Auslandsbafög') – expects from its students to speak the foreign language already quite well before going abroad to assure that the academic progress is already guaranteed right from the beginning¹⁴⁵. Therefore short and medium term stances – inside the EU Germany supports complete degrees abroad if the first two semesters are pursued in Germany and up to five semesters outside the EU¹⁴⁶ – must have the focus on acquiring foreign academic knowledge and not the improvement of language abilities. But at the same time in an inquiry

¹⁴⁴ EuryDice, 1997: p. 107

¹⁴⁵ BMBF, 2000: p. 13

¹⁴⁶ Bafög 2001 § 16 with reference to § 5

of students participating in ERASMUS German students complained most in Europe about not getting their foreign academic credits recognized at home due to the national inflexibility of the system which then prolonged their studies at home unduly¹⁴⁷. Therefore if foreign academic experience is not recognized willingly anyway then the focus of stances abroad should shifted be rather to cultural and linguistic matters.

Surprisingly one can find in national regulations of two countries – namely Portugal and Greece – that they provide financial support to their students within the country up to a certain limited extent but if they participate in organised student exchanges like i.e. the ERASMUS-programme they will not be able to transfer state support abroad. Therefore students of those two countries who receive financial support in their country of origin are at a financial disadvantage. If they want to participate in exchange programmes or if they are depended on state support and have no other sources of income their studies will effectively be limited to the home country. Therefore an improved higher education, which should also stress the obtainment for foreign know-how, understanding of different cultures and improvement of linguistic abilities, would be limited to a financial elite under such circumstances.

By looking at the country-specific state maintenance grants and loans as well as the availability of such financial support for studies abroad one can determine certain geographical differences. Generally speaking northern countries in Europe offer a much higher financial support for both studies at home and abroad. Especially in Scandinavian countries one finds very well developed systems which are open for international studies or exchanges. In the centre of the EU only France supports student mobility actively by permitting an almost unlimited access to study programmes outside its territory whereas in the Mediterranean countries both national studies and tertiary education abroad are only supported at a minimal level.

Empirical data also shows that the availability of maintenance grants for studies abroad are not directly related with the number of students one specific country might send outside its own country since such mobility could also be a reflection of the insufficient provisioning of the

¹⁴⁷ Ulrich Teichler, 1997: p. 127

national higher education system¹⁴⁸. Here significant criteria are the availability of study places in general, a *numerus clausus* which limits access depending on school performance or entry exams, or study fees which present a financial barrier to the socially weak. Such an academic migration abroad is even more appealing to mobile students if the country of choice not only offers better or more interesting conditions but also if in the host country the same language is spoken, too. This might partly explain the high numbers of Irish students in Great Britain, Austrian students in Germany or French students in Belgium.

Some countries like i.e. Luxembourg or Germany offer, additionally to their maintenance grants and loans, subsidies for study fees in the host country which would not have to be paid at home. This makes also sense for the national budget since it was already shown that no country in Europe charges real cost study fees from their foreign students after the decision in 'Gravier' and as a conclusion the migration of their own students to other countries might be a free-rider approach to save money in their own national higher education budget¹⁴⁹.

¹⁴⁸ Centre for Educational Research and Innovation, 1997: p. 97

¹⁴⁹ David Throsby, 1999: p. 36 co.

Table 13

FINANCING OF STUDYING ABROAD

	Complete Studies	Limited to certain Countries or Institutions	Limited under certain Conditions	Transferability
Belgium - French		Bilateral agreements with certain institutions if no national degree is available	If part of a national degree	yes
Belgium - Dutch		Bilateral agreements; if no national degree is available	If part of a national degree	yes
Denmark	Maximum of 4 years in recognized institutions		If part of a national degree and started in a national institution first	yes
Germany		For Danish minority support in Denmark possible	First 2 semesters in Germany, then possible to finish it abroad (outside EU max. 5 semester). Knowledge of language a must	yes
Finland	yes		If part of a national degree	yes
France		World-wide	yes	yes
Greece				no
Great Britain			If part of a national degree/language course and started in national institutions first	yes
Ireland				yes
Italy		Certain degrees in the EU	If part of a national degree	yes
Luxembourg	With or without starting in Luxembourg's institutions first			yes
Holland		Bilateral agreement with certain institutions and limited degrees	If part of a national degree and started in a national institution first	yes
Austria			If part of a national degree and started in a national institution first. Max. 2 years and knowledge of language a must	yes
Portugal				no
Sweden	In recognized institutions		If part of a national degree and started in a national institution first	yes
Spain			If part of a national degree and started in a national institution first	yes

(Source: EuryDice & www.citizens.int)

VISITING STUDENTS

As it was decided in the case of 'Gravier' by the ECJ, the free and unlimited access to higher education in the EU is only affected by European legislation insofar as the actual access to study places and related costs for registration and study fees are concerned. Specifically excluded for foreign students are financial support payments for maintenance expenses if the national government in question does not voluntarily decide to support their foreign student population as well. The Court did not have a chance so far to clarify if foreign students have an automatic right to state subsidised student dormitories or other maintenance related issues. For the sake of the argument it would actually not be logical if foreign students cannot benefit from state maintenance grants or loans but would have access to state financed student accommodation which is i.e. in some major cities of Germany more than 50% below the market value¹⁵⁰.

The access to state maintenance grants and loans is normally regulated at two levels in the host country which defines the legal position of EU-students. Because of European legislation and decisions of the ECJ caused by vague descriptions in laws and legislation, migration workers of the EU and their dependants actually have the same social rights and obligations as nationals of the host country. The definition of the status as a migrant worker is and must only be defined by European institutions and legislation and then be applied directly at the national level; an interpretation by individual Member States cannot be permitted since any national interference would only lead to different opinions on the issue and confuse a common harmonised standard. Whereas children of migration workers have immediate access in all areas of social rights and obligations when they accompany their parents, migration workers themselves can only enjoy social rights in the education sector after some time and therefore cannot benefit from subsidies for maintenance support if they would want to pursue academic studies. At present generally applied European legislation (mostly defined by the ECJ) states that, before commencing further education and claiming support in the host state, it is expected from migrant workers to be at least employed for 6 months or suffer a dismissal not caused by ones own fault and that

¹⁵⁰ i.e. „Studentenwerk München' 2001

there exists a direct link between the content of the work and the academic orientation of the chosen degree¹⁵¹. What is not necessarily understandable is the fact that there should be a link of content of the job with the future academic career. The rapid development of the job market and the change of industrial orientation should actually enable workers to choose a new professional direction without being obliged to maintain their former educational choice. Therefore it would only be logical that if somebody suffers an involuntary dismissal he should have a second chance of trying to improve his know-how in a new sector. Especially the new tendency to argue that life-long learning should keep employees with a permanently up-dated know-how and the new popularity of one-year long MA-degrees with the possibility of switching into new professional areas would allow an improved job security and actually should be supported and not hindered by European legislation.

If the migrant worker asks for a voluntary dismissal at work then this will have an immediate effect on his social rights meaning that the legal supremacy lowers from the European to the national level giving him in most cases the status of a legally resident but non-working alien. This can mean, depending on the national regulations in question, that migrant workers have to wait up to 5 years (if they cannot receive transferable state support from their home country) before they are able to achieve access to national student support systems in the host state.

This discussion will have as a starting point the investigation of national legal systems that regulate the social rights of EU-students and migration workers. Depending on the approach most countries demand either the cultural integration and/or the acquirement of such social benefits by paying for some time via taxes into the national social budget.

¹⁵¹ as defined in ‚Lair’ and ‚Brown’

Table 14

POSSIBILITY TO CLAIM FINANCIAL SUPPORT IN THE HOST COUNTRY

	Residence without prior intention to study	Minimum residence before commencing studies (in years)	Additional Conditions
Belgium – French	no	5	
Belgium – Dutch	no	2	
Denmark	yes	2	Guest workers at arrival younger than 20 or employed or married to Danish citizen
Germany	no	5	Working or immediately if one German parent
Finland	yes	2	Guest workers at arrival younger than 18
France	no	2	
Greece	no		
Great Britain	yes	3	Also for British students coming from abroad
Ireland	yes		Residence at least before the 1 st October before commencing studies
Italy	no		
Luxembourg	no	3	Recognized Luxembourg A-levels (Abitur)
Holland	yes		Unrestricted residence permit
Austria	no	5	Living with parents or in employment
Portugal	no		
Sweden	no	2	Guest worker at arrival younger than 20 or employed
Spain	no		

(Source: EuryDice & www.citizens.int)

All Member States expect their incoming migration workers to be employed for a certain period which must last - depending on the state - from two to five years and during that time they are not allowed to end their employment contract voluntarily and then apply for state maintenance grants in higher education. In some cases foreign students can have an accelerated or immediate access to such benefits if one of their parents holds the nationality of the host state of the student. Age limits for the children of migrant workers do not apply

to families from the EU anymore since in the decision of the case 'Lubor Gaal' the ECJ decided that also dependants who are older than 21 years are allowed to claim benefits as children of migrant workers.

SUMMARY

It is obvious from the Tables above that some country combinations cause financial disadvantages for mobile students which then either put the financial burden on the students and their families or as a dramatic consequence limit the opportunities to such an extent that possibly a significant number of students will rather choose to study at home than be burdened with large expenses caused by their higher education career abroad. The majority of country combinations do not allow for pursuing a complete degree outside the home country with the help of state maintenance grants or loans although the home and/or host country would actually provide sufficient means to do this for nationals in their own country.

Gaps of this kind would actually be unthinkable nowadays in areas of i.e. health insurance or pension funds in the EU (although it might be imaginable that certain specific random situations could still cause reason for complaints). On the other hand to expect direct access to higher education outside ones own country is still an unregulated issue at the European level and puts a high burden of insecurity on European students.

A division of social responsibility – if a system of state maintenance support exists both in the host state and the country of origin – should be able to close the legal gap and provide financial security and stability for its students. As shown in Chapter 2.1 students who are financially covered with maintenance benefits in their country of origin and have no possibility to transfer these social rights or obtain similar ones in the host country are very likely to stay in their home country to continue enjoying these benefits. Such a limiting regulation has therefore no direct financial benefit for the education budget of the student's country of origin since it will have to provide maintenance benefits as well as a study place there.

Countries, on the other hand, which allow a transferability of these benefits abroad, save on the costs of providing more study places as well. Best off are possibly countries which allow the transferability with

a certain (time) limit, i.e. Germany¹⁵² which sends its students abroad for a maximum of 5 semesters but urges them home again to finish their degrees there. This regulation might limit the feared 'brain drain'¹⁵³ to a minimum extent and prevent that a state actually sponsors the future graduates of another country and will not enjoy their newly acquired academic and professional know-how.

¹⁵² Until the reform of 'Bafög' in 2001. Now inside the EU under certain conditions complete degrees are possible; in third countries this limit still exists.

¹⁵³ Migration of academic population abroad in search for better opportunities with the possible result that they might stay there afterwards for employment as well

4.4. Language requirements

One of the most outstanding features of the European Union as a voluntary cooperation of formerly autonomous nation states is the great cultural and linguistic variety. In the European Union twelve principal languages¹⁵⁴ are spoken which do not include the great variety of provincial or local officially recognised minority or regional languages or sometimes highly distinct dialects.

Now the question arises which primary aim student exchanges might have at the European level. Such short, medium and long-term stances could be organised for a variety of reasons:

- different perspectives within the academic content
- improvement of language knowledge
- expansion of cultural horizon
- personal maturity

As one can easily imagine a certain knowledge of the language in question should be considered as a minimum for mobile students to be able to follow their academic courses. But here a distinction can be made for different situations a mobile student might be confronted with. Especially short stances (even in several countries) might be pursued to have quick and intensive insights into foreign cultures and to improve the knowledge of the language in question via an intensive exposure to the new environment. Academic classes could be attended but the foreign student might contain himself in quite a passive role because his language dominance is not developed well enough to participate actively in discussions and group interactions but feels confident enough to take up the presented material. During the course the knowledge of the language might improve enough so that the student is able to participate more and more actively in the academic teaching process. This form of student exchange with the above mentioned desired effects is mainly integrated in the ERASMUS-programme. Even students with no knowledge of the language at all can participate in these programmes since the acquirement of languages is one of the main focuses. Thus either the

¹⁵⁴ English, Irish, Finnish, Swedish, Danish, German, French, Dutch, Spanish, Italian, Greek, Portuguese

student can attend intensive language courses before the academic year begins or such courses are offered in parallel to the academic ones¹⁵⁵. As a concluding remark it should be stated that the academic institutions who take part in the ERASMUS-exchange do not expect that incoming students do necessarily dominate the national language. Therefore additional efforts are made to facilitate the stance of international students which might include an intensive supervision of the students and the facilitation of administrative support even in other languages (i.e. often in English).

The situation is different for students who come to the country and intend to stay for the whole duration of the course. The reasons for these students to go abroad might be based on different aspects:

- avoid study fees at home
- no place to study available in country of origin due to entrance limits
- enjoy a higher academic quality and reputation
- wider choice of degrees

As we have already determined in other chapters many Member States of the EU have not exactly facilitated the mobility of foreign students and therefore it does not come as a surprise that the linguistic (and cultural) integration of such foreign long-term students might not be one of the highest priorities either.

At this point it is important to state that there exists a fundamental difference in the level of academic education between such mobile long-term students and students in exchange programmes like ERASMUS. Long-term students pursue the whole course of studies and therefore enter the academic institutions at the entrance level like their national counterparts. Exchange students on the other hand can normally only apply for the participation in such programmes if they have already passed a certain academic (not linguistic!) level. Students have to have at least successfully completed two semesters of studies in their home university before they are allowed to enter the ERASMUS-programme¹⁵⁶.

¹⁵⁵ Decision 253/2000/EC 24.01.2000 – Article 2

¹⁵⁶ Decision 253/2000/EC 24.01.2000 – Action 2.2 – Paragraph 2

By taking this information into account it could be concluded that the level of linguistic abilities of students participating in ERASMUS should be expected to be higher since the academic level or their expectations regarding the teaching quality should be more advanced as well. At the same time academic institutions could be interested in assuring that all students in the courses possess a certain minimum of linguistic capabilities so that they are in the position to follow classes without problems because on the other hand a lack of communication could lead to certain disturbances since students with only limited linguistic capabilities would need a much higher supervision and attendance from academic personnel. In the ERASMUS-programme these special linguistic needs were taken into account and universities prepared themselves for the cultural and linguistic integration of short-time students.

In most of the Member States nevertheless long-term students who come to a host country to follow a whole academic course do not automatically enjoy such standards. To the contrary, besides other legal and financial obstacles, some Member States like France, Germany and Austria actively prevent students from entering the country and registering for academic courses by asking them to show a very high linguistic standard from the very beginning already. Here students are asked in some cases to participate in language courses and pass exams afterwards or to prove their linguistic ability even before they are taking up their studies.

Also it can be argued that if students should be able to at least follow their courses in the national language it must be carefully evaluated to which extent such regulations are also used to prevent foreigners from entering academic institutions in the host state. It has to be highlighted that such exams do not apply to children of migrant workers since regulation 1612/68 would not allow for the discrimination and active exclusion of students of foreign nationality. Here it is contradictory to argue that the children of migrant workers should be responsible enough to determine if their knowledge of the national language is enough to follow an academic education whereas otherwise mobile students have to be tested before admission is permitted.

It becomes more and more clear that such criteria were not only used to assure academic quality but also to prevent a large migration of mobile students. If such an argument would not be true then student

exchanges with their integrated intensification of linguistic abilities could be criticised as well.

4.5. Country Study

AUSTRIA

Austria has only recognized very lately the international aspects as a very important component in its higher education system. Geographically and politically limited due to historical reasons caused by the Second World War and the aftermath its academic system was strongly oriented inwards whereas some historical connections with other east-European states made Austria actually a model in the cooperation with states from the former Eastern block. Only due to entry of Austria into the EU in 1995 and the participation in ERASMUS and CEEPUS in the early 1990s it internationalised its higher education system to some extent and also established more and more an organised form of student exchange with the necessary financial and administrative support and cooperation. This also included the recognition of foreign academic credits and diplomas, and individual universities received a higher grade of autonomy to do so¹⁵⁷.

Inside the EU Austria maintains the highest level of foreign students with about 12% whereas a large proportion of these mobile students comes from the east-European area. Already in 1989 a legal base had been created to offer the possibility of teaching academic courses and degrees in other languages than German; but due to the lack of linguistic abilities of the academic personnel this could not be introduced on a general basis so far¹⁵⁸.

Originally foreigners had to pay study fees of about € 290 annually which has lost its importance due to the entrance of Austria in the EU¹⁵⁹ and a high number of exceptions for students coming from east-European countries. A combination of the longest (speaking in semesters) degrees in Europe¹⁶⁰ and the loss of study fees for students formerly coming from the EU started up again the discussion about the introduction of study fees both for national and foreign students and, commencing in 2001, fees were introduced again distinguishing between the EU and other countries. Austrian and EU-

¹⁵⁷ Law for the Reorganisation of Universities, 1993

¹⁵⁸ Centre for Educational Research and Innovation, 1997: p. 177

¹⁵⁹ up to 2001 EU-Students did not pay study fees

¹⁶⁰ CERI, 2001: p. 151

students will have to pay approx. € 365 and other foreigners the double of € 730 per semester¹⁶¹. This makes Austria one of the few countries that wants to profit from international student mobility.

Although Austria sends about 9,5% of its students abroad - which is one of the highest levels in the EU - it is important to note that about 70% of these students take Germany as their first choice¹⁶². Since both countries did not charge any study fees such mobility towards Germany can be explained by the higher variety of academic courses which such a big country like Germany is able to offer in comparison to Austria. Starting in 2001 the introduction of general study fees in Austria should even increase this mobility towards Germany.

Stances abroad in the ERASMUS-programme are supported additionally with national grants up to ten months to enable its own students to participate in these programmes and use the financial support as an additional incentive.

BELGIUM

Belgium is the only country in the EU – and therefore similar to Switzerland – in which the population does not share one common national mother tongue meaning that part of the population cannot communicate with the others with a separation in three linguistic areas of Flemish, French and German¹⁶³. This does not only affect the cultural background and the individual clichés of nationals but also finds a direct reflection in the educational sector. Not only are academic courses conducted in all three languages but also the maintenance support is not designed equally in the three linguistic areas.

The German-speaking part of Belgium does not have an academic institution at its disposal; hence they have to sign up in other parts of Belgium where they might have some academic courses in German at their disposal but not for complete degrees. Although language tests are not compulsory by the state some universities, i.e. Université Libre de Bruxelles, ask both their Belgium students who do not come from

¹⁶¹ Bundesgesetz BGBl. I Nr. 142/2000 (Budgetbegleitgesetz 2001)

¹⁶² Centre for Educational Research and Innovation, 1997: p. 178

¹⁶³ A large part of the French community does not speak Flemish whereas vice versa it is highly likely that Flemish speakers can communicate on a high level in French. The same is valid for German

the same linguistic background as well as other EU-students for linguistic proof of evidence.

The state maintenance support system regarding studies abroad is different for all three linguistic backgrounds as well; studies within Belgium in other linguistic parts of the country are possible without any additional financial barriers with the same conditions as for residents there. Generally speaking Belgium students are able to transfer their maintenance support abroad to study in other Member States of the EU if the chosen degree does not exist in Belgium. For students from the French-speaking community no additional options exist at the moment. German-speaking students¹⁶⁴ can select any kind of degree abroad but are limited in their choice to France and Germany. Flemish-speaking students can study all available degrees in the Netherlands¹⁶⁵.

In the higher education system in Belgium, limits on the entrance to academic institutions do not exist so far. This lead to a significant migration of students from the surrounding countries like the Netherlands, France, Germany and Luxembourg to especially the academic institutions of the Belgium French-speaking part for courses which are limited in the country of origin with a *numerus clausus* or similar obstacles. Therefore some universities in the French-speaking part introduced a procedure which only admits EU-students for certain degrees if they can prove that they would be able to obtain a similar course in their home country as well¹⁶⁶.

Study fees in Belgium are also dependent on the linguistic region whereas in the French-speaking part yearly study fees with approx. € 500 are about the double compared to the Flemish region. This could also be evaluated as a defensive action against the immigration of EU-students to the French-speaking part of Belgium. Already in the case of 'Gravier' the Belgium state complained about the highest number of foreign students in the EU at that time.

The linguistic diversity of the country is also reflected in the choice of the teaching language. In Belgium, universities in the French-speaking

¹⁶⁴ French is usually the first foreign language taught at schools of the German region and therefore most German-speaking Belgium nationals study in the French-speaking part of the country

¹⁶⁵ Ortelius, 1995: p. 27 co.

¹⁶⁶ Hortense Hörburger, 1996: p. 16

part offer academic classes in French, English and German. At Flemish universities, besides courses taught in Dutch, one can also note an increased number of classes held in English. Especially in internationally oriented post-graduate courses like i.e. MAs or PhDs whole degrees are offered in English, too.

DENMARK

A historic priority of the higher and further education system of Denmark is what is nowadays known as life-long learning. Every year about 50% of the population participates in educational programmes which are (partly) financed by the state. About $\frac{3}{5}$ of them participate in part-time courses which normally take place in the evenings¹⁶⁷. This reduces maintenance costs for the state and should theoretically diminish a social imbalance due to the lack of financing in normal full-time courses.

Additionally, in the beginning of the 90s, higher education degrees which were similar to the German long-term higher education system changed to the Anglo-Saxon system of BAs (3 years) and MAs (2 - 2 $\frac{1}{2}$ years) to adapt themselves more to an internationally oriented standard and achieve better recognition of Danish education and its degrees abroad¹⁶⁸. The shortened degree for the first part of the academic studies in combination with further educational programmes of the proposed life-long learning scheme – which as an approach is also supported actively by the European Commission¹⁶⁹ - should allow the population a more rapid adaptation to industrial needs and changes. What was not achieved is to shorten the academic process overall since a BA in combination with a MA still takes more than 5 years.

Denmark spends about 3,3% of his national budget for the financing of its higher education system and related expenses on maintenance benefits. This brings Denmark to the top rank of the EU when one considers such expenses in comparison which the overall state budget¹⁷⁰.

¹⁶⁷ Ortelius, 1995: p. 46

¹⁶⁸ Hortense Hörburger, 1996: p. 25

¹⁶⁹ In SOCRATES and other Community Actions

¹⁷⁰ CERI, 1997: p. 10, 75 – statistics are based on 1994

National and foreign students are not asked to pay study fees; most degrees are nevertheless limited with a *numerus clausus* which excludes about $\frac{1}{3}$ of all national applicants and this barrier of entrance is also applied to EU-students¹⁷¹.

Danish higher education institutions do neither receive study fees from students nor a per-student state budget which normally leads to decreasing interest of universities for increasing student numbers who only cause additional administrative strain. To ensure that universities maintain a high interest in international academic exchange they receive approx. € 670 per exchange student to maintain and improve quality and academic reputation abroad.

Since the grant & loan reform in the UK was introduced in 1998, Denmark offers the highest percentage of grant receivers in the EU. For EU-students who come to Denmark before being 20 years of age and if a permanent residence is maintained there it is possible to claim Danish maintenance support as well.

In 1996 the maximum time available to spend abroad with the help of national grants and loans was upgraded from 3 to 4 years which allowed increasingly obtaining foreign diplomas, too. Nevertheless this is still much less than the 6 years students can enjoy if staying in Denmark and finishing the degree there. Exceptions might be available for specific Scandinavian countries where under bi- or multilateral agreements the maximum length might be permissible¹⁷².

