

The Effect of EU Case Law on German Portable Student Support

A Case Study on Morgan and Bucher

Bachelor Thesis

Date:	29.01.2013
Programme:	BSc Public Administration (European Studies)
Student:	Christoph Strotmann
Student Number:	s0149934
Address:	Hansastraße 13 48465 Schüttorf Germany
Email:	c.strotmann@student.utwente.nl
Supervisor:	Prof. Dr. Hans Vossensteyn
Co-Reader:	Dr. Harry de Boer

Abstract

This bachelor thesis investigates the effect of activities of the European Court of Justice on national legislation concerning the portability of student support and the consequences for outbound student mobility. In a case study on the European Court of Justice's decision in the Joined Cases C-11/06 and C-12/06 (Morgan and Bucher), the effects on the German student support portability scheme under the *Bundesausbildungsförderungsgesetz* and on the thereby portably supported German outbound students are researched upon. Via an explorative research relating legal and statistical analysis, as well as expert interviews, it has been shown that the disputed case can be neither regarded to be the cause for amendments made to the German portable student support nor for the developments of German outbound student mobility. Still, it has been found that a deterministic relationship between the case and the amendment would have caused similar effects on mobility.

Table of Contents

Abstract	2
Table of Figures	5
List of Abbreviations	6
I) Introduction	7
I.1 Student Mobility and Support Schemes on the European Level	7
I.2 Problem Statement	10
I.3 Research Question and Sub-Questions	11
I.4 Methodology	12
II) Higher Education Policy-Making on the European Union Level	15
II.1 Institutions and Interrelations in Policy-making	15
II.2 Education – Competences and Legislation	18
II.3 Higher Education and the European Court of Justice	21
II.3.1 Establishing EC Competences in Education Policy	21
II.3.2 Social Benefits and Freedom of Movement of Workers	23
II.3.3 European Citizenship and Access to Social Benefits	27
II.4 Joined Cases C-11/06 Morgan v. Bezirksregierung Köln and C-12/06 Bucher v. Landrat des Kreises Düren	29
II.4.1 Background	29
II.4.2 Argumentation	30
II.4.3 Judgment and Potential Impact	32
II.5 Summary	33
III) Developments on German Portable Student Support after Morgan & Bucher	35
III.1 Amendments on Student Support Portability Legislation in Germany	35
III.2 Development of German Outbound Mobility	36
III.3 Conclusion	42
IV) Evaluation of Inter-variable Relationships	43
IV.1 Relationship: Change in BAföG – German Outbound Mobility	43
IV.2 Relationship: Morgan & Bucher – Change in BAföG	45
IV.3 Relationship: Morgan and Bucher – German Outbound Mobility	47
IV.4 Summary	48
V. Conclusion	49
Annex A: Synopsis of §5 Bundesausbildungsförderungsgesetz	51
Annex B: Statistical Data on German Students Abroad	53
Annex C: Results of Statement Requests and Questionnaire/Interview	55

C1 Response	55
C2 Questionnaire.....	55
C3 Questionnaire Response Deutsches Studentenwerk.....	56
C4 Questionnaire Response Bundesministerium für Bildung und Forschung	58
Annex D: Timetable Case Proceedings Morgan & Bucher and Policy Proceedings BAföG-Amendment	60
Bibliography.....	62

Table of Figures

Figure 1: Hypothetical Causal Chain.....	13
Figure 2: European Union Competence Types and Competence Areas	19
Figure 3: European Union Action Areas on Education	20
Figure 4: Statistical Development of Students Abroad and BAföG receivers abroad, (2000-2010)	37
Figure 5: Share Development of BAföG-receivers abroad (Eu-13) in other Groups abroad, (2000-2010)	39
Figure 6: Actual and Forecast Development BAföG-receivers abroad, EU-13 and non-EU-13 (2000- 2010).....	40
Figure 7: Individual Country Statistics - Growth in Inbound German BAföG-Students (2008-2010)....	41
Figure 8: Hypothesized Causal Chain	43
Figure 9: Synopsis of §5 Bundesausbildungsförderungsgesetz before and after the 2008-amendment	51
Figure 10: German students abroad with BAföG Support by Destination and Year (2000-2010)	53
Figure 11: German Students Abroad by Destination and Year (2000-2010).....	54
Figure 12: Timetable Case Proceedings Morgan & Bucher and Policy Proceedings BAföG-Amendment	60

