

UNIVERSITEIT TWENTE.

15 October 2010



**UNIVERSITEIT
TWENTE**

SHIRIN REUVERS (s0164593)
BACHELORTHESIS

Portability of student support

—

The residence requirement

Supervisor: Prof. Dr. Hans Vossensteyn
Co-reader: Dr. Adrie Dassen

Author : Shirin Reuvers (s0164593)
s.i.m.reuvers@student.utwente.nl

Study program: European Studies (cohort 2007)
Study year: 2010/2011

Abstract

The following thesis provides a contribution to earlier research done on student support systems in the European Union. By analyzing the development of the European Union's policy on student support systems over time, it strives to answer the question **"To what extent is the Dutch residence requirement for portability of student support in line or not with the European Commission's policies and Community law on student mobility?"** This question arises due to the recent claim of the European Commission that the Dutch residence requirement for students to receive portable student support is not in line with the non-discrimination principle of the European Union. Conducting a qualitative analysis on earlier ECJ case law on student mobility, it investigates the development of the European Union's use of the non-discrimination principle. This principle, anchored in the Treaty establishing the European Community, is used by the European Commission in order to gain influence on national student support systems. In addition an analysis of possible ways to organize student support is presented. A qualitative analysis, involving surveys with the ministries of education of all those European countries who already implemented portable student support, shows that all countries included a residence requirement similar to the Dutch one. It concludes that those residence requirements are essentially designed to prevent unintended use of the portable student systems by students who do not have a link with the countries.

Key words: student mobility- internationalization theory- Bologna process- European Union case law on student mobility- residence requirement- financial student support- portability of student support systems

Table of Contents

Chapter 1: Introduction.....	5
1.2 Methodology.....	8
Chapter 2: Student mobility in the European Union.....	10
2.1 What is student mobility?	10
2.2 Why is student mobility important?	11
2.3 Internationalization and its impact on mobility.....	11
2.4 Different approaches to financial student support	13
2.4.1 Direct versus Indirect financial student support	13
2.4.2 Criteria for the provision of public student support	13
2.4.3 Portability.....	14
2.4.4 Short-term versus Long-Term Portability	14
2.4.5 Portability, its risks and related requirement	14
2.5 The financial obstacle to student mobility and potential solutions.....	15
2.6 How was the European Union policy towards student mobility shaped over time? Intergovernmental versus Supranational approach- <i>EU law</i> versus <i>Bologna process</i>	17
Chapter 3: Shaping a European Higher Education domain	19
3.1 Case law of the European Union on student mobility- the non-discrimination principle and its development	19
3.2 Analysis of the case law	24
3.3 Recent case in front of ECJ: The Netherlands against the European Commission	27
3.3.1 The European Commission's view.....	28
3.3.2 The view of the Netherlands.....	29
Chapter 4: Comparative analysis of different approaches to prevent unintended use of student support	30
4.1 Germany.....	30
4.2 Denmark	31
4.3 Finland	31
4.4 Sweden.....	32
4.5 Norway.....	33

4.6 Comparative analysis	34
4.7 Point of View Commission	34
Chapter 5: Conclusion	36
Chapter 6: Limitations of the study	40
7. References and Attachments	41
7.2 Attachments	46
7.2.1 Survey questions	46
7.2.2 Answers of the survey by the Ministry of Finland	46
7.2.3 Answers from the Ministry of Norway	48
See following page.....	48
7.2.3 Answers of the Ministry of Sweden	51
Study support - basic requirements.....	51
7.2.4 Answers of the Ministry of Education of Denmark	53
7.2.5 Answers of the Ministry of Education Germany	53

Chapter 1: Introduction

1.1 Introduction to the research question

“What does exist is an educational dimension to European problems and a European dimension to educational problems”

(G. Fragnière, Rector of the College of Europe 1993-1995)

In the last decades student mobility became more and more an issue. On the one hand the European Union pushes for more exchange of students and teachers between countries by initiating student support schemes such as Socrates or Erasmus¹ and by introducing European Union law within the Higher Education domain². On the other hand European countries themselves came together and decided on a general structure that would enhance student mobility greatly, a process originating in the Bologna conference in 1999 (Caddick, 2008). Within this frame, but also even before, a number of countries decided to introduce portability of student support in order to enable their own national students to become mobile. Those countries include Denmark, Sweden, Norway, Finland, Germany and the Netherlands.

Portability of student support means that students are able to make use of their national student support system, even though they are not studying within their own country - whether they do so for a short-term or a long-term period (Vossensteyn, 2004). The generous introduction of financial student support portability, such as in the Netherlands, was only possible when countries could ensure that additional costs by unintended use of portable support are avoided (Vossensteyn, 2004). In this regard, the recent decisions of the ECJ concerning student mobility played a crucial role for all Member States of the EU. Within this line, all countries having established portability of student support (for full studies abroad) introduced some kind of requirements, which have to be met by students in order to be eligible to portable student support. A very common way is the introduction of a so-called „residence requirement“. The Netherlands, having introduced portability of student support in 2007, for example, requires students, eligible to portable support, to have lived three out of the last six years within the Netherlands. This requirement has to be met by all Dutch and non-national students. There are however differences in the shape of the residency requirements and their regulatory framework and precise wording is dependent on the country.

Concerning the Dutch case (one of the most recent cases of the introduction of portability of student support) the European Commission argues that the residence requirement is

¹ Both programs (Socrates and Erasmus) are initiated and funded by the European Union in order to promote exchange of students/doctorates/professors and ideas (EU, 2010).

² Within the Bologna process the target was set that by 2020 at least 20% of students graduating in the European Higher Education Area (EHEA) should have had a study or training period abroad (EU, 2010).

discriminatory, since it is much easier met by nationals than by foreign European citizens, and brought the case in front of the European Court of Justice.

This thesis focuses on the similarities and differences in these requirements and the rationales of the different countries behind the residence requirement.

It aims to explain

- how unintended use³ of portable student support can be avoided
- what are the differences in the requirements/conditions that have to be met by students to be eligible for portable support and
- if these differences explain why only the Netherlands got sued by the European Court of Justice, and not any other European country, having introduced student support portability and residence requirements.

The main research question consequently reads:

“To what extent is the Dutch residence requirement for portability of student support in line or not with the European Commission’s policies and Community law on student mobility?”

Within this thesis an investigation of the development of European Union law on student mobility will be conducted.

- How did the non-discriminatory principle in the domain of student mobility develop over time?
- On which grounds did the European Court of Justice deliver their judgments on student mobility and financial student support?
- How did their reasoning change over time?

In a next step different conditions that countries have introduced when implementing portability of student support are analyzed.

Whereas Denmark, Sweden and Norway introduced portability quite early, the Netherlands and Germany took this decision rather recently - after the ECJ’s ruling on the Bidar case. However, all of them introduced certain requirements, such as residence requirements, which will be explained within this part. In the following it will be analyzed what the reasoning of those countries were to

³ With the term ‘unintended use’ the ‘use of the financial support by students who do not have a link to the country’ is meant.

introduce those requirements and why they decided to specify the conditions as they did. Recently the Commission brought the Netherlands in front of the European Court of Justice claiming that the Dutch residence requirement for portable student support is not in line with the non-discriminatory principle of the EU.

- On which grounds does the European Commission argue that the residence requirement is against EU law?
- Why did the Commission bring the case of the Netherlands in front of the ECJ, even though other countries have similar conditions, which have been introduced years before?
- Do the other countries, which have portable student support and a residence requirement related to it, expect consequences from the decision of the ECJ on the case European Commission versus the Netherlands?
- What will they-and also the Netherlands- do in order to be able to provide portable student support and stick to the non-discriminatory principle of the European Union?

In the following a short overview of the structure and content of this paper and the methodology used will be given.

1.2 Methodology

The focus of this thesis lies on portability of student support, in particular the residence requirement often used by countries in order to prevent unintended use of student support. Following the conceptualization of a number of important terms, such as student mobility, student support, portability of student support, residence requirements, unintended use, a qualitative analysis will be conducted. This analysis will be based on a number of cases brought in front of the ECJ as the units of analysis, namely:

1983: Gravier 293/83
1989: Raulin C357/89
1990: Bernini C-3/90
1997: Meeusen C-337/90
1999: Grzelcyk C-184/99
2001: Ninni-Orasche C-412/01
2003: Bidar C- 209/03
2006: Morgan C11/06 and
Buchner C-12/06
2007: Förster C158/07

These cases were chosen due to their importance and influence on student mobility systems and for European Union law, based on the number of times they were referred to in other studies used as references for this research.

The legal grounds (articles, directives) on which the ECJ decided that measures were against or within EU law, will be analyzed. With the help of this information one will be able to see whether, and if so, in which way the ECJ increased the scope of the non-discriminatory principle.

This qualitative analysis will be bedded in a theoretical part, explaining student mobility from the point of view of internationalization- thereby discussing the importance of student mobility. Due to its main focus on student support this paper will give an overview of obstacles to student mobility - stressing the financial component. As a next step two very important processes - the development of EU law and the Bologna processes - will be explained and the role of the European Commission in those process will be investigated. By doing so, a clear line of preferences of the European Commission will be shown. With this theoretical support not only investigation on important case law takes place, also the current claim of the European Commission that the Dutch residence requirement is against the non-discriminatory principle, will be discussed. In order to do so, a literature review will be conducted to analyze the different student support models in all those European countries which introduced portability of student support. Thereby main attention is given on the way they arranged portability of student support and possible conditions/requirements, which students have to meet in order to be eligible for portable student support. To

answer the questions on the nature of the national requirements, as mentioned above, a standardized survey will be designed, including a number of clearly structured questions on portable student support and its conditions. This survey will be sent to a representative of the national ministries of education of each of the countries that have introduced portable student support. The survey will be held either via telephone, or electronically (via e-mail). In the appendix you will find the exact wording of the survey questions. The empirical part of this study will consequently build on the data generated by the survey and will then form the basis for a comparative case study.

In addition, a more specific look on the question why those requirements are chosen in their specific details (e.g.: why two-out-of-five years?) will be given and insight in how countries expect the case in front of the ECJ to end and in which way they fear consequences will be provided.

The analysis aims to clarify if the institutional designs of residency requirements in Sweden, Norway, Finland, Denmark and Germany are build on different rationales, and if so, whether these differences explain why the Netherlands got sued rather than all other countries. Norway is included in the list of countries, even though it is not a Member State of the European Union. This, since it has a very similar residence requirement, was used by other Member States as an exemplary and because it is of great interest to see how countries not affected by a ECJ decision argue in favor of a residence requirement.

The analysis will be continued by investigating whether the differences may prevent countries from changing their portable student support model in case the European Court of Justice decides that the Dutch system is discriminatory and has to be changed. This might bring up recommendations to the Dutch government in order to change their model.

Chapter 2: Student mobility in the European Union

In the following it will shortly be pointed out why portability of student support is needed and how the European Union developed its recent approach towards it. Important to understand the general line a short introduction into the subject will be given: what is student mobility? Why is it important? How can students be stimulated to become mobile? In a next step the approach of the European Union, and in particular the European Commission, towards the encouragement of student mobility by its Member States will be analyzed. This is important in order to clarify the European Union's role in the introduction of portable student support. To differentiate clearly between the European Union's influence and the steps taken by the Member States themselves, the two movements shaping a European Higher Education approach: The Bologna Process and EU law, will be explained.

2.1 What is student mobility?

According to the European Student Union (ESU), the term student mobility is used when referring to a "study period taken abroad and returning home afterwards" (ESU, 2010). There are four main forms of student mobility: 1) Horizontal mobility (students spend a certain period of their studies in another country, also called credit mobility); 2) Vertical Mobility (student take a full degree abroad, also called degree mobility); 3) EU Programs (student, post graduate and teacher mobility schemes, initiated by the European Commission); and 4) Brain Mobility (process that describes the move of the most talented citizens of one country to other countries, also called brain drain) (ESU, 2010). This differentiation between forms of student mobility is made, even though there is a considerable amount of overlap between them. One of the incentives to study abroad is the academic value- the access to high quality education in all levels - which according to the European Union should be an option for all students, regardless of their citizenship, place of living or birth (EC, 2008). In addition there are several other reasons that encourage students to study abroad: learning or improving a foreign language, personal development, cultural exchange, building international networks, etc. (EC, 2009). One of the main reasons for a low mobility rate within the European Union is insufficient funding for students and the still existing inequalities between foreign and national students concerning the social services offered (ESU, 2010). The European Commission therefore tries to eliminate all problems of recognition, financing, information-sharing, cycle-structure and language- in both horizontal and vertical mobility (EC, 2008).