Due to a national regulation up to 10% of student residences can be assigned to foreign students whereas at the moment about 4% of all students come from abroad. This is presented as a plain signal for foreign students that they are well looked after in Denmark and do not have to worry about finding accommodation once they arrive which is especially interesting for short-term stances¹⁷³.

GERMANY

Under the 'Rahmengesetz für Hochschulbildung' of 1976 all kind of higher education was oriented towards the support and advancement of international and specifically European cooperation and academic

¹⁷¹ Eurydice Information Centre, 2001

¹⁷² Ortelius, 1995: p. 54

¹⁷³ Danish Ministry of Education, 2000

exchange whereas especially § 2 emphasizes the special needs of foreign students. Germany is also one of the few countries of the EU which never charged additional study fees from foreign students.

Germany is one of the main sending countries both at the international as well as European level when it comes to organized exchange programmes. Especially polytechnics offer some combined study degrees in which students have to go abroad for one or more years and obtain foreign degrees at the same time. In comparison with universities polytechnics are able to offer a much more structured course of studies and therefore due to the high need of pre-organisation are able to assure the stable exchange with a lower level of administrative barriers.

For a long time universities resisted the combination or harmonisation of their national curricula with foreign academic contents with the argument that such a process of integration would be harmful for academic research and liberty and diminish the academic variety students could choose from. At the same time it was very difficult for German students to get even short-time academic certificates recognised from abroad and in most cases student exchanges lead to an almost automatic prolongation of the number of semesters needed to finish ones degree although the problem of recognition of academic certificates is also known from students changing university within Germany during their academic career¹⁷⁴.

The migration of students from and to Germany has become a very one-sided issue. The flow of foreign students towards Germany is on a steady decrease now for many years. This might partly depend on the almost unique system of academic diplomas and structure which finds only a low level of recognition abroad due to its difficult standard of comparison with other benchmarks. Polytechnics are visited even less by foreign students since, besides other criteria, they do not offer possibilities of individual research due to their practical orientation towards the needs of industrial demand. Since 1997 restructuring has taken place where some universities and polytechnics adapted their degree schemes to the more internationally recognized Anglo-Saxon models of BAs and MAs. This should especially in the postgraduate area make the academic system more interesting for foreigners who

¹⁷⁴ Hochschulrektorenkonferenz, 1996: p. 14

cannot easily enter the German system and have their foreign qualifications recognized¹⁷⁵.

Traditionally especially engineer studies were mostly chosen by foreigners as their favourite higher education but due to the loss of industrial importance and other trade and industry priorities this was also one of the reasons for decreasing student numbers from abroad. Academic classes in foreign languages like i.e. English are hardly available which makes it even more difficult for students to choose Germany as their favourite place of study.

With the exception of the German states of Baden-Württemberg and Berlin none of the 'Länder' charge study fees from neither national nor international students¹⁷⁶; but there is an on-going discussion of such an introduction with the main argument that it would be in the students interest if he had to pay fees since this would improve the academic service and give them the rights of service consumers.

International as well as European students theoretically enjoy an equal and almost unlimited access to German academic institutions. Nevertheless problems might arise from administrative issues like the recognition of foreign certificates or the precondition of linguistic abilities.

The amount of money available from state maintenance grants and loans is normally calculated on the basis of the family income since in most cases families and spouses have a financial responsibility towards the maintenance of their children or partners until they finish their studies. From 2001 onwards it was decided to increase the support to about € 585 along with children support etc.¹⁷⁷ and limit the maximum amount of debt to about € 10.000¹⁷⁸ to assure that students do not start their career heavily indebted.

Only a small part of German students receive state support (16%) but this does not mean that they have the maximum level at their disposal. In general support comes either from the family or additional

¹⁷⁵ CERI, 1997: p. 179

¹⁷⁶ All the 'Länder' charge a contribution towards the student union (Studentenwerk). The level depends on benefits since i.e. public transport might be included.

¹⁷⁷ § 12 BAföG, § 13 BAföG

¹⁷⁸ § 18 BAföG

employment activities (64% of the students work even during the semester) to finance their studies¹⁷⁹.

The organisation of short and medium term stances abroad existed already long before the introduction of the ERASMUS-programme. The DAAD was helping with the organisation of international stances as well as with supplements for maintenance and study fees. The academic recognition of foreign stances does not fall into the responsibility of the DAAD but lies solely with the faculty of the student. The DAAD also distributes scholarships for foreigners who want to come and study in Germany but the election criteria are based on academic performance rather than social background.

The state stopped to support full-time studies¹⁸⁰ abroad since the beginning of the 90s. In a report of 1992 the German government announced that they did not want to play a leading role in higher education at the European level and therefore did not support financially complete studies¹⁸¹ abroad¹⁸² with the help of maintenance and fee benefits. This has changed now insofar as since 2001 foreign studies are possible up to a final foreign degree if the first two semesters are commenced in Germany.

Nevertheless it is very likely that German students might have problems to transfer their academic credits of their first two semesters abroad due to the still not harmonized transfer of academic performance. Moreover since it was shown in Chapter 4.3 that the actual number of maintenance recipients in Germany is rather low it comes as no surprise that the German Federal Ministry of Education sees no contradiction in actively promoting the exchange of students but at the same time states that on a general basis the student himself should bear the additional costs due to the 'arising advantages'¹⁸³ such an experience brings for the future career.

The financial support of studies abroad is rather seen as a European issue and financial support had not sufficiently increased in proportion

¹⁷⁹ Die Zeit, 12.11.1999: p. 42

¹⁸⁰ Before it was possible to pursue degrees abroad which were limited with a *numerus clausus* in Germany

¹⁸¹ Nevertheless it was still possible to use the permitted two semesters for an i.e. MA

¹⁸² ,Bericht der Bundesregierung über die Auswirkungen des europäischen Binnenmarkts auf das BAföG'/07.01.1992

¹⁸³ BMBF, 2000: p. 14

to additional demand. Since the ERASMUS-programme is not able to provide sufficient funds in all Member States it is not surprising that the Council of Science complained about a low number of German students abroad¹⁸⁴.

Due to the reunion of East and West Germany ten years ago and the incorporation of East German international student exchanges a new priority has been laid as well with new exchanges to academic institutions in Central and Eastern Europe.

FINLAND

Only in the middle of the 80s the political position of Finland changed insofar as that it loosened more and more its close relationships with the Soviet Union and other Baltic states nearby and turned more closely towards the EU and its political and economic activities¹⁸⁵. As a consequence Finland adapted its higher education policy towards the European priorities and participated early in the programmes of ERASMUS and NORDPLUS. Traditional academic relations with the Soviet Union and other Scandinavian countries were extended to the EU and other international partners in general.

In the 90s a reform took place since its higher education suffered under long and inflexible study degrees which caused difficulties with international exchange programmes. Thus shorter degrees were added with the Anglo-Saxon model of BAs but without introducing further postgraduate degrees like MAs. European academic credits are recognized on a general basis since through the Scandinavian cooperation in the NORDPLUS-programme a system of credit recognition already existed and the introduction of ECTS only extended the number of countries. Many classes and courses are also offered in English but without providing whole degrees in that language on a common basis.

Study fees are abolished since the 70s both for Finnish students and foreigners but at present there is an ongoing discussion about a re-introduction with the main argument that it would reduce significantly the numbers of semesters and hence reduce long-term studies in general.

¹⁸⁴ Wissenschaftsrat, 1992: p. 42

¹⁸⁵ Participation in EFTA in 1986, EWR in 1994, EU in 1995

Students can be financed by the state with maintenance grants, loans and rent subsidies. Degrees abroad can also be supported by the state if the foreign degree is equivalent to a national one. The Finish student has to live in Finland for at least 2 years before commencing studies abroad and the stance abroad has to be considered only as temporary if national benefits are to be transferred to other countries. EU-students on the other hand must have lived at least 2 years in Finland before commencing their studies and their residence has to be considered as permanent to receive the same Finish student support even for studies outside Finland.

The Finish state grant & loan system was under permanent reconstruction during the last decade whereas contrary to European trends the government tries to make academic studies financially as attractive as possible to create an economic upswing for the new industrial demands. To achieve this loans were reduced, grants increased and a great variety of benefits provided to make studies more attractive¹⁸⁶.

FRANCE

France with around 2 million young people in tertiary education has about the same student numbers as Germany. Nevertheless in Germany many more young people attend further formal education due to the dual education structure¹⁸⁷ which also explains why the French higher education system experiences a superior demand by potential students but is limited with a stringent *numerus clausus*, special entrance examinations done by the academic institutions and with additional selective exams done on a regular basis during the academic course. Also study fees are charged from national and international students with about € 300/year and additional expenses for a great variety of additional i.e. administrative issues.

Such a difficult academic environment might explain the large number of free movers to Belgium, Germany and Great Britain where study fees as well as entrance conditions are much easier to overcome with

¹⁸⁶ Hortense Hörburger, 1996: p. 36 co.

¹⁸⁷ European Commission - Key Data on Education in the EU, 1997: p. 86

hardly any financial or administrative barriers and are also available in an immediate surrounding geographical location¹⁸⁸.

Any migration of students is also facilitated due to the fact that French state maintenance grants are transferable abroad and about 18% of students are actually supported by the state¹⁸⁹. EU-students can also benefit from the French social support system for students under the same conditions as nationals if they have worked at least two years before commencing their studies.

Therefore France, as defined with the theoretical approach in Chapter 2.1, presents itself as a typical case where it protects itself with study fees and other limitations from the access to higher education of an exaggerated migration of students towards France since the preconditions make the French higher education system already an unattractive choice for potential foreign applicants. Additionally – and caused mainly by the transferability of grants and national study fees – French students choose to study abroad and benefit from foreign higher education systems since it might be easier and cheaper to enter a foreign academic institution. This was one of the reasons why Belgium complained in the cases of ‘Gravier’ and ‘Blaizot’ explicitly about French students who come specifically to Belgium to avoid the French *numerus clausus* and study fees and therefore cause additional costs to the Belgium system.

The usual language of teaching is French; English as a medium to teach foreigners or nationals is neither planned in whole degrees nor in individual courses on a general basis¹⁹⁰. Although foreigners are expected to show their knowledge of linguistic abilities with a specific language test German students do not have to participate since their school certificate, which allows them the unconditional access to German universities, also includes several foreign language components¹⁹¹.

GREECE

Greece has in its possession the possibly most unusual higher education system in EU with the consequence that it sends at the

¹⁸⁸ CERI, 1997: p. 184

¹⁸⁹ State grants based on the income of students were already introduced in 1925

¹⁹⁰ Ortelius, 1995: p. 84 co.

¹⁹¹ <http://citizens.eu.int>

same time the highest percentage of 'free movers' to other Member States without actually offering any support to these mobile students. The Greek budget for educational issues makes 0,7% of the Gross Social Product or about 2% of the state budget available for higher education and in comparison with other European budgets consequently provides the lowest financial level for the education of its citizens. In absolute numbers the financial expenditure per student in Greece is the lowest, Spain as the second lowest country spends about 1,5 times the amount Greece spends per student and Sweden as the sole leader in educational expenditure hands out about 4,8 times in comparison¹⁹². Additionally it has to be noted that only about 1/3 of all applicants for higher education (at the moment about 210.000 registered students) are actually admitted at Greek academic institutions and this also partially explains the high number of mobile students¹⁹³.

The direct consequence is that Greece possesses the highest percentage of outward mobile EU-students with 15% in relation to their national student population and the most attractive countries for Greek students are Italy, Germany and Great Britain¹⁹⁴.

At the same time due to administrative and linguistic issues Greece is the least attractive country for mobile students (if we exclude the students from Cyprus; the potential new member of the EU who occupy about 10% of all Greek study places) since for free movers the same entry conditions apply as for Greek nationals and ERASMUS students might not have a great interest in Greek universities due to linguistic deficiencies¹⁹⁵.

Greece has neither ratified the Convention of The Hague of 1956 nor the UNESCO-agreement of 1979 on the recognition of foreign academic certificates and diplomas. It also maintains no single bilateral convention with any state to promote student exchanges or academic mobility. Whatever recognition of studies or academic certificates exists depends on the individual consideration of

¹⁹² CERI, 1997: p. 64, 75, 10 – numbers are based on tables from 1994

¹⁹³ Ortelius, 1995: p. 137

¹⁹⁴ European Commission - Key Data on Education in the EU, 1997: p. 96

¹⁹⁵ CERI, 1997: p. 182

institutional regulations and students cannot rely on whatever European or Greek case law or legislation¹⁹⁶.

Study fees are neither charged from Greek or EU-students; students from EFTA or other countries are exempted from paying fees in Greece if in that country Greek students are also liberated from such financial obligations.

The state maintenance grant and loan system is comprised of 50% loans and 50% grants and about 7% of all the students receive these financial state benefits of about € 570 annually. Studies abroad are not supported on a general basis and EU-students can only have a very limited access to receive Greek state support¹⁹⁷. If such a low amount of money is actually a stimulating effect on mobile students from abroad would be highly questionable anyway.

Considering these special circumstances Greece together with France is possibly one the best examples for the theoretical approach defined in chapter 2.1 that by creating certain legal limits for entrance into higher education in their own country, a large part of their own potential student population would see a great need to go abroad pursuing their studies there and therefore be a financial burden on the host country.

GREAT BRITAIN

Access to and quantity of state grants and loans are normally a typical feature of a socially minded welfare state. Therefore it might be even more surprising that in Great Britain – the economic and political reform country in the EU during the 80s and 90s – until 1997 about 96% of all students received state maintenance benefits and an additional 59% applied for further support based on loans. In comparison with i.e. Germany, another highly industrialised country which might have been known even more for its welfare system only about 16% of the student population¹⁹⁸ receives some state maintenance support whereas the English maximum amount for a combined grant and loan support was even 10% higher than the German one¹⁹⁹.

¹⁹⁶ Ortelius, 1995: p. 141

¹⁹⁷ Ortelius, 1995: p. 144

¹⁹⁸ European Commission - Key Data on Education in the EU, 1997: p. 77

¹⁹⁹ Ortelius, 1995: p. 288

The Labour party which achieved a change of government after 17 years of conservative rule had caused a far-reaching reform of the financing of higher education in 1998 which affected the maintenance support of students as well as a new determination of study fees for undergraduate degrees. Inducing part of this restructuring might have been the costs caused by immigrating students which could not be charged additional fees anymore due to 'Gravier'. Some estimations assess such costs at € 100 million per year or the actual costs of four average British universities. I.e. the newest numbers available estimate the foreign student population in Great Britain at about 81.000²⁰⁰ but in comparison with English students going abroad Great Britain has the most imbalanced proportion²⁰¹ regarding the in- and outflow of students.

Due to the reform caused by the new Labour government study fees were introduced for undergraduate degrees charging up to € 1.500/year depending on the family income; the state grant system was also converted into a 100% loan scheme over a couple of years. British nationals as well as foreigners can only qualify for state support if they have legally lived in the country three years before commencing their studies. Studies abroad are only supported if they are included as a compulsory part in the academic curriculum; which in most cases is an ERASMUS participation and usually automatically prolongs the English undergraduate studies from 3 to 4 years. British nationals or their dependants might be able to qualify immediately for state support when coming back from abroad if they were employed as migration workers in other states of the EU since this would cause otherwise a direct discrimination of returning migrant workers²⁰².

The British study system is designed by keeping an economically oriented management of the academic institution in mind. State subsidies to finance higher education are based on a per student fee and therefore the student numbers are of greatest importance for these institutions to secure a stable and possibly increasing income. Because of the equal treatment of EU-students with national ones British academic institutions try to attract as many students as possible

²⁰⁰ National Agency for Higher Education, 1997: p. 198

²⁰¹ CERl, 1997: p. 178

²⁰² Ortelius, 1995: p. 289

from all over the EU and this might be the cause for foreign student populations of up to 50% at some institutions and also explains the high number of foreign students overall at 11% which is together with Austria the highest in Europe²⁰³. British universities present themselves internationally – meaning mainly outside the EU - as service providers which offer - for quite high studies fees of up to € 7.500/year for under-, postgraduate and PhD - internationally recognised degrees and are in a strong academic competition with the USA and Australia for high-quality academic education.

This causes a certain import of internationalisation at British universities and export of British know-how and possibly later business relations due to the typical British peer network. Students participate in the British higher education to improve their linguistic abilities and pursue national degrees. Therefore there is no real demand to offer whole degrees in other languages or adapt their own curriculum to international needs since students come to Britain primarily for its international reputation.

Higher education is also a very important economic sector in Britain. Estimations by the British Economic Ministry put the volume of the positive economic impact caused by foreign students at up to € 10 billion/year and the generation of 35.000-51.000 direct and indirect employments²⁰⁴. The introduction of additional study fees might in fact be counter-productive since it could reduce foreign student numbers and therefore the attraction of foreign capital.

IRELAND

During the last decade Ireland has experienced a surprisingly stable and even increasing economic growth which enabled it with the financial support of the EU and internal intensive economic reforms to increase the Gross Domestic Product from under 75% of the European average to about 95% at the moment. This economic trend with significant additional increases in the sectors of industry, electronics and service has steadily raised the demand for a well-educated workforce. To assure that a lack of professionals would not endanger the favourable economic climate it was determined that reforms were

²⁰³ National Agency for Higher Education, 1997: p. 196

²⁰⁴ National Agency for Higher Education, 1997: p. 200

necessary in the higher education sector as well to increase the student numbers in the short term and adapt the academic curriculum to the economic needs. This was the first time in the history of Ireland that the country experienced large numbers of immigrants. Part of them were Irish nationals returning from abroad and additionally mostly British citizens both seeking employment in the new economy and studying in the modernised tertiary education²⁰⁵.

Until 1996 Ireland raised the highest study fees in Europe from their own nationals which moved depending on the degree in a band of about € 2.400 – 4.400 annually. Foreign students from third countries outside the EU – similar to the British approach – still have to pay fees up to € 6.500 per year.

With the beginning of the academic year 1996 the Irish government decided to abolish study fees at all both for nationals and EU-students to make Irish higher education more attractive although it still retained a variety of administrative fees. With about 90.000 undergraduate students this creates an additional expenditure of € 230 million for the Ministry of Education and therefore causes a raise of about $\frac{1}{3}$ of the costs per student. This development is interesting to look at insofar as in almost all the other Member States either study fees are introduced at the moment or plans for this are being heavily discussed.

Although at the moment there does not exist enough empirical evidence a permanent supervision and investigation of the Irish higher education system should bring in additional know-how on the actual effects of changing the financing from students to the state. Common arguments like the shortening of time necessary to finish a degree by study fees, improvements on quality, etc. should actually cause the contrary in Ireland at the moment.

For historical reasons the Irish system is quite similar to the British one and, since English is the second official language in Ireland, both countries use principally this language for academic teaching²⁰⁶. High study fees until 1995 and a limited availability of study places might explain as well the high percentage of Irish students abroad although

²⁰⁵ European Commission - Key Data on Education in the EU, 1997: p. 87

²⁰⁶ The official language by the Constitution is Gaelic, not English

the majority of these mobile students choose Great Britain with 80% as their first choice and a further 10% go to the USA²⁰⁷.

Complete degrees abroad are also supported since 1996 with the assistance of state maintenance benefits although the choice is presently limited to the EU²⁰⁸. EU-students are able to gain access to such state benefits as well by staying in Ireland at least one year before commencing their studies which is actually the shortest limit imposed by a government in Europe for mobile students.

ITALY

Of all countries in the EU or better said of the whole world Italy possesses the longest tradition of a higher education system. Already in the year 1088 the first university of the world was established in Bologna.

Of the four Mediterranean Member States (Italy, Portugal, Spain and Greece) Italy is the most potent economic force and its Gross Domestic Product *per capita* is at about the same level as France, England and Germany. Nevertheless the actual financing of the higher education system is way below the European average with the lowest expenditure per student after Spain and Greece and the lowest proportion of the state budget regarding expenses for its educational system²⁰⁹.

The percentage of foreign students in Italy is one of the lowest in the EU as well whereas the majority of these mobile students actually come from Greece where they most likely were not able to obtain a study place²¹⁰. Since the Italian academic system does not impose any entrance limits to its academic institutions Italy was for a long time the first academic choice for Greeks due to its geographical closeness. Study fees are imposed both on Italian and European students which depend strongly on the actual academic institution and range from about € 150 – 450 per year.

Studies abroad are supported only by the State maintenance system if they are part of the national curriculum. Nevertheless this is not of great importance for its students since these benefits do only play a

²⁰⁷ CERI, 1997: p. 178

²⁰⁸ Eurydice - Key Topics in Education, 1999: p. 101

²⁰⁹ CERI, 2001: p. 76 co.

²¹⁰ Ortelius, 1995: p. 179

minor role in Italy due to its low level of recipients which together with Greece at 3% form the bottom line in Europe²¹¹.

LUXEMBOURG

Luxembourg's higher education system is very limited nationally due to the low number of inhabitants in the country. With only a population of about 400.000 citizens it is clear that its academic institutions cannot offer a great variety of academic courses at home. Only one state university offers their nationals to commence academic studies for two semesters in Luxembourg and then arranges student exchanges abroad for the rest of the academic degree where they will obtain the final diploma²¹²; here for linguistic reasons Belgium, France and Germany are the favourite choices for these exchanges. At present the introduction of complete degrees at Luxembourg's institutions is under discussion but an end to the debate and an actual introduction might not happen in the near future.

The unique higher education system of Luxembourg explains as well why their nationals hardly ever participate directly in the ERASMUS-programme. Such exchanges usually only take place when students are already quite advanced in their degrees. In that state of the academic career Luxembourg's students are already abroad anyway. Although it is certainly possible that they decide to go to a third country for up to two semesters in the ERASMUS-programme once they continue their degree abroad it is actually less likely than for students who still have not left their own country of origin. At the same time Luxembourg has the lowest number of foreign students since it is of almost no interest to both ERASMUS-students and free movers because they could only take part in the two first semesters anyway. Since the higher education system is strongly oriented towards foreign academic institutions it can certainly be expected that state grants and benefits can be transferred abroad as well. What might seem actually a little bit unusual is that *per capita* the economically strongest country in the EU only offers to its students a combination of grants and loans

²¹¹ CERI, 1997: p. 67

²¹² Has more than a hundred bilateral agreements with foreign academic institutions

as a maintenance support whereas loans take up the greater proportion overall²¹³.

Study fees are not charged in Luxembourg; in the three academically most attractive countries France, Germany and the Netherlands study fees are respectively paid by the Luxembourg government²¹⁴, not charged at all²¹⁵ or taken up by the Dutch government²¹⁶.

Since no real higher education system exists in Luxembourg the economically most powerful country *per capita* in Europe leaves it to a large extent to its neighbouring countries to take care of its students both academically as well as financially.

THE NETHERLANDS

According to a country report compiled by the OECD in 1985 investigating the educational and academic systems of its Member States it judged the Dutch higher education system at that time as inefficient and cut-off of international developments and cooperations. This was one of the main reasons why the Dutch government published a White Paper with the topic of the internationalisation of education and research in 1987 and pressed forward with reforms and the international opening towards more academic cooperation²¹⁷.

Since 1987 Holland had the lowest percentage of foreign students in the EU with 2%²¹⁸; for this reason it tried to attract more mobile students from abroad who would then also have to pay fees and therefore financially support its academic system. To achieve this, international degrees with English as the language of teaching were introduced and it was even tried to introduce English as the second official teaching language by law. This failed nevertheless in parliament in 1990 due to the resistance of the delegates for nationalistic reasons. For a variety of reasons (i.e. popularity of Dutch

²¹³ Ortelius, 1995: p. 202

²¹⁴ France charges nationals and foreigners study fees; these fees are reimbursed by Luxembourg

²¹⁵ Germany does not charge fees from nationals and foreigners. Therefore no financial transaction takes place

²¹⁶ Holland institutions charge fees from students. Since these fees are (partially) reimbursed via the state grant system, Holland was obliged to pay out this part to EU-students as well since the case of 'V. J. M. Raulin'

²¹⁷ National Agency for Higher Education, 1997: p. 159

²¹⁸ National Agency for Higher Education, 1997: p. 163

language) the percentage of foreign students continues to diminish and is now the second lowest in Europe with 1,4% (Italy 1,3%)²¹⁹.