List of Abbreviations

AAGR	Average Annual Growth Rate
BAföG	<i>Bundesausbildungsförderungsgesetz</i> (Federal Education and Trainings Assistance Act)
BAföGÄndG	<i>Gesetz zur Änderung der Bundesausbildungsförderungsgesetzes</i> (Federal Education and Trainings Assistance Act Amendment Law)
BMBF	Bundesministerium für Bildung und Forschung (Federal Ministry for Education and Science)
CEEPUS	Central European Exchange Programme for University Studies
DSW	Deutsches Studentenwerk (German National Association for Student Affairs)
EC	European Community
EEC	European Economic Community
ECJ	European Court of Justice
ERASMUS	European Community Action Scheme for the Mobility of University Students
EU	European Union
OMC	Open Method of Coordination
O NEM	<i>Office National de l'Emploi</i> (National Office of Employment)
TEEC	Treaty establishing the European Economic Community
TEU	Treaty establishing the European Union
TFEU	Treaty on the Functioning of the European Union

I) Introduction

The internationalization of higher education is one of the most mentionable developments in Europe within the last four decades. Originating from the conceptualization of the “Joint European Studies”-initiative initiated by the European Commission in 1976, the establishment of action programmes such as the ERASMUS programme (1987) and its follow-up projects under the umbrella of the SOCRATES I (1995) and II (2000) programmes have boosted intra-European student mobility in all countries affected. Official European Commission statistics show a constant annual increase from 3244 mobile students under ERASMUS in 1987/88 to 213266 students in 2009/10.¹

International experience acquired through studies abroad has emerged as an important factor in the human resource departments of companies. A study by Teichler and Janson suggests that international experiences acquired via participation in the ERASMUS-programme “*have been helpful for most of them in getting employed for the first time*”.² The authors further find that a large portion of former ERASMUS participants as well as potential employers consider international experience an indicator for superiority over non-mobile students regarding professional competences, although it is further suggested that the declining exclusiveness of studying abroad results in diminishing professional value for current cohorts of ERASMUS students in comparison to previous cohorts.³ This study aims to show how the European Court of Justice has gradually improved the situation of internationally mobile students in general, as well as if and how the Court has specifically affected the student support portability provisions of the German *Bundesausbildungsförderungsgesetz* (Federal Education and Trainings Assistance Act; BAföG) as a result of the Joined Cases C-11/06 *Rhiannon Morgan v Bezirksregierung Köln* and C-12/06 *Iris Bucher v Landrat des Kreises Düren*.

I.1 Student Mobility and Support Schemes on the European Level

As the example of Teichler and Janson’s study shows, funding of student mobility has positive effects on the acquisition of professional experiences and therefore also positive effects on the professional careers of internationally mobile students, in their own and their potential employers’ views. The development of the ERASMUS and SOCRATES programmes has shown that student mobility has emerged to be a major political topic in European and international politics. However, the influence of the European Union on higher education policy is largely of supportive nature, since ultimate authority in the national higher education sectors today still remains with the national or national-federal levels within the Member States. Further, where the European Union has gained authority in higher education, the subsidiarity principle becomes applicable.⁴ The principle provides for a delegation of governance between various governance levels with the aim of governance at the lowest level possible⁵, which, in the case of education, is the national or a subordinate level.⁶

Currently, the European Union’s authority in higher education is therefore stuck between legitimacy and limitation, respectively caused by the subsidiarity principle and national sovereignty.⁷ Reasons for the reluctance of Member States to transfer competence in education policy to central organs of the EU is the importance of education for the maintenance of national

¹ European Commission (2012), p. 21

² Teichler & Janson (2007), p. 493

³ Ibid, p. 493f

⁴ Maassen & Musselin (2009), p. 6

⁵ Olsen (2007), p. 236

⁶ Maassen & Musselin (2009), p. 6

⁷ Van der Wende & Huisman (2004)

identities⁸ and for the nationally governed welfare systems.⁹ This circumstance limits the EU powers to harmonize structures either to non-binding processes outside the official EU structures like the Bologna Process or Europe 2020, or to interpretative case-law by the European Court of Justice.