Within this paper the focus will be on the financial side of student mobility, in particular the possibility to use domestic student support for studies abroad.

2.2 Why is student mobility important?

In recent years student mobility became more and more important: on the one hand for the students themselves and on the other hand for Higher Education Institutions. Through mobility students develop specific skills, including language skills, and improve their understanding of the economic and social culture of the host country. This accounts for the openness towards different cultures and point of views and thereby encourages cooperation between countries. Especially the European market benefits from mobile students/workers. As said before also Higher Education Institutions and enterprises profit from mobility, due to the fact that student mobility brings along an exchange of knowledge and creativity, and also enables more efficiency in science. Another aspect is its contribution to the development of a “pool of well-qualified, open-minded and internationally experienced” (EC, 2010) young people, who will be able to adapt to the requirements of an EU-wide/global labor market.

All in all, student mobility is seen as a key feature to establish the European Union and a global and peaceful world with a better understanding for each other. This includes creating an European dimension, awareness of the European Union and its Member States, including their cultural similarities and differences, a European labor force and European political consciousness (EC, 2008).

Those rationales will be described in more detail using the internationalization theory of Knight (2008). In the following an investigation of his theory and its relevance for the focus of this study will be done.

2.3 Internationalization and its impact on mobility

“Internationalization of Higher Education is the process of integrating an international/intercultural dimension into the teaching, research and service functions of the institution”

(Knight, 1994)

According to Knight there are several rationales and motivations for internationalization in the political, economic, academic and social areas. Those categories however are not mutually exclusive but instead more and more interrelated. Originally, international education was seen as beneficial in order to establish foreign policies, keeping in mind national security and peace among nations. While this still plays an important role nowadays and constitutes also an important rationale of the European Union to support international student exchange, it is not the only one. Especially in the age of globalization an additional political rationale at the national level is the idea of reinforcing national identity. An additional argument within the political rationale is seen in

cultural, scientific and educational exchange that increases communication and diplomatic relations between countries.

Based on a more recent way of looking at Higher Education as an export product based on massification, an economic rationale can be added. This rationale becomes more and more important due to a growing linkage between countries based on economic, scientific and technological interdependence, but also competitiveness. In addition a more international working environment is created- this especially within the European Union where a European labor market is growing in size and importance (EC, 2008).

Concerning the institutional level, recent developments in the rationalization of Higher Education systems enabled transnational institutions to arise, and produced a need for international resources due to budget cuts. An international market orientation of institutions such as universities is dependent on international cooperation. Higher Education Institutions are consequently strong supporters of international exchange in order to increase the quality of Higher Education and the amount of resources.

The academic rationale for internationalization mainly lies within the achievement of international academic standards of excellence. The assumption, that enhancing the international dimension in the fields of teaching, research and service leads to an added value for the Higher Education system, plays thereby an important part.

As already mentioned in the political rationale, the preservation and promotion of national culture and identity also is an argument for the cultural and social rationale. Acknowledging cultural and ethnic diversity connected to the intercultural understanding needed in today's world is important. Learning a foreign language thereby is accounted for as an important skill for graduated students on the labor market. A student thereby is supported in order to become a local, national and international citizen.

All those rationales are taken into account by countries and the European Union when forming their point of view concerning internationalization. Knights theory gives a very precise overview on why student exchange is important for countries, showing the consequences in the political, cultural & social, academic, economic and institutional area. As a consequence there should be a broad national interest in encouraging students to go abroad. This is possible in many forms, one of them being financial student support.

2.4 Different approaches to financial student support

Financial student support is organized very differently all over Europe. Many countries give grants to their students, like Ireland; others loans, like the UK. Some countries have a mix of grants and loans, like the Netherlands. In addition more differentiations between the kinds of support can be made: direct versus indirect support; mean-tested versus merit-tested (entry-rule) and portability versus non-portability, which then can be divided between long-term versus short-term portability of financial student support. In the following a short overview of the different approaches to financial student support will be given, thereby outlining the model chosen by the Dutch government.

2.4.1 Direct versus Indirect financial student support

Arrangements directly available to students, like grants, loans, scholarships and any kind of support such as for meals and travel costs are called “direct support”. “Indirect support” on the other hand stands for all kinds of subsidies given to the parents of the student (or other relatives, respectively). The term consequently includes family allowances and tax benefits (Vossensteyn, 2004). In addition indirect support may be granted to third parties, like Higher Education Institutions, as well.

Grants and loans are both examples of direct support. Within this system grant support is more attractive for students than loans, because they don't have to be repaid. However, loans include most of the times also subsidies, like interest subsidies or debt remission (Vossensteyn, 2004). Another perspective to look at loans is the cost-side: loans also bring along costs, such as “administration, interest subsidies and costs of non-repayment (default)” (Vossensteyn, 2009). There are different ways of dealing with them: fixed versus flexible repayment periods/amounts; interest rates (interest rates of student loans vary from zero to five per cent within Europe (Schwarz &Rehburg, 2004)); and private versus public loans. All these characteristics change the attractiveness of loans for students. However, lately there has been a trend to replace grants with loans, such as in the Netherlands and the UK (Vossensteyn, 2009).

2.4.2 Criteria for the provision of public student support

In order to receive student support a number of conditions must be fulfilled. First students need to be eligible for support (entitlement). At this stage most frequently socio-structural criteria such as nationality and age can be found. The second decision is about the amount of support they will receive (extent). At this point socio-economic criteria play an important role: state support is awarded depending on the financial situation of a student, his/her parents/partner, and also the housing situation. In addition, in some European countries student financial support is means-tested⁴. This means that support is based upon the financial situation of an applicant and his family.

⁴ The opposite of means-tested is merit-tested, which is based on the idea that students need to fulfill certain other criteria, such as passing an exam or a certain minimum grade for their secondary education.

2.4.3 Portability

Portability relates to the possibility of students to use financial student support for studying abroad. In general indirect support is portable in almost all European countries. Portability of direct support however is only introduced in a number of countries, and still then many requirements are bound to it. Limitations to portability are mostly driven by the aim of countries to “maintain control over the costs” (Vossensteyn, 2004).

2.4.4 Short-term versus Long-Term Portability

The arrangements within a country concerning portability of financial student support differ widely concerning the length of the study conducted in a foreign country. A distinction between the support available for a “short period of study abroad within the framework of studies conducted at a Higher Education Institution in the home country” (Vossensteyn, 2004) and the support available for a student who conducts his/her entire study in a foreign country is consequently very important. Within this document also “credit” and „degree mobility“ are used to describe the length of study abroad (Vossensteyn, 2004). Most countries enable portability of student support for short-term periods, at least if these periods are within the framework of a program followed at a national Higher Education Institution. Some countries even offer additional support, such as grants or loans for travel expenditure.

2.4.5 Portability, its risks and related requirement

Having a look at the overall situation concerning portability of student support in the European Union, one can see how important the differentiation between short- and long-term study abroad is. Whereas in almost every country students are generally able to use student support facilities when studying abroad for a limited period of time(credit mobility), there are many limitations when it comes to degree mobility (Vossensteyn, 2004).

Those limitations to the portability of student support are driven by the goal to maintain control over the general costs, something particularly important to countries with a rather generous student support model, such as the Netherlands. Another important difference has to be made between indirect and direct support. In almost all countries, besides the Czech Republic, Latvia and Portugal, indirect support is easily portable (Vossensteyn, 2004). Use of portable student support for degree students however is way more limited. This often is done by limiting the range and level of programs or the number of countries for which support is portable. Some countries, such as Belgium, Latvia and Slovenia give away financial aid only if the same program cannot be followed in the home country. Others keep to bilateral agreements and only a few have relatively open policies towards portability of student support (Vossensteyn, 2004). Those are Germany, the Netherlands, Denmark, Finland, Norway and Sweden, which will be discussed later in the thesis. However, the just mentioned countries have rather restrictive conditions, which have to be fulfilled for foreign students applying for student support, such as residence requirements. By judging these conditions,

one should keep in mind that those countries also enable their students to take their student support outside the country, something the majority of European Union Member States does not do!

2.5 The financial obstacle to student mobility and potential solutions

As mentioned before there are a number of obstacles towards student mobility⁵- one of them being an additional financial burden to the student, which might negatively influence his decision to study in a foreign country. However, in order to stimulate mobility there are a number of approaches to tackle the financial burden. Basically there are three different points of view: the home country approach; the host country approach; and the European solution (EU, 2010). Within the home country approach, the student's national country is supposed to support the student during her/his stay in a foreign country. This is the main focus of this study, because the home country approach is realized through portability of student support. This means that when the home country is responsible for financial support of mobile students, it enables them to make use of their national student support by making it portable. The host country approach on the other hand refers to the idea that the country, which hosts the student for his/her time of being, is responsible for financial student support (Van Vught, 2006). Due to the European Union's main principle of non-discrimination, countries are forced to enable European citizens to make use of their national systems as well- allowing for certain conditions discussed in this thesis. The following study consequently focuses on a combination of both approaches: European citizens who can make use of the portability of student support of their host country and the limits given by the Member States.

The third approach- the European solution- is an idealistic idea of having a central European institution responsible for student support, which distributes financial student support taking into account financial needs (amount of student support; depending on living expenses in host country; own or parental income) and the number of incoming/outgoing students. Even though this might be the most convenient way of regulation, it is far from being realized- mainly due to the fact that the European Union still only has little influence in the Higher Education domain and countries will be reluctant to give away their competences to the European Union. As a consequence this approach will not be discussed in detail here.

In general all approaches have clear disadvantages. On the one hand the distribution of incoming students is far from equal: Whereas countries, such as the UK, host a very high number of foreign students each year (415.585 international students in the academic year 2008/2009⁶) and a very low number of students leaving the country for study purposes (20.000 in the academic year

⁵ Certificate recognition, accomodation, visa requirements, etc.

⁶ Atlas of student mobility, 2010

2008/2009⁷), others such as Italy have a small number of incoming students (17.060 international students in the academic year 2006⁸) and a high number of students leaving the country for study purposes (27.060 in the academic year 2006⁹). The host country approach consequently puts an unreasonable high burden on countries with a high amount of incoming students, such as the UK.

In addition living expenses vary widely between European countries. In the Netherlands and the United Kingdom maximum or fixed student fees and average living costs are significantly higher than in countries such as Portugal, Spain, Italy or Greece¹⁰ (Schwarz & Rehburg, 2004). This results in serious difficulties to pay living costs for students from countries with lower average incomes studying in countries with high living expenses. Consequently, the home country approach has restrictions as well.

In today's European student support systems, elements of both approaches are visible. On the one hand students are eligible to support from the host country when fulfilling all conditions. This is strongly supported by European Community law, which tries to eliminate differences between students based on nationality (as explained later within this paper (Chapter 3.1)). On the other hand a number of countries introduced portability of student support- a practice of the home country approach.

Portability of student support as researched within this paper also contains elements of both approaches. On the one hand it supports domestic students via the home country approach and on the other hand it enables non-national students to receive student support from their host country. In order to clarify this point an example will be used. In case a Dutch national studies in Germany for three years, he is able to make use of the Dutch student support system- that means: his home country supports him while being abroad. On the other hand a German student who has lived in the Netherlands three out of the last six years may get Dutch student support in order to study in Germany as well. Then not his home, but his host country (for the three years he lived in the Netherlands) supports him. As a consequence portability of student support is a rather complex practice.