Dutch higher education institutions are able to charge study fees from all students but national students receive a reimbursement from the national grant system. This also explains the extremely high number of students who actually receive benefits from the state since these reimbursements are part of the maintenance grant²²⁰. Since the decision in 'V. J. Raulin' in 1992 EU-students are entitled to this reimbursement as well; before the Dutch government claimed that either EU-students had no right to demand such national benefits or such a division of the benefits was actually not possible due to the impossibility to differentiate between the two payments.

To increase the international mobility of its students specific exchange programmes were introduced in 1990 to allow Dutch students to study abroad and still be able to benefit from the national maintenance scheme. At the moment it is possible for Dutch students to study in the Flemish-speaking part of Belgium and in the states of Nordrhein-Westfalia, Lower Saxony and Bremen in Germany. An extension to France and Great Britain is under discussion.

PORTUGAL

Together with Spain and Italy, Portugal holds one of the lowest foreign student quotas with around 2%²²¹. Possibly due to the lack of linguistic knowledge only 25% of these students come from the EU²²². The biggest share of students actually comes from the largest Portuguese speaking country Brazil and from some former colonies where Portuguese is still the official state language²²³.

Due to massive students protests in 1995 study fees were abolished which at that time had actually only a mere symbolic character anymore. Nevertheless because of the fiscal reforms necessary for Portugal to enter the European Monetary Union study fees were introduced again to relieve the financial pressure on the educational budget.

²¹⁹ European Commission - Key Data on Education in the EU, 1997: p. 107

²²⁰ Ortelius, 1995: p. 223

²²¹ Centre for Educational Research and Innovation, 1997: p. 177

²²² Finland 0,4%, Austria 5,8%

²²³ Ortelius, 1995: p. 245

In the same year the state maintenance system and the calculation of the maximum amount available were reformed. As the highest amount the national minimum income was fixed which is seen as the absolute minimum to be able to make ends needs. This amount is adjusted every year with an index and linked to economic changes (i.e. inflation) which might lead to an increase. This reform was based on the idea that students should, within a certain financial framework, be able to pursue their academic studies without an obligatory parental support²²⁴.

Generally, the Portuguese maintenance system does not allow – together with Greece the only one in the EU – students to participate in any form of foreign studies or exchanges without losing their national financial benefits. On a general basis this also includes the participation in the ERASMUS-programme; this means that Portuguese recipients of maintenance support are able to go abroad during their studies but do not receive state support during that time. This might explain as well to a little extent why Portugal together with Greece sends the lowest percentage of students abroad in ERASMUS²²⁵.

Also Portugal does not intent to attract specifically foreign students and therefore no special efforts like offering postgraduate degrees according to the Anglo-Saxon model or whole degrees in foreign languages are being made.

SWEDEN

Sweden spends about € 12.800 per year and student in its educational budget. Study fees are charged neither from nationals nor foreigners which would actually even add up to the expenses of some other countries.

The internationalisation of its higher education policy was already an important topic in the 70s for a specifically created group called 'Commission on Internationalisation'. The reason for using such an approach was the opinion of the government at that time that the increasing globalisation of the economy and geographical disadvantages of Sweden should be counterbalanced with an active

²²⁴ CERI, 1997: p. 227

²²⁵ Ulrich Teichler, 1994: p. 33

international educational policy and therefore promote and improve the national know-how.

Then in 1989 the decision was taken that it should be possible to transfer claims to the state maintenance grant and loan system – which is divided 30% to 70% respectively – abroad as well. At the same time national academic degrees were internationalised to offer interested students the opportunity to enjoy short and medium term student exchanges abroad in integrated national degrees. $\frac{3}{4}$ of all stances abroad are nevertheless outside organised student exchanges whereas most of these stays abroad are either complete undergraduate or shorter postgraduate degrees.

Academic teaching in languages other than Swedish is also a common feature of higher education institutions. In many courses obligatory classes are held in English, optional academic classes and seminars are also offered in French or German²²⁶.

SPAIN

Calculated as a percentage related to the population overall Spain has one of the highest student numbers in the EU²²⁷. This might be partially due to the fact that – like in Finland as well – the country suffers under an above average general level of unemployment and an additional high level of unemployment among young people. Likewise in the case of Spain its further education system does not possess any significant post-secondary professional training which leaves young people who were not able to gain access to the job market and are interested in further education only the option to enter academic institutions.

State expenditure for higher education is the second lowest in the EU after Greece²²⁸ but this low level of state support is partially compensated by a quite high level of study fees which are somewhere around € 500/year depending on the number of courses attended. An exception exists for foreign students regarding the payment of study fees if they can claim maintenance support from their home country and therefore are able to prove either an outstanding academic quality or a poor personal financial background.

²²⁶ Ortelius, 2001: Chapter 14

²²⁷ European Commission - Key Data on Education in the EU, 1997: p. 86 co.

²²⁸ Centre for Educational Research and Innovation, 1997: p. 10

A very important issue for the active exchange of students is the problem that Spain has no history at all to provide student dormitories or other forms of state supported student homes. In comparison with its student number of 1.377.553 in 1993 there were only about 27.621 places at dormitories or student apartments available²²⁹ which indicates that only about 2% of all students are able to find such a form of accommodation. With an actual foreign student population of slightly below 2% this means that all the student residences would be needed to accommodate foreign students if so required²³⁰. In a questionnaire posed to ERASMUS-students Spain was therefore actually identified as the most problematic country regarding the housing of foreign students²³¹.

Especially in the 90s study reforms permitted universities to offer, additionally to their normal long-term degrees, postgraduate courses as well which normally take the form of a one-year Master; since their long-term degrees last already for 4-5 years anyway these MA are not a precondition for further doctoral studies like in other countries but serve much more as additional specialist courses. Nevertheless surprising, these MAs do not have the character of a nationwide degree but are only certificates issued by the individual university.

14% of all Spanish students are supported by state grants which normally only take the form of a reduction of payable study fees. Criteria are presently a combination of academic performance together with the financial background of the student. For logical reasons this support is not transferable to other academic institutions abroad since the state does not pay out these fees to the student directly but is actually asking the individual university not to charge these specific students²³².

CONCLUSION

By looking at the single country reports and the development in their education systems over decades it is possible to draw some cautious conclusions.

²²⁹ Ortelius, 1995: p. 267

²³⁰ Centre for Educational Research and Innovation, 1997: p. 177

²³¹ Ulrich Teichler, 1997: p. 111

²³² Ortelius, 1995: p. 263

If a second language is used in academic teaching as well to facilitate the supervision of foreign students and to diminish their problems to understand the academic content English is the first language of choice. In almost all countries we can discover intentions to use English as the *lingua academica* whereas in many cases more criticism is raised regarding the abilities of lecturers to teach in English than the willingness of students to actually attend such classes. The intention of teaching in English and the direct benefit for national students is in most cases to enable the graduates to get used to an English-speaking environment in which they then can also develop a profound knowledge of the language. Other opportunities for students would only be to actually go abroad in an English-speaking country or attend additional language classes in their home country.

In many Member States an introduction or increase of study fees is discussed with only a few exceptions where fees were reduced or abolished. These discussions could be found especially during the time just before the introduction of the second step of the Monetary Union to improve heavily indebted state budgets. With only a few exceptions the financial participation of students in the EU is actually quite low in an international context since no country in the EU actually charges the real cost of providing a study place. Academic education, as it is, is seen as an obligation of the state sometimes extended by the argument that due to later added value for the graduate, part of the cost should be born by the student as well. But it is to be assumed that the discussions about study fees will continue and even increase if academic education is seen more and more as a prerequisite to cover a majority of job opportunities which cannot be filled by traditional professional trainings anymore due to high demands on linguistic and academic knowledge. Experts from several countries confirm that the actual introduction of study fees is usually heavily discussed since it was formerly based on the principle of providing free education to all. An augmentation or adaptation of fees later-on does not play such an important role anymore since this is rather seen as a logical development due to the common increase of costs.

This development will also have a direct impact on the state maintenance support of students which is in most cases based on a combination of grants and loans. In practically all cases the combined state benefits are not enough to guarantee the maintenance of

supported students without some additional income. This can take i.e. the form of additional family support or employment of the student in vacation time or during the semester. Furthermore state grants or the proportion of it in combined packages are changed and shifted to mainly loan based systems with the effect that more and more graduates see themselves indebted after finishing their degrees.

Here it could be questioned if not thorough academic reforms with the aim to speed up university education and to identify wasted resources and administrative delays would also cause the desired effects and could avoid to put students under financial pressure triggered by increasing study fees and lower maintenance support.

Complete degrees abroad are mainly pursued by mobile students for the reason of not having been able to gain access to higher education in their home country. This can – as in the case of Greece or Luxembourg – be a significant proportion of the student population and host countries like Belgium or Great Britain have to provide the academic and financial resources to accommodate these migrating students.

Regarding the transferability of state maintenance grants and loans we still can detect large gaps which prevent a mobility of social benefits in Europe. Considering the idea of mobility in Europe it should be discussed if all countries could allow their own students to transfer benefits abroad or, if eligible students already resided in the host country for some time before commencing their studies, fixed limits should be set with the possibility to transfer social responsibility from the country of origin to the host country. What should be prevented in any case is that students are not able to gain access to neither of them and have to finance their studies themselves although both in the host and home country benefits would be available for nationals.

5. The ECJ as Pacemaker in European Educational Policy

As it was possible to determine in the previous Chapter, the introduction of any kind of European educational policy in higher education started off quite late in comparison with other issues handled at the European level. On the one hand this might have been caused by Member States and their prevailing opinion that topics related to education should be treated rather at national levels where they could design educational policies independently²³³. On the other hand the European Commission acting as the engine of European integration did not emphasize enough the necessity of further harmonization in that sector during a significant period up to the 1980s and did not propose changes to the Council either. Compared to nowadays, studies in other countries were not that popular either due to strict limits on student mobility with only a few exceptions and the demand by the industry for graduates with experience in other countries and knowledge of foreign languages was relatively lower as well²³⁴. Hence discrimination based on nationality only affected a small group of students without a vocal representation and nothing was done until the late 80s to take on the issue and allow the creation of a European Educational Market²³⁵.

Therefore there is a need to investigate who or which institution actually kick-started student mobility in the 1980s at least on a limited basis which was then the framework for the present mobility initiatives and had as a result the present legal rights and obligations of EU-students. Since a compromise between the European Commission and the Council of Ministers was only possible under the most difficult of circumstances, but EU-students nevertheless believed that they had achieved additional rights under primary and secondary law, only the highest judicial institution in the EU – the European Court of Justice –

²³³ Josephine Shaw, 1993: p. 335

²³⁴ Juliane List, 1994: p. 6 co.

²³⁵ One assumption might be that foreign studies were mostly pursued by a financial elite which was not likely to complain about high costs of foreign education (OECD, 1997: p. 80).

was actually able to define the extent to which academic mobility should form part of the EU.

The obligation of the ECJ within the EU is to safeguard European legislation and to interpret and assure the correct application of primary and secondary law in general²³⁶. A firm legal framework is of utmost importance for the EU to allow its executive system to work properly and permit increased cooperation between the Member States. If neither a legislative base would exist nor an institution could assure that laws are not broken by none of the Member States nor other institutions or persons then the actual interpretation of European law would fall back into the hand of individual states of the EU which might have been the actual cause of the conflict in the first place anyway. This explains the importance of an institution like the ECJ to act as a final Court in disputes between all possible parties in Europe. Without its objective – or at least not nationally oriented – approach the risk would be great that national interests could prevent an impartial judicial sentence which then could be accepted as a legal and not political decision by the affected parties. Additionally this European institution also provides the possibility that a decision is actually interpreted equally in all Member States without whatever kind of national interference.

It is important to note that at present the ECJ is consisting of 15 judges²³⁷. These judges then decide either in a grand plenum or, which is actually more likely in most cases which are not of an outstanding legal or political implication, in smaller chambers of 3 to 7 judges to be able to process a higher number of cases. To improve the efficiency of the Court an additional eight general advocates are supporting the judges whereas for each case one of them, ... acting with complete impartiality and independence, to make, in open court, reasoned submission ... in order to assist the Court in the performance of the task' (Art. 222/TeC). Although the ECJ does not automatically have to follow the opinion and proposal of the assigned general advocate it can be noticed that in a majority of cases the general advocate was doing the ground work and actually preparing the legal arguments

²³⁶ Article 220 – TeC

²³⁷ One judge per Member State – if it is an even number an additional judge would be nominated who must receive the support from all countries

highlighting cases from both sides and then drawing a recommendation. This conclusion of the Advocate is also of greater importance to the reader since it is useful to understand why certain decisions have been taken.

The actual decision-making process of the judges in the ECJ takes place behind closed doors and no minutes are taken for the public. Final sentences are determined by a majority decision of the judges participating in the specific case and have to be signed by all the judges. Different to the Supreme Court of the United States of America the judges of the ECJ who disagree with a sentence are not allowed to publish their dissenting opinion²³⁸. Therefore the arguments used by the General Advocate can be very helpful in interpreting the thoughts and reasons for taking certain steps but they are certainly not a guarantee since the judges may leave this predetermined path for their very own reasons without any further justification.

The professional experiences a judge or General advocate of the ECJ should have to be able to be delegated for this task could also be of specific interest since it might partly explain why some decisions have much more political than legal structures. Although according to Article 223/TeC the judges and advocates should be '... chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence ...' the past has shown that at least no pure political designations have taken place according to their political orientation as it is quite common for the Supreme Court in the USA²³⁹.

Hence the political and national independence of the judges is maintained but it seems that the actual legal experience of most candidates in similar posts at national levels is actually quite limited²⁴⁰. Many of them possess a great deal of experience in the political arena as either high-level civil servants or even with experience as politicians which might then have an impact on the decisions the ECJ is taking. This does not mean that ECJ-judges would not be able to maintain their neutrality towards individual Member States but highlights the

²³⁸ Neill Nugent, 1994: p. 231

²³⁹ George L. Watson, June 1996: p. 257

²⁴⁰ Neill Nugent, 1994: p. 229

probability that judges do not actually stick with their original task of pure interpretation of European law but also meddle with the political design of the EU. It is likely – especially due to the fact that the Court has developed a system of precedence cases like in the Anglo-Saxon model – that the judges pay close attention to the political development in the EU and have always in mind the political impact their decisions might have.

The actual impact of Article 220 and to a certain extent Articles 230 and 288/TeC which define the tasks and obligations of the ECJ might permit the Court to base its decisions not only on written primary and secondary law but also include other sources as well depending on the intentions of the judges. One important guide for the judges can be the common principles stated in the introduction of legal texts which reflect to some extent the intentions of the Legislative when the legal base was defined. Hence there is actually an important reason behind the fact why on a general basis most legal texts in Europe are preceded by a Preamble to describe the thoughts and outlooks of the authors. This might enable the ECJ to recognize the ideas of legal articles in the correct context. Nevertheless this could almost automatically open the doors for an interpretation and extension of the legal framework but i.e. the application of proportionality to arrive at the desired goal should not surpass the necessary and avoid a confusion of the Jurisdiction and Legislation²⁴¹.

Although not used in most of the Member States with the exception of Great Britain and Ireland the ECJ uses references to former cases and either maintains the formerly expressed ideas or extent their application. By creating such precedence cases the Judges permit themselves to create or reform European law²⁴². This is caused by the fact that in many cases European law is only vaguely defined and written to avoid resentment of individual states during the preparation process.

How else would come the ECJ – as we will see later in this Chapter – to the conclusion that a national education policy was experiencing a

²⁴¹ Koen Leanerts, 1994: p. 12 co.

²⁴² The equal treatment of national and foreign students regarding study fees as described in ‚Gravier‘ is an excellent example of how the ECJ can cause the creation of new European law which was actually not foreseen explicitly by Member States and European legislation

reform process caused by European events during the 80s and therefore EU-students would be able to claim an equal treatment with national students regarding study fees but not in the case of national maintenance grants. In the opinion of most Member States during that period – which can be seen clearly when Member States are asked to make statements in cases before the ECJ – it is reflected that in their opinion an educational policy did not exist at the European level and that education as a political issue was in the sole hand of individual nation states.

The legislative decision-making process, in which via the Council of Ministers all Member States are involved, sometimes only makes a very slow progress and due to different opinions or intentions of the Member States the final outcome might be a weak or vague compromise. After a careful investigation of primary legislation defined in the founding treaties with all amendments and additional treaties it can be concluded that the kind of formulations used in these legal documents cannot be compared with the exactness and precision one is used to from most national legislation. It appears much more that European Treaties present a kind of political document that describes the intentions of the Member States within certain limits which then are used as guidance for the future development of the EU and the procedure how this should be achieved in relation to national legislation²⁴³. But nevertheless these documents have a binding legal character with the possible result that – as will be investigated later-on in some cases of the ECJ – an interpretation and decision of the ECJ is needed to define if i.e. valid national legislation is affected and who would be considered as the final executive: national or European institutions.

A quite obvious example is Article 6 of the Treaty of Amsterdam which on a general basis prohibits – except excluded specifically in another Article – any form of discrimination based on i.e. the nationality of the affected person. As was determined the list of possible discriminations concerning the free mobility of students in Europe is long and very often it is not clear at all if these kind of discriminations fall into the

²⁴³ Most European primary law is concerned with the power balance between national and European competences and how this then is organised and regulated at the European level

legal frame of the Treaties or not. If this is not the case national regulations can or cannot prohibit these discriminatory behaviours but it can differ from one state to the next.

Primary law defined in the Treaties therefore sets certain legal conditions which might in some cases uphold a final supranational definition to avoid that individual states start to quarrel again about the exact meaning of each piece of legal work. But such a procedure can lead to some undemocratic governing since it might be the case that the ECJ not only fills certain gaps in the affected legal areas but is also able to create a new legal standard via the introduction of precedence law which then is as a result also legally binding in all Member States and not only for the parties who referred the case to the Court. As a final outcome this can actually mean an extension of the influence of the Jurisdiction into the Legislative and increase the powers of the Court.

As examined further down it might be probable that, with this kind of legal influence the Court might have exercised in certain cases, it had an important impact on the further development of a European education policy which was mainly shaped afterwards by the European Commission with the consensus of the Member States but most likely kick-started by the ECJ²⁴⁴. It can also be stated that it is not always possible to verify the exact roles of the individual European institutions. Repeatedly cases are brought forward to the ECJ in which the basic rights of the codetermination or sole competence of the European institutions versus the Member States have to be distinguished²⁴⁵.

Due to continuous amendments of the founding Treaty with additional Treaties and Primary Law the EU experiences a permanent change and possibly increase of competences. If then doubts arise due to the new extent of the legal battlefield between national and European issues the Court might be asked to assess and if necessary newly define the roles of European institutions²⁴⁶. Also due to changes in the voting system it is imaginable that competences which before required unanimity are then under the majority voting taken by the loosing

²⁴⁴ Neill Nugent, 1994: p. 216 co.

²⁴⁵ Ramón Tamames, 1996: p. 98

²⁴⁶ Josephine Shaw, 1993: p: 74

parties to the Court to determine if the piece of legislation is not actually in conflict with European Treaties.

As mentioned before Treaty texts often give a kind of political orientation but do not necessarily start immediate legal action to solve the issue at stake. I.e. it seems quite obvious that an Article which is concerned with ‘... encouraging the academic recognition of diplomas and periods of study ...’ (Article 149/2 TeC) should actually lead to some result as well for the benefit of the students or trainees concerned. But it is possible that due to the disinterest of individual or some of the Member States or since they could not be able to agree on a common consensus, a significant delay might be caused with the result that overdue pieces of legislation are not put into action for a long time. This is certainly the case when decisions of the Council of Ministers can only be taken with a unanimous vote or if there exists a great disagreement on possible solutions between the Member States which can be either solved on the national or European level.

If such a so-called permanent delay prevents the progress of an area which is specifically mentioned in one of the Treaties then theoretically there exists the possibility to propose a suit of ‘failure to act’ under Article 175 which can be demanded for either by Member States or one of the European institutions with the result – if the ECJ agrees – that the responsible institution did not proceed sufficiently according to the idea expressed in the relevant part of the primary legislation. Unfortunately in reality such cases brought forward to the Court did not bring the expected results and came themselves under the scrutiny of the ECJ.

The ECJ made clear in its decision ‘Absence of a Common Transport Policy’²⁴⁷ regarding the topic of ‘failure to act’ that if the relevant primary law does not explicitly state a certain time frame it is left to the initiative of the Council of Minister and the European Commission of how and when to proceed²⁴⁸. Nevertheless opinions are divided on this issue. It is understandable that if there exists a certain resistance from national governments regarding the introduction of a new policy at the European level that this can influence negatively the outcome if

²⁴⁷ European Parliament vs. Council of the European Communities – case 13/83 – decided 22.05.1985

²⁴⁸ Neill Nugent, 1994: p. 226

governments are pushed too hard. But it is also quite obvious that the agreement on a consensus can always fail if one or some countries are not interested to participate actively. Such behaviour might certainly be the case in regards to education policy since up to now it was seen as one of the fundamental areas which were still considered as one of the principal national obligations²⁴⁹. But since requirements for the European market might demand changes in this area as well, resisting countries should feel some pressure to accommodate the newly defined needs of the people and the industrial market to provide a highly flexible, at least partially market-oriented tertiary education. But in no case a national person has the right to refer a case directly to the ECJ asking for a 'failure to act' proceeding and the Court itself also has not the power to initiate one which leaves it to the European Commission and the Member States who have more possibilities in other areas anyway to push forward in such slow-going matters²⁵⁰.

At the national level, basic ideas of a constitution cannot be ignored in the long run if the content obliges the government to comply with certain principles. At the European level it is of great importance if for the time being one might consider primary law as some sort of European constitution which experiences permanent changes with the ratification of new Treaties although part of the political ideas of the older ones have not been achieved so far and are either only copied into the new one or even extended but without any further active legislation in the secondary legal level²⁵¹.

Basically there exist two possibilities which can be used to ask for a clarification of European law. Article 234/TeC permits a 'preliminary ruling' for the clarification of European law by the ECJ. Such action is normally applied if a national judge in one of the Member States sees the need to interrupt a case which he is handling at the moment to decide if European law is or might be affected in his case and if it is not clear to the national judge of how he has to interpret a certain piece of supranational legislation. If the case has already reached the highest court at the national level and the ECJ has not been asked until then (by this or any lower court) to interpret European legislation

²⁴⁹ Koen Leanerts, 1994: p. 8 co.

²⁵⁰ Ramón Tamames, 1996: p. 98

²⁵¹ Neill Nugent, 1999: p. 274

which is concerning this specific case and the judges in the highest court in their own opinion do not require further clarification from the ECJ, then either the defendant or the plaintiff has the right to refer the case to the ECJ for clarification on the issue (not a sentence, this is always dependent on the national court) if so desired²⁵². This possibility gives the affected parties the security that no national court can use their own interpretation of European law which would then certainly lead to a wide range of national judicial opinions on European law all over the EU. On the other hand the ECJ can also reject referrals to its Court if it deems an interpretation as not important for the further proceedings in the national court.