The reluctance of EU Member States to delegate authority in Higher Education policy-making to the EU-level has resulted in an approach to harmonize higher education structures outside the binding umbrella of the EU, namely the Bologna Process. Although established outside the EU framework, the Bologna Process can be seen as an indirect consequence of the increase of student mobility resulting from the *ERASMUS* programme.¹⁰ The Bologna Process was initiated following the anniversary celebrations of the Parisian Sorbonne University in 1998, where the respective Ministers of Education of France, Germany, Great Britain and Italy declared their willingness to structurally harmonize European higher education systems with the aims of increased mobility of students and alumni, increased cooperation between universities and simplified mutual recognition processes.¹¹ Following the *Sorbonne Declaration*, in 1999 the *Bologna Process* was established, under which nowadays 47 European countries, including all 27 EU Member States and the European Commission¹², cooperate to harmonize structures and foster mobility in the European Higher Education Area.¹³

Inside the EU, the Lisbon Strategy and its follow-up, the Europe 2020 growth strategy were the main strategy plans affecting national education sectors in the previous and the current decade. The Lisbon strategy, launched in 2000, aimed predominantly at the reformation of the EU governance structures, introducing the Open Method of Coordination (OMC), and transforming the EU Member States' economies into knowledge-based economies.¹⁴ The underlying objective becomes clearer when recalling the mission statement of the strategy, aiming to *"become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion"*.¹⁵ Main aspects with regard to higher education refer to the improvement of mobility, the recognition of diplomas and study periods as well as substantial increases in investments into human resources.¹⁶ Following the conclusion of the *Lisbon Strategy* in 2010, *Europe 2020* was set up as successor. In the light of the ongoing financial crisis Commission President Barroso describes the purpose and methods of the strategy as follows: *"Europe needs to get back on the track. Then it must stay on the track."* Europe has *"[...] the capability to deliver smart, sustainable and inclusive growth [...]"*.¹⁷ When comparing the general measures of the two strategies regarding higher education, *Europe 2020* largely builds upon the Lisbon measures and sets higher and more sophisticated targets. The included *Youth on the Move* initiative calls for increased efficiency of investments, improvement of educational outcomes and the establishment of qualification frameworks.¹⁸ However, all measures taken are, in a traditional sense, non-binding and goal oriented strategies largely making use of the Open Method of Coordination, which can be

⁸ Beukel (2001)

⁹ Plümper & Schneider (2007)

¹⁰ Teichler & Janson (2007), p. 478

¹¹ Sorbonne Joint Declaration (1998)

¹² Vlaams Ministerie van Onderwijs en Forming (2012)

¹³ Bologna Declaration (1999)

¹⁴ Natali (2010), p. 93

¹⁵ European Council (2000), Art 5

¹⁶ Ibid, Art 26

¹⁷ European Commission (2010a), preface

¹⁸ Ibid, p. 11

described as an unconventional soft law policy instrument involving hard law interventions, mostly incorporating benchmarking, best practice and recommendation¹⁹, designated to enforce law by the “*name and shame*”²⁰ principle. Therefore, it can be supposed that the EU shows interest in the facilitation of student mobility, but lacks the tools at hand to enact fully-fledged, EU-wide binding legislation

As has been shown, the Institutions of the European Union have limited powers at hand to engage in Higher Education legislation. Summarizing, these powers involve the engagement in larger initiatives such as the *Bologna Process*, where the European Commission has an equal share in comparison to the other *Bologna* Member States, or via strategy papers such as the *Lisbon* or *Europe 2020* strategies, where the EU is able to set goals to be achieved, but merely has the enforcement tools of the Open Method of Coordination at its disposal. This weakness in policy-making abilities can be traced back to limitations set by the Treaties on which the political construct of the European Union is based. In the Lisbon Treaty, officially named Treaty on the Functioning of the European Union, the current formulation concerning the EU institutions’ abilities to influence higher education policy-making can be found: the EU’s contribution is limited to encouragement of cooperation “[...] *by supporting and supplementing their [the Member States’] action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of educational systems and their cultural and lingual diversity*”.²¹ This formulation has been left largely untouched by the 1992-Maastricht Treaty on European Union²², where it was first introduced.