⁷ Atlas of student mobility, 2010

⁸ Atlas of student mobility, 2010

⁹ Atlas of student mobility, 2010

¹⁰ 2004 maximum or fixed student fees and average living costs per student and month in Euros:

- NL: 788
- Portugal: 426 (Schwarz & Rehburg, 2004)

2.6 How was the European Union policy towards student mobility shaped over time? Intergovernmental versus Supranational approach- *EU law versus Bologna process*

The European Union policy towards student mobility was shaped by two important processes: an internal and an external one. In the following a broad overview of those two processes will be given, thereby linking them to the theoretical approach of internationalization, mentioned before. In order to be convenient the term „EU law“ will be used for the internal process. The external process having a strong influence on the European Union, is the Bologna Process. Both, the internal and the external processes, are very important factors that influenced the strategy, mission and practices of the European Union. It therefore is important to be aware of both processes in order to analyze the development of European Union law as reflected in the case law mentioned later (Chapter 3.1). It also helps recognizing the dilemma at hand: on the one hand the European Union is very much willing to promote student support and on the other hand European Union law makes it difficult for countries to do so.

The so-called „Bologna Process“ is an intergovernmental process, which started in 1998 with the signature of the Sorbonne Declaration by France, Germany, Italy and the United Kingdom. The Sorbonne Declaration, initiated by the French education minister Claude Allégre, had the principal goal of harmonizing „the architecture of the European higher education system“ (Sorbonne Declaration, 1998). A year later the Bologna Conference took place- on a way broader scale: 29 countries signed the Bologna Declaration, thereby voluntarily committing them to create more convergence in the European Higher Education Area. One of the main goals of the declaration was the promotion of mobility. Many other objectives consequently contributed to this goal: the creation of a degree-system, the two-cycle system, the credit point system and the European cooperation in quality assurance. Even though the objectives were only set to be reached by 2010, a number of conferences and declarations followed in order to increase the cooperation and harmonization between the Member States. In each of these declarations the objective to increase mobility was strengthened, which shows how important student mobility was and is to the parties involved in the Bologna process. In contrast to the internal process, the Bologna process is a bottom-up process. Many scholars even argue that the Bologna process is a reaction of preceding EU law: Member States decided to take action in order to prevent the European Union to gain too much influence. However, due to the fact that many of the states, that signed the Declaration (by 2007 46 States), are also Members of the European Union the Bologna Process had a strong influence of the European Union policy towards student mobility. However, this influence is reciprocal: since the Bologna Conference, the European Commission became part of the steering group (originally consisting of the four countries that signed the Sorbonne Declaration), thereby trying to exert influence on the development of the Bologna objectives (Corbett, 2006).

The internal process on the other hand is guided by the general idea of the European Commission to promote mobility and thereby eliminate all possible obstacles. However, due to the fact that the European Union was created as a purely economic community, there was initially no basis for action in the Higher Education domain (Keeling, 2006). Only with the Treaty of Maastricht in 1992 the EU started to enlarge its competences in the field of education. Even though the influence of the EU still kept on being very small, Article 149 EC builds a first legal ground for action in the education field. In addition also Article 12 EEC¹¹ builds a fundamental basis for the development of free movement of students and its financial support (Corbett, 2006) as will be shown later within this thesis.

After having analyzed the general approach of the European Union a focus on the case law developed by rulings of the European Court of Justice will be given. The beneath mentioned ECJ cases will serve as indicators for the development of the influence of the European Union on the Higher Education domain. In addition it will be investigated on which grounds the European Court of Justice took decisions and how they argued in favor or against measurements. In order to do so, a number of cases were selected based on the criterion whether they were influential for the development of a European Higher Education domain and issues, such as portability of student supports, within the national Higher Education systems. These cases are listed chronologically and include the Gravier case in 1983, the Raulin case in 1989, the Bernini case in 1990, the Meeusen case in 1990, the Grzelcyk case in 1999, the Ninni-Orasche case in 2001, the Bidar case in 2003, the cases on Morgan and Bucher in 2006 and the most recent relevant judgment about the Förster case in 2007.

¹¹ Article 7 EEC: *Within the field of application of this treaty and without prejudice to the special provisions mentioned therein, any discrimination on the grounds of nationality shall hereby be prohibited. The Council may, acting by means of a qualified majority vote on a proposal of the Commission and after the Assembly has been consulted, lay down rules in regard to the prohibition of any such discrimination.*

Chapter 3: Shaping a European Higher Education domain

3.1 Case law of the European Union on student mobility- the non-discrimination principle and its development

Based on Article 220 EEC, the European Court of Justice aims at interpreting, applying, and enforcing European Union law. This is especially the case if primary or secondary sources of law are imprecise or not sufficiently comprehensive (Davis, 2007), as it is within the Higher Education domain. By doing so the ECJ enhanced the competences of the European Union in the Higher Education domain and established a number of important rules. Within this chapter the most important ECJ cases will shortly be analyzed concerning student mobility and it will be investigated in which way and on which grounds the ECJ ruled.

One of the first rulings in the Higher Education domain was the 1983 Gravier ruling (C 293-83). Francaise Gravier, a French national, studied at a university in Belgium and due to his nationality had to pay a higher tuition fee (Minerval) than Belgian students. He claimed that this was discriminatory and against EU law. The ECJ conceded on this point based on Article 12 EEC. Important to notice is that the European Union in 1983 only had competences concerning vocational training. The ECJ consequently first decided on the definition of vocational training.

“A year of study which is part of a programme forming an indivisible body of instruction preparing for a qualification for a particular profession, trade or employment or providing the necessary training and skills for such a profession, trade or employment constitutes vocational training for the purposes of the EEC Treaty” (Gravier case).

According to this definition Gravier was considered to follow vocational training and thereby fell into the scope of Community law (Article 128 EEC). In a next step the ECJ decided that asking a higher tuition fee is against the non-discrimination principle (“prohibition of discrimination on grounds of nationality” Article 12 EEC) adopted by the European Union. Having established this exemplary case, the starting point for free movement of students within the EU was set. All EU citizens will be asked for the same amount of tuition fees as national students.

→ First ruling on the equality of tuition fees in 1983

- Based on Article 12 EEC (Non-discrimination principle)

The following ruling touching the Higher Education domain was the 1989 Raulin case (C 357-89). Again a French national, who studied in the Netherlands, claimed financial student support from the Dutch government in order to pay her tuition fee. Based on Article 12 EEC (the non-discrimination principle) the ECJ decided that *“financial assistance granted by a Member State to its*

own nationals in order to allow them to follow a course of vocational training only in so far as such assistance is intended to cover the costs of access to the course” (Raulin ruling) had to be granted to all European citizens. With this ruling the ECJ consequently broadened the Gravier ruling.

→ Case law on the equality of financial support for tuition fees

- Based on Article 12 EEC (Non-discrimination principle)

In 1990 the ECJ ruled on the case of Mrs. Bernini (C 3-90), an Italian, who lived almost all her life in the Netherlands as the daughter of a migrant worker, and claimed student financial support for her study in Italy. Due to the fact that Mrs. Bernini underwent occupational training and was employed as a paid trainee for a time period of 10 weeks at a furniture factory in the Netherlands, she considered herself as having acquired the status of a worker within the meaning of Article 48 EEC. Based on Article 7 (2) of Regulation 1612/68¹² Mrs. Bernini consequently claimed her right to non-discrimination and therefore financial student support. The ECJ decided that if in the occupational training effective and genuine work is done the status of a migrant worker can be achieved. This status can be held even if the worker leaves the country to study in another country, if there *“is a relationship between his previous occupational activity and the studies in question”*. Furthermore it decided that on the grounds of Article 7 of the Regulation 1612/68 a child of migrant workers, who is still depending on financial aid by its parents, can keep the rights of nationals in the host country, even if he studies abroad. This includes the right to financial student aid.

- Ruling that on achieving status as a migrant worker, a student is eligible to student financial support by the host country
 - Based on A 48 EEC and A 7(2) of Directive 1612/68

¹² Article 7

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment;

2. He shall enjoy the same social and tax advantages as national workers.

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

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

The next ruling affecting the Higher Education domain is the 1997 Meeusen case (C 337-90). Meeusen was a Belgian student who was also studying in Belgium, but whose parents both worked in the Netherlands. Therefore she claimed Dutch student support, which she was denied. The ECJ decided that Meeusen is eligible to Dutch financial support, since her parents are migrant workers as specified in Article 48 EEC and Meeusen herself is financially dependent on her parents. (*“Accordingly, the dependent child of a national of a Member State who pursues an activity as a self-employed person in another Member State while maintaining his residence in the State of which he is a national can obtain study finance under the same conditions as are applicable to children of nationals of the State of establishment, and in particular without any further requirement as to the child's place of residence”*(Judgment on Meeusen, C 337-30)). This judgment was based upon several treaty provisions: Article 48 EEC and Regulation 1612/68 on the freedom of movement of workers and Article 52 EEC, which secures the right of establishment. Article 12 EEC, the non-discrimination principle, however, is the main basis for this judgment (*“the principle of equal treatment is also intended to prevent discrimination to the detriment of descendants who are dependent on a self-employed worker. It precludes, therefore, national legislation which makes study finance conditional upon a residence requirement in the case of the children of workers who are nationals of other Member States but not in the case of the children of workers who are nationals of the host State, since such a condition is discriminatory”* (Judgment on Meeusen, C 337-30)).

→ Ruling on student support for non-national students not living in a country, but their parents have strong economic ties

- Based on A 48 EEC, Regulation 1612/68

Two years later the ECJ ruled on the case Grzelcyk (C 184-99)- the first judgment dealing with the “right of economically inactive persons to reside in another Member State” (ECL, 2007). The French national Grzelcyk studied more than 3 years in Belgium but could not receive Belgian student support, which he thought to be discriminative because he had to meet certain conditions only designed for foreign students. The ECJ firstly confirmed the concept of European citizenship by referring to Articles 12 and 18 EEC and the non-discrimination principle (*“The fact that a Union citizen pursues university studies in a Member State other than the State of which he is a national cannot, of itself, deprive him of the possibility of relying on the prohibition of all discrimination on grounds of nationality laid down in Article 6 of the Treaty”* (Judgment on Grzelcyk, C 184-99)). Based on Directive 93-96, Directive 90-364 and Directive 90-365 on the right of residence and the non-discrimination principle, the Court decided that the Belgian measurements were discriminatory because they only applied to students of nationalities other than the Belgian.

- ➔ students should not be excluded from receiving social support, including financial student support, due to their nationality. This judgment however does not concern portable student support, but the ability to receive social support from the host country.
 - Based on Directive 93-96, Directive 90-364 and Article 12 and Article 18 EEC

Until that time (1999) the ECJ had always ruled in favor of the plaintiff, thereby widening the scope of rights for EU citizens and the competences of the European Union in the Higher Education domain. Mobile European students consequently were granted more and more rights in other Member States.

In 2001 however the ECJ limited the scope of rights of European nationals in other Member States when ruling on the case of Ninni-Orasche (C 412-01). Ninni-Orasche was a female Italian, who was married to an Austrian and lived and worked in Austria two-and-a-half months as a waitress. After that, she went back to Italy, finished her high school diploma and, after two years of unemployment, started studying at a university in Austria. In order to do so she claimed an Austrian study grant. The ECJ ruled that it is on the national courts to decide whether *“the activity performed as an employed person is not purely marginal and ancillary”* (Judgment on Ninni-Orasche, C 401-01). If this would not be the case a person can be seen as a migrant worker as specified in Article 48 EEC. As a worker she would be entitled to benefit from Article 7(2) of Regulation 1612/68 on the freedom of movement for workers within the EU, as changed by Regulation 2434-92 in case continuity between the occupational activity and the studies pursued is given. The limitation however was that this is not the case if she *“involuntarily [became] unemployed and is obliged by conditions on the labor market to undertake occupational retraining”* (Judgment on Ninni-Orasche, C 401-01). The ECJ clearly states that it is not within the idea of the Community that a *“national of a Member State may enter another Member State for the sole purpose of enjoying, after a very short period of occupational activity, the benefit of the student assistance system in that State. Such an abuse is not covered by the Community provisions in question”* (Judgment on Ninni-Orasche, C 401-01). By ruling so, the ECJ limited the scope of the Grzelcyk case, falling back to the solely economic argument that links persons to the state.