Additionally the European Commission also has the right to bring a case to the Court under Article 298/TeC if it detects a violation of the Treaties by one of the Member States and the country does to react to the demands of the Commission which it is allowed to express in such a case. Many of these legal violations are reported via complaints to the European Commission because legal or natural persons have the possibility to protest to the European Commission if they believe that some legal action or jurisdiction at the national level is against European law or ideas expressed in European primary law. The European Commission then has the obligation to investigate such complaints and come to an internal conclusion. Either the complaint is considered as not valid which might be i.e. in the case that although some form of discrimination exists the procedure is not regulated at the European level and therefore Member States are allowed to follow their own regulations²⁵³ or the issue is considered as against current practices and then the Commission has several options available to come to an agreeable result with the affected parties.

To do this it has the possibility to express its opinion in a Decision²⁵⁴ which is directly aimed at either a Member State or a natural or legal

²⁵² Article 307 last paragraph – TeC

²⁵³ I.e. although a European driving licence has been introduced with similar permits in all the Member States if a European citizens wants to register its licence in another country (i.e. Spain → Germany) the national governmental institution is still allowed to demand a translation of the driving licence although the individual classes already specify with letters the vehicles which are permitted to drive (European Commission, Information letter: 27.11.2000)

²⁵⁴ Article 249/TeC: 'A decision shall be binding in its entirety upon those to whom it is addressed.'

person that it should do away with its problematic behaviour and therefore settle the issue without any further legal procedures. This procedure is actually more like a mediation or settlement out of court since it does not inflict any legal costs on the defendant. If the defendant does not want to follow the proposals of the European Commission then the Commission has the possibility to refer this issue directly to the ECJ.

Under Article 228 and 229/TeC the Court would also have the possibility to issue financial penalties if the dependant does not follow suit. This is of great importance since it is considered as a recently added feature of the Court. Without the possibility to inflict financial punishment it would actually be quite difficult for the ECJ to put into action its sentences if there were a great resistance from the defendant to comply with the ideas of the ECJ.

Unfortunately it takes quite a long time until a case is brought forward to the ECJ and which then additionally prolongs the legal procedure at the national level. On average a preliminary ruling requested by a national court takes about 18 months excluding the time for the national court. If the ECJ is asked directly – i.e. by the European Commission – to comment and sentence on a legal issue this takes normally around two years.

If the plaintiff is a natural person and if this person suffers a discrimination at the national level i.e. because of the commencing of academic studies and the host university causes problems because of foreign qualifications or a lacking of financial resources then such a long period of time until a legal decision is reached can have great influence on the personal fate of the plaintiff even if he wins the case afterwards²⁵⁵.

The cases which are discussed below were all brought forward to the ECJ either as a reference of a national court or with the support of the European Commission as a plaintiff. Especially two cases are going to be investigated thoroughly because they are acting as precedence cases of the ECJ in the areas of unhindered access to foreign academic institutions and state maintenance grants paid out by the host state and country of origin. These two cases can be considered as the base for all further European development towards a free

²⁵⁵ see also footnote 260

movement of students and still regulate EU-students' rights without any further primary or secondary law available. It is important to note that before sentencing on these cases, all issues related to the mobility of students were regulated at the national level and although no additional primary or secondary law was created the ECJ caused a complete change of policy both at the European and national level. This was also confirmed in various cases like i.e. ‚Donato Casagrande‘ where the Court upheld that the Treaties did not transfer the area of Education Policy as an issue to the European level. But this does not mean that primary or secondary legislation cannot have an influence on such issues if related areas at the European level are connected to the question at stake and therefore an additional interpretation at the supranational level is demanded. In i.e. ‚Wirth‘²⁵⁶ it needed to be decided if mobile students enjoy mobility of services for their education. If the Court had confirmed this students all over Europe would have demanded to receive the same treatment nationally not only concerning access to higher education but also the same opportunities regarding maintenance grants. Nevertheless the ECJ came to the conclusion that only private profit-making institutions fall under the mobility of services whereas in other nationally sponsored education institutions states are allowed to limit the access to benefits under certain circumstances.

As discussed by the European judges in the final argument of the sentence in ‚Casagrande‘ European law and case law can very well have influence on national educational policies if part of this national framework might be in conflict with European legislation²⁵⁷. The impact of such influences from the European direction towards national education systems and on their financial framework was already discussed and it can be noted that the Court is able to have a great influence with her decisions on the national design of educational policies.

²⁵⁶ Stephan Max Wirth vs. Landeshauptstadt Hannover – case 109/92 – decided 07.12.1993

²⁵⁷ In this case a child of a EU-migration worker could not be excluded from the ‚Bayerischen Ausbildungsförderungssystem‘ (Bavarian System of Educational Maintenance Support) with the argument that European Law does not have an influence on national education policies although Article 12 of the Directive 1612/68 guarantees such dependants the access to educational institutions under the same conditions like nationals

In one of the two principal precedence cases, namely, 'Françoise Gravier vs. City of Lüttich', the ECJ had to decide if the prohibition of discrimination based on the nationality of the affected person as defined in Article 7 of the then valid Treaty of Rome and the right to mobility of European migration workers would also include a right for mobile students to pursue their academic courses in other Member States under the same conditions as nationals of the host country²⁵⁸. This and following cases normally make a reference to full-time studies in other host countries. This is of specific importance since for simple exchange programs it would be more difficult to reason that it should be the obligation of the host state to look after foreign students financially since students who pursue full-time degrees abroad are, after finishing their academic career, more likely to remain as migrant workers in the host state and therefore will be contributing via taxes to the state budget as well²⁵⁹.

Ms. Gravier was a French national with her usual residence in France where also her parents resided. In the year 1982 she registered at the Académie Royale des Beaux-Arts in Belgium where she intended to pursue a higher education degree in the academic course of Comic Strips. Due to Belgium legislation at that time she was charged additional study fees compared to Belgium nationals since she did not have her permanent residence in Belgium before commencing her course. Since she was of the opinion that such discriminatory treatment would be against European legislation at that time she brought the case to a Belgium court which then referred some questions to the ECJ²⁶⁰.

²⁵⁸ The argumentation of Françoise Gravier is not discussed here since it is of no importance for this work. Although the ECJ agreed with her, another strategy of arguments was used by the Court. Ms. Gravier intended to argue on the basis of free movement of services

²⁵⁹ Actually it is vice versa since the ERASMUS-programme asks the host universities not to charge study fees from exchange students and provide additional linguistic and administrative services free of charge

²⁶⁰ In this context the power balance between the affected parties is of great interest as well. After Françoise Gravier refused to pay additional study fees since she claimed that the regulation was against valid European law the higher education institution denied her the registration. As a consequence her residence permit was not prolonged. Since she lost her status as a student her parents were not able anymore to transfer her money to Belgium due to French exchange control regulations of that time. Only after calling a national court in Belgium which ordered a temporary academic registration, an imminent deportation was avoided.

Important in this context is as well the political point of view of the European Commission. The Belgium government directed a question to the European Commission in 1985 to assure that their discriminatory behaviour against foreign students – mainly expressed by the introduction of additional study fees for students from outside Belgium - would be in line with European legislation. At that time the European Commission was still of the opinion that an extra study fee only directed at foreign students and at the same time not demanded from their own nationals would be in conformity with European legislation and sustained by the opinion on European student mobility of the European Commission as well. This opinion changed quite quickly once the case of 'Gravier' was brought forward since a change of opinion happened inside the Commission and some Member States. Gravier received the full political support of the Commission in her arguments against the state of Belgium.

The Belgium government might even had had a valid reason to claim that under European and Belgium legislation of that time it could have been assumed that an equal treatment of foreign and national students regarding the payment of study fees was impossible to derive. Article 128 of the then valid Treaty of Rome referred to a future development and harmonisation of the professional training within the European Community without proposing any specific steps to achieve this goal. The state of Belgium also tried to justify these higher study fees for foreign students with the argument that especially in the 70s there was a great migration of EU-students towards Belgium and these specific study fees solely aimed at foreigners should provide some sort of financial stability for its own academic system. That possibly a larger part of these EU-students actually came to Belgium as the children of migrant workers – in this case civil servants from all over Europe serving the EC institutions – and did not have to suffer under discrimination due to their legal status as dependants was not specifically mentioned but was one of the reasons why only a low percentage of all foreign students actually had to pay such fees.

It is also important to note what it meant when the European Commission presented figures which showed the low mobility of students within Europe at that time but stating that Belgium had the

highest figure of foreign students within the Union²⁶¹. In the final conclusions made by General Attorney Sir Gordon Slynn in the case 'Gravier' it can be seen that at that time around 4.050 foreign students attended Belgium's higher education institutions and of them about 650²⁶² were covered neither by European nor national legislation which would have excluded them from paying such study fees. Considering this number of 650 paying students at least in the legal proceedings no distinction was made between European students and others coming from countries outside the EC. Therefore Belgium claimed to suffer excessively due to a maximum of 650 EU-students who came to the country because of academic or other private reasons. Evaluating the context of this case one should therefore never forget the exaggerated number of 650 foreign students contributing towards the education budget²⁶³. Nevertheless one should keep in mind that the number of foreign students can be quite high in certain degrees since Belgium did not limit the access to higher education with a *numerus clausus* in any one of its courses and therefore certain limited degrees in France like medicine or veterinary medicine caused French students to take up the degree in Belgium instead.

The ECJ drew certain conclusions, as happened already before in the case of 'Casagrande', that the organisation and administration of higher education and education policy itself do not belong into the areas of responsibility of the EU. Nevertheless this does not indicate that Member States are able to exclude EU-citizens from national education systems and especially not if further professional education is concerned²⁶⁴. Therefore it is important to investigate the arguments which were used several times by the Member States if academic studies *per se* belong into the category of further professional education since part of them cannot be assigned to specific professions afterwards. This might, on first glance, appear somehow

²⁶¹ Françoise Gravier, op. cit.: p. 610

²⁶² Françoise Gravier, op. cit.: p. 595

²⁶³ As it was presented in the Chapter on the United Kingdom a foreign student population at individual British academic institutions of up to 50% was and still is possible. These students did not have to pay fees for undergraduate degrees at all up to 1998 and compared with the numbers in the case of 'Gravier' already one British university housed more foreign non-paying students in the 90s than were present in the whole state of Belgium in the 80s

²⁶⁴ Françoise Gravier, op. cit.: p. 612

strange since it is commonly assumed that higher education enables the majority of students to find better employment after finishing their academic career but it has its reasons because of the following individual circumstances: in practically all Member States one can find at least one and normally more educational systems which are directly related to some sort of further professional training. In some countries there exists the dual system like i.e. in Germany or Austria where professional training partly takes place in companies and partly in state schools specifically dedicated to these trainings. Furthermore in some professions training takes place completely in schools or institutions since the profession in question does not allow for training at the workplace. Additionally there is also the 'training-on-the-job' where the complete professional education takes place in the company and the necessary know-how is transferred by company-specific courses, the teaching of colleagues and the direct application through 'learning-by-doing'.

But with all these different systems one important fact is always outstanding. There is always a direct relation with the later professional occupation. No doubts exist that in each specific kind of education mentioned above either one is already directly integrated in the working environment or that one is preparing himself for a well-defined professional occupation. Member States denied that this would be the case in general for degrees obtained from higher education institutions. Studies at academic institutions normally cover a wide field of possible areas of interest which can reach from i.e. the studies of philosophy to veterinary medicine. It is more likely in the opinion of the author that i.e. the studies of philosophy are less considered as a preparation for a specific professional occupation than veterinary medicine since the latter leads to a state-regulated profession which allows the graduate to exercise one specific form of employment which cannot be entered with any other form of qualification. Without evaluating the degree of philosophy it seems to be quite obvious that it is difficult to maintain the claim that its studies would prepare the holder for one specific professional employment with only a few exceptions. It is much more the case that philosophy enables the student to use its obtained know-how in a wider field and therefore also allows him to act much more as an allrounder if so required. But nevertheless Member States tried every possible move to convince the

ECJ that even the undergraduate degree for veterinary medicine which ends with an academic degree and is compulsory for continuing the postgraduate studies and obtaining the final qualifications of a veterinary surgeon should not be considered as professional training²⁶⁵. It was the declared aim of the affected Member States to prove that higher education degrees would not act as prerequisites for an entrance into the job market and therefore mobile students could not claim to have indiscriminate access to it.

The ECJ on the other hand came to the conclusion that, due to Article 128 of the Treaty of Rome, the described policies of professional education experienced a step-by-step development at the European level since its signature and lead to the improved mobility of students in Europe. Additionally professional education at the European level should be considered as an elemental part of the mobility of workers²⁶⁶. Therefore the access to higher education should fall under the application of primary law and a discriminatory national framework should be declared as in contrary to Article 7 of the Treaty of Rome and hence students should have equal access to academic institutions.

But doubts still remain until now when and where the ECJ could have seen a step-by-step evolution on professional education policies in the EU during the 70s and 80s. It could be much more argued that the ECJ actually started the step-by-step development with its precedence cases which then lead to an increasing quantity of cases where students complained about the difficulties which they experienced as mobile students.

The second case which played a very important role and caused another big leap forward for the European mobility of students in the 80s and at the same time provided the framework for the claims of social financial support in the host country had to be investigated by the Judges in the light of migration of workers who then could benefit from social contributions, the host state was offering primarily to its own nationals. Although, as was determined already in the case of 'Françoise Gravier', the access to higher education abroad was

²⁶⁵ Vincent Blaizot vs. Universität Lüttich and others – case 24/86 – decided 02.02.1988: p. 386

²⁶⁶ Françoise Gravier, op. cit.: p. 613

possible without risking to pay higher study fees than their national colleagues the case did not clarify if the decision excluded explicitly the possibility to claim national maintenance benefits in the host state. It is important to distinguish in this context if the student came only into the host country with the primary idea of taking up academic studies or if he was employed as a migrant worker before and due to private or professional reasons then decided to attend a higher education institution. Additionally as it was still common at that time the Court tried to define if the specific course in question could be considered as a professional education.

For the first time since the decision in 'Gravier' and similar cases the ECJ had to clarify for a German court in the case of 'Sylvie Lair'²⁶⁷ if Member States can make use of national legislation to regulate the access to maintenance grants for migrant workers or if such national frameworks have to be based on European primary and secondary law to avoid any kind of discrimination based on the nationality of a student.

Sylvie Lair who was of French nationality came 1979 to Germany to work as a bank employee and stayed in this occupation until 1981. During the period from 1981 until 1984 she was mostly unemployed with some interruptions for professional retraining and employment. In 1984 she started her academic studies at the University of Hanover and attended courses in Germanistic and Romanism. In order to finance her maintenance she applied at the same time for state support under the German Law of Student Support (BaföG). The administrative institution in charge then informed her that she was not yet eligible for such benefits since at that time foreign students were obliged to work for at least five years in the host country without interruption before being able to have access to such financial support²⁶⁸. The employment before commencing the studies should generate enough taxes to justify the financial claims of a foreigner towards the German social system and therefore avoid social tourism towards countries which possessed a relatively advanced social security system.

²⁶⁷ Sylvie Lair vs. Universität Hannover – case 39/86 – decided 19.11.1985

²⁶⁸ § 8.2.1 of the latest BaföG was then valid for all European foreigners who were not included in one of the exceptions mentioned in the paragraph (which did not include EU-citizens at that time)

Sylvie Lair brought the case to a German court and claimed under Article 7 of the Treaty of Rome that the German regulation was discriminating against her due to her French nationality. The court of Hanover felt that important European issues were affected and thus referred the case to the ECJ for clarification.

In relation with the case of 'Gravier' the ECJ maintained again, that at that moment the non-discriminatory access to tertiary education was assured for EU-students under Article 7 of the Treaty of Rome but due to the step-by-step development of the European education policy which was formed both by national and European developments the financial support of guest students was still depended on national regulations in each country. Therefore the argument Ms. Lair used in relation with Article 7 was rejected. Nevertheless the ECJ saw a significant relation with Article 7 of Regulation 1612/68 which assured migration workers equal access to higher and further education and gave them full and equal access to the same social advantages their national counterparts could claim as well²⁶⁹. Nevertheless in the statements of some Member States it was denied that a migration worker would keep his status as a worker after commencing his studies since academic studies do not present further professional training and in some countries, national students do not keep their status as a worker either. This is mainly done to exclude national students from benefits which are mainly aimed at workers or socially weak persons, i.e. unemployment and housing benefits, social security, etc²⁷⁰.

On the one hand, while discussing the issue of student mobility, the sovereignty of a state was criticised which used its powers to exclude EU-students from the financial benefits its own nationals receive if such mobility does not fall into the application of European primary or secondary law. On the other hand the negation of such benefits can present a discrimination of rights of mobile workers which then would very well fall into the application of European law and therefore could not be regulated at national level without taking into account European standards. Of importance is in this context that it cannot be left to Member States to define the legal status of a migration worker since

²⁶⁹ Sylvie Lair, op. cit.: p. 3203

²⁷⁰ Sylvie Lair, op. cit.: p. 3168 co.

this would lead to individual national interpretations of which they would most likely search for their own legal advantage²⁷¹.

Nevertheless the ECJ was of the opinion that a migration worker who leaves his employment voluntarily can only claim financial maintenance support for these further studies if there exists a relationship between the former occupation and the content of the future studies, i.e. a computer programmer studying computer science. A change and new orientation due to other studies causes therefore a loss of financial claims a migrant worker had obtained through his legal status. It could be assumed that this decision should prevent that EU-students who want to study in another country accept whatever kind of employment for a certain period and then give notice voluntarily with the idea in mind that their legal status will give them immediate access to social benefits and therefore the host country would finance their academic degree which was the main reason when they had chosen to come to the host state in the first place.

This kind of argumentation is certainly not completely free of criticism. Especially nowadays when the job market demands a high level of flexibility and additional professional qualifications, further tertiary education with a new professional orientation is not uncommon and can increase the chances to find a new occupation. This is especially true in the academic sector for post-graduate studies when one or two-year long MA-studies offer the possibility to undergraduates as well as returning professionals to gain new insights in areas which were not related to their former education or employment. Taking into account the interpretation of the ECJ in the case of 'Lair' migrant workers would not be able to pursue voluntarily additional academic studies in other areas with the help of national social benefits if they have not yet complied with the national – not European – prerequisites. Furthermore the ECJ did not define a time-limit after which a migrant worker can give notice voluntarily and commence academic studies in a field which is not related to his former work and claim maintenance benefits from the host state at the same time. Therefore migrant workers are still in a legal vacuum at the European level when it comes to continuing tertiary education in the host state.

²⁷¹ Steven Malcolm Brown vs. Secretary of State for Scotland – case 197/86 – decided 21.06.1988: p. 3244

It appears to be contradictory but still conclusions can be drawn from the legal decisions of the ECJ and European primary and secondary law that a migration worker is often discriminated against in relation to the free choice of academic studies and that this should actually be in conflict with Article 6/TeC and Article 7 of Regulation 1612/68. The migration worker does only obtain a free choice of tertiary education when he loses the employment involuntarily since then further education can be defined as professional retraining.

Obviously the ECJ was not able to find a harmonised and non-discriminating policy for migration workers who were interested in further academic studies since fears might have been existed that whatever step forward in the wrong direction could bring up a flood of claims by EU-students asking for maintenance support in the host rather than the home country. It becomes quite obvious that it should actually not be the work of the ECJ to estimate and evaluate the political consequences of their sentences to such an extent that this might cause further although less intensive discrimination to protect the interests of national governments. On the other hand if the Council of Ministers and the European Commission would create a common, although possibly limited, European Education Policy – as can be seen to some extent in Chapter 7 – then the ECJ would not be asked time and again to find a way round the mixture of European primary and secondary law, precedence cases of the ECJ and national regulations. A case where the contradictions in the sentencing of the ECJ are much more obvious can be seen in the following decision. In the case ,René Humbel and Marie-Thérèse Edel'²⁷² who lived as French migration workers in Luxembourg the ECJ came to the conclusion that the son of the petitioners would have to pay additional study fees for his academic studies in Belgium although all Luxembourg nationals were excluded from such financial obligations due to an informal agreement between the two states. Article 12 of Regulation 1612/68 demands that dependants of nationals of one of the Member States who are employed in another state of the EU must be able to participate under the same conditions in the education and further professional training like nationals of this specific country without any further

²⁷² Belgium State vs. René Humbel and Marie-Thérèse Edel - case 263/86 – decided 27.09.1988

discrimination²⁷³. Although it could be argued with reason that the state of Belgium should be allowed to claim fees from Luxembourg students for their participation in the Belgium education system it is the opinion of the author that in this case a wrong decision has been taken insofar as the family Humbel should not have been the defendants in the case. In paragraph 24 of the case 'Humbel' at the ECJ the Judges claim correctly that the obligation to allow the dependants of European migration workers to have equal access to the education system in the host state is indeed based on European legislation and therefore no difference can be made between national and foreign children.

In this context it is also important to mention the case 'Carmina di Leo vs. the State of Berlin'²⁷⁴ where the plaintiff Ms. di Leo who as the daughter of an Italian migration worker wanted to commence her studies of medicine in Germany. Due to a *numerus clausus* which limited the access to this degree in Germany she then rather chose to pursue her studies in Italy where she was able to gain access to her degree of choice. At that time the German maintenance system still supported financially degrees abroad which were only available at a limited basis in Germany and therefore German students could nonetheless pursue their favourite studies if they were willing to go abroad. Di Leo then applied for German maintenance benefits for her studies of medicine in Italy since this was also possible for German students and she expected the same treatment under Article 12 of the Regulation 1612/68 which guaranteed the equal treatment of foreign children and nationals.

The German state declined the application with the reasoning that Article 12 would only cover measures taken within the host state where the parents of the applicant were employed. Additionally, since Italy was the country of origin for the plaintiff and her parents, the studies of di Leo actually meant a voluntary return to her roots in the opinion of the defendant and therefore no claims could be made to the German social system since it should rather be the obligation of her home country to maintain and support her during the studies in Italy. The ECJ did not follow the argumentation of Germany and determined that the

²⁷³ See also 'Donato Casagrande vs. Landeshauptstadt München – case 9/74 – decided 03.07.1974', where it was decided that Article 12 of Regulation 1612/68 also includes claims for financial maintenance support of students

²⁷⁴ Carmina di Leo vs. the State of Berlin - case 308/89 – decided 13.11.1990

student cannot be obliged to stay with the parents in the host state and that she should be able to enjoy all opportunities which are available to the nationals of the host state, too, even if this means that she returns to her country of origin to commence full-time studies there with the financial help of the former host state.

If one had already used this form of argumentation in the case of 'Humbel' then the Court should actually have reached some other conclusion under such specific circumstances. An obvious step would have been not to consider the family Humbel as being responsible for paying additional study fees but much more the state of Luxembourg to guarantee the equal treatment of Luxembourg nationals with the dependants of migrant workers in Belgium. The General Advocate Sir Gordon Slynn had pointed out in his final conclusions that because of an agreement²⁷⁵ between Belgium and Luxembourg nationals from the latter were able to attend the Belgium education system without paying any further fees which would otherwise also have been a contradiction to the case 'Gravier'. The state of Luxembourg should have modified this agreement insofar as to include children of migration workers in its scope to assure that the obligations expressed in Article 12 of the Regulation 1612/68 cover them as well without any further discrimination. This can either be achieved by including such foreign children in the agreement with Belgium or by the Luxembourg state paying such extra fees under these specific circumstances to the Belgium state.