Other ways to affect national higher education policies are closely related to the European Court of Justice and its ability to generate negative policy-making and spill-over effects.²³ The ECJ has shown in its history that it is able to produce spill-over effects in its rulings, which have effect on other policy areas than initially intended in the original EC/EU legislation. An example for such spill-over effects in relation to higher education are the interpretations of Regulation 1612/68/EEC²⁴ and Decision 63/266/EC²⁵ in the ECJ cases *Gravier*²⁶ and *Blaizot*²⁷, which have extended provisions on the free movement of workers to students in higher education by relating the Union’s authority concerning vocational training policy-making to tertiary education.²⁸

With regard to higher education, the European Union’s institutions have shown particular interest in the promotion of student mobility. This engagement can be observed, for example, by the establishment of the *ERASMUS* and *SOCRATES* programmes, the formulation of the *Lisbon* and *Europe 2020* strategies and the membership in the *Bologna Process*. In addition, the European Court of Justice strongly became involved with judgments concerning the status of students and their right of freedom of movement in the light of the treaty. Essentially important topical areas can be summarized into three subgroups, as practiced by the European Commission with regard to their

¹⁹ Regent (2003), pp. 191; 214

²⁰ Szyszczak (2006), p. 500

²¹ Treaty on the Functioning of the European Union (2010), art 165(1)

²² Treaty on European Union (2010), art 150(1)

²³ Rottiers (2008), pp. 356f

²⁴ European Council (1968)

²⁵ European Council (1963)

²⁶ *Francoise Gravier v City of Liege* (1985)

²⁷ *Vincent Blaizot v University of Liege* (1988)

²⁸ *Apap & Sitaropoulos* (2001); *Lenaerts* (2006)

Youth on the Move initiative²⁹, which are recognition of qualifications, access to education and maintenance grants and loans. In the light of the *ERASMUS* programme and its noteworthy success in improving student mobility over the last decades via, among other measures, provision of financial support for periods abroad, the group of case law regarding maintenance grants and loans is interesting. At this point it must be noted, considering the previously mentioned limitations of the European Union regarding higher education policy-making, that the *ERASMUS* programme must be considered being supplemental. Further, there is no European Union initiative providing student grants or loans, but several of its' Member States provide portable grants for full study programmes abroad³⁰ and, with the Central European Exchange Programme for University Studies (*CEEPUS*) and *NordPlus* programmes, there are two sub-regional programmes providing mobility grants.³¹

1.2 Problem Statement

Among those cases referring to maintenance grants and loans, the joined cases Morgan and Bucher are the most interesting for several reasons. The German government expanded the portability of financial student support under the BAföG in 2001³², but the first appeals against the effective legal provisions, in the form of Morgan and respectively Bucher, entered national courts in 2004 and were filed at the ECJ in 2006.³³ As Morgan and Bucher are unlikely to have been the first students that experienced similar treatment under the BAföG, this suggests either that first conflicts between students and the German BAföG-Amendment occurred three years after its implementation or that previous conflicts were not challenged before national courts.

Second, the cases' status as joined cases shows that both individual cases have one claim in common. In Morgan and Bucher, the common claim relates to a *first-stage study condition* necessary to make the German study grant awarded under the BAföG portable.³⁴ The respective clause in §5(2) of the BAföG, effective and unchanged since its introduction in 2001 until 2008³⁵, provides that a study programme taken up abroad must represent a continuation of an educational programme previously attended in Germany for at least one year in order to claim portable BAföG funding.³⁶ In the court ruling on the Morgan and Bucher cases, the ECJ ruled that the *first-stage study condition*, as it is formulated in §5(2) of the BAföG, represents a condition "*too general and exclusive*"³⁷ to prove a sufficient degree of integration into society, as was established in previous case law.³⁸

Third, EU and national policies of some countries, partially also as a result of the Bologna Process, aim at intensifying mobility by enlarging the opportunities of portability of national student financial support, as has been shown before. As ECJ case law is often tailored to a specific infringement of the treaties by one specific country, it must not be assumed that a court ruling is necessarily followed by legal amendments in all EU Member States, but when it does, it might not follow the initial intentions

²⁹ European Commission (2010b)

³⁰ NESSIE (2012)

³¹ Eurydice (2012), p. 164

³² Bundesregierung (2001), art 1

³³ Joined Cases Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren (2007), preface

³⁴ Ibid, §17

³⁵ Bundesregierung (2008)

³⁶ Bundesregierung (2001) art.1, §1a(cc)

³⁷ Joined Cases Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren (2007), § 46

³⁸ Marie-Natalie D'Hoop v Office National de l'Emploi (2002), §§ 36, 40

of policy makers. The resulting effects might have not been intended by the creators of Treaties in the first place and, therefore, might include a widening of EU citizens being eligible to profit from certain policies, which, in terms of portable student support, might bear additional costs to the providing Member States. Basically, the ECJ has made use of its powers to create spill-over effects to stretch certain concepts beyond what was initially established by the Treaties, among them the non-discrimination and free movement of persons principles. The case of *Morgan and Bucher* is closely related, as it challenged a condition limiting eligibility of BAföG-support for internationally mobile students. The condition, observable by the reference to the *unreasonable burden* argumentation³⁹, is at least partially driven by economic considerations on behalf of the national authorities. These unintended effects might create a tendency that national governments become more reluctant concerning their portability policies. The particular interest of this thesis, therefore, relates to the problem if, to what extent and into what direction the Morgan and Bucher case has affected national legislation on student support portability in Germany.