- ➔ Social support is not given to all EU citizen, if not a migrant worker or not financially dependent on a migrant worker
 - Based on Article 48 and Regulation 1612/68

A very important and widely known ruling of the ECJ in 2005 is the Bidar case. Dany Bidar, a French national who lived and studied in England, claimed English student loan, which was denied. The ECJ consequently ruled on the question whether Bidar was discriminated against, even though he did not fall under Regulation 1612/68. (Regulation 1612/68 is only applicable to migrant workers or

their children, which Bidar wasn't). In their ruling the ECJ argued that Member States can give "*such assistance only to students who have demonstrated a certain degree of integration into the society of that State*" (Judgment on Bidar C-209/03). The so-called link however, does not necessarily have to do with the employment market. The measure to decide whether a "*certain degree of integration*" (Judgment on Bidar C-209/03) has been achieved is left upon the Member States. To put it differently: A person who has established a genuine link with the society of the Member State, is eligible to receive financial student support from that Member State. This is based upon Articles 12 (non-discrimination) and 18 EEC (Citizenship of the European Union).

- „Certain degree of integration“ needed
 - Based on Articles 12 and 18 EEC

The two cases Morgan (C 11-08) and Bucher (C 12-06) were combined, since both dealt with very similar things. Morgan and Bucher, two German nationals, studied a whole study program in other European countries: the UK and the Netherlands, respectively. In order to do so, they applied for German student support, called BAFöG. However, this was denied by the German administration, because one of the requirements in order to become eligible for financial support was that students must have studied one year in Germany before going abroad. Even though this was not the case, the two students argued that they should receive financial support based on the non-discrimination principle.

Interesting to note at this point is that in contrast to the earlier rulings not the host, but the home country is brought in front of the ECJ. The ECJ decided that the requirement brings along "*personal inconvenience, additional costs and possible delays*" (Judgment on Morgan C 11-08), which discourages "*citizens of the Union from leaving the Member State*" (Judgment on Morgan C-11/08). Whereas they reconfirm the possibility to introduce a measurement to ensure that a certain degree of integration of the student in the country's society is given, they conclude that the requirement of a "*first stage of studies in the student's Member State of origin*" (Judgment of Morgan C-11/08) is not in line with the Community's principles, laid down in Articles 17 and 18 EEC.

- First stage of study requirement is discriminatory
 - Articles 17 and 18 EEC

In the most recent ruling on that topic (C 158-07), Jacqueline Förster, a German national studying in the Netherlands, received Dutch student support due to the fact that she was part time employed. In addition, Dutch authorities assumed that she would qualify for work after having finished her studies, thereafter being regarded as a worker, as specified in Article 39 EEC. However, after Ms Förster stopped working, the authorities annulled the grant and requested a repayment of the

student support already received. Förster claimed that this was discriminatory. The ECJ first argued that Regulation 1251/70 on the right of workers to remain in the host Member State and receive social advantages was not applicable to Ms Förster. The Dutch government however introduced a measurement of integration: EU citizens must have had 5 years of uninterrupted residence in the country. The ECJ concluded that this five year requirement is not discriminatory and ruled against Förster, who did not fulfill this condition.

- 5 year requirement in line with „certain level of integration“ idea
- Article 12 EEC

3.2 Analysis of the case law

Even though the European Union had the initial goal to become an Economic Community, its competences in social domains increased heavily in the last decades. Higher Education however did not become one of these and officially still lies within the hands of the Member States. As a consequence there are no treaty provisions directly dealing with the domain, and only through ECJ case law could the EU gain some influence on the issue. The non-discrimination principle and the status and rights of migrated workers and their family members thereby served as main grounds. In the rulings analyzed above however, a certain economic dimension is still clearly visible. Summarizing the case law, a main question arises: “In which way is a Member State obliged to financially support European citizens (non-nationals as well as nationals studying abroad) during their student time?”.

The basic argument in the answer is an economical one: Only if the student provides genuine and effective work, has the status of a migrated worker or is financially depended on a migrated worker (parents) or if there is a genuine link between the student and the society of the host country, the Member State is obliged to support the student financially.

The main treaty provision, on which it is argued for a widening of student support, is the non-discrimination principle. This is anchored on the one hand in Article 12 EEC, reading:

“Within the field of application of this Treaty and without prejudice to the special provisions mentioned therein, any discrimination on the grounds of nationality shall hereby be prohibited. The Council may, acting by means of a qualified majority vote on a proposal of the Commission and after the Assembly has been consulted, lay down rules in regard to the prohibition of any such discrimination”(Article 12 EEC) and in Article 18 EEC, stating:

“1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

2. *If action by the Community should prove necessary to attain this objective and this Treaty has not provided the necessary powers, the Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. The Council shall act in accordance with the procedure referred to in Article 251.*

3. *Paragraph 2 shall not apply to provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection”.*

In addition the ECJ argued for an extension of the use of social advantages based on the idea of European citizenship, anchored in Article 17 EEC:

“1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby”.

The concept of European citizenship was introduced by the Maastricht Treaty in 1992 and reinforced the idea of non-discrimination and free movement and rights for all citizens of European Union Member States (European Citizenship, 2010). The ECJ argued on this basis in the cases of Morgan and Bucher, where not the host but the home country was held responsible for student support. European citizenship can be regarded as a concept used to promote the non-discriminatory principle: instead of regarding persons as national citizens and other European country citizens, they are all summarized using the term „European citizens” and therefore shall not be discriminated by Member States.

Another very important treaty provision is Article 48 EEC, stating that:

“Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States” (Article 48 EEC)¹³.

This article plays an important role when looking at the statement, saying that the basic argument of the ECJ is an economical one: Only if the student provides genuine and effective work in his education, has the status of a migrated worker or is financially depended on a migrated worker (parents) or if there is a genuine link between the student and the society of the host country, the Member State is obliged to support the student financially. This shows that, even though European

¹³ *“Companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making” (Article 48 EEC).*

citizenship was introduced, the generally used approach regards the home country as responsible for student support, in case no strong link with the host country can be found.

It can clearly be seen that on the basis of the non-discrimination principle the European Union has broadened its scope of influence within the Higher Education domain. Whereas the EC originally did not have any ground to influence the Higher Education Area due to a lack of treaty provisions, it nevertheless did so by applying Article 12 EEC¹⁴ to the area. Based upon the non-discrimination principle the ECJ first argued that there should be equality concerning the tuition fee (Gravier ruling). In a next step equality was broadened and applied to financial support for tuition fee (Raulin case). Afterwards student aid was granted to migrant workers (Directive 1612/18 and reinforced in the Bernini ruling) and to European students not resident in the country, but dependent on their parents, who work in the host country (Meeusen and Ninni-Orasche rulings). Especially those cases gave the discussion an economic argument. The Bidar ruling however changed the situation: for the first time no economical link but a certain degree of integration was made a condition to receive social support from another European Member State than the home country. The ECJ consequently changed its solely economic argumentation into a more cultural/sociological direction. This judgment was continued in the Förster case where again a certain degree of integration was asked for. The judgment on the case Morgan and Bucher was a novelty within ECJ law as well, since it was the first case claiming support from the home and not the host country.

Important to note concerning the Bidar case is that it had a number of consequences. The decision of the ECJ that countries may impose certain criteria in order to measure the degree of integration of the student in their host country was an important milestone for many countries. Whereas many countries altered their student finance system slightly, countries such as the Netherlands and Germany even felt confident enough to introduce portability of student support. This in context with the fear of countries that students, who are actually not intended to do so, would be able to make use of their financial student support system. In order to clarify this point an example will be given: The Netherlands are very strongly in favor of student mobility. In order to enable and support their students to study abroad, they would like to make their student support system portable. However, due to the non-discrimination principle the Netherlands were afraid that when doing so they would have to grant portable student support to all European citizens, even though

¹⁴ „Within the field of application of this Treaty and without prejudice to the special provisions mentioned therein, any discrimination on the grounds of nationality shall hereby be prohibited. The Council may, acting by means of a qualified majority vote on a proposal of the Commission and after the Assembly has been consulted, lay down rules in regard to the prohibition of any such discrimination” (Article 7 EC).

there is no direct link between them and the country. This fear was strengthened not only because the Dutch student support system is very generous but mainly because most other European countries did not introduce portability. With the Bidar ruling however, the Netherlands were confident that they would be able to avoid unintended use by implementing a certain criteria to measure integration: the residence requirement as a measurement of an applicant's link to society. Through the judgment of the ECJ on the Förster case this rationale was even strengthened.

Another distinctive feature of the case law presented above is that the variety between countries brought in front of the ECJ is rather small. Concerning their student support system, from all European Union Member States only Belgium, the Netherlands, Austria, the UK and Germany have been brought in front of the ECJ. In fact, all those countries having a rather generous student support system. This already implies that in the past countries who are leading in respect to good student support systems are forced to alter their systems, whereas countries who do not have student support systems or only very basic ones are not considered. On the one hand this may sound (and be) very unfair- but has a logical reasoning: the European Union's competences are limited in so far as they can only revise domestic law and argue based on the discriminatory system, but cannot force countries to establish domestic law, such as a student support system. As a consequence they try to widen their competences and influence the countries wherever they are able to, thus only when domestic law already exists.

3.3 Recent case in front of ECJ: The Netherlands against the European Commission

On the 22nd of May 2007 the Dutch government introduced long-term portability of student support for students to become mobile all over the world. This was done by a small change in the WSF 2000¹⁵, which established portability limited by two important requirements. On the one hand the quality of the program a student wants to follow abroad, has to have a comparable quality standard as a Dutch program and on the other hand every student eligible for portable student support must have lived legally in the Netherlands for three out of the last six years (Wetgeving en juridische Zaken, 2007). The latter condition is called *residence requirement* or *3-out-of-6* requirement and is the main topic of the thesis at hand. An additional requirement is the fact that a student receiving direct student financial support by another country is not eligible for student support in the Netherlands (Wetgeving en juridische Zaken, 2007). According to the European Commission however, the 3-out-of-6 requirement is discriminatory, because it is easier met by nationals than by non-nationals. As a consequence the Commission's Directorate-General of Labor, Social Affairs and Unequal Opportunities brought the Netherlands in front of the ECJ. This is remarkable, since most of the earlier mentioned cases were brought forward by the Directorate

¹⁵ WSF 2000: Wet Studiefinanciering 2000

General of Education. So far, there is no decision. In the following a shortly elaboration on the arguments of both parties will be provided.

3.3.1 The European Commission's view

Based on Regulation 1612/68, the European Commission claims that the Dutch 3-out-of-6 requirement is in conflict with the European principle of free movement of workers. Article 39 EEC establishes the right of movement of workers within the European Union, thereby granting non-discrimination on the grounds of nationality. Regulation 1612/68 subsequently supports the treaty article, stating that a non-national worker should receive the same social advantages as a national worker. In order to become eligible for the social advantage¹⁶ of student support in the Netherlands, the additional residency requirement, according to the Commission, is more difficult to be met by non-nationals. In the Bernini case (C 3-90) the ECJ had argued that student support indeed was considered a social advantage as specified in article 7 of regulation 1612/68 and that children of migrant workers could make use of those social advantages without having to fulfill additional residence requirements (Point 29 C 3-90). The Commission argues that especially people working in the border region are strongly discriminated by the 3-out-of-6 requirement and reminds the Netherlands that the measurement for a certain degree of integration is only applicable if persons do not fall within Regulation 1612/68. The Commission argues in line with Article 21 EEG (on the freedom of residency in the EU), Article 45 EEG (concerning workers in the EU) and Article 18 EEG where discrimination on grounds of nationality on workers is prohibited. In the Bidar case a measurement for integration was considered to be in line with Community law, since there was no additional economical link between the student and the host country. The Dutch residence requirement however applies to all students, no matter whether there is an economical link between their parents or themselves and the Netherlands. It therefore is considered to be discriminatory, since there might be an economical link between the student and the Netherlands, which cannot be measured through the residence requirement. A student whose parents work in the Netherlands but live close to the Dutch border in Germany will not be entitled to receive portable student support, even though there is a clear link between him and the Netherlands. The Commission consequently brings the Netherlands in front of the ECJ based upon Article 288 EEG on the binding effect of regulations.