It is important again to note that the ECJ defined the development of the 'common policy in the area of professional education' according to Article 128 in the Treaty of Rome as being done step-by-step since such a procedure was actually created by the precedence cases. Additionally the Court described this Common European Education Policy as an integral part of the obligations of the Community and its aim to improve the mobility of migrant workers and the improvement of their standard of life²⁷⁶. These recommendations were of specific importance in the cases of 'Gravier', 'Blaizot' and 'Lair' to assure on

²⁷⁵ During the trial it was not possible for the Court to determine if there existed a formal agreement or just some form of consent between Luxembourg and Belgium. The Belgium delegate was not informed and a written questionnaire to the Luxembourg government went unanswered

²⁷⁶ Françoise Gravier, *op. cit.*: p. 613

the one hand that a change and new orientation towards the development of a common policy in the area of further and professional education has taken place. On the other hand a quick harmonisation was not to be expected due to the limitations in primary and secondary law and the unwillingness of the Member States to push forward this topic which was formerly regulated completely at the national level.

The latter preoccupation was mainly based on the idea that EU-students would try to have access to state maintenance benefits in host states on a general basis even when they do not have a special relationship with the country or were not employed there as migrant workers before commencing their studies. Nevertheless one could use as a counter-argument that since the signature of the Treaty of Rome in 1958 in relation to student mobility and a European Education Policy practically nothing has happened until the 1980s and only the impact the ECJ created with its precedence sentences caused a rethinking of this idea. Certainly already before the sentences of the ECJ, Directives and Regulations concerning the rights of migration workers and their family members could be found but they were never directly related to Article 128/ToR and only in the 1980s the Court with its precedence cases created a new political spectrum with the access to further education²⁷⁷. On the one hand it can be noted that during 25 years not much had happened regarding the mobility of students; on the other hand since the changes caused by the ECJ to allow for free access to foreign higher education not much more has happened for students interested in pursuing complete academic studies abroad either.

The comments of General Advocate Sir Gordon Slynn in the case of 'Steven Brown' show quite clearly the problematic issues at stake in the discussion over having access to state maintenance benefits from the host state for EU-students. On the one hand it seems to be clear to the General Advocate that the absence of financial means for the basic needs of a student – which is defined as having food and accommodation at his disposal – would be a direct hindrance to the free access to tertiary education. On the other hand he sticks with the claim that the means for maintaining ones life as a student are not sufficiently directly connected with having access to higher education to be considered as being a discriminatory barrier. Therefore as a

²⁷⁷ Koen Leanerts, 1994: p. 9 co.

conclusion EU-students cannot have access to the same means as nationals²⁷⁸. But as it has been stated already in the case of 'Casagrande' the specific negation of gaining access to financial support from the host state can be considered as being a limitation for the further education of a student. Additionally in every Member State where there exists a means-tested grant and loan system for students it was introduced with the argument that less well-off persons should have the same opportunities as the financial elite. Hence in practically all countries grant systems themselves are proof enough that there exists a strong relationship between ones personal income and access to tertiary education and the pure existence of such support schemes present themselves as a direct contradiction to the argumentation of the General Advocate already.

The argumentation of the ECJ that only from the characteristics of a migration worker a claim can be derived for the financial support from the host state can be used to create an interesting paradox, too. From the decision in the case ,D.M. Levin vs. Staatssecretaris van Justitie'²⁷⁹ a different treatment of EU-students can be derived for the ones who not only pursue their academic studies in the host state but are also employed in some form of part-time work during the academic year.

It could be sufficiently argued that EU-students have to improve their personal income since due to the decision of the ECJ in the case of 'Sylvie Lair' students who come to a host country with the idea of pursuing academic studies there, cannot post claims to the local maintenance benefit system. Additionally, depending which country they are coming from, they do not receive financial support from their own national maintenance scheme either. If an EU-student is employed in some form of part-time work then he is immediately able to obtain the status of a migration worker with full claims to the social advantages of the host country as it has been defined in the case of 'Sylvie Lair'²⁸⁰. What is even more important is that an EU-student cannot loose the status of a migration worker during his stance at the foreign university since he continues to be employed. In the case of 'D.M. Levin' the ECJ defined that a part-time employment is seen by a

²⁷⁸ Steven Malcolm Brown, op. cit.: p. 3230

²⁷⁹ D.M. Levin vs. Staatssecretairs van Justitie – case 53/81 – decided 23.03.1982

²⁸⁰ Sylvie Lair, op. cit.: p. 3200

great number of people as a form to improve their standard of living even when the income derived from such a contract is below the national minimum income of the host state. The Court therefore draws the conclusion that for the definition of a migration worker a part-time employment is sufficient and can also be below the national minimum income as long as it is not on such a small scale as to be regarded as purely marginal and ancillary²⁸¹.

Also important to note is that the actual reasons for the EU-student to come to the host state is not supposed to be considered as long as only a true form of employment as defined above has been obtained²⁸². In all cases where up to now it was argued in favour of EU-students having access to maintenance benefits in the host country this kind of argumentation has not been used so far. In 'Sylvie Lair' as well as in 'Steven Malcolm Brown' it was always talked about an employment which ended at the latest before commencing their studies and no follow-up part-time employment had been taken on.

National law in several Member States declares the status of a worker incompatible with the one of a student saying that such students who also participate in the job market do not enjoy the same social protection like their fellow workers. As an example one of the basic claims of a worker is to have access to unemployment benefits which is also applicable for part-time jobs but is not compatible with the status of a student. On the other hand if i.e. a student in Germany claims maintenance benefits from the BaföG additional income from employment is considered in general with only few exceptions²⁸³ and therefore students experience some discrimination in relation to social benefits.

The ECJ had declared on several occasions that national legislation cannot have an influence on the status of a migration worker which is actually defined by European legislation and precedence cases of the ECJ itself. If therefore an EU-student, who is legally working in some part-time employment and as a result recognised as a migrant worker in the host state, refers his claim for maintenance benefits in the host state to the ECJ such a case should have a sound legal basis.

²⁸¹ D.M. Levin, op. cit.: Paragraph 17

²⁸² D.M. Levin, op. cit.: Paragraph 21-22

²⁸³ Berufsausbildungsförderungsgesetz § 21-25

Additionally the Court defined in 'Levin' explicitly that in the case of a real and legal employment the status of a migration worker is maintained and the original motives for coming to the host country are not supposed to be taken into consideration for evaluating the status as a migrant worker.

Therefore the contradiction is created that an EU-student is forced to take on employment with at least a part-time contract to be possibly able to have a right to state maintenance benefits in the host state according to the regulations which apply to national students there and that he must continue in this employment for an unspecified amount of time to avoid losing his status as a migrant worker and with it all his newly gained social rights. Most likely at the same time the income gained from employment will be deducted (partially) from the maintenance benefits and therefore his social benefits are reduced. Practically the only possibility which would allow national governments to avoid this scenario would be that both national and foreign recipients of state maintenance benefits would not be permitted to follow any kind of employment. This then would avoid a discrimination against foreigners whose only chance of obtaining such benefits would be a combination of work and maintenance grants and loans. Unfortunately such a case has not been tried so far at the ECJ and therefore can only serve for a theoretical approach.

A short description of the rights of mobile students gained via the European Court of Justice, the Council of Ministers and the European Commission will show us in which areas a dominant decision-making from the Court improved the situation of EU-students and where other European institutions contributed effectively towards an improved European academic mobility:

- 1985 – ECJ: in the case of 'Gravier' (N° 293/83) the discrimination of EU-students regarding study fees and equal access to higher education institutions is abolished;
- 1987 - European Community Action Scheme for the Mobility of University Students (the "ERASMUS programme")
- 1988 – ECJ: in the case of 'Lair' (N° 39/86) recognized migrant workers can have access to maintenance benefits for their academic studies in the host state;

- 1988 – ECJ: in the case of ‘Commission vs. Belgium’ (N° 42/87) the quota system which the Belgium government had introduced for EU- and foreign students was considered to be discriminatory since foreign student numbers of above 2% triggered an obligation for them to pay additional study fees;
- 1988 – ECTS voluntary system of academic credit allocation and transfer;
- 1990 – ECJ: in the case of ‘Di Leo’ (N° 308/89) dependants of migration workers also have the possibility to pursue full-time academic studies outside the host state with the financial support of it if this is possible for their national colleagues as well;
- 1992 – ECJ: in the case of ‘Raulin’ (N° 357/89) students obtain the automatic right of residence and if necessary a residence permit to be able to reside legally in the host state if they can show an inscription at a higher education institution, a certain minimum income and a health insurance;
- 1992 - ‘The Bologna Declaration on the European Space for Higher Education’ prepared by the Confederation of EU Rectors’ Conference and the Association of European Universities and signed by the European Ministers of Education of 29 countries recommends an opening of the European higher education system on a voluntary basis and promotes increased mobility;
- 1996 – the European Commission publishes the green-book ‘Obstacles to border-crossing Mobility’, highlights mobility barriers and proposes voluntary solutions;
- 2001 - Recommendation of the European Parliament and of the Council on ‘Mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers’ (2001/613/EC) highlighting barriers to academic mobility and proposing voluntary solutions.

As it becomes obvious from the dates, most cases and legislation which were concerned with the topic of student mobility and rights of EU-students took place before the signature of the Treaty of Maastricht. Interestingly in the case of ‘Lair’ the ECJ came to the conclusion that: ‘...assistance given by a Member State to its nationals when they undertake such studies nevertheless falls outside the Treaty, at the present stage of development of Community law, except

*to the extent to which such assistance is intended to cover registration and other fees, in particular tuition fees, charged for access to education...*²⁸⁴.

It became clear in Chapter 3 that European primary legislation has changed quite substantially in the area of Education Policy. As Leanaerts states in his essay 'Education in European Community law after Maastricht' the idea and wording 'education' in comparison with 'professional training' only appears in European primary law since the introduction of the Treaty of Maastricht. If one would continue the argumentation of the ECJ then the inclusion of an Education Policy into primary law of the EU and additional precedence cases would mean a new start or an important step forward again at the supranational level with consequences and spill-overs into relevant areas²⁸⁵.

The Court does not have to rely automatically on a concrete referral in the Community law either to determine if an EU-student is able to gain additional rights under i.e. Article 6/TeC which bring him to an equal level in comparison with national students in the host state. In Article 149.2 a 'developing the European dimension in education ...' and the 'encouraging the mobility of students ...' is envisaged, Article 150.2 demands to 'facilitate the access to vocational training and encourage mobility of ... trainees and particularly young people'²⁸⁶ and in the preamble of the Treaty of Maastricht it is expected that the EU should achieve the 'wide access to education'. Since most of the cases which were brought to the ECJ took place before this new primary legislation was established one could reasonably argue that this caused an improved situation for a common European Education Policy to which the Court could refer future cases relating these references to the improved mobility of students. If in specific articles it is talked about the improvement of student mobility and as a political initiative an overall access to education is promoted this should then actually be reason enough to break down still existing barriers which are blocking academic mobility and to define if either the home or host state carries the financial responsibility of its EU-students.

²⁸⁴ Sylvie Lair, op. cit.: p. 3162

²⁸⁵ Clive Church, 1994: p. 199

²⁸⁶ In many of the cases discussed before the ECJ had determined that academic education is part of the idea of education in general

After a thorough investigation of the judicial cases and the comments of the Member States which they had to bring forward to argue their standpoints it seems to be obvious that Member States will continue to limit the supranational influence of European institutions and the European legislation as much as possible to avoid that final decisions will be taken at the European rather than at the national level. Education is one of the few bastions left where Member States were able to maintain their autonomy but it is doubtful to some extent if this insistence is a reflection of maintaining national quality or if it is rather a fight about political decision-making. But without a clear European primary and secondary legislation Member States will always run the risk that the ECJ will take the decision-making process into its own hands and set some minimum standards using its precedence cases at the European level which then are compulsory to apply for all Member States and not only to the affected parties. On the other hand there still exists a great resistance of Member States in the Council of Ministers to find a common solution for the issue of student mobility in Europe since the great variety of academic systems and its financing both for the institutions as well as the support of students make it very difficult to find a common framework. Although such individual proposals must move on a great band it certainly does not mean that there would be no solution to it. What is lacking at least at the moment is the political willingness to make a step ahead. Compared with other issues i.e. in the economic field, educational issues are not threatening the functioning of the EU and therefore Member States see no urgent need to carve in and press forward for the benefit of mobile students. Whatever happens in the near future, it seems to be much more convincing that Member States should present solutions for a harmonised European Education Policy in the Council of Ministers rather than being confronted by decisions of the ECJ where they are not able to shape the outcome. It should certainly not be the task of the Court to co-determine a European Education Policy and base its claims on the vague primary law present at the moment. Instead a coherent legislation should be created by the Council of Ministers, European Parliament and the European Commission to allow for a flexible and non-discriminating academic mobility within Europe.

6. European Integration Theory and its Impact on Higher Education and Mobility

European Integration Theory has progressively developed over decades during the evolution of the European Community. Over the years integration theory itself has experienced various changes and enhancements to cover occurring events. This Chapter will not go further into the investigation of the utility of certain theoretical approaches but try to apply published theories to the evolution of a European higher education sector, investigate their utility and possibly expand their application. One should not make the mistake of trying to apply all possible European integration theories on this very specific issue since other scholars have already shown that the integration process in Europe is so full of varieties and different forms of integration procedures that it is possibly an effort in vain to find an all-embracing explication²⁸⁷.

The aim of the theoretical approach is to understand why, as discussed in Chapter Three and Four, no common European approach was reached to facilitate student mobility. Neither social nor educational policies are to be found in the Preamble or listings of aims of the Treaty of Rome. The only legitimate claim for educational issues could be based on Article 57 (mutual recognition of diploma), 118 (cooperation in social questions) and 128 (common principles for vocational training). Nevertheless vaguely written primary law caused an unintentional legal development for tertiary education at the European level since secondary or derived legislation was based on a large variety of Articles 2, 3, 8a, 48, 49, 52, 54 and 57 which then permitted EU-students to place their claims in front of the ECJ using a broad interpretation of standpoints²⁸⁸. Consequently it should be investigated if this evolution is following a certain system which then finds its replication in a theoretical methodology.

Therefore to determine the applicability and importance of Integration Theories it will be of particular interest to look at (Neo)-Functionalism, Flexibility and the effects of *spill-overs* as means to explain the peculiar

²⁸⁷ Claus Giering, 1997: p. 10 co.

²⁸⁸ Heiko Walkenhorst, 1997: p. 71

aspects of higher education integration. Important to note is that the development of integration in Europe takes on a much more evolutionary than constitutional-building characteristic²⁸⁹. It is sometimes very difficult to decide when and if federal aspects develop in specific areas or only supranational or even intergovernmental cooperation occurs between the Member States.

It can be stated by looking at the development of the EU from the early Treaties of Rome and ECSC that the major focus of European integration was mainly built up on economic aspects²⁹⁰. This could lead us to the conclusion that European institutions and the procedures for the development of legislation are particularly well adapted to economic aspects and do not take into account the necessities of integrating other spheres of European interests with the same clarity and quality. It could even be argued that the resignation of political powers in the economic field is minor in comparison to the major changes one might expect during the next decade which will possibly bring together 20-30 European countries and create the largest and on the whole one of the most complex communities in the world.

One major quandary of harmonization efforts in the European higher education sector might be that universities and similar institutions enjoy freedom of action in many aspects of education and their individual administration. Areas like academic recognition, possibilities to study abroad, etc. are mostly regulated at university level and for European institutions it appears to be very difficult to reach all the relevant authorities to establish some form of cooperation. The European Commission and the Council of Ministers do not have the legal authority to interfere in these areas without questioning academic freedom itself at national and regional levels²⁹¹. Hence it appears to be that political changes in the tertiary sector either depend on voluntary participation of academic institutions in areas related to academic content and the regulation of academic awards or the seizure of their legal rights through European legislation and judicial sentences in cases like higher education access, finance, student maintenance and residence rights. An additional option might be that peer pressure or

²⁸⁹ John Pinder, 1986: p. 52 co.

²⁹⁰ Brent CO. Nelson, 1998: p. 326

²⁹¹ Heiko Walkenhorst, 1997: p. 13

academic demand forces individual academic institutes to ask European institutions for a supranational approach.

The introduction of ERASMUS and ECTS on a basis of voluntary participation by the European Commission shows that the creation of a European network of cooperation can soften individual positions up to an extent where staying outside of a (voluntary) programme might even be harmful and peer-pressure possibly brings about the desired effects in the end. Both institutions and citizens might become so used to a voluntary network that the abolishment would be out of question but a legal realization might be unfeasible for political reasons. Such a process might even be possible to happen behind the backs of the powerful and was more thoroughly researched and defined by Mutimer as ramification process²⁹². This form of integration can happen in very specific areas and is mostly facilitated by intensive necessities and formal solutions possible at a technical level.

I.e. in the Netherlands, English as an academic language is widely used in teaching both at undergraduate and postgraduate level to improve the linguistic abilities of their national students and attract more foreign students who normally are not fluent in the local language. In 1990 the Dutch Ministry of Education tried to put forward a legal framework to recognize English as an official second academic language in higher education but this proposal was squashed in parliament due to different nationalistic views on the issue²⁹³. Therefore the use of English was requested and provided by academic institutions on a voluntary basis but legal recognition was too much to bear for politicians. Although the legal introduction failed English still continues to be used as the *lingua academica*.

A similar development can now be observed with the structuring of university diplomas. There appears to be a tendency of a number of Member States to accept and introduce the Anglo-Saxon system of BA's and MA's to make academic achievements more comparable and competitive at the international level whereas this trend goes right from Scandinavia via Germany and Belgium to southern Europe. It is highly doubtful that an official introduction of such an alteration and the introduction of a European Degree would be feasible but demands of

²⁹² David Mutimer, 1994: p. 25

²⁹³ National Agency for Higher Education, 1997: p. 167

the industry to introduce more flexibility and shorter degrees might not go unheard. After a long voluntary transformation European harmonisation in this area could be achievable since the first step was taken wilfully by individual countries²⁹⁴.

In the EU both European institutions as well as Member States are applying different methods of integration to achieve further consolidation or harmonisation of their (supra)-national starting-points at stake. Negative Integration defines itself through the abolition of integration barriers in the course of which these barriers had been introduced before by the individual states to impede European mobility; but such obstacles can exist as well because of the inherent features of a sovereign nation state which usually puts certain limits on cross-border activities of whatever kind. Such integration via Negative Integration can take place both through the action of the European Commission and the Council of Ministers when legislation is passed to facilitate the mobility and abolish former barriers or the ECJ takes action against what it might consider harmful obstacles to the idea of the Community.

The introduction of study fees charged from foreigners in Great Britain in the 1980's could be named as an example where universities were allowed to ask for real study-cost fees from non-nationals. Foreigners - in comparison to nationals who could participate in undergraduate studies free of charge - had to pay up to € 7.500 per year to contribute towards the British higher education system²⁹⁵. Higher education was considered as an economic service rendered and the influx of foreign students should be made to pay for its received academic input. This is still reflected by the attitudes expressed by British universities which not only try to recruit as many national and foreign students as possible but also establish campuses in other continents as well. The expansion is based on financial business cases which should bring about increased (academic) prestige, economic size and profits. At that time Great Britain considered nationals from the EU as overseas students and made them pay for their education like third-country students as well. Hence by charging higher fees Great Britain wanted

²⁹⁴ 'The Bologna Declaration on the European Space for Higher Education' - 19th June 1999

²⁹⁵ Ortelius, 1995: p. 288

to protect itself from a large student migration to its country that could be caused by the popularity of English as a means of communication in business and the broad international acceptance of its academic degrees.

When in the case 'Gravier' it was decided that regarding study fees there should not be made a distinction between national and EU-students it led to an imminent abolishment of study fees for these students from the Member States and allowed for an unobstructed mobility without at least financial discrimination.

EUROPEAN COURT OF JUSTICE

Often the ECJ presented itself as the ultimate means of fighting European and national bureaucracy and defending the rights of individual students when it came to an improved European academic market. The structure of European Treaties and legislation is known to cause legal loopholes and individual companies or persons run the risk of falling outside the economic or social benefits of European integration by having narrow-minded national laws applied to them²⁹⁶. These examples can stretch from cases like 'Cassis de Dijon'²⁹⁷ where national regulations would not permit foreign products into the home market on the grounds of insufficient alcohol content or 'René Humbel and Marie-Thérèse Edel' where the Belgium education board discriminated against children of migration workers in Luxemburg but not against dependants of Luxembourg citizens. By studying carefully a long list of cases brought to the ECJ one can discover that the ECJ's main task is to interpret the applicability of national laws and regulations in the European context rather than sentence typical infringements²⁹⁸. This could lead us to the conclusion that the ECJ was created with the intention not only to supervise the integration process but also help to transform difficult legal ideas into reality where the democratic concept of agreement between elected politicians is almost bound to fail.

The evolution of the EU from a cooperation between nation-states on the basis of various legal agreements to a Community with Treaties

²⁹⁶ Neill Nugent, 2000: p. 171

²⁹⁷ Rewe-Zentral AG vs. Bundesmonopolverwaltung für Branntwein – case 120/78 – decided 20.02.1979

²⁹⁸ Brent CO. Nelson, 1998: p. 260

acting as constitutional documents and the ECJ acting as a Constitutional or Supreme Court is actually partly the doing of the ECJ itself²⁹⁹. Although the Court was given wide legal powers in the Articles 169, 170, 173, 175 and above all in Article 177 it was never the intention of the Member States to provide for an ultimate arbitration board which could actually revoke decisions made by the Member States and oblige them to comply with Community regulations³⁰⁰.

The democratic deficit in the decision-making process is well defined and the ECJ is part of the non-democratic sector within European institutions but without such a court European integration would even be a bigger playfield for uncontrolled decision-making since then an ultimate instance of mediation would be missing if other European institutions are not capable of taking a final decision³⁰¹. Slowly the EP is taking over part of the control on decisions taken by the European Commission and the Council of Ministers by participating up to a certain level in the decision-making process whereas its rights are balanced between non-existence, advisory and compulsory participation. Nevertheless its sphere of influence stops after the introduction of legal work has been completed. Here a distinction can be made insofar as the EP is primarily concerned with the controlling and designing of legal work up to its introduction and the ECJ mostly deals with interpretations and amendments of difficult legal pieces afterwards. This stands in clear contrast with national schemes where supreme courts may also interfere in legal problems but on a general basis national parliaments are much more concerned with the complete development, introduction and amendment of legal work. In the case of the EU the interaction of three institutions (European Parliament, European Commission and the Council of Ministers) has therefore a great influence over the speed and willingness to change and adapt legislative work³⁰².

A very interesting paradox limits possible complaints to the ECJ as well. Losers of integrative steps are normally not able to go to court and claim lost or not gained advantages. Individuals might want to complain that integrative steps did not go far enough. The ECJ stated

²⁹⁹ Alex Easson, 1994: p. 78

³⁰⁰ Neill Nugent, 1999: p. 262 co.

³⁰¹ Jürgen Neyer, 1999: p. 368 co.

³⁰² Alex Easson, 1994: p. 96

repeatedly that individuals are not able to sue for more integration if they are of the opinion that current procedures do not go far enough. This also includes the interpretations of Treaty articles which are not directly applicable; i.e. the support of student mobility in Article 126 might lead to the conclusion that legal barriers would be against the idea of mobility but since such articles are rather the expression of political wills and intentions no direct effects can be drawn³⁰³.

Here the medal has two sides as well. It is possible that national laws before the introduction of European regulations provided a higher standard and European changes might have resulted in real losses for some of the parties involved³⁰⁴. Due to the practice that federal law breaks national law an attempt to revoke European decisions via the ECJ is normally impossible except if the legal piece in question presents itself in conflict with other European legislation already in place³⁰⁵. In the case 'Costa'³⁰⁶ the ECJ concluded that the introduction of EU-Treaties created its own legal order and therefore automatically overrides contrary national laws. Thus the extension of European law into new areas automatically nullifies contradictory national laws if they are not adapted or abolished. In the case 'Les Verts'³⁰⁷ the ECJ concluded and confirmed in subsequent cases that the Community constitutes a union with legal structures and consequently national states are bound by its decisions and the legal review of the ECJ³⁰⁸.