I.3 Research Question and Sub-Questions

The previous elaboration has shown that the ECJ judgment on Morgan and Bucher has the potential to create a threat to national policies on student support portability as they were at the time of the proceedings. The effects of the particular judgment, however, have been researched only rarely and not with a focus on Germany in particular. A study by Kofler⁴⁰ shall in this regard be mentioned exemplarily. The author has discussed the implications of the Morgan and Bucher judgment on the Austrian higher education system, in particular the *Studienförderungsgesetz*, the Austrian equivalent to the BAföG, and the access to Austrian higher education. Further research comprising the Morgan and Bucher case concentrates for the bigger part on the general implications the case has on the Right of Free Movement granted to EU citizens⁴¹, judicial activism by the ECJ regarding student support⁴² or the Europeanization of student support in the larger picture of Bologna and EU policy-making.⁴³ Hence, a particular focus on the potential effect on the German student support portability scheme and the impact on German students abroad making use of the support portability scheme is absent. Therefore, the central question of this thesis is directed towards exploring and comparing the impact of specifically the ECJ judgment in the Morgan and Bucher case on national policies regulating portability of student support in Germany. The corresponding main research questions read as follows:

“Does the ruling of the European Court of Justice in the Joined Cases C-11/06 and C-12/06 (Morgan and Bucher) have an effect on the provisions regarding portability of student support under the German BAföG? Does it have an effect on the number of BAföG-supported German students abroad in the European Union?”

Based on its latent complexity, the main research questions will be approached with the help of a set of five sub-questions. First of all, the context at the European Union level needs to be clarified. The EU’s ability to shape national higher education policy-making needs to be discussed in more detail in order to generate a greater insight into the allocation of powers between Union and national higher

³⁹ Joined Cases Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren (2007), § 42

⁴⁰ Kofler (2008)

⁴¹ Shuibhne (2008); Schrauwen (2011)

⁴² Bartels (2010)

⁴³ Mietens (2008)

education policy makers, as well as an impact assessment of ECJ judgments. Subsequently, the development of higher education related case law preceding *Morgan and Bucher* needs to be analyzed to achieve an overview on the standards set and underlying motives. For this purpose, the leading sub-questions are:

1. *“What are the competences and instruments of the main European Union institutions to shape national legislation in the field of tertiary education?”*
2. *“How did ECJ rulings evolve the field of tertiary education and what general standards and requirements were established?”*

The results build the foundation to discuss the outcome of the *Morgan and Bucher* case in detail, with a particular emphasis on the argumentation of the defendant and claimant sides, as well as its potential impact on the BAföG legislation. These outcomes will be cross-referenced with actual amendments to the BAföG. Next, the development of German BAföG-receiving students abroad in the EU will be observed for noticeable developments subsequent to the amendments. Lastly, the relationship between the three main factors, (1) outcome of *Morgan and Bucher*, (2) amendments to BAföG-portability and (3) development of BAföG-students abroad in the EU will be investigated for their causal chain. The corresponding set of sub-questions is as follows:

3. *“What was the particular outcome of the joined Cases C-11/06 and C-12/06 (*Morgan and Bucher*) and towards which issues does the German BAföG have to adapt?”*
4. *“Did the German BAföG scheme undergo an amendment process during or after the case proceedings in *Morgan and Bucher*? If so, what was amended?”*
5. *“What is the effect on German BAföG-supported students abroad in the EU after the amendments to the BAföG became effective?”*
6. *“Did the proceedings in the Cases *Morgan and Bucher* cause the BAföG-Amendment? Did the BAföG-Amendment cause the observed effects to German BAföG-receivers abroad in the European Union?”*

I.4 Methodology

The nature of this research is predominantly explorative, due to the remote attention that scientific literature has so far directed to the *Morgan and Bucher* case and its potential consequences for German BAföG-portability and German outbound mobility. The intention of the thesis is to explore the likelihood of the *Morgan and Bucher* case being the cause for amendments made to the BAföG and the development of the student numbers. Therefore, it is hypothesized that *Morgan & Bucher* (1) has affected amendments made to the portability of BAföG student support, which, in turn, (2) caused the outbound mobility of German students receiving portable BAföG to other EU Member States to noticeably differ from the pre-amendment period (Figure 1: Hypothetical Causal Chain).