¹⁶ Based on the case "Echternach and Moritz" (C 389-87), financial student support is seen as a social advantage, as specified by Regulation 1612/68.

3.3.2 The view of the Netherlands

In order to support students in becoming mobile, the Dutch government introduced portable student support in 2007. Enabling student mobility, something very much in line with the ideas of the European Commission, was only possible if a requirement would be introduced to prevent unintended use of student support: the residence requirement. This condition prevents unintended use of portable student support by mainly two groups: migrated worker-students who stay less than 3 years in the Netherlands and want to use student support for studying outside the EU, and children of migrated workers who live and study in their home countries. Allowing those groups to use Dutch portable student support would bring along unreasonable high costs. Stimulated by the 2005 ruling on the case Bidar (C 209-03), the Dutch government introduced the residence requirement in order to overcome this problem. In the Bidar ruling, the ECJ decided that a minimum of 3 years residency is accepted as a requirement for the eligibility for student support, knowing that such a condition is more difficult to meet for non-nationals. This idea was even strengthened when the ECJ decided on the 2007 Förster case (C 158-07), where it was allowed for a certain measurement of integration (in that case 5 years). The Netherlands argue further that they used the example of the Danish/ Swedish system: In Denmark a two-out-of-10 and in Sweden a 2-out-of-5 requirement are in use. All in all, the Dutch government is aware of the fact that the new requirement is limiting, even though fully equal to nationals and non-nationals, but regards it as a necessary condition in order to enable the introduction of portable student support. It also stresses the fact that the ECJ allowed for similar criteria in earlier cases.

On the 15th April 2009 the Commission issued an advice to the Dutch government to change the residence requirement, giving them two months time to do so. The Dutch government however sent a letter to the Commission once more repeating their point of view and did not change the requirement in time. As a consequence the EC brought them in front of the ECJ. The ruling is still pending.

In the following chapter a comparison between the portable student systems countries have introduced for degree mobility will be provided. This comparative analysis is based on empirical research conducted using surveys and semi-structured interviews.

Chapter 4: Comparative analysis of different approaches to prevent unintended use of student support

Within the European Union there are only a small number of countries with portable student support. Those countries are the Netherlands, Germany, Denmark, Sweden, Finland and Norway (not belonging to the European Union, but included in the thesis for convenience).

In the following an overview of the conditions on portable student support (introduced by the Member States in order to prevent unintended use of student support), why Member States decided to use certain measurements and how they look at the recent case the Netherlands vs European Commission, will be given. This, based on the answers of my survey/interview with the Ministries of Education of each country.

4.1 Germany

3 years –requirement

Germany introduced full portability of student support for complete and part-time studies abroad in December 2007 through the implementation of the 22nd Bafög Änderungsgesetz (student support modification law¹⁷). Before, portability was only possible if students had studied within the country for at least 1 year. In addition to the requirements such as maximal age (30 years) that all students, also those studying within the country, have to fulfill in order to be eligible for student support (BAFÖG), students applying for portable student support must have lived in Germany three years immediately before starting their abroad studies. Through this measure a certain link between the student and the country shall be ensured, to avoid an unreasonable burden on German taxpayers. In fact the German Ministry of Education regards this criteria necessary in order to show political responsibility when dealing with the domestic budget. Germany joined the Netherlands in spring 2010 as a partner in the ECJ case on the Dutch residence requirement. This, mainly due to their belief that a residence requirement is a rather objective criterion, especially since it is the same for all nationalities. A decision by the ECJ that residence requirements are discriminatory according to EU law, incurs a danger to the current German system- and portability of student support as such (German Ministry of Education, 2010).

¹⁷ Bafög Änderungsgesetz, 2007. Paragraph 16, clause 3.

4.2 Denmark

2-out-of-10 years requirement

In Denmark portable student support for degree studies was introduced in 2002. It is generally granted for Higher Education only and for a maximum of four years (even if there are exceptions¹⁸). In order to be eligible for portable student support, students (of Danish or any other EU nationality) have to fulfill two important criteria:

First, the study program must meet the same conditions for recognition „as a comparable study in Denmark“ (SU, 2010) and the acquired qualifications „must be usable in Denmark“ (SU, 2010). Second, students have to fulfill a residence requirement: They must have been a resident in Denmark for a period of at least 2 years within the last 10 years consecutive to their stay abroad prior to the reception of the application“ (SU, 2010). The residency requirement came into force on July 1, 2002 and was “introduced to ensure that students receiving student support for studies abroad have a genuine link to Denmark” (DESA, 2010). Denmark is “aware of the pending ECJ case against the Netherlands and [...] the Danish Government [is expected] to support the Dutch residence requirements” (DESA, 2010).

4.3 Finland

2-out-of-5 years requirement

In Finland portable student support is limited to students who have been “a registered resident of a Finnish municipality (as determined in the Home Municipality Act) for a minimum of two years during the five years preceding the beginning of studies”(Finnish Ministry of Education, 2010). In addition there are a number of other requirements to be met by students in order to be eligible to student support portability similar to the conditions students have to meet to be eligible to financial support at home.¹⁹ The residence requirement was implemented for the purpose of

¹⁸ ‘In very specific cases, support is granted for more than 4 years, if a long-lasting program with the same occupational aim is not provided in Denmark, and if the qualifications obtained meet a special labor market need in Denmark’ (SU, 2010).

¹⁹ 1. In order to qualify, a student must have gained admission to a school, study full time, and be in need of financial assistance.

2. A student can get financial aid for abroad studies, if they correspond to the Finnish studies that are covered by the system.

3. A student must have been resident in Finland for at least two years within the five years preceding the course of study abroad. In other words, if a student have lived abroad for more than three years before beginning studies, she/he is not qualified. Financial aid for a course of study which is conducted entirely outside Finland is only available for citizens of Finland, other EU/EEA countries or Switzerland and their family members. Requirements which apply to citizens of EU/EEA countries and Switzerland are that they are working in Finland and the intended course of study is closely linked to their job or that they are unwillingly unemployed.

4. For those studying outside Finland, the Study Grant is paid at the same rate as it would be in Finland, with the exception that the grant for studies at a foreign vocational training institute is equal to the grant provided to students

“determining integration [,] ensuring equal treatment of people [and] preventing aid-shopping” (Finnish Ministry of Education, 2010). Finland considered the two-year condition as a reasonable measurement for a link between the student and the country and as an “appropriate targeting of state funds for student financial aid” (Finnish Ministry of Education, 2010). In addition the two-year requirement is considered as a benchmark to put citizens of Finland and the whole European Union on an equal starting point in regard of studies abroad. Finland considers the residence requirement as essential, since otherwise foreign students may be attracted to use the support system, even though they do not have actual ties with the country (a danger especially applying to continental Europe because distances are smaller). This, especially since the country is a supporter of the home country approach (Finnish Ministry of Education, 2010). Concerning the recent case between the Netherlands and the Commission, Finland reckons the claim of the Commission that the Dutch residence requirement is discriminatory, but does not necessarily fear consequences of the outcome, however it might be. Furthermore comparable conditions for obtaining student financial aid are considered to be important- possibly including certain requirements. It therefore argues in line with the Netherlands that the country “providing the aid must be able to determine the criteria for granting on national premises” (Finnish Ministry of Education, 2010). Especially when keeping in mind that the competence in national student financial aid legislation stays within the Member States. Finland consequently supports the Netherlands, even though its own residence requirement can be met more easily, saying that the degree of integration may vary between national systems. However, it also states that “if the requirement were more than two years, it would undermine mobility and possibilities to study abroad, and the financial aid could be granted to much fewer people than at present” (Finnish Ministry of Education, 2010).

4.4 Sweden

2-out-of-5 years requirement

In Sweden students (of Swedish, any EU country or Swiss nationality) are eligible to financial student support in case they fulfill the residence requirement, which says that the student „may be entitled to study support for studies outside Sweden if he/she has been a resident in Sweden for at least two consecutive years during the last five years“ (Regeringskansliet, 2010). In addition there are certain conditions that the host Higher Education Institution has to meet. The Swedish government introduced those conditions in 2006, due to the basic argument that students should have a strong tie/connection to the host country in order to be entitled to portable student support. Sweden, holding one of the most generous student support systems, thereby hoped to

attending a higher education institute in Finland. Housing Supplement (usually EUR 210 per month) and the government guarantee for student loans (EUR 440 per month for higher education studies and EUR 360 per month for secondary-level studies) are also available.

prevent unintended use. The choice to implement the specific two-out-of-five rule was based on the opinion that „this length of residence was considered long enough to establish a strong connection to the host country. In addition it was an argument that the time limits were similar to those in other Nordic countries“ (J. Wockatz, personal communication, June 18, 2010). In 2006 the Swedish government held the opinion that the rulings of the ECJ did not make demands for strong ties/connections with the host country impossible. The government also noted that the ECJ had not made any rulings on specific Swedish conditions in this matter and that the consequences of such a ruling, with a negative outcome for Sweden, could be that it is necessary to limit even Swedish citizen’s right to study support. Sweden has not so far been subject to any kind of assessment stating that this rule is discriminating (J. Wockatz, personal communication, June 18, 2010).

In the light of the recent ECJ ruling on the Netherlands the Swedish government is afraid of possible consequences for their own national student support system and a possible turn to “student support shopping”: EU-citizens who want to study at home or in another Member State may apply for portable student support from the country that offers the most favorable conditions (J. Wockatz, personal communication, June 18, 2010). As a consequence the Swedish government hopes that the ECJ pays attention to the arguments of the Netherlands and does not fully follow the Commission’s line of arguments²⁰.

4.5 Norway

2-out-of-5 years requirement

In order to receive portable student support from the Norwegian government, students either have to be of Norwegian nationality, that means they possess Norwegian citizenship, or they have the status of an EU/EEA-worker or family member with a right to permanent residence. If both is not applicable students may be eligible to portable student support if they have lived two out of the last five years in the country. This requirement is additional to the requirements for all students studying in Norway and abroad²¹. The Norwegian government views the residence requirement as necessary in order to show that a person has a link with the Norwegian society. Concerning the recent ECJ case on the Dutch residence requirement, the Norwegian government does not have any suggestions to the Netherlands. Due to the fact that Norway is not a Member of the European Union, it does not have to fear any consequences from the current case Dutch vs. the European Commission (Norwegian Ministry of Education and Research, 2010).

²⁰ see 3.3.1

²¹ Remarkable is that students in Norway have to prove by documentation that they are admitted at an institution and that tuition fees have been paid. In addition academic achievements will be proofed regularly.

4.6 Comparative analysis

Remarkably, all of the countries having introduced portable student support, being Germany, the Netherlands, Sweden, Denmark, Norway and Finland introduced a certain residence requirement in order to avoid unintended use of their systems. The form of these residence requirement thereby varies only a bit: whereas students are eligible to German portable student support if they have lived within the country during the three years consecutive before going abroad, students must have lived three out of the last six years in the Netherlands before they go abroad, two out of 10 years in Denmark, and two out of five years in Finland and Sweden. In all countries, these requirements must be fulfilled in addition to a number of other conditions applicable to all students- studying within the country or abroad. Interesting to note, even though all countries have different measurements (except Sweden and Finland), they all argue that the time period chosen by them is suitable to prove a certain link with the country. Especially the Nordic countries thereby admit that the choice of their neighboring countries were used as a guideline while designing their student support model.

Concerning the current ECJ case on the Dutch residence requirement almost all countries (except Norway, which is no member of the European Union and therefore does not need to fear consequences), are following the process intensively, not knowing why the European Commission chose to bring the Netherlands in front of the ECJ, even though similar residence requirements were implemented a lot earlier. Even though only Germany joined the case as a party, all other European countries with portable student support argue that a residence requirement is crucial in order to enable their generous system. As a result they fear the consequences of a judgment saying that the three-out-of-six requirement is discriminatory. In fact none of the countries has an alternative solution to avoid unintended use, which brings along a high danger that, in case they are forced to open up their system to all students, they need to withdraw portability.