In the case 'Van Gend en Loos'³⁰⁹ the ECJ concluded that certain Treaty articles can have a direct effect and applicability in the Member States and a national legal introduction is either not necessary or national laws contrary to the respective article are null and void. Regulations, Directives and Decisions agreed on by the Community institutions can have such a direct effect, too, which is very important in the case of Directives³¹⁰, in which only common objectives are

³⁰³ Heiko Walkenhorst, 1997: p. 173

³⁰⁴ Brent CO. Nelson, 1998: p. 260

³⁰⁵ Like in Germany federal law overrides state law: 'Bundesrecht bricht Landesrecht'

³⁰⁶ Costa vs. ENEL - case 6/64 - decided 15.07.1964

³⁰⁷ Partie Ecologiste 'Les Verts' vs. EP – case 294/83 – decided 04.12.1985

³⁰⁸ Factortame Ltd and others – case 213/89 – decided 19.06.1990

³⁰⁹ Van Gend en Loos - case 26/62 - decided 05.02.1963

³¹⁰ 'Shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods' (Article 249, TEC)

expressed and it is left to the individual states to choose the appropriate method to achieve the goal. Here delays might happen on the national level due to the unwillingness of some Member States to put into action inconvenient legislation and as a consequence individuals³¹¹ might be able to claim that such Directives which were not introduced on time give direct rights to citizens nevertheless³¹².

The legal application does not limit itself to demands between individuals and the state (vertical effect) but can also apply to confrontations between legal subjects (horizontal effect) as well. In various cases³¹³ the ECJ showed that Articles might confer direct rights to its citizens like i.e. equal pay for men and women, which was not integrated in Belgium law but was contrary to Article 119/ToR of European primary law and as a result also applicable in Belgium. This argumentation makes it more difficult for Member States to claim that certain political approaches in primary law only give some form of orientation without direct legal application.

FUNCTIONALISM

During the early stages of the EC and possibly again during the preparation of the SEA, Functionalism as an approach to explain integrationist developments had its justification. Even on the side of politicians a 'hands to work' attitude followed and the desire to actually solve problematic questions was above the usual political quarrels. To apply Functionalism to empirical data certain conditions had to be fulfilled nevertheless:

- *a specific, non-political sector is only exposed to non-fundamental conflicts of interest*
- *the process of finding solutions takes its course incrementally; the actual solution of the issue is the main focus of the discussion; ideological controversies are avoided and political authorities are kept away from the discussion*
- *decisions are based on rational and technical criteria and are taken mostly by autonomous experts*

³¹¹ Ursula Becker vs. Finanzamt Münster-Innenstadt - case 8/81 - decided 19.01.1982

³¹² Alex Easson, 1994: p. 79

³¹³ Gabrielle Defrenne - case 43/75 - decided 08.04.1976
 M. H. Marshall - case 152/84 - decided 26.02.1986
 Marleasing SA - case 106/89 - decided 13.11.1990

- *the support of this process and the necessary institutional structures stem from the realization that the interests of participating parties can be represented efficiently*
- *a successful cooperation in one sector will stimulate the demand for continuing collaboration in other functional areas as well*³¹⁴

This demand for further cooperation without a direct legal base was defined in Neo-Functionalism as *spill-overs* to express the idea that integration in one sector might lead almost automatically to further integration in related sectors as well. Although Functionalism and its further development into Neo-Functionalism was often criticized as not always being useful to describe integration at the top level by applying it to an overall picture, its utility nevertheless is of great value when applying it to specifically selected issues³¹⁵.

Functionalism as a theory had specific problems being applied to political systems like the EU and amendments and adaptations had to be made to provide for a functioning theory. Mutimer argues that the strict separation of power and functionalistic/bureaucratic handling is theoretically possible but does not prove to fit the EU³¹⁶. On the contrary the functionalist expansion might be the result of a lengthy bargain between politicians and only then a functionalist tendency may possibly take over.

Neo-Functionalism, which was originally defined by Ernst B. Haas, tries to accommodate much more the different shades of politics and the possibility of interfering powers. *Spill-overs* were introduced to describe the expansion of integration into other areas without politicians having to kick-start discussions³¹⁷. Here solely the pressure of further integration might inundate other areas because only a whole package covering several areas could bring the expected results.

Neo-Functionalism does not strictly believe in the separation of political and functional or bureaucratic approaches either. The political will to proceed into new areas is not only caused by the sheer necessity to expand integrative procedures and obtain the required results but Member States must be willing to restrict harmonization and limit it to certain areas even if this means that the outcome is less

³¹⁴ Claus Giering, 1997: p. 46

³¹⁵ Reginald J. Harrison, 1974: p. 27 co.

³¹⁶ David Mutimer, 1994: p. 27

³¹⁷ Ernst B. Haas, 1968: p. 3 co.

rewarding in this specific field³¹⁸. Hence the idea of an objective approach to functional progress is only possible if it is not against the personal interest of individual politicians.

Here typologies, as also defined by Reinhard Meyers³¹⁹, portray idealism as one of the possible characteristics to enhance further integration. Strong leaders might be able to push integration forward with determined behaviour. In the late 80s and early 90s the duo Mitterand-Kohl was able to move the EU forward into new areas and overcame major disputes between the Member States³²⁰. On the other hand the same might be true for charismatic leaders trying to stop or slow down such supranational tendencies like as when de Gaulle forced the Compromise of Luxembourg and the refusal of the entrance of Great Britain into the EC or Lady Thatcher who effectively tried to avoid further European integration on a more general basis³²¹. Consequently it should be noted that at that point the every-day-life of Europe is run by European institutions whereas mayor movements in integration or inclusion of new political spheres strongly depend on political leadership by heads-of-state or the President of the Commission as in the case of Jacques Delors. Such strong and ambitious leaders might have a personal favourite topic as in the case of ex-chancellor Helmut Kohl with the Monetary Union³²². If now another outstanding political leader assumed European higher education policy as an important matter the harmonization process could be kick-started at the European level with the necessary impetus.

The exclusion of politicians as a necessary requisite to obtain a functional decision-making process can happen in either of two ways. Either, due to national procedural standards, politicians do not negotiate the issue at stake or they withdraw voluntarily their political rights to smoothen the process and leave the development of new ideas to rational bureaucrats.

³¹⁸ David Mutimer, 1994: p. 30

³¹⁹ Wolfgang Schumann, 1996: p. 41

³²⁰ Neill Nugent, 1999: p. 177 co.

³²¹ Josephine Shaw, 1993: p. 30

³²² Agence Europe, 17.04.2000: p. 2 co.

The feature of the European Commission and the Member States to admit package-deals³²³ to solve complex controversies in a wide area of interests also tends to avoid political stalemates and allows approaches where otherwise a way-out would not have been possible. Such an approach to bargaining is explained by technical trade-offs where functional civil servants, who are not blended as much by political party-interests as politicians, determine the usefulness of such packages.

Another possibility is to leave difficult issues to the meetings of Heads of States who are responsible to their electorate but might only want to defend their own turf if packages bring more disadvantages than benefits. Ministers with a portfolio on the other hand might not want to loose out in their field of responsibility at all costs although packages might mean an overall benefit for the country.

Decisions can only be taken at the highest level available and already from the very beginning European institutions including the Council of Minister seemed politically not to be competent enough to solve such complex and diverse issues. So meetings between the Heads of State of each Member State became a regular event and were even institutionalised during the Paris summit in 1974 as the European Council to give new impetus to problematic matters; especially when new areas formerly not covered by the EU were concerned. The European Council can act, if necessary, as a powerful locomotive towards further integration if big steps are necessary to achieve new goals. This was especially obvious when in the 80s after a long period of stagnation the SEA with its emphasis on opening up the European market and the Treaty of Maastricht with its focus on EMU took place. On the other hand the long-awaited institutional reform and the admission of new members especially from Central Europe probe the European Council to the utmost and the lack of regulations of how to proceed in a deadlock makes it very difficult to determine how to reach a solution³²⁴.

Even though the European Council is recognized as a European institution with regular meetings every year, it itself does not fall under

³²³ A combination of political decisions, which are individually not acceptable to different Member States, might be agreed on as a package if it offers more advantages than disadvantages to EACH Member State

³²⁴ Ramón Tamames, 1996: p. 90

the influence of the Treaties and the ECJ. Hence the Court has no powers over the European Council and cannot try the reasoning, the European Council uses, to come to its conclusions. This is very important when former Treaty texts are under the scrutiny of the Court and additional or more defining Treaty texts would give the ECJ additional guidance or erase even the necessity for a judgment because of legal assistance by the European Council³²⁵.

The question remains nevertheless if higher education itself is uncontroversial enough to use Functionalism and *spill-overs* to explain the recent integrationist developments in this area. As the Dutch example with the subject of English as an official academic language has shown quite clearly, functionalists at the technical level were overruled by political superiors that this specific theory actually tries to avoid. This does not mean that in general the utility of Functionalism itself is doubted but for each topic it has to be evaluated if the approach to solve the issue can remain at a level where it is not under the scrutiny of an open, possibly biased, political discussion.

Already the Schengen Agreement on the abolition of border controls has shown that cooperation between a limited group of willing members can lead to an EU-wide agreement in the medium or long run. The risks of such rather random cooperations have been investigated thoroughly and possible two of the main schemes should be mentioned here: *Europe à la carte* and *Core Europe* might be highlighted in order to show that possibly a good approach for further integration of the European tertiary market would be not to pressurise all Member States in one common scheme but let the hesitant ones stay outside for some time and convince them with a working system afterwards.

In *à la carte* Member States should be able to choose if they want to participate in European activities. This is certainly quite different to what we know from monetary union or the social chapter where, after long and hard bargaining, Member States could receive an opt-out if so insisted on. The issues above are fully integrated into the EU and also run by EU-institutions and via the EU-budget. *À la carte* would be much more difficult to apply and additionally it would leave citizens with the confusion to determine if certain legislation applies to them

³²⁵ Neill Nugent, 1999: p. 177 co.

depending on their specific legal situation or geographical location. Thus it would be an appropriate scheme only when a small group or even a slight majority of Member States wants to take a major political step towards further integration or harmonization and it does not lead to confusion with the citizens as i.e. in the case of the Schengen agreement.

A *Core Europe* on the other hand would be safely nested in the EU-environment and the same Members would always act as an integrationist motor and be one or two steps ahead of the others. The remaining group should always have the possibility to catch up or even only be left behind during a specific period of time with the obligation to participate in the medium or long run. It is difficult to imagine that even a small group of Member States would agree in a wide range of issues. In the second stage of the EMU it was expected that only a minor group of Member States might start off introducing the common currency and now, driven partially by political enthusiasm and determination in 2002, when the physical currency of the Euro was introduced, 12 Member States have finally participated with discussions ongoing in Denmark and Sweden about a speedy membership³²⁶. It is therefore very difficult to determine who would be actually in such a *Core Europe* since the final result not only depends on specific criteria (i.e. in the case of EMU the economic criteria which had to be fulfilled for entering the Euro-zone) but also the political willingness of the incumbents (i.e. safe members of the EMU accepting that the criteria should not be applied strictly) and the outsiders (i.e. Great Britain not trying to block the Euro-move). Would it include a large numbers of the present Member States or would it go down to the original founding Six or even less? Would the *Core Europe* consist of the same countries for each issue or would the membership change according to the political field? Since there exists no empirical development at this stage it is very difficult to establish the criteria for such a theoretical approach in this area³²⁷.

The integration of the higher education sector, if there exists considerable resistance from some Member States, would then be placed much better under the umbrella *à la carte*. Member States

³²⁶ European Central Bank, 2001: Background to the Euro/Participating Countries

³²⁷ Claus Giering, 1997: p. 214 co.

would not be obliged to join but a common system could be established at the European level with the possibility that after a successful start more Member States see the practical benefits and decide to participate. Furthermore integrative steps could not only be based on the experience gained from free-movers and the ERASMUS-Programme but also from the highly flexible and integrated NORDPLUS-Programme developed in Scandinavia. The loose cooperation in Scandinavia enjoys a close collaboration in higher education and allows its students to move freely and with financial support within its borders. Moreover Scandinavian higher education institutions have a long reputation for facilitating the recognition of merits gained abroad as well.

Therefore the NORDPLUS-Programme should be investigated more closely, patched up if weaknesses are found, merged with the successful ERASMUS programmes and then other countries be invited to participate as well. The final outcome should then be that students will be able to move to other countries as if they were in their own country with full access to or transferability of social benefits and transfer and recognition of academic merits. Such a procedure *à la carte* would have the advantage that its application is both only available to a very specific group of people, in this case mobile students, and an explicit sector so confusion for the citizens is very likely to be avoided.

If there exists at least a common consensus between Member States to tackle the issue of higher education although not enough willing members to participate are available a decision could be taken as well to integrate the policy into the EU-scheme what some authors call *variable geometry*³²⁸. This would make it easier to transfer the scheme into the EU once it is accepted by all Member States. It would be a cheaper way to maintain the system, too, because no new institutions have to be established to start up and maintain the scheme outside the European ones. Also the cost of maintaining the scheme would come out of the EU-budget and would present itself as an additional incentive to participate because the outsiders would bear the costs but not the benefits, as it is the case of the EMU for Great Britain, Denmark and Sweden.

³²⁸ Christopher Tugendhat, 1985: p. 428

Such a *modus operandi* is also known in the EU when a common defence policy is concerned. What caused some problems though is if non-participating members are allowed into the relevant committees with a right to opinion and vote. In the case of EMU the UK for example complained dearly about not being admitted to the advisory board although the scheme itself is run under EU-regulations. Member States might fear in such a case that Members who chose to opt out of such integrationist steps not only show less interest in the maintenance of the project but also might effectively disturb the process with counterproductive opinions and behaviour because they might consider integrationist movements in such areas, even by other Member States, as against their national interests.

For obvious reasons both possibilities have their pros and cons and have been weighed against each other to choose the right approach. In the case of higher education perhaps, if a consensus can be reached, the issue should be kept within EU-institutions because experience has already been gained via ERASMUS and an integration of the higher education sector is to be expected at least for a variety of administrative issues in the medium term anyway.

SPILL-OVERS

With European institutions Haas came to the conclusion that especially the European Commission was and is acting as a motor of integration in the European environment. Putting forward new projects and incentives for further cooperation in related areas was defined as *cultivating spill-overs* to demonstrate the inherent intentions the Commission wants to pursue³²⁹. This certainly depends on the possibilities and legal leeway each institution has at its disposal. At a national level the motor of any initiative is normally the parliament but compared to the European Commission and the Council of Ministers the European Parliament's opportunities are still very limited. Not that this means that the EP would stand back in its pursue of European integration. On the contrary, by many the EP is considered as one of the most radical supporters of further harmonisation that could be explained by the fact as well that it acts on the basis of being much more an adviser than a proposer like the European Commission. By

³²⁹ Christian Welz, 1993: p. 147

being in opposition most of times it usually stands out with quite aggressive European proposals and intends to add and adapt as much as possible of its own ideas³³⁰.

Functional *spill-overs* might become political ones in the medium term when the necessities of integration touch issues which either fall outside the competence of bureaucrats or the issue at stake is so political that the common interest to solve the problem is overshadowed by political quarrelling.

But there exists another European institution that actually possesses superior legal powers in existing areas and decisions taken by it can have both impacts on integration in the area concerned or spill over into other sectors. The ECJ has the ability to act as an independent court in the EU although the community itself has not obtained federal powers similar to other communities and therefore the Court is actually limited to reach verdicts only in areas that were handed over from the Member States into supranational agreements. From this point onwards the ECJ and its decisions are superior to national law and courts and enjoy a community-wide application³³¹.

Important decisions made by the ECJ and afterwards used as precedents in other cases can result in the necessity to clarify the legal situation by European legislation. Hence the term *judicial spill-overs* should be introduced and added to the definition of spill-overs to explain a specific feature of European integration which itself is not comparable to other similar environments like in the USA. Every now and then the ECJ is faced with the problem of deciding in a case where either the Member States are not willing or able to come to a common solution or the interpretation of a vague treaty text requires the definition of the range of application. Such decisions can be highly political and the ECJ tends to look at the European Commission for some non-binding point of view to see what is politically desirable and permissible or unwanted³³². The Court could always run the risk of arriving at conclusions which are not politically acceptable anymore although so far Member States acting as the defendants have accepted sentences without criticizing the strong position of the Court

³³⁰ Wolfgang Schumann, 1996: p. 123

³³¹ Brent CO. Nelson, 1998: p. 290

³³² Neill Nugent, 1999: p. 262 co.

itself. But it is also not unheard of that the ECJ has changed its opinion again³³³ after following a certain determined position in various precedents³³⁴.

Such judgments by the ECJ can present themselves as solutions to the issue at stake or are then followed by European legislation to further define the issue in question. Especially if the sentence goes against the implicit wishes of a majority of Member States they have as a remedy the possibility to introduce new legislation to reduce the undesired effects of the judicial outcome. Such new legislation might then offer more specific instructions to Member States than a judgment could ever do.

Once the Court established in the decision in 'Gravier' that students shall have equal access to higher education it triggered the necessity to establish further rights to enable students to study abroad. In Functionalism it would be argued that either Member States or the Council of Ministers and the European Commission would create the basic framework to put such a sentence into action. But empirical evidence demonstrates that there was actually no willingness at all to integrate further higher education at the European level³³⁵. Of all the measures taken to facilitate the migration of students only the Regulation on the residence permit of students³³⁶ is binding in all the Member States and actually is itself a response not to 'Gravier' but others like 'Raulin' where a Member State tried to limit the access to residence permits for students³³⁷.

Here the argument goes that because of the precedence cases set by the ECJ and the obvious unwillingness both from the European Commission and the Member States to create binding legislation the Court is awaiting further cases and is forced to define the legal framework in related areas as well which then causes such *legal spill-overs*. In the case of higher education and the precedence of non-discriminating access, related areas might then be the access to

³³³ Agence Europe, 10.04.2000: p. 2 co.

³³⁴ Union royale belge des sociétés de football association ASBL vs. Jean-Marc Bosman - case 415/93 - decided 15.12.1995

³³⁵ Heiko Walkenhorst, 1997: p. 57

³³⁶ 93/96/EWG - 29.10.1993

³³⁷ Walter Demmelhuber, 2001: p. 59

maintenance support, residence permits and rights of children of migrant workers.

Such *judicial spill-overs* do not have to be automatically decided by the ECJ. In cases where national or regional courts do not pose questions to the ECJ although European legislation is concerned or the losing party does not appeal and therefore does not reach the highest national court with the possibility to refer questions to the ECJ it is difficult to know about such *national judicial spill-overs* on European issues since no legal register based on such criteria exists. Nevertheless European cases, which followed up precedents, are already available in a sufficient manner to justify the amplification of spill-overs.

If comparisons with one of the most similar unions of states are made one will discover that the situation in the USA is actually quite different. Student mobility itself is highly encouraged and studying outside one's home state is - compared to Europe - very common indeed. For students the mobility is not hampered by border controls and residence permits. On the other hand students have only limited access to social services and other state benefits in the US guest state. Additionally state universities in the host state have the possibility - and are applying it presently - that out-of-state students are charged much higher fees than in-state students. Such discriminative behaviour was challenged in the Supreme Court but the Court upheld that out-of-state students have the possibility to pursue their studies in universities of their own state and no general access to higher education in the USA exists under the same conditions which are locally available³³⁸. This argumentation does not apply to private universities since they are free to determine their study fees independently from state regulations and effectively charge relatively high and equal fees from all applicants³³⁹.

³³⁸ Vlandis vs. Kline et al., Appeal from the United States District Court for the District of Connecticut
No. 72-493: argued 20.03.1973 - decided 11.06.1973
Nyquist, Commissioner of Education of New York, et al. vs. Mauclet et al., Appeal from the United States District Courts for the Western and Eastern Districts of New York
No. 76-208: argued 22.03.1977 - decided 13.06.1977
Elkins, President, University of Maryland vs. Moreno et al, Certiorari to the United States Court of Appeals for the Fourth Circuit
No. 77-154: argued 22.02.1978 - decided 19.04.1978

³³⁹ studieren.at: 2001, Studiengebühren USA

The American Court did not have to express an opinion on the mobility of students themselves since there exist no legislative barriers to mobility (or at least in the opinion of the Court). Rather it had to determine if the discrimination against out-of-state students practised by state universities is presented itself as an illegal procedure or as a lawful custom to charge real study fees from students who or their parents did not have a history as potential taxpayers in this specific state.

By comparing the two cases before the ECJ and the American Supreme Court it comes to ones mind that the ECJ could have followed the American line of argumentation as well. Of all the reasons mentioned by the ECJ – as it has been investigated more closely in Chapter Five - it could have been claimed that the decision in 'Gravier' was much more a political than a technical one. The ECJ had to decide and actually did in its concluding remarks that the EC reached a certain stage where the discrimination concerning study fees based on nationality could not be upheld anymore. This argumentation was reinforced by the ECJ in 'Vincent Blaizot'³⁴⁰ when the ECJ argued that the unlawful discrimination ceased to exist through its decision in 'Gravier' and previous overcharging of foreign students could not be legally reclaimed. It therefore did not connect the abolishment of discrimination to a change in legislation or similar events but used its own interpretation of the development of the EU to determine when it considered being the time to adapt the financial contributions of EU-students. Possibly overseen by the defendants was that much more closely integrated unions like the USA still practice this kind of discrimination and consequently the outcome in Europe was much more a political than a legal one.

The sectorial and dense topic of higher education in Europe suffers also under the multi-agent problem. At national and regional level several ministries and universities have the ultimate say in different issues. Therefore it is very difficult to bring the responsible actors together and coordinate integrative steps. Actors can be:

- the university board for academic questions like academic content and recognition

³⁴⁰ Vincent Blaizot vs. University Lüttich and others – case 24/86 – decided 02.02.1988

- the Ministry of Social Affairs for maintenance support at the national and/or regional level
- the Ministry of the Interior for issues related with residence and work permits
- the Ministry of Education for issues related to student mobility

Since some issues are not connected to each actor, it is possible to pursue some integration aspects irrespectively from the progress in other areas; nevertheless substantial delays could have dampening effects on other projects in progress, too. As far as students are directly concerned the separation of issues at the decision-making level might also influence negatively the mobility of students.

Here contradictory interests could exist, too. Whereas the Ministry of the Interior might want to increase (temporary) migration to one's universities for reasons like prestige and academic excellence the Ministry of Social Affairs would perhaps like to attract less (foreign) students to decrease its expenses. Additionally the mobility might be dampened by an excessive burden of bureaucratic regulations that decreases the student's interest of going abroad³⁴¹.

It is also difficult to determine who would be prepared to actually support the idea of harmonizing the European Higher Education Sector. Although via the ERASMUS-network a close cooperation has been established between higher education institutions, the compulsory relinquishment of rights was rather minor. At the utmost the ECTS allowed for foreign academic credits to be recognized but only if the home university agreed to participate in the system before sending its students abroad. Education ministries as well as universities seem to defend their positions rather than trying to reach new European heights.