Figure 1: Hypothetical Causal Chain



The research is divided into three parts. The first part will provide the context of legislative interrelations between the EU and the Member State level, generate an insight to ECJ case law, reproduce the line of argumentation in *Morgan & Bucher* and derive the potential consequences for national legislation. The main method of research applied in this section is desk research on primary and secondary legislation, case law, and related scientific literature. Hereby, the necessary understanding of the interrelation between European Union and national law in terms of education policies, the status of ECJ case law provisions prior to and the direct implication of the *Morgan & Bucher* judgment will be provided. The choice of ECJ cases for analysis is based on their direct relation to the sector of higher education and the mobility of Member State citizens therein, in combination with the subject of social assistance or compensation. This part seeks to provide an answer to the first three research questions, to establish the character of EU legislation with regard to its deterministic or probabilistic effect on national policies and to provide the basic knowledge for the procession of the antecedent chapters.

The second part concerns the fourth and fifth sub-question, which aim to generate insight into the developments in Germany during and after the ECJ judgment in *Morgan & Bucher*. Here, the fourth sub-question, aiming at disclosing the amendments to the BAföG and cross-relating it to the outcomes of *Morgan & Bucher*, will be attended primarily by desk research to analyse scientific literature and legal documents as well as government and stakeholder statements within the timeframe 2000-2010. The timeframe for legal documents and statements is chosen as it covers amendments prior, during and after the ongoing proceedings and allows a suitable preparation and response period. The fifth sub-question will be dealt with by a statistical discussion on the development of German students abroad between 2000 and 2010, which are divided into the main variables *German students abroad* and *BAföG-receivers abroad*⁴⁴ that are again divided into the respective categories *Total*, *EU-13* and *Non-EU-13*. The category EU-13 contains the European Union Member States prior to the 2004 enlargements, as the political changes from the EU accession may have had an influence on the accessibility of student support for German students when targeting these countries for going abroad. Further, Greece is excluded for reasons of incompletely reported and unreliable data. Greece and the 2004 and 2007 EU-enlargements are included in the *Non-EU-13* and the *Total* categories, as the former is derived from the difference between the data reported as Total and the EU-13 data. These statistics will be observed towards their developments before and after the potential point of policy impact in 2008, because the final judgment in *Morgan & Bucher* was delivered on October 23, 2007 and the BAföG-amendment became effective on January 1, 2008. The respective data is collected from official publications of the *Statistisches Bundesamt* (German

⁴⁴ Synonyms may be used: BAföG-Students; BAföG-supported students; BAföG-receiving students

statistics office) and the *Bundesministerium für Bildung und Forschung* (Federal Ministry of Education and Science; BMBF).

The statistical discussion will involve a comparative discussion of the general numbers, as well as their annual, periodical and total growth rates and the periodic *average annual growth rate* (AAGR) of the categories *Total* and *EU-13* to highlight differences in development. Next, a share development analysis will provide an overview of the development of the share of German students (general and BAföG-receivers) targeting *EU-13* and *Total* and the interrelated development between the categories. Third, a forecast analysis will generate alternative developments of the variable *BAföG-receivers abroad* for the years 2008 to 2010, based on the expected growth derived from the development trends of the two periods 2000-2007 and 2004-2007. A comparison of forecasts to the actual development provides an indication of whether the policy impact in 2008 has facilitated a development. Finally, the distribution of BAföG-students among countries individually is analyzed. By comparing general and percental developments in the post-impact period 2008 to 2010 this part will be able to generate an overview on the homo- or heterogeneity of the distribution of German BAföG-receivers abroad among the target countries. Together, the evidence will provide an indication of whether the developments observed can be attributed to the policy amendment or if other external sources of influence may have been involved.