4.7 Point of View Commission

Based on an interview conducted the 16th of July 2010, with Jochem Nordhoek (working as a representative of the European Commission in the Netherlands), more information on the question why the Netherlands have been sued by the European Commission concerning their residence requirement and not other countries having had introduced similar measures already years before, was attained. According to him, the difference in the residence requirements (amount of years required to have lived in the country before being eligible to portable student support) is not necessarily decisive. Instead it is very like that the Dutch student support system caught the attention of the Commission by coincidence. This might be related to the most recent ECJ case in the Higher Education domain, concerning Jacqueline Förster (case description see above). Even though the introduction of portable student support is not a direct measure of a decision made by the ECJ (and therefore cannot be considered as wrong implementation of ECJ case law), the

number of cases concerning the Dutch student support system as mentioned above, might have increased the Commission's interest in the Dutch system and finally might have led to the concern that the Dutch residence requirement is against the non-discriminatory principle of the European Union. In addition pressure to investigate the case may have come directly from European citizens or the representative Ombudsman.

All in all, he concludes that it is very likely that the Commission chose the Dutch residence requirement by coincidence. This claim may be valid for other requirements as well, but so far the Commission wasn't aware of these regulations. Nordhoek argues that due to a lack of time and resources the Commission cannot examine each new piece of legislation from its Member States, but only when it comes across it by coincidence, e.g. via a case brought in front of the ECJ touching the area, or when there are complaints from European citizens. Nordhoek denied giving more information on the Commission's point of view concerning the fairness of their claim and possible solution practices in order to avoid unintended use of portable student support.

Chapter 5: Conclusion

Student mobility is an important goal of the European Union and its Member States in order to adapt to the general process of internationalization. It enhances personal development, cultural exchange, learning different languages and creating international networks. Within this thesis it is argued, based on the theory of Knight (2008), that through internationalization political, cultural & social, academic, economic and institutional rationales arose. This makes it an important task for countries to encourage students to go abroad. Student mobility can be approached by countries using a variety of financial support systems, which are explained within this paper. In the European Union several student support systems exist: direct versus indirect support, a number of different criteria in order to be eligible for support, including merit- and mean-based systems and the optional portability of student support. Portable support then can be split into support for short-term (credit mobility) and for long-term studies (degree mobility). Whereas support for short-term studies is rather common, there are only six countries having introduced portability for long-term direct financial support: Sweden, Denmark, Norway, Finland, Germany and the Netherlands²². Since the implementation of portable student support contains certain financial risks, all countries established requirements which need to be met by students in order to receive portable financial support.

The perspective of the European Union on student mobility is very supportive. This builds an incentive for the European Commission to involve in an internal and external process, thereby supporting the elimination of obstacles to student mobility. The processes mentioned are the Bologna process, externally, and the development of Community law, internally.

Within this report emphasis is given to the internal process. Therefore an analysis of the 10 most important ECJ cases on student support has been conducted. Whereas the European Union initially did not have any competences in the Higher Education Area, this gradually changed through ECJ judgments based on the non-discriminatory principle, anchored in Article 12 EEC treaty. In addition, another change between the earlier and more recent judgments could be observed: in the beginning the ECJ argued for the broadening of rights for all European citizens based on an economical argument, whereas later also rights were given to students who did not have an economical link with their host countries. In addition, the analysis also showed that only a small number of different countries were brought in front of the ECJ: Belgium, the Netherlands, Austria, the UK and Germany. This is of special interest, since a common feature of these countries is a rather generous support system.

²² For the sake of simplicity Norway is considered an European Union country within this thesis. However, a possible decision of the ECJ will of course not influence their student support system- since there is no direct legal binding consequence.

All in all, the analysis clearly shows that the ECJ widened the scope of competences for the European Union in the Higher Education Area, arguing on the grounds of Article 12 EEC (the non-discrimination principle), since there is no direct treaty provision concerning the Higher Education area. By doing so, the rights of European citizens studying in other Member States were widened broadly, even though ECJ case law focused on a very limited number of countries.

Referring to the case law analysis, one of the most important cases for the introduction of portable student support is the Bidar judgment. Within this case the ECJ decided that European citizens may be eligible to social advantages even though they did not have an economical link to the country under the condition that they showed a certain degree of integration. Based on this judgment certain countries introduced portability of student support requiring a certain degree of integration from students willing to receive portable student support.

The recent claim against the Netherlands, that the three-out-of-six requirement (students need to have lived three out of the last six years within the Netherlands in order to be eligible to portable student support) is discriminatory was brought forward from the Commission's Directorate General on Employment, Social Affairs and Equal Opportunities.

Within this research interviews with the ministries of all countries, having introduced portability, are conducted in order to understand how countries designed their student support system in order to avoid unintended use (use of the financial support by students who do not have a link to the country) of their student support models. Attention was also given to the perception of the current claim of the European Commission (that the Dutch residence requirement is against the non-discriminatory principle anchored in Community law) by the countries interrogated.

The results of the survey clearly showed that all of the countries tried to avoid unintended use of their systems by implementing a residence requirement. Those residence requirements varied only slightly in form: whereas students are only eligible to German portable student support if they have lived within the country the three consecutive years prior to them going abroad, students must have lived three out of the six years in the Netherlands prior to their stay abroad, two out of 10 years in Denmark, and two out of five years in Finland and Sweden (and Norway). Time periods are chosen based on the belief that they are adequate to measure a certain degree of integration between the student and the country.

Concerning the current ECJ case on the Dutch residence requirement almost all countries (except Norway, which is no member of the European Union) fear consequences from the outcome of the judgment. This, especially in connection with their lack of alternative solutions in order to avoid unintended use of student support. Even though only Germany joined the ECJ case as a party, also all other European countries argue that a residence requirement is crucial in order to enable the establishment of their rather generous systems.

Having analyzed the different residence requirements, one can say that they are fairly similar to each other and therefore no direct explanation why only the Netherlands got sued by the ECJ can be deviated from it. The most likely explanation is that the European Commission came across the Dutch residence requirement more or less by chance- probably while dealing with the Förster judgment. This, especially since the Dutch requirement is to be found somewhere in the middle between the strictest requirement (Germany) and the one met most easily (Denmark). According to Jochem Nordhoek (representative of the European Commission in the Netherlands) the European Commission is limited in time and resources and therefore hardly detects domestic law, which is not in line with Community law, immediately. Most of the time the European Commission either gets a hint from a third party, the ECJ is asked to judge on a certain measurement or the European Commission comes across domestic law not in line with Community law while supervising the correct implementation of a case touching the area.

Having analyzed the European case law on student support, including the recent case concerning the Dutch residence requirement, and considering the opinion of the Member States, a clear dilemma arises. The European Union clearly promotes student mobility, thereby encouraging its Member States to support their students financially during their studies abroad. This on the one hand is done via an external process, the Bologna process, where the European Commission facilitates information, advice and resources to the Member States. On the other hand it is done via an internal process, European Community law. The internal process however works twofold. Whereas the rights of students are indeed broadened through ECJ judgments, making it easier for students to study abroad, it also increases the burden of the Member States. This might be different in case all Member States would be affected by the rulings of the ECJ. The current situation however looks differently. Only those Member States having established a rather generous student support system are brought in front of the ECJ. This brings along the consequence that those countries are becoming very careful in introducing new incentives for students to go abroad, such as portability, since they fear unintended use of their financial support models. Especially the recent case concerning the Dutch residence requirement is a very critical one. In case the ECJ would decide that the residence requirement is discriminatory, this may lead to the abolishment of portable student support in many countries, which would then mean that while trying to promote student mobility without discrimination the European Union would actually work contrariwise and would force countries to recall portability. Interesting to note at this point is that even though all European countries will be affected by the judgment only Germany joined the case.

By analyzing the main research question **“To what extend is the Dutch residence requirement for portability of student support in line or not with the European Commission’s policies and Community law on student mobility?”** it got clear that the European Union at this moment is stuck in the dilemma mentioned above. This especially since the residence requirement seems to be the

least discriminatory requirement and best solution to avoid unintended use and a non-acceptable burden to countries. To put it frankly, there is no good alternative to the model of portability of student support of the Netherlands without increasing the budget significantly. The core problem consequently is that when countries are forced to remove the residence requirement, it will most likely cause them to recall the implementation of portable student support as a whole²³. This would mean that through the efforts to increase the scope of students eligible to portable student support, the European Union would reach the opposite outcome: the abolishment of student support portability. This is supported by the fact that none of the countries have an alternative solution and all of them fear that they will be forced to limit portability also for their national students. All in all, the current residence requirements seem to be the least discriminatory and most feasible option in order to prevent students, who do not have any link to a country, from making use of its portable student support system.

The ambiguity lies in the function of the residence requirement. Looking at it separately, it can be described as discriminatory and therefore not in line with the Community's principle and laws. It however enables countries to introduce portability of student support for degree mobility, a measurement very much in line with the European Union's policy. In order to answer the main research question it can be stated that the Dutch residence requirement of student support is only so far in line with the European Commission's policy as it enables the introduction of portable student support.

When it comes to the question whether the residence requirement is in line with Community law on student mobility, the answer is rather complicated. On the one hand the ECJ did mainly strengthen the rights of students through their judgments in the last years. It based its decisions almost entirely on the non-discrimination principle. As a consequence it is most likely that the ECJ would argue against such a requirement. On the other hand the ECJ judged on a number of cases, such as Bidar and Förster, in a way that allowed certain criteria, such as measurements of integration. Based on these two judgments it would be surprising if the ECJ decides that concerning portable student support a certain measurement of integration is against Community law. The still pending decision of the ECJ will consequently bring along new research topics, which at this point of time cannot be answered.

²³ Unfortunately most countries did not want to give away any information about how they might change their systems in case the ECJ decides that a residence requirement is against EU law. This, either because they simply do not know yet or due to political rationales.

Chapter 6: Limitations of the study

As most other studies, my research has significant limitations. Important to note here is that the research did not intend to enable generalization. Instead it focuses on investigating the single case concerning the claim of the European Commission that the Dutch residence requirement is against Community law. It mainly consists of two important parts: a qualitative analysis on ECJ case law concerning student mobility and a qualitative analysis of the student support systems provided by all European countries having established portability of student support. Within the first part a selection of cases is done based on the importance of the judgments for the Higher Education Area, in particular student mobility. Due to limitations in time only 10 cases were investigated. This accounts for a rather specific analysis of the development of the rationales of the ECJ on student mobility. Further research would be needed to include more case law and opinions of the ECJ and the EC, in order to get a more detailed view on the argumentation of both institutions.

Concerning the second part, there are a number of restrictions as well. The survey was sent to all countries, having introduced portable student support. However, it would also have been of great interest to receive information of those countries who do not introduce portability. Unfortunately due to time limitations this was not possible. In addition those representatives who answered the questionnaire were not always willing or able to answer all questions, based on political or juridical reasons. It would be of special interest to hear how the European Commission argues within the discussion presented above. Unfortunately they were not willing to give much information.

The use of other methodologies would additionally strengthen the significance of this research. In order to analyze the policy of the European Commission it may be very useful to do a survey with persons working for the Commission. In addition all White or Green papers issued by the Commission on the subject could be analyzed. This would also enable the differentiation between the European institutions. Within the provided study the European Union and its organs are assumed to be a single actor. In reality however they act as several ones. To analyze the discriminatory character of a residence requirement, research on the use of it in different fields could be conducted. However, due to the limited amount of time and resources provided, the above mentioned approach has been chosen. Future research however needs to be done in order to increase the significance of the outcomes.