Negative Integration should take away bureaucratic regulations especially for short periods abroad where on the one hand student's

³⁴¹ A non-representative survey conducted with EU-students shows that i.e. a majority of students avoids the application for a residence permit although this is normally punished with a hefty fine in most Member States. This is partly due to the unwillingness of students to submit themselves to bureaucratic procedures for short periods (3 months to 1 year) and also because some countries (i.e. Spain, Greece) ask for the minimum income required by the regulation 93/96/EWG of 29.10.1993 to be shown physically at the beginning of the year which, for some students, proves to be impossible.

stances, who might still be suffering under the lack of linguistic abilities and excess bureaucratic obligations, could develop to overwhelming nightmares or on the other hand administrative processes for legal prerequisites might last longer than the actual stance itself³⁴². Here student exchanges under the auspices of academic exchanges or ERASMUS should be freed of all unnecessary obstacles and especially the short duration of such stances should be taken into consideration. Therefore the legal framework of mobility for migrant workers cannot automatically serve as a role model since the tendency goes towards the integration of workers into the social and work environment which would not be the principal aim for mobile students in exchange programmes.

As it is possible to determine the approach for some of the policies used to solve the critical obstacles it seems that they do not follow a coherent strategy. It is rather a stop-and-go approach that reflects the cooperation of the negotiating partners³⁴³. I.e. the efforts made to introduce a residence permit regulated at the European level to solve once and for all not only the mobility of migrant workers but also the legal status of pensioners, students, etc. in other countries led to a discussion which lasted for more than 25 years. One might assume that the right to move and reside in other Member States would be seen as a very basic need and be treated accordingly. Nevertheless the EP insisted during a quarter of a century on a common right for everybody, that an all-covering solution had to be found and European citizens should not be treated differently based on the reasons for the stances abroad. This behaviour led to a stalemate between the Council of Ministers and the Commission and EP and reached only a new impetus when the ECJ as a new player had to regulate the rights of mobile citizens on an increasing scale. Finally the EP had no other chance but to step down from its original ideals in order to advance the process and three different pieces of legislation were passed according to the status of the alien resident but such an extreme example shows quite clearly how long it can take to solve issues and how much they might depend on individual agents involved.

³⁴² The present legal limit for applying for residence permits is for stances longer than 3 months but i.e. one has to wait 5 months in Spain to actually receive the permit

³⁴³ Wolfgang Schumann, 1996: p. 150

Centralism allows speedier courses of action that in turn cut down on bureaucratic expenses as well. Such arguments are also known from countries like Germany and Spain where a large number of federal states with individual parliaments and bureaucratic bodies have to be maintained³⁴⁴. It could be argued that the creation of the EU with their institutions should actually lead to a decrease of expenses at national levels because legal authority has been transferred to supranational institutions and work taken away at national levels. Such transfers should then be accompanied by the physical and financial reduction of national expenses on their own bureaucracy.

Intergovernmentalism is considered by the more national and independent states like the UK and Denmark as the instrument of choice because it leaves the decision-making process in the hands of each Member State. At the same time *intergovernmentalism* presents itself as wasteful in resources because the processes to reach agreements depend on a high level of consultation between all the states and any discord only lengthens the procedure³⁴⁵. In the case of European Educational Policies it is rather doubtful if *intergovernmentalism* is presently the correct approach to explain the political development. This would only be the case if Member States willingly delegated cooperation in this sector towards European institutions for efficiency reasons but still maintained control. In the case of European Academic Mobility, with the exception of SOCRATES, almost all other activities related to 'free-movers' are maintained at a national level and fiercely defended. Hence this theoretical approach, since also the ECJ takes rather an independent role from the Member States, could only be used if Member States accepted a European approach with institutions acting on their behalf which here is not the case.

Historical Institutionalism with its independent behaviour of supranational institutions could be used to some extent to explain why for example the European Commission changed its opinion autonomously in 'Françoise Gravier' to support her claim of discrimination as a rational choice. Legal or political gaps are occupied and filled intentionally and the Commission possesses certain means

³⁴⁴ John Gerring, 2001: p. 6

³⁴⁵ Brent CO. Nelson, 1998: p. 298

to push forward and sanction certain behaviour but this nevertheless does not apply to the ECJ since the legal and political mismatches she has to fill are taken to her by other institutions, Member States or individuals which then brings in again *spill-overs* derived from *neo-functionalism*.

Simultaneously priorities of policy fields might change internally as well which gives them either different priorities or other approaches to the issue. One of the more common changes recently of how to solve issues was the formal integration of subsidiarity into primary law since the Treaty of Maastricht. Here both the German States and the UK tried to apply this approach strictly on the basis that about anything that can be solved at regional levels should not advance to European institutions. For the UK this presented an insurance that it possessed a legal base to argue that Europe – and in this case Brussels – should not develop itself to the political and legal centre of nation states but leave most decisions to Member States and stress intergovernmental cooperation over supranationalism. German States on the other hand used the approach of subsidiarity as a power-grab not only to redirect the decision-making away from Brussels again but also try to gain additional voice and power in sectors that were formally handled at the national rather than regional level³⁴⁶.

At the same time Member States who prefer a more intergovernmental instead of centralistic supranational approach also argue that the concept of subsidiarity – once it is decided that the decision-making habit should remain with the individual state – only leaves the approach to solve the problem with individual Member States but not the initiative itself. Therefore the concept of subsidiarity is often compared to the legal base of a Directive, too. Member States have to tackle issues once a Directive has been passed but it depends on each state to solve the issue according to its national legal procedures. Defendants of this approach argue that it cannot be left with the individual states to set legal priorities because this then would introduce *intergovernmentalism* through the back door again.

Although such individual problem-solving hands back power to the Member States it also leaves their citizens with a legal insecurity. It is left to each Member State of how to convert a European legal matter

³⁴⁶ Neill Nugent, 2000: p. 198

into national application. This can be a law passed by the national parliament but also a bureaucratic regulation. So citizens and companies have to inform themselves in each Member State about the measures that have been taken to regulate the issue which in the case of legal or natural persons acting at the European level can cause significant administrative efforts.

Especially when unanimity and the threat of the Luxemburg compromise were used on a regular basis to reach agreements in new sectors of integration the state-centric model tried to portray an image of voluntarism where decisions were based on the lowest common denominator and each state could evaluate the package and reject it if it was against its political or national interests. This view was adjusted and later argued that it was mainly the large state that negotiated on the basis of the lowest common denominator. Small states were bought off with side payments in package deals to reach an agreement. Large states on the other hand are frequently able to get their own way because they usually act as a carthorse in difficult negotiations³⁴⁷. Presently such differences in opinion come into the open again during the reform negotiations and the enlargement of the EU. Small Member States under the presidency of Portugal complained about their possible loss of influence and it is to be seen what side payments will have to be conceded to make the EU more democratic relatively to the size of Member States³⁴⁸.

An interesting starting point for the further integration of higher education might be as well to decide who feels itself responsible, or to define it in another way, who sees a need to harmonise or integrate the educational sector. Ministers of Education might be interested to maintain their current portfolio and individual national systems because this leaves the responsibility and design of education in their hands. Any integrative steps might result in a diminishing importance of their task. Additionally present systems - especially at the higher education sector - could be seen as being in competition with each other and harmonisation would then lead to a waning prestige of local standards.

³⁴⁷ Brent CO. Nelson, 1998: p. 223

³⁴⁸ Agence Europe, 26.04.2000: p. 2 co.

For example it might be problematic that when EU-students apply for a residence permit in other Member States one precondition for them is to prove their financial liquidity. This proved in effect to be a *spill-back* since the ECJ decided in the early 90s that students have a right to a residence permit but did not require them to show a minimum income. Before the sentence by the ECJ this issue was left to Member States and only some of them used an independent minimum income as a requirement for a student's residence permit. European institutions like the European Commission or the ECJ might push forward with a European approach in certain areas but if the Council of Ministers is not backing completely the idea it still has the capability to create secondary legislation and water down conditions or criteria for the application of the relevant piece of legislation³⁴⁹.

SUMMARY

The maintenance or introduction of administrative and/or financial barriers to hamper student mobility in Europe is therefore related with a variety of political and sociological problems. Political key persons could on the one hand be able to improve the situation for EU-students but on the other hand run the risk of reducing their own political weight at the national level. It is therefore not unlikely that they will maintain the present situation out of political self-interest. Possible is – as shown in Chapter 2.1 - that such individual decisions taken at the national level can actually contribute towards a worsening of the issue and cause free-rider states to exploit the situation financially for some time before other Member States are obliged to retreat to fiscal protection and to avoid a one-way migration of students.

In the second case barriers or added difficulties towards mobility are created or exist already out of the characteristics of sovereign nation states: border controls, permits of residence and limits on the access to social benefits in the host country can be of a different nature in each individual state but at least at the European level it can be noted that national laws can still hamper student mobility greatly.

³⁴⁹ Philippe C. Schmitter, 1971: p. 236

7. Possible Areas for Improvement

When options and prospects are discussed to improve the legal and financial situation of mobile students in Europe one has to have clearly in mind that recently discussions and negotiations were often driven under the light of public savings. Especially in the 1990s Member States of the EU followed a strict financial savings course to prepare themselves for the qualification into the Monetary Union. Expenditures in general had to be cut dramatically and as a result these actions also left their marks on education budgets³⁵⁰.

Two main areas for major savings approaches by the state can be identified during that time. Studies were streamlined to speed up the maximum length of students at university by introducing study fees, imposing entrance obstacles and reorganizing the degree structure. The idea was to reduce the number of students, the number of semesters spent at university and to gain additional income via fees both from national as well as international students. Especially entrance barriers like i.e. a *numerus clausus* and study fees can partly explain an increasing student mobility since such changes did not take place homogenously all over Europe but only in a limited number of countries with different priorities³⁵¹.

At the same time state maintenance grants and loans were not adapted to inflationary increases, the key focus changed from grants to loans or the eligible group of needy students was reduced. As a consequence students had to rely more and more on private financial sources which also limited their opportunities to go abroad since it might be difficult to combine employment with stances abroad. Only some countries used the transferability tool to promote student mobility and actually relieved their tertiary system by sending students abroad³⁵².

But for mobile students especially the important issue of administrative obstacles seems not to have been addressed adequately which would have served furthermore to improve the efficiency of the tertiary

³⁵⁰ David Throsby, 1999:p. 17

³⁵¹ EuryDice, 2000: p. 107 co.

³⁵² Centre for Educational Research and Innovation, 1997: p. 14

system³⁵³; possibly because no direct public savings could be derived immediately. But not only in the light of efficiency an improvement of the administrative situation could be expected; one of the major arguments in favour of study fees by the promoters was that students could finally act as 'paying consumers' who would then be able to demand improved services in exchange for their financial contribution³⁵⁴. Such improvements would especially be of benefit for short-term stances where students might then expect better services for their mobility and academic recognition from their home university to which they pay.

Since in many cases academic institutions are financed directly by the state with only limited means of quality control and evaluation one could also pose the question if academic institutions have established themselves as 'state-in-the-state' acting outside of the direct control of the state by claiming that any kind of regulation would curtail their 'academic freedom'. Although this might reasonably be applied to the content of academic studies, administrative obstacles caused by individual institutional approaches should come under public scrutiny. Especially the highly valued 'academic freedom' might suffer in the long run if students are not able to make a free choice for their education and if the tertiary system does not allow for a great variety of academic opportunities during ones course.

Therefore improvements in a European Education Policy should not only touch different means to finance student mobility but the option should also be considered that there might exist a great potential to optimise the academic education system without large investments by optimising and streamlining processes and possibly introducing a European standard for administrative regulations. Compared to practically most other areas tertiary education is an issue where academic and administrative self-determination goes down to the institutional level and is defended vigorously against any intervention by the state or other institutions.

In the following some methods will be discussed as well to limit this self-determination mainly in the administrative sector to avoid that unlimited autonomy is actually causing harm to academic education

³⁵³ Deborah Stone, 1997: p. 217 co.

³⁵⁴ EuryDice, 2000: p. 98

overall. The focus is therefore mainly based on the approach to facilitate mobility and introduce a border-crossing academic choice for students. As a result academic institutions should be tempted to attend more to student and market requirements by having to attract a more and more geographically agile student community.

7.1. Transfer of State Grants to other Member States

Of all the possibilities available to improve the mobility of students within the EU the argument to allow students, who are legal recipients of financial state support in their home country, to transfer their maintenance grants or loans to other Member States as well is possibly the easiest one to introduce. Because of this – and among other reasons – it was the one chosen by the European Commission to propose in her green book ‘Obstacles to border-crossing Mobility’ and to emphasize again in the Recommendation ‘Mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers’.

Compared with other ideas discussed further down the transferability of grants has only a minor impact on the sovereignty of the individual country. It can still decide on the group of students who are eligible for state support, the amount of money spent on each student and if such support is conceded as a grant and/or a loan. The only difference would really be that it should make no difference anymore if students choose to go to another Member States of the EU. Such possibilities might be of special importance in little countries anyway where the choice of studies is rather limited or countries where there is a general limitation of study places.

Another argument in favour of this proposal is that short and medium-term student mobility using national maintenance support (i.e. ERASMUS) is permitted in virtually all Member States and long-term studies or complete degrees abroad would only be an extension of these opportunities.

By looking a step further one can determine that there might exist different reasons for going abroad which are also reflected in programmes like ERASMUS as well. Firstly, in some countries – i.e. the Mediterranean states – it is quite typical for students to live with their parents during their academic education. These countries have a quite high geographical distribution of academic institutions³⁵⁵ which allows students to travel daily from and to their higher education institutions. At the same time these Member States do not provide

³⁵⁵ Ortelius, 1995: p. 267 co.

large state grants or loans to their students which means that they have to rely mainly on family income or some form of employment to be able to continue their higher education. If such students choose to go abroad this means an instant and substantial increase of their expenses since their maintenance was formerly included in the parental household. If they were participating in the job market to finance their studies in general then this income would be lost at least during their stance abroad, too.

The current level of ERASMUS-grants will not enable students to go abroad either as the sole base of maintenance since they are normally only intended to cover additional maintenance expenses caused by the stance abroad. Here only a substantial increase of the financial support for mobile students either at the national level or via the ERASMUS-programme also covering expenses which are caused by living independently from one's parents and abroad would allow significant student numbers to participate in exchange programmes. Students in countries which do not actively support their student's independence or mobility are therefore at a disadvantage because their own state does not provide enough financial support which then limits their opportunities to go abroad even on a temporary basis.

Secondly, some countries – notably Greece – do not offer enough study places or limit the access with other means, i.e. a strict *numerus clausus*, and therefore show a very significant number of students who go abroad to pursue their full-time courses without normally receiving financial support neither from their home nor host state. A conclusion can be drawn that either such students belong to a financial elite in their home country and do not need to be financially supported from the state anyway or they are trying to maintain themselves by working while studying at the same time during their stance abroad. Here a fiscal and social estimation would be needed to determine if such well-off students would be eligible for financial support. Another open question would be if there exists a significant number of mobile students who achieve their income from working while studying abroad. At least for Germany some information exists due to regular social investigations (Sozialerhebungen des Deutschen Studentenwerkes). There it becomes clear that foreign students have an income at their disposal of about 25% of financial support from parents, 19% from scholarships, 30% from employment and the

remaining 26% from various sources³⁵⁶. Nevertheless these numbers do not distinguish between EU-students and students from other countries which is important insofar as EU-students have an automatic right to a residence permit including the right to work whereas this is much more difficult for other foreign students. Therefore it is more likely that EU-students can more easily obtain (well-paid) student jobs due to their legal status.

Thirdly countries which actively promote the international mobility of students, i.e. Scandinavian countries via the NORDPLUS-Programme³⁵⁷ experience an increased participation of students in the mobility programmes and send a relatively high number of free-movers abroad as well. Here the conclusion can be drawn to at least some extent that there exists a strong relation between the active financial and administrative support students receive when there might be some interest to go abroad.

Another investigation would be worthwhile doing to estimate the student numbers who convert themselves from mobile students to migration workers after finishing their degree. One possibly valid argument against supporting mobile students from the sending country is that the expenses might be to the benefit of the country where the graduate is taking up employment afterwards because he was causing a fiscal burden to the national grant system of the home country but contributes afterwards with his taxes to the state budget of the host state. Especially countries like Luxembourg or Scandinavia would then suffer greatly under such a 'brain drain' towards other countries if no net benefit from returning national students or EU-students does exist. On the other hand if all Member States would offer some sort of financial support to their mobile students then no individual country would be able to behave like a free-rider and exploit this situation which is still regulated at the national level.

By looking at the three cases described above it can be determined that the financial factor and also the availability of study places at home are some of the most important ones for students when they make

³⁵⁶ Klaus Schnitzer, 1999: p. 50

³⁵⁷ The program was launched by the Nordic Council of Ministers in 1988. The objective is to advance a positive interrelationship between the universities and institutions of higher education in the Nordic countries creating a distinctive sense of common ground.

their decision to go abroad. Although it can certainly be assumed that the availability of interesting foreign study places and attractive academic conditions increase the interest of students to go abroad, this does not automatically mean that they will be able to do so financially. In an EU which developed certain minimum standards for the mobility of students it should not be of any difference if a student crosses a national border 50 km away from his place of origin to study at a nearby foreign university or if he has to travel a greater distance to pursue his studies at a national academic institution. It seems to be contradictory that everything is done to promote mobility of workers within the EU but education both at the professional and academic level is still hampered greatly when it comes to border-crossing activities. A promotion of such interaction could be seen as a step Zero and precondition to enter the job market and would most likely lead to higher professional mobility afterwards as well.

7.2. Access to State Grants and Loans in other Member States

By looking at the administrative issue of allocating state support to students the easiest method to apply would be a shift of responsibility from the home to the host state where the EU-student is residing during his studies.

Firstly, the governmental institution which is responsible for the distribution of state aid for its national students is certainly much more adequately suited for the administrative supervision of foreign students than the respective institutions in the student's country of origin. If done like this the institution responsible for overlooking state student support does only have to know its own educational system and does not have to track students all over Europe. It would be very difficult in this context to understand the great variety of academic degrees available in Europe and to supervise the academic performance of the students (which in many Member States is related to the continuing financial support).

Secondly for the student, he would have a direct point of contact near his temporary residence and such an approach would therefore facilitate the legal and administrative supervision of the applicant.

Thirdly, it could be argued that the financial support of students is in fact not only a subsidy for the student itself but also generates economic benefits through higher economic turn-overs caused by students in the areas of academic institutions. Attracting great numbers of (foreign) students therefore creates economic benefits and improves the academic reputation internationally.

Fourthly, as shown in Chapter 5 the legal status of EU-students regarding the access to maintenance benefits in the host country was defined by the ECJ in various cases but up to now the social security of mobile students is still defined by the financial backbone of his country of origin. Such a treatment might be difficult to justify in an 'ever closer EU' where social security is still defined by different national standards. It might not be obvious to everyone why migrant workers can rely on the social security system of the host state from day one whereas this is not the case for students and possibly a difficult issue for working part-time students in the host state. The open

question is from when onwards somebody becomes a legally registered alien resident of the host state with all its accompanying rights and obligations.

But at the same time counter-arguments are quite easy to define as well if a financial support system for EU-students is envisaged in the host state. Firstly, besides running higher expenses on the support of foreign students, a disproportionate migration towards specific – possibly academically attractive but also financially interesting – countries could not only increase the expenses of such a state but also force it to limit its financial resources towards its own national students as well. As it was argued before this might have happened exactly in Great Britain where the loss of foreign study fees possibly led to the introduction of general fees for BA-courses both for EU- and national students.

Such a development is actually known quite well in the EU as the 'free-rider syndrome'³⁵⁸. Significant areas in the fields of social security, political responsibility and tax levels are not harmonised yet. Hence Member States are able to choose their own standards meaning that they can set certain priorities for a variety of national and possibly European reasons. This is i.e. known from the taxing standards for companies where some Member States try to maintain lower taxes than others to attract more international business³⁵⁹. As a result social standards are endangered in countries which charge a rather high level of taxes and redistribute these via social benefits to their citizens. Therefore if countries try to save on their state expenditure – as it happened when many Member States had to redefine and decrease their state budgets to qualify for the Euro-criteria – peer pressure might force one state after the other to lower their social benefits for i.e. education in order to stay competitive between each other or, as shown in Chapter 2.1, obliges them to introduce study fees; especially if some Member States facilitate student mobility which then forces others to protect themselves from such a large inbound academic migration.

³⁵⁸ Neill Nugent, 1999: p. 384 co.

³⁵⁹ Josephine Shaw, 1993: p. 268

7.3. European Grant System

It is very difficult to make assumptions about the financial needs of students in general. Whereas it is easy to assume that students will always be interested in the availability of grants that they do not have to pay back, experience in several countries³⁶⁰ has shown that the willingness to accept loans is much lower. Compared to the USA, in Europe the idea is still not willingly accepted that students should burden the complete cost of higher education including both study fees and maintenance costs and therefore start their professional life with substantial debts that would have to be paid back during latter employment.

If we had a similar system in Europe the problem of student mobility would be reduced greatly but it is questionable if the present social attitude towards education in general would permit such a drastic approach. At the same time higher wages and lower taxes for the academically educated professionals should reward them immediately for having chosen further higher education and enable them to pay back their debts after finishing their studies. Student mobility would be made more flexible insofar as Member States would not have to worry anymore about the cost of academic institutions and the maintenance of their own or foreign students since the financial burden would be completely carried by the students themselves. Additionally it would be advantageous to have as many national and foreign students as possible because this would create regional employment both at the higher education institutions as well as in areas catering for students. The attraction of high student numbers could i.e. happen by offering a high academic standard, low education costs regarding fees and maintenance or a mixture of both.

However changing the European system would have a significant impact on issues like i.e. the attractiveness of certain studies as well. If money is the predominant factor to choose an academic degree – and it is likely to be if a student must start his professional life heavily indebted – certain degrees which promise no high financial return will become less and less attractive although its continuity is of importance

³⁶⁰ CERl, 2001: p. 102 co.

for the society as a whole. Another argument would be that tertiary education – after having gained this privilege for the whole community during the student revolts in the late 60s – should not be left to the financial elite since such high costs might deter the middle and working classes from making such a difficult financial decision³⁶¹.

For all these reasons and although it might have certain advantages as well due to its increased flexibility in the opinion of the author the American model should not serve as an example for improving student mobility since it would cause unnecessary social changes not desired by a majority which cannot be estimated with all possible consequences³⁶². Therefore if an approach is made improving the mobility of students in Europe this should happen with the financial help of taxpayers although the extent could certainly be open for discussion since in many cases graduates with higher incomes also pay over-proportionally higher taxes.

In comparison with regional approaches a European determination and distribution of loans and/or grants does have some advantages and should possibly be combined with the additional financing of higher education institutions. The usefulness and feasibility of a harmonised financial support for students and European Education Policy can certainly be discussed but the mere availability would give all students the same chances to pursue some form of further education independently from their personal background. Additionally such maintenance support would then not be limited to the country of origin and students would have a free choice of academic institutions all over Europe.

Such a scheme could be combined with the financing of higher education institutions (or at least part of it) via a central European organisation as well. Using the financing model of the UK, academic institutions would receive (part of their) financing depending on student numbers. Besides from becoming an academic service provider and having to actually attract students by offering students incentives (i.e. academic reputation, interesting courses, etc.) academically interesting countries would then not suffer from a large net inflow of

³⁶¹ CERl, 2001: p. 104

³⁶² Eurydice, 2000: p. 128 co.

students since this would mean at the same time that they receive a higher income from student related financing.

In the year 1996, for which the most recent figures on a European level are available, the Swedish government offered the highest level of financial support for tertiary education to students in the EU. Such a financial support is and was available to all students independently from their parents' earnings. Any student could have access to a state subsidy of approximately € 6.670/year and on average about $\frac{2}{3}$ of all students took advantage of this state aid which is divided into some 70% loan and 30% grant³⁶³.