The third and final part of the thesis will regard the evaluation of the hypothesized causal chain (Figure 1). Central are the questions (1) whether changes in the BAföG law can be attributed to *Morgan & Bucher* and (2) whether a noticeable development in the numbers of German students abroad can be attributed to a change in federal law. For this purpose, Babbie's elaboration on causality is used, which characterizes causality by three features, correlation, time order and non-spuriousness of variables.⁴⁵ With regard to the first relation, additional data is gathered primarily from respectively one expert interview with an official from the *BMBF* on the government side and the *Deutsches Studentenwerk* (German National Association for Student Affairs; DSW), which was consulted during the legislative process of the BAföG-Amendment, on the stakeholder side. The latter relation will be evaluated by a comparative discussion of the distinct statistical conspicuities with the changes in the German BAföG law. Further, alternative potential explanations will be taken into consideration to rule out third variables that might have caused the observed peculiarities.

In the process, the second hypothesized relationship will be dealt with first. The intention is to construct the national relationship first and relate them to the European level at a later point. This alignment prevents to going back and forth between purely national and national-to-European involvements. The initial conception of the case-amendment connection being the first and the amendment-mobility connection being the second relationship in the hypothesized chain is though upheld to display the correct hypothesized temporal order.

⁴⁵ Babbie (2007), p. 90f

II) Higher Education Policy-Making on the European Union Level

This chapter discusses the main EU institutions in the policy-making process and their interrelations with the national structures in terms of legal instruments-at-hand, important concepts and competences in general and in the sector of higher education in particular. Of particular interest will be the role of the European Court of Justice and its role as a judiciary body. Further, Treaty provisions and secondary legislation that are frequently referenced in related case law will be introduced and shortly explained. This section will highlight legal bases and thereby establish a foundation for subsequent elaborations. Second, the section will provide an overview on the progress of higher education related case law before the European Court of Justice. The intention is to trace the higher education-related judgments and their interrelations with other competence areas to provide insight on the extent to which higher education and portability of student support have become competences of the European Union in order to generate a solid basis for the interpretation of Morgan & Bucher. Finally, the joined cases C-11/06 Morgan and C-12/06 Bucher will be subject to an in-depth analysis of the respective backgrounds of the cases and the national and European legal foundations that caused the case to go before national court. The judgment by the European Court of Justice will then be summarized with regard to the questions forwarded for preliminary ruling, the central arguments, involvement with previous case law and outcomes. The chapter concludes with a derivation of the potential implications for national case law, establishing the foundation for the cross-analysis with the German amendments to portability of the BAföG-support in the follow-up chapter.

II.1 Institutions and Interrelations in Policy-making

The institutional decision-making framework in the European Union generally resembles that of a nation state, although it lacks central elements necessary to classify it as a state, such as an own population or a territory as these belong to its Member States.⁴⁶ Simplified, the institutional set-up can be regarded as a division of powers, or as Ziller describes it more adequately, a division of governmental functions⁴⁷ into five major functions: legislative, executive, supervisory, direction and organic functions.⁴⁸ The individual functions are often divided among a potpourri of the Union's institutions, which are the European Parliament, the Council of the European Union⁴⁹, the Commission - all of them assisted by the Committee of the Regions and the Economic and Social Committee -, the European Council, the Court of Justice, the European Central Bank and the Court of Auditors.⁵⁰

Legislative functions are carried out basically by the Council and the Parliament upon proposal by the Commission.⁵¹ After the Lisbon Treaty taking effect, the most common legislative procedure is the

⁴⁶ Ziller (2008), pp. 137f

⁴⁷ Ibid, p. 137

⁴⁸ Ibid, p. 141

⁴⁹ The 'Council of the European Union' will subsequently be referred to as 'Council' in the following, not to be confused with the 'European Council'

⁵⁰ Treaty on the Functioning of the European Union (2010), Art 13

⁵¹ Ibid, Art 294(15) provides that secondary actors such as the European Central Bank, the European Court of Justice or a group of Member States may initiate legislation under certain circumstances. This thesis, though, will concentrate on the principal actors solely. Ziller (2008, p. 163) further adds the Committee of the Regions or the European Economic and Social Committee as sources of legislative initiative.

ordinary legislative procedure under which the Council, composed of national ministers of specific fields, and the Parliament act by co-decision. The Commission, based on its abilities to as well define the legislative processes as to withdraw its proposal to ensure that the legislation is in the interest of the Union, is therefore the initiating and certifying institution in the legislative process, while the Council and the Parliament are responsible for drafting legislation. EU legislation can be divided into three types of legislative and two types of non-legislative acts, which differ in terms of the aspects applicability and bindingness. Regulations have thorough applicability and are binding in their entirety in all Member States of the European Union; Directives have applicability only towards the goals to be achieved in the Member States addressed, not regarding the measures to be taken; Decisions are thoroughly applicable and binding to the addressee.⁵² Non-legislative acts are Recommendations and Opinions, which are without legally binding force. In addition, with the Open Method of Coordination, the European Council has an intergovernmental, soft law tool at hand. The OMC was introduced to enable the EU to define common goals, without binding force, to be achieved by the Member States in areas that are “outside, or at the periphery of, Community competence.”⁵³ The ‘enforcement’ of the OMC is achieved through monitoring and peer review of national action plans initiated, followed by mutual criticism or highlighting of best practices.⁵⁴

The top-level executive branch in the post-Lisbon EU institutional framework is practiced by the European Commission, marginally influenced by the European Council and Parliament’s ability to affect the composition of the Commission.⁵⁵ The primary executive functions of the European Commission are the establishment and management of programmes, the execution of the Union’s budget and the control of implementation of binding legal acts by the Member States⁵⁶, which superposes with the Commissions tasks concerning supervisory function highlighted at a later point. Thus, where the Council and Parliament are responsible to draft legislation, the Commission initiates and implements legislation and supervises implementation of Union legislation by the Member States.

The supervisory function is divided between the ECJ, regarding judiciary tasks, and the Commission, in terms of oversight of the Member States’ compliance with binding EU law under control of the ECJ.⁵⁷ Hereby, the Commission is, as previously mentioned, potentially influenced by the European Council and the Parliament due to appointment and dismissal competences, as well as by their and the Councils ability to initiate a lawsuit against the Commission under certain circumstances.⁵⁸ Partially, the oversight function is also exercised by the Member States, which are able to lodge a lawsuit, together with the Commission, against other Member States.⁵⁹ The ECJ’s judicial function is primarily executed via case law in terms of legal actions initiated by Member States, Institutions or legal or natural persons, preliminary rulings regarding the interpretation of primary or secondary law provisions requested by any subordinate court or judgment on cases provided for in the Treaties.⁶⁰ The ECJ’s judgments generally have the character of Decisions, thus having direct effect and

⁵² Ibid, art. 288

⁵³ Chalmers and Tomkins (2007), p. 138

⁵⁴ European Council (2000), art 37f.

⁵⁵ Ziller (2008), p. 163

⁵⁶ Ibid, p. 148-151

⁵⁷ Ibid, p. 153; TEU, art 17

⁵⁸ Ziller (2008), p. 163f.

⁵⁹ Treaty on the Functioning of the European Union (2010), art 227

⁶⁰ Treaty establishing the European Union (2010), art 19(3)

supremacy over national law, but being applicable only to the addressee in the first place, due to the preliminary rulings, however, may also act as precedent.⁶¹ By performing its duties as judiciary institution, the ECJ has produced important decisions fostering the integration processes in the European Communities and, later, the Union. Prominent ECJ decisions in this regard are *Van Gend en Loos*⁶² (C-26/62), establishing direct effect of EU legislation after publication, and *Cassis de Dijon*⁶³ (C-120/78), which established primacy of EU law over member state law.

The direction function is shared between the European Council and the Commission. The European Council, based on its composition of primarily the heads of state or government of the respective Member States, can be seen as an “*intergovernmental forum*”⁶⁴, which “*shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof*”.⁶⁵ Therefore, the European Council is the main driving force in the EU institutional framework regarding the provision of general directions and guidance concerning policy-making. While the European Council is more concerned with the general programming of the future course of the Union, the Commission is responsible for the actual day-by-day programming of the political agenda, strongly influenced by the Parliament.⁶⁶

The organic functions in the European Union are mostly related to the institutional development, primarily practiced in terms of treaty amendments, which contains shifts of power regarding the previously mentioned functions between the EU institutions.⁶⁷ According to Ziller, the competences of the EU institutions regarding organic functions are dependent on the addressed institution and the policy field, and may involve all major institutions. Most commonly, though, Ziller points out the European Council as main actor, with involvement of the Parliament and the Commission, where it may submit proposals.⁶⁸ With respect to policy areas, it has been shown that the ECJ is also able to expand policy competences on the basis of provisions of not directly, but closely related treaty articles. An example would be the previously mentioned Case *Gravier*, where the ECJ created a connection between non-discrimination and access to education, creating superiority of EU law over national legislation in the sector