7. References and Attachments

7.1 References

- Atlas of student mobility (2010). *United Kingdom 2009*. Retrieved 10.07.2010 from <http://www.atlas.iienetwork.org/?p=48047>
- Börzel, T. (2003). *How the European Union Interacts with Member States*. Retrieved 25.02.2010 from http://aei.pitt.edu/1049/01/pw_93.pdf
- Caddick, S. (2008). *Back to bologna. The long way to European higher education reform*. Retrieved 03.03.2010 from <http://www.nature.com/embor/journal/v9/n1/full/7401149.html>
- Cowles, M. G., Caporaso, J. & Risse, T. (2001). *Transforming Europe*. Queens Papers pd Europeanisation, 1/2004. In: Lenschow, A. (2006), in: Richardson, J. (2006), *European Union, Power and policy-making*, 3rd edition, Routledge, New York. Page 55-71
- Corbett, A. (2005). *Universities and the Europe of Knowledge*. Palgrave Macmillan, London
- Dassen, A. & Vossensteyn, H. (2010). *Mobiliteit en studiefinanciering*. Cheps, Twente, Enschede.
- Deane, C. & Pauwels, W. & Rauhvargers, A. (2009). *Bologna Process Stocktaking Report 2009*, Leuven.
- EC (2010). European Commission: Erasmus Student mobility. Retrieved 09.07.2010 from http://ec.europa.eu/education/erasmus/doc894_en.htm
- ECL (2007). *EU case law- a blog about leading judgments of the ECJ, CFI, CST and ECTHR*. Retrieved 05.09.2010 from <http://www.eucaselaw.info/rudy-grzelczyk-2001/>
- ESU (European Student Union), 2010. Student Mobility. Retrieved at 20.06.2010 from http://www.esib.org/index.php?option=com_content&task=view&id=95&Itemid=272
- EU (European Union), 2010. *Portability of financial student support all over the world*. Retrieved 17. 07.2010 from <http://www.kslll.net/PoliciesAndAchievements/ExampleDetails.cfm?id=9>
- European Citizenship, 2010. The European Citizens Initiative. Retrieved 22.06.2010 from <http://www.european-citizenship.org/>
- Field, J. (1998). *European dimensions : education, training and the European Union*, Editor Jessica Kingsley Publisher.
- Gellert, C. (1999). *Innovation and adaptation in higher education: the changing conditions of advanced teaching and learning in Europe*. London, Kingsley
- Hartley, T. C. (2004). *European Union Law in a Global Context, Text, Cases and Materials*. Cambridge University Press, Cambridge

Portability of student support – the residence requirement
Shirin Reuvers, 15.10.2010

Hooghe, L. & Marks, G. (2003). *Unraveling the Central State, but How? Types of Multilevel Governance*. American Political Science Review, Vol. 97, No 2.

Huisman, J & van der Wende, M. (2004). *The EU and Bologna: are supra- and international initiatives threatening domestic agendas?** European Journal of Education, Vol. 39, No. 3, 2004

Kaiser, F. Vossensteyn, H. en Koelmand, J. (2001). *Public funding of higher education- A comparative study of funding mechanisms in ten countries*. CHEPS-Higher education monitor, Enschede.

Keeling, R. (2006). *The Bologna Process and the Lisbon Research Agenda: the European Commission's expanding role in higher education discourse*. European Journal of Education, Vol. 41, No. 2, 2006

Kleinman, M. (2002). *A European Welfare State? European Union Social Policy in Context*. Palgrave, New York.

Knight, J. & Wit, H. (2007). *Strategies for internationalization of higher education: historical and conceptual perspectives*. International Education Magazine, Vol.9, No.1

Knight, J (2008). *Internationalization Brings Important Benefits as Well as Risks*. European Journal of Education, 2008

Knill, C. & Lehmkuhl, D. (1999), *How Europe Matters. Different Mechanisms of Europeanization*. Retrieved 21.02.2010 from <http://eiop.or.at/eiop/texte/1999-007.htm>

Lenschow, A. (2006). in: Richardson, J. (2006), *European Union, Power and policy-making*, 3rd edition, Routledge, New York. Page 55-71

McCormick, J. (2005). *Understanding the European Union, A Concise Introduction*. 3rd Edition. Palgrave Macmillan: New York

Mietens, A. (2008). *The Europeanisation of Student Financial Support, a case study of the changes of the Dutch and German Student Financial Support Systems*. CHEPS, Universiteit Twente: Enschede.

Ministerie van Onderwijs en Wetenschappen, (1986). *Studiefinanciering, Globale beschrijving van de rol van de Rijksoverheid van de periode 1919-1986*. Publicatie van het Ministerie van Onderwijs en Wetenschappen: Den Haag.

Ministerie van Onderwijs, Cultuur en Wetenschap, (2007) *Studentenmonitor, 2006, Beleidsgerichte studies Hoger onderwijs en Wetenschappelijke onderzoek*, Publicatie van het Ministerie van Onderwijs, Cultuur en Wetenschap: Den Haag.

Ministerie van Onderwijs, Cultuur en Wetenschap (2001), *Studeren zonder grenzen, Studiefinanciering: de basis voor studeren n het buitenland*. Ministerie van OCW: Den Haag.

Pfetsch, F.R. (2001). *Die Europaeische Union, Eine Einfuehrung*. 2nd edition. UTB: Muenchen

Portability of student support – the residence requirement
Shirin Reuvers, 15.10.2010

Qiang, Z. (2003). *Internationalization of higher education: towards a conceptual framework*. Policy Futures in Education, Volume 1, Number 2, 2003.

Regeringskansliet, 2010. *The Swedish study support system*. Retrieved 20.06.2010 from <http://www.sweden.gov.se/sb/d/2098/a/69849>

Richardson, J. (2006). *European Union, Power and policy-making*. 3rd edition. Routledge: New York.

Schwarz, S. & Rehburg, M. (2004). *Study Costs and Direct Public Student Support in 16 European Countries — Towards a European Higher Education Area*. European Journal of Education , 521-532.

SU, 2010. *SU- The Danish students' Grants and Loans Scheme*. Retrieved 20.06.2010 from <http://www.su.dk/English/Sider/default.aspx>

Teichler, U. (2004). *Internationalisation of Higher Education: European Experience*. International Centre for Higher Education Research Kassel

Van Keulen, M. (2006). *Going Europe or Going Dutch, How the Dutch Government Shapes European Union Policy*. Amsterdam University Press

Van der Wende, M. (2009). *European Responses to global competitiveness in Higher Education**. University of California, Berkeley.

Van Vught, F. (2006). *A supranational European university policy?* Contribution to the Project 'The Public Interest and Academic Research',

Vossensteyn, H. (2004)a,. *Portability of student financial support, An inventory in 23 European countries, main report*. Ministerie van Onderwijs, Culture en Wetenschap: Den Haag.

Vossensteyn, H. (2004)b. *Student financial support, An inventory of 23 European countries, Background report for the project on the portability of student financial support*. Ministerie van Onderwijs, Cultuur en Wetenschap: Den Haag.

Vossensteyn, H. (2000). *Mobiliteit en studiefinanciering, Studiefinancieringsarrangementen van 16 West-Europese landen voor het volgen van een volledig hoger onderwijsprogramma in het buitenland. Eindrapport*. Ministerie van Onderwijs, Cultuur en Wetenschap: Den Haag.

Vickers, P. & Bekhrania, B. (2007). *The economic Costs and Benefits of International Students*. Higher Education Policy Institute (HEPI).

Wessels & Weidenfeld (2002), *Europa von A bis Z*. Bundeszentrale fuer politische Bildung:

Bonn.

Witte, J. K. (2006), *Change of degrees and degrees of change : comparing adaptations of European higher education systems in the context of the Bologna process*. Retrieved at 25.02.2010 from http://www.che.de/downloads/C6JW144_final.pdf

Wockatz,J., personal communication, June 18, 2010.

Others:

Berlin communiqué

Retrieved 20.03.2010 from <http://www.bologna-berlin2003.de/pdf/Communique1.pdf>

Bergen communiqué

Retrieved 20.03.2010 from

[http://www.uibk.ac.at/fakten/leitung/lehre/bologna/downloads/bergen_communique_\(english_310_b\).pdf](http://www.uibk.ac.at/fakten/leitung/lehre/bologna/downloads/bergen_communique_(english_310_b).pdf)

BFUG Working group report of the working group of portability of grants and loans

Retrieved 20.03.2010 from

http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/WGR2007/Portability_of_grants_and_loans_final_report2007.pdf

Bologna Process

Retrieved 20.03.2010 from http://www.aic.lv/ace/ace_disk/Bologna/Bol_semin/Noordwijk/index.htm

London Communiqué

Retrieved 20.03.2010 from

<http://www.dfes.gov.uk/londonbologna/uploads/documents/Reportportabilityworkinggroupfinal.doc>

Lisbon Strategy

Retrieved 20.03.2010 from http://europa.eu/scadplus/glossary/lisbon_strategy_en.htm

Prague convention:

Retrieved 20.03.2010 from http://www.bologna-berlin2003.de/pdf/Prague_communicuTheta.pdf

WSF-oud , juni 1986. Retrieved at 20.05.2010 from <http://wetten.overheid.nl/>

WSF 2000. Retrieved at 20.05.2010 from <http://wetten.overheid.nl/>

Dutch parliament, Tweede Kamer. *Wijziging van onder meer de Wet studiefinanciering 2000 in verband met uitbreiding van de mogelijkheid met studiefinanciering in het buitenland te studeren, invoering van het collegedcredit en invoering van een nieuw aflossingssysteem*, Memorie van toelichting. 2006-2007, number 30 933, 's-Gravenhage, 2007

Portability of student support – the residence requirement
Shirin Reuvers, 15.10.2010

<http://wetten.overheid.nl/>

Tweede Kamer der Staten-Generaal, Vergaderjaar 2001-2002, nummer 24 724, *Studiefinanciering, Brief van de Ministerie van Onderwijs, Cultuur en Wetenschappen, aan de Voorzitter van de Tweede Kamer der Staten-Generaal*. 2002, 's-Gravenhage
<http://wetten.overheid.nl/>

Wetgeving en juridische Zaken (2007), *Deel 6, Wet studiefinanciering 2000, Wet tegemoetkoming onderwijsbijdragen en schoolkosten, Wet verzelfstandiging Informatiseringsbank, les- en cursusgeldwet*. Ministerie van Onderwijs, Cultuur en Wetenschap: Den Haag. Retrieved 20.06.2010 from <http://wetten.overheid.nl/>

Council Regulation 1612/68 in: Busby, N. & Smith, R. (2006). *Core EU Legislation*. Law Material Publishing, Exeter. Page 202-203

Directive 2004/38 in: Busby, N. & Smith, R. (2006), *Core EU Legislation*. Law Material Publishing, Exeter. Page 234-248

Consolidated Version of the Treaty Establishing the European Community. In: Busby, N. & Smith, R. (2006). *Core EU Legislation*. Law Material Publishing, Exeter. Page 1-70

Exchange of letters:

01.08.2007 European Commission to the Netherlands

17.09.2007 The Netherlands to European Commission (WJZ/2007/36368)

03.04.2008 European Commission to the Netherlands (C(2008) 1015)

24.10.2008 The Netherlands to European Commission (BRE-JIZ/08-833)

14.04.2009 European Commission to the Netherlands (C(2009) 2396)

14.12.2009 European Commission to the Netherlands (JURM(09) 12067)

ECJ Case Law:

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

1983: Gravier 293/83

1989: Raulin C357/89

1990: Bernini C-3/90

1997: Meeusen C-337/90

1999: Grzelcyk C-184/99

2001: Ninni-Orasche C-412/01

2003: Bidar C- 209/03

2006: Morgan C11/06 and
Buchner C-12/06

2007: Förster C158/07

7.2 Attachments

7.2.1 Survey questions

Survey questions:

- 1) Your country introduced portability of student support in Xx (dependent on country).
 - a. How did you try to prevent unintended use of the support model?
 - b. What are the specific criteria to be fulfilled by students in order to be eligible to portable student support?
- 2) Why did you introduce these conditions? Please explain in detail (E.g.: Residence requirement: Why exactly three-out-of-six years, not two-out-of-six or four-out-of-6?)
- 3) The European Commission has recently brought the Netherland for the Court of Justice due to their residence requirement. They claim that the residence requirement is not in line with the non-discriminatory principle of the European Union.
 - a. Do you believe that this will have consequences for your national model of portability?
 - b. Why do you think did the EC bring the Netherlands before the ECJ and not any other country with similar requirements?
 - c. What are you planning to do with your model of student support portability in order to stay in line with the non-discriminatory principle?
 - d. What would you suggest to the Netherlands?