It is difficult to estimate the financial needs of a student living on his own and maintaining himself but it is the opinion of the author that by taking an average place of study in the EU the monthly budget of approx. € 560³⁶⁴ paid out by the Swedish government could be used as a calculation example to decide the budget for a European grant and loan system based on the Swedish criteria that every student should have access to autonomous financial state support.

If we compare the average state support of Sweden with other EU-countries we can conclude that even highly industrialised countries like Germany or France did not necessarily support their students as extensively³⁶⁵. The level of state maintenance support can be seen as a priority which is put by a national government on the importance of social, political and economic benefits in the education sector. By arguing on a general basis it can be determined that on average countries only pay out about $\frac{1}{3}$ ³⁶⁶ of what is considered in Sweden as a minimum to make ends needs as an independent student. It is also interesting to note that 7 out of the 15 countries presented in the Table below provide less than 10% of what the Swedish government considers necessary for student finance.

According to figures published by the Swedish National Board of Student Aid in 1999 on average only $\frac{2}{3}$ of the maximum of grants and loans were paid out to national students due to personal preferences

³⁶³ CSN - Swedish National Board of Student Aid, 1999

³⁶⁴ Other figures can be applied to the model. It is clear that in many larger cities already a great proportion of the students income is spent on accommodation and monthly costs in Paris, London, etc. could easily reach € 1.000

³⁶⁵ Although grants as in the case of Germany have been increased recently

³⁶⁶ Table 11

of either depending on family support or working while studying at the same time. One of the main reasons to do so is to avoid debts caused by maintenance loans. In these cases students either choose to rely on family support or work during their studies³⁶⁷.

The following calculation should give us an approximate overview of a worst-case scenario where a supranational organization provides European students the financial support to select their university of choice. Such support can be based on either loans and/or grants and for the sake of the argument should be available to all students in the EU.

Table 15

Member States	State Supported Student Population in %	Student Number per Country	Student % of EU Population	Deficit	Grants and Loans	Total Budget necessary in €1,000
Austria	9	241.000	2,00	1.473.763.200	145.756.800	1.619.520
Belgium (D)	3	361.000	3,00	2.353.142.400	72.777.600	2.425.920
Denmark	56	180.000	1,50	532.224.000	677.376.000	1.209.600
Finland	32	226.000	2,00	1.032.729.600	485.990.400	1.518.720
France	9	2.063.000	17,00	12.615.657.600	1.247.702.400	13.863.360
Germany	13	2.132.000	17,00	12.464.524.800	1.862.515.200	14.327.040
Great Britain	80	1.891.000	15,00	2.541.504.000	10.166.016.000	12.707.520
Greece	1	363.000	3,00	2.414.966.400	24.393.600	2.439.360
Ireland	30	135.000	1,10	635.040.000	272.160.000	907.200
Italy	5	1.893.000	15,00	12.084.912.000	636.048.000	12.720.960
Luxembourg	100	2.000	0,02	0	13.440.000	13.440
Portugal	3	351.000	3,00	2.287.958.400	70.761.600	2.358.720
Spain	7	1.684.000	14,00	10.524.326.400	792.153.600	11.316.480
Sweden	100	275.000	2,00	0	1.848.000.000	1.848.000
Holland	49	469.000	4,00	1.607.356.800	1.544.323.200	3.151.680
Total		12.266.000		€62.568.105.600	€19.859.414.400	€82.427.520

(Source: CERI, 1997: p. 88)

³⁶⁷ CSN International, 1997: p. 9

As already discussed in Chapter 2 there exists a strong resistance by some Member States to give away educational issues to supranational institutions since the content of education as well as the methods chosen to finance higher education are strongly related to national and regional preferences. It would not make much sense to introduce a European regulatory agency if national disparities were to continue. It would then be very difficult to convince such resistant Member States to harmonise the financing of higher education institutions and even more unlikely to come to a common standard for maintenance grants and loans.

Nevertheless just by looking at the figures it becomes clear that an improvement of the financial situation for students is not so much a political than a financial problem. If we take the result of Table 15 as a rough guideline it could be concluded that the introduction of a European maintenance support system for students would need a yearly budget of about € 82 Billion, of which about 25% could be recovered from national systems. I.e. for Germany with about 22% of the European population and its low ranking of student support also shown in Table 12 & 13 this would mean that it would either have to increase its own grant & loan system by € 12 Billion - if everybody would be able to claim the same benefits as in Sweden - or abolish its own system and transfer around € 14 Billion to a European budget. Especially the Mediterranean countries would have to increase their grant & loan budgets - up to a 100 times in one case – significantly to provide an adequate support comparable to the Swedish level. It is just difficult to imagine that countries like i.e. Spain would show the political willingness to provide an additional € 10 Billion yearly – although some could be recuperated by loans instead of grants – to adequately finance its student population. Since Spain has the highest student numbers of the EU as well as the highest percentage of unemployed academically educated professionals³⁶⁸ it could also not be argued that an increased student financing would be to the benefit of the economy with later financial gains through higher industrial activity.

If a realistic approach is being taken and the support of a majority of Member States is to be gained then the design of loan & grant systems will be staying with the individual states and only mobility shall be

³⁶⁸ EL PAÍS, 27.11.2000: p. 38

supported on the European level. This can take the form of mobility grants as offered in ERASMUS and the additional transferability of national support to other Member States of the EU.

7.4. Administrative Obstacles

Although quite a significant number of students is prepared to go abroad for a certain period of time and the financial support can possibly be assured from either private or public sources there might still exist a great variety of obstacles concerning their stance abroad that they rather choose to obtain the complete academic education at home than gaining at least some foreign experience during their studies. It now depends on the Member States and the EU to either promote such mobility actively and facilitate any academic border-crossing by removing administrative obstacles or to remain - academically speaking - isolated from foreign know-how and culture.

RESIDENCE PERMIT

In most Member States it is compulsory that both their own national citizens as well as foreign visitors are registered under a specific residence at a state institution. If foreign students would not comply with this requirement they would then first of all be liable under national regulations³⁶⁹ and might not have access to certain social benefits or other commercial services or products³⁷⁰. European regulations demand that anybody staying for longer than three months is obliged to register himself in the host state according to their national requirements. Especially for academic short-time stances of one semester many students do not see a need to register themselves since they might not stay for much longer than the four or five academic months and depending on the country in question such a registering can be quite a bureaucratic issue sometimes lasting even longer than the stance itself³⁷¹. Here special consideration should be taken for students participating in the ERASMUS programme and similar bilateral exchanges to either automatically exclude such students from the formal requirements or give them the possibility to

³⁶⁹ Although in the case 'V. J. M. Raulin' it was made clear that they cannot be considered illegal immigrants since EU-students have a right to residence in other Member States

³⁷⁰ In many Member States it is difficult to apply for telephone access, banking, electricity, etc. without being able to prove ones residence

³⁷¹ Regulation 90/364 & 64/221

prepare their registration already beforehand³⁷² with the help of the ERASMUS office in their local university. This then would allow them to enter the host country already being legally registered and therefore enables them to have immediate access to all services for which a residence permit is required. If an automatic exclusion for exchange students from this obligation is agreed on by the Member States a time-limited 'ERASMUS student identity' could be issued to show that the student is registered at a university in the host state and possibly that his national health insurance is extended abroad to the host country with one of the E-forms.

Especially for such short stances an unbureaucratic approach should be used since due to present European legislation mobile short-time students practically do not have access to any social benefits in the host country anyway and therefore an easy and rapid way of legally establishing their short-time stance should be the best method. For mobile students pursuing their whole degrees abroad the normal approach for applying for a residence permit laid down in Regulation 93/96/EWG can be used since it can be safely assumed that such long-term stances need much more preparation from the student's side as well.

Therefore it should be proposed that for short-term student exchanges covered under the ERASMUS or similar programmes a temporary student identity card should be introduced with the following features:

- valid for the period participating in the student exchange up to two semesters
- can be obtained before going abroad
- replaces the need to register locally during the stance abroad
- is recognized locally as a temporary residence permit
- shows that the holder is covered by a health insurance in his country of origin (E 111, E126)
- is sufficient for taking up employment during a maximum of two semesters

³⁷² This would be also easier if their place of accommodation i.e. in a student residence is already known

This would enable students to enjoy a legally valid status in the host state without any exaggerated administrative overhead.

ACCOMMODATION

Since prompt and relatively cheap accommodation was identified by short-time mobile students as one of the most difficult issues to overcome once they enter the host country the allocation of such apartments specifically for mobile short-term students should also be considered at the European level to facilitate and increase student mobility³⁷³. As it was summarized in sub-chapter 4.5 a significant number of universities already allocate student halls to their visiting students. If this topic would be pushed forward even more at the European level mobile students would not have to fear anymore that during their short time stance abroad they will have to reside in inadequate and overpriced places.

Also if such an automatic reservation of student accommodation for mobile students would take place this could then also be combined with the proposal of a student identity card mentioned above so that legal registration at a specific residency could already take place before going abroad if so required by the state.

ACADEMIC CREDITS AND DIPLOMAS

The transferability of academic credits and the further use of degrees is also one of the important topics where students run the risk of spending additional time and resources on their stance abroad which then prolongs their degree at home. It was investigated that students participating in such exchange programmes loose up to 100% of their time spent abroad³⁷⁴ whereas this stances could actually be integrated in their course at home. Since in many Member States complaints are being made that studies on a general basis take too long one of the remedies should be as well to integrate foreign stances to avoid that students loose time once they choose to go abroad³⁷⁵. This can either happen by using the ECTS standard on a general basis and each university would be obliged to recognize foreign credits if obtained

³⁷³ Ulrich Teichler, 1997: p. 110

³⁷⁴ I.e. BA-programmes in England take 4 instead of 3 years if an ERASMUS-stance is included (Undergraduate Prospectus, University of Essex/UK 1999)

³⁷⁵ EuryDice, 2000: p. 107 co.

during an exchange programme or as a second solution every university should be required to have at least one partner university in every Member States where it recognizes credits and certificates automatically. Of greatest importance for students is here that it is already known before going abroad how foreign credits are integrated into the degree at home. It cannot be that only once the students return they are confronted with the administrative burden of having their foreign academic performance recognised³⁷⁶.

The same argument is valid if during the stance abroad whole degrees are obtained – most likely a Masters degree which in several Member States only lasts two semesters – and then this degree is used to continue further studies at home. What is clearly needed is some sort of security for the student that degrees are interchangeable in Europe and do not suffer unnecessarily under administrative obstacles. This can either be determined by evaluating all forms of degrees in Europe according to their ECTS value or by a definition which kind of foreign degrees are necessary in each country to start postgraduate degrees³⁷⁷.

FOREIGN ACADEMIC DEGREES FOR PROFESSIONAL USE

In the end what is of greatest importance for students returning or migrating with academic degrees is their recognition for later employment.

Here one must principally distinguish between three possible options. Firstly degrees which are aimed at the open market and therefore only need to be evaluated by the future employer. Consequently such an approach is based on a demand and supply basis and not very different to the rules used for national degrees as well. If like at present i.e. there is a high demand for computer scientists most employers will not differentiate between one coming from Germany or Ireland. Secondly degrees must be evaluated where the profession is normally regulated by the state and therefore only a specific degree allows the bearer to pursue such a profession. The European Commission with

³⁷⁶ Ulrich Teichler, 1997: p. 197

³⁷⁷ I.e. for doing a PhD in Austria a German 'Diploma' might be sufficient and an English Master might be the equivalent but not a Bachelor (although according to ECTS credits a English 4-year Bachelor could be the equivalent to a 3-year Bachelor plus a 1-year Master)

the support of the Member States has already provided a long list of degrees like i.e. medicine, law, etc. where the criteria are listed for being able to pursue ones activity in another Member States as well. This can happen either by passing additional exams or by showing some form of professional experience in the home country³⁷⁸. Thirdly some interpretation has to take place as well if the state itself is a potential employer since it cannot – as in comparison with the free economy - base its decisions on subjective standpoints which might be defined by the market condition and the opinion of the civil servant holding the job interview. Clear and commonly valid criteria have to be deployed to assure that employment in the state sector is available for migrant workers, too. Such criteria should be valid at all levels to guarantee that the state is acting as a role model when it comes to the employment of EU-citizens.

Also the question arises what level of academic degree has to be recognized (graduate, post-graduate, doctoral studies) or if all educational diplomas have to pass through an administrative process of homologation for the professional use in another Member State if one holds e.g. a British Bachelor, a Spanish Master and a German Doctorate³⁷⁹.

The pre-condition for doing a German doctorate is a title equal to the level of a Master, the pre-condition for a Spanish Master is a title equal to the level of a Bachelor. But since in Spain a Spanish Master is not an official title but an individual 'proper' diploma of each university (and in Spain not a pre-condition for obtaining a doctorate since the normal 'licenciatura'³⁸⁰ allows for this access already) the Spanish NARIC claims that the British Bachelor (which would not have been sufficient for starting a doctorate in Germany) has to be homologated instead. Can Spain demand the homologation of the British Bachelor (although it was not leading to the doctorate) or do they have to accept the Spanish Master as the academic title leading to a doctorate although in their own country it is not of common use³⁸¹?

³⁷⁸ Regulations 89/48/EWG, 92/51/EWG, 94/38/EC, 95/43/EC, 97/38/EC

³⁷⁹ Causing administrative, legal and translation costs and delays in the application process for the professional use

³⁸⁰ Spanish academic long-term degree lasting approx. 5 years

³⁸¹ At the moment under consideration at the EU - General Directorate 'Internal Market'. Results will be published under <http://www.demmelhuber.info>

SUMMARY

Student mobility in the EU is still at a very early stage of harmonisation compared to i.e. labour mobility and short-term stances covered by the ERASMUS umbrella are clearly benefiting from a more developed academic recognition via ECTS and administrative services provided by ERASMUS coordinators in the home and host university. Furthermore in most cases students who receive state grants or loans at home are able to transfer these claims abroad during their short-term stance and might additionally receive some financial support from the ERASMUS-programme, too.

On the other hand students who organise their short, medium or long-term stances abroad by themselves – which is actually the large majority of all mobile students in the EU³⁸² – still suffer greatly under unregulated conditions which leave it in most cases to national regulations to determine their legal rights and obligations. Here we still have the greatest potential of harmonising administrative matters to facilitate student mobility which should be done by the European Commission to provide a comprehensive secondary legislation assuring student mobility without individual national interpretations. Such a procedure would also avoid permanent conflicts with primary legislation which are then interpreted by the ECJ and obliges Member States to take individual adaptations.

This does not include the intention to approach the academic content since it can be left to the student to decide what kind of education he values most. But administrative and financial obstacles present in most countries at the national level are actually limiting this choice within the European Education Market and favouring academic institutions in the country of origin.

³⁸² EuryDice, 2000: p. 157

8. Conclusions

During more than forty years of its existence higher education and student mobility never has played an important role in the European Union while its legal framework was extended. Created originally for economic reasons and then expanding into other areas in reality it rarely touched tertiary education and related policy approaches enough to provoke a similar opening to European demands as it happened i.e. in the economic field.

But calling for a European Education Policy is possibly a misleading description of the issue at stake anyway. During the last twenty years of activity in this area it was never the intention of the European Commission and the European Court of Justice to influence the academic autonomy of the Member States and tertiary institutions³⁸³. This would have been a clear contradiction with Article 126.1 (TeC) were any harmonisation efforts concerning the content of education were excluded in general. Nevertheless the omission of harmonisation efforts for any laws, conventions and administrative regulations of Member States as mentioned in Article 126.4 (TeC) have always been under the scrutiny of the European Commission and especially the European Court of Justice. Since the free movement of students was and still is hampered in the EU, a kind of European Academic Mobility Policy should therefore be promoted to facilitate and increase the free choice of tertiary education by letting the student – or better said consumer of academic education – decide on what is most adequate for his personal preferences. Although it could be in conflict with European and national primary law, which speaks out against harmonisation efforts and in favour of subsidiarity in the education sector, it would make clear nevertheless that the discussion would not be about harmonising any academic content, which was the original intention of the lawmakers to avoid anyway, but about improving the education market by dismantling regional or national academic monopolies.

As it has been with the mobility of labour, European institutions did not interfere with the labour market directly. It would not have been

³⁸³ with possibly the exception of promoting the European view in education and the learning of additional languages

feasible to redesign unemployment benefits, pension schemes, employment measures, etc. on a grand scale at the European level. What happened was that it was tried to do everything to facilitate and promote European mobility with the aim of opening up labour markets for EU-migration workers, harmonise administrative regulations, abolish barriers to mobility and allow for a transferability of benefits within the EU or even the direct access to social benefits in the host country.

A similar approach should be taken for student mobility and after some major milestones have been taken by the ECJ, the European Commission and the Council of Ministers together with national and regional institutions made the first steps towards some common educational market in the EU although at present this is strictly based on a voluntary basis.

ERASMUS, ECTS and the Convention of Bologna are based on voluntary participation with the hope that peer pressure will finally force most of the academic institutions into involving themselves in a European network of exchange and cooperation. To achieve this improvement at the European level and increase the pressure on academic institutions to participate, a certain legal and administrative framework needs to be created nevertheless to kick-start European academic mobility to such an extent that it cannot be ignored anymore by higher education institutions and governmental bodies administrating student benefits and residence requirements. Otherwise it would seem contradictory that the original functioning of the EU was based on giving up sovereign national rights to a supranational community in the economic field and then expect at the same time that a voluntary cooperation in the educational sector would achieve the same positive results.

Notwithstanding some first efforts several areas related to tertiary education can still be identified where a strong European interference needs to take place in order to achieve immediate and rapid improvements for the academic mobility in the EU. This necessity is also reflected in the fact that the greater part of mobile students in Europe still does not enjoy the benefits of ERASMUS and ECTS and depends, if available, in the majority of cases on financial support from private resources.

In the case of access to grants and loans regarding the state benefits of students a clear inclination towards support from the country of origin can be detected. In many of the discussed precedence cases, the Commission's Green Book on obstacles to border-crossing mobility and the Councils Recommendation on mobility, the idea was permanently highlighted that with only a few exceptions students are either supposed to transfer state support from their home country – if permissible - to finance their academic career at their chosen EU-university or have to rely on some private sources of income. Only in a few exceptions, where students are recognised as migrant workers or as dependants of one of these, they can claim social benefits from the host country.

The cautious conclusion can be drawn that a European Education Policy concerning the mobility in higher education is much more a political question than anything else. In the end for the result it is not important if a voluntary individual or centralistic approach is going to be taken to abolish mobility barriers. But what matters is that after more than 40 years of European Community and almost 20 years of organised and individual student mobility Europe is still lacking a free movement of students with the result that even in highly organised exchange programmes like ERASMUS students complain about legal, academic and administrative barriers³⁸⁴.

The spread of student mobility all over Europe both in organised programmes as well as 'free movers' has reached significant numbers actually exceeding the level of migrant workers in the EU. Nevertheless at the EU-institutional and individual national levels it has not received the necessary attention to avoid administrative and legal barriers, which still hamper academic border-crossing.

Under the cover of subsidiarity and the excuse of not harmonising administrative regulations as determined in European primary law Member States effectively discriminate against mobile students and do not leave them with a free academic choice in Europe. Only in the early 80s the European Court of Justice started to consider academic mobility as one of the basic EU-principles and conceded increasing rights to mobile students. Such competences of the Court could not be derived directly from European primary and secondary law; hence the

³⁸⁴ Ulrich Teichler, 1996: p. 204

Court used the idea of 'legal spill-overs' to establish precedence cases with the result that students rights were drawn from similar mobile groups (mostly from migration workers).

Although basic principles for the treatment of mobile students have been established by the Court, neither clear European secondary law nor homogeneous national laws exist to assure that European students can expect an administrative treatment based on generally accepted political ideas in all the Member States. Not even students participating in organised academic exchanges like 'ERASMUS' can expect a trouble-free experience abroad since the programme only covers academic issues which furthermore are only based on a voluntary participation.

What is needed therefore is a strong willingness and support both at the political and academic level to demand and introduce changes in favour of increased academic mobility but at the same time use a strong functional and rational approach by technical and administrative experts to avoid that one-sided political positions delay or rule out a common approach. Unanimity as a method to bring together national positions has proven to be inflexible and underperforming in the long run and should not be used to come to agreements in the administrative sector since the lowest common denominator based on the legal position of each and every academic institution in Europe is not even obtainable.

The European Parliament and the Council of Ministers reminded Member States in its most recent Recommendation on 'Mobility within the Community for Students, Persons undergoing Training, Volunteers, Teachers and Trainers'³⁸⁵ that mobility and transparency mainly concerning administrative issues is still a far cry away and all Member States should make a joint effort to facilitate student mobility. As a final remark the reader should therefore browse through the most important points³⁸⁶ of this Recommendation because even without any further explanation it gives the reader a clear overview of all the open points that still need to be tackled in a political approach to improve an academic mobility in Europe.

³⁸⁵ Recommendation of the European Parliament and of the Council, 10th July 2001 (2001/613/EC)

³⁸⁶ All highlighting and underlining done by the author to facilitate reading

1. Measures which concern all categories of people covered by this Recommendation:

- a. take the measures they consider appropriate to remove the legal and administrative obstacles to the mobility of persons undertaking a course of studies, ..., particularly in the context of Community programmes (including Socrates, Leonardo da Vinci and Youth) but also outside them; ...
- b. ...
- c. promote the development of various arrangements for financial support for mobility (grants, scholarships, subsidies, loans, etc.) and in particular:
 - i. facilitate the portability of scholarships and national aids
 - ii. ...
- d. ...
- e. consider to what extent the persons covered by this Recommendation can benefit from the arrangements for support available to the same categories of persons in the host State, such as for example reductions for public transport, financial assistance with accommodation and meals, as well as access to libraries and museums, with the exception of benefits available under social security. In this context discussions on introducing a "mobility card" should be initiated
- f. ...
- g. take the measures they consider appropriate so that the categories of persons concerned by this Recommendation are not subjected to discrimination in their home Member State in relation to the same categories of persons who do not undertake a transnational mobility experience
- h. ...

2. Measures which specifically concern students:

- a. facilitate the recognition, for academic purposes, in the home Member State of the period of study undertaken in the host Member State; for this purpose the use of the European Credit Transfer System (ECTS) throughout the Community should be encouraged ...
- b. take, furthermore, appropriate measures so that the decisions of the authorities responsible for academic recognition are adopted within reasonable timescales, are justified and can be subject to administrative and/or legal appeal
- c. encourage educational establishments to issue a European supplement as an administrative annex to the

diploma, the aim of which is to describe the studies undertaken in order to facilitate their recognition

d. ...

e. *take or to encourage appropriate measures to enable students more easily to prove that they have health cover or insurance in order to obtain their residence permits*

f. ...

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<http://www.daad.de/> (Deutscher Akademischer Austauschdienst)

<http://europa.eu.int/> (European Union and its institutions)

<http://ortelius.unifi.it/> (Database on Academic Education)

<http://www.eurydice.org/> (Information network on education in Europe)

<http://www.his.de/> (Hochschulinformationssystem)

<http://www.hrk.de/> (Hochschulrektorenkonferenz)

<http://www.cedefop.gr/> (European Centre for the Development of Vocational Training)

<http://www.das-neue-bafoeg.de/> (German Federal Law on Grants & Loans)

<http://citizens.eu.int/> (European Hotline on Mobility Issues)

<http://www.oecd.org/> (Organisation for Economic Co-operation and Development)

<http://europa.eu.int/comm/education/socrates.html> (Socrates Programme)

<http://www.siu.no/vev.nsf/start/nordplusen> (Scandinavian Exchange Programme)

http://www.studieren.at/karriere_ausl.htm (Study Fees Abroad)

<http://www.destatis.de/> (Statistisches Bundesamt)

<http://www.demmelhuber.info/> (Collection of Mobility Information)