7.2.2 Answers of the survey by the Ministry of Finland

1. Your country introduced portability of student support very early. How did you try to prevent unintended use of the support model?

We require that the student has been a registered resident of a Finnish municipality (as determined in the Home Municipality Act) for a minimum of two years during the five years preceding the beginning of studies.

b. What are the specific criteria to be fulfilled by students in order to be eligible to portable student support?

1. In order to qualify, a student must have gained admission to a school, study full time, and be in need of financial assistance. 2. A student can get financial aid for abroad studies, if they correspond to the Finnish studies that are covered by the system. 3. A student must have been resident in Finland for at least two years within the five years preceding the course of study abroad. In other words, if a student have lived abroad for more than three years before beginning studies, she/he is not qualified.

Financial aid for a course of study which is conducted entirely outside Finland is only available for citizens of Finland, other EU/EEA countries or Switzerland and their family members. Requirements which apply to citizens of EU/EEA countries and Switzerland are that they are working in Finland and the intended course of study is closely linked to their job or that they are unwillingly unemployed.

4. For those studying outside Finland, the Study Grant is paid at the same rate as it would be in Finland, with the exception that the grant for studies at a foreign vocational training institute is equal to the grant provided

Portability of student support – the residence requirement
Shirin Reuvers, 15.10.2010

to students attending a higher education institute in Finland. Housing Supplement (usually EUR 210 per month) and the government guarantee for student loans (EUR 440 per month for higher education studies and EUR 360 per month for secondary-level studies) are also available.

c. Why did you introduce these conditions? Please explain in detail (E.g.: Residence requirement: Why exactly 2-out-of-5 years, not something else?)

1. For the purpose of determining integration.

- The two-year requirement is a fairly reasonable demand as a demonstration of integration with the country granting the financial aid. If the requirement were more than two years, it would undermine mobility and possibilities to study abroad, and the financial aid could be granted to much fewer people than at present.

2. For the purpose of ensuring equal treatment of people irrespective of their nationality

It puts citizens of Finland and other countries on an equal footing in regard of studies abroad.

3. For the purpose of preventing aid-shopping and for appropriate targeting of state funds for student financial aid.

Without any residence requirement, the financial aid could attract foreign students who have no actual ties with Finland to come to Finland with the sole purpose of benefitting from the Finnish student aid system.

4. It is a general principle in student financial aid systems is that it is the home country and not the host country that provides aid. Other countries also require residence of some length in the granting country or other close ties with the country.

2. The European Commission has recently brought the Netherland for the Court of Justice due to their residence requirement. They claim that the residence requirement is not in line with the non-discriminatory principle of the European Union.

a) Do you believe that this will have consequences for your national model of portability?

It is possible, but not necessary.

b) Why do you think did the EC bring the Netherlands before the ECJ and not any other country with similar requirements?

Presumably in order to promote mobility and to guarantee equal treatment of workers. Because of shorter distances, student mobility is more common in Continental Europe, which is why the requirement of residence has more importance.

c) What are you planning to do with your model of student support portability in order to stay in line with the non-discriminatory principle?

We follow international developments and seek to assess the consequences of new court cases for national legislation in collaboration with other Member States. The conditions for obtaining student financial aid must be comparable, but in all probability this does not mean a ban on conditions/requirements.

d) What would you suggest to the Netherlands?

The competence in national student financial aid legislation resides in the member states. The country providing the aid must be able to determine the criteria for granting on national premises. Thus the application of national legislation also has repercussions on the national economy. The purpose of the

restrictions is partly to prevent "aid shopping", or immigration in the purpose of getting aid for the immigrant or his/her family member through the student aid scheme of the receiving country.

On the whole, however, each state should take care of the income of their own citizens during their studies. It is reasonable to expect integration of a certain degree into the host country before student financial aid is granted. The degree of integration required may vary from one national system to another.

7.2.3 Answers from the Ministry of Norway

See following page.



ROYAL NORWEGIAN MINISTRY OF
EDUCATION AND RESEARCH

Shirin Reuvers
s.i.m.reuvers@student.utwente.nl

Your ref

Our ref
201003295-/SMO

Date
16.08.2010

Dear Shirin Reuvers,

Questions on portable student support - Norway

The Norwegian Ministry of Education and Research refers to the questions in your e-mail of June 15, 2010.

1) Your country introduced portability of student support very early.

a. How did you try to prevent unintended use of the support model?

There are several ways to prevent unintended use of student support in general, in this context we assume that you ask for unintended use of portable student support. The student has to prove by documentation that he or she admitted at the institution, and that tuition fees have been paid. During the education abroad, the student has to prove his or her academic achievements regularly.

b. What are the specific criteria to be fulfilled by students in order to be eligible to portable student support?

- General criteria for all students in Norway and abroad
- Nationality; Norwegian citizenship, or status as EU/EEA-worker of family member, or EU/EEA-citizen with a right to permanent residence.
- Residence requirement; two of the last five years.

2) Why did you introduce these conditions? Please explain in detail (E.g.:Residence requirement: Why exactly three-out-of-six years, not two-out-of-six or four-out-of-6?)

Postal address	Office address	Telephone +47 22 24 90 90*	Department of Administrative Affairs	Our officer
P.O. Box 8119 Dep	Akersg. 44	postmottak@kd.dep.no	and Development	Ellen Smogeli
0032 Oslo		www.kunnskapsdepartementet.no	Telephone +47 22 24 74 11	+47 22247751
		Vat no. 872 417 842	Telefax +47 22 24 27 30	

The Norwegian government has the opinion that a person has the necessary link to the Norwegian society if he or she has lived in Norway for two of the last five years.

3) The European Commission has recently brought the Netherland for the Court of Justice due to their residence requirement. They claim that the residence requirement is not in line with the non-discriminatory principle of the European Union.

a. Do you believe that this will have consequences for your national model of portability?

The fact that the Commission has brought the Netherland for the Court does not change Norway's opinion on the residence requirement. The Norwegian Ministry of Education will have to consider the consequences if the Court decides against Netherlands requirement.

b. Why do you think did the EC bring the Netherlands before the ECJ and not any other country with similar requirements?

We have no reflections on this.

c. What are you planning to do with your model of student support portability in order to stay in line with the non-discriminatory principle?

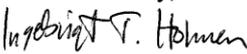
This will have to be considered by the Norwegian government. We have no plans on this which we can publish at this stage.

4) What would you suggest to the Netherlands?

We regret to inform you that we have no suggestions to the Netherlands.

We hope this was helpful. Please do not hesitate to contact us if you have further questions.

Yours sincerely,


for Torill Måseide
Senior Adviser


Ellen Smøgeli
Senior Adviser

7.2.3 Answers of the Ministry of Sweden

1. Your country introduced portability of student support very early.

e. How did you try to prevent unintended use of the support model?

By making sure that there is a strong connection between the applicant and the host country.

f. What are the specific criteria to be fulfilled by students in order to be eligible to portable student support?

Study support - basic requirements

- You may be awarded study support no later than in the year of your 54th birthday.
- You must be attending a school/higher education institution or course that qualifies you for study support.
- You must be studying at least half-time.
- You must study for at least three weeks.

Foreign students' right to study support

Under the terms of EC law, EU, EEA and Swiss nationals may be treated as Swedish citizens and be entitled to study support if they fulfill the following conditions

- they are working or running their own business in Sweden
- they are a close relative of someone working or running his/her own business in Sweden
- they enjoy a status as a permanent resident of Sweden

Third-country nationals also enjoy the right to study support in Sweden if they have a status as a long-term resident in Sweden or in another EU Member State according to the Swedish Migration Board. The latter must also have a residence permit in Sweden.

All foreign citizens are entitled to study support under the terms of Swedish regulations if they

- hold a permanent residence permit
- have moved to Sweden for a purpose other than to study
- have a right of residence and permanent ties with Sweden

Exceptions from these rules can be made if there are specific reasons for doing so. Such a reason can be if the person has refugee status according to the Swedish Migration Board.

Portable study support

Swedish students and EU and EEA-nationals that are being treated as Swedish citizens are entitled to Swedish study support for studies outside Sweden. The student may be entitled to study support for studies outside Sweden if he/she has been a resident in Sweden for at least two consecutive years during the last

Portability of student support – the residence requirement
Shirin Reuvers, 15.10.2010

five years. This is if the other requirements regarding the right to Swedish study support are met. Further the host higher education institution must meet certain conditions.

Foreign students that are not treated as Swedish citizens are entitled to study support only if they have started an educational programme at a higher education institution in Sweden and the studies abroad can be recognized towards a part of the Swedish higher education programme within the framework of an exchange program. In this case the study support can be given for a maximum of one year.

Why did you introduce these conditions? Please explain in detail (E.g.:Residence requirement: Why exactly three-out-of-six years, not two-out-of-six or four-out-of-6?)

When introducing the 2 out of 5-rule (in 2006) the government's arguments was that it is fair and reasonable to demand that there are strong ties/connections between the applicant and the host country for the applicant to be entitled to portable study support. The concern that the Swedish government raised was that it otherwise could be a reality that people choose to apply for portable study support from the country that offers the most favourable conditions – the most generous study support. This would lead to a systematic exploitation of generous study support systems. The opinion at this time was also that the rulings of the ECJ didn't make demands for strong ties/connections with the host country impossible. The government also noted that the ECJ hadn't made any rulings on specific Swedish conditions in this matter and that the consequences of such a ruling, with a for Sweden negative outcome, could be that it is necessary to limit even Swedish citizen's right to study support. Sweden has not so far been subject to any kind of assessment stating that this rule is discriminating.

The reason that the government choose the specific 2 out of 5-rule was that this length of residence was considered long enough to establish a strong connection to the host country. In addition it was an argument that the time limits were similar to those in other Nordic countries.

The European Commission has recently brought the Netherland for the Court of Justice due to their residence requirement. They claim that the residence requirement is not in line with the non-discriminatory principle of the European Union.

Do you believe that this will have consequences for your national model of portability?

Yes

Why do you think did the EC bring the Netherlands before the ECJ and not any other country with similar requirements?

I don't know. Maybe because they started to investigate the Dutch system in the Förster-case. What are you planning to do with your model of student support portability in order to stay in line with the non-discriminatory principle?

We still hope that the EC court will pay attention to the arguments presented by the countries and not fully follow the Commission's line of arguments. We will not anticipate the outcome of this process. What would you suggest to the Netherlands?

As we have already answered to the Netherlands, it is important that the member states have the right to difference in treatment when it comes to the right to portable study support. We believe that a good way to ensure this link is to make the eligibility dependent on a residency requirement.

In addition we think that the political dimension is very important. To state that the member states are not allowed to impose demands on strong ties or connections with the host country is not in line with the view that portable study support is an important and necessary tool to obtain full mobility. With respect to our common efforts in the Expert Network on Student Support in Europe (NESSIE) to remove obstacles on the way to full mobility, the Commission's attempt in this matter will only make our efforts more difficult, if not impossible. Countries who do not today offer portable student support will most likely not offer this in the future if the member states do not have the right to difference in treatment in this matter.

A scenario that we see before us if the residency requirement is prohibited is so called „student support shopping“ – EU-citizens who want to study at home or in another member state may apply for portable student support from the country that offers the most favorable conditions. This is a scenario that hopefully no one sees as a good alternative and that must be avoided!

7.2.4 Answers of the Ministry of Education of Denmark

Dear Shirin,

The Danish residence requirement for student support for degree studies abroad was introduced in 2002. The residence requirement was introduced to ensure that students receiving student support for studies abroad have a genuine link to Denmark.

We are aware of the pending ECJ case against the Netherlands and we expect the Danish Government to support the Dutch residence requirements. We are awaiting the result of this case with interest.

Kind regards
Mia Wallin

7.2.5 Answers of the Ministry of Education Germany

Answers were given during a telephone-conference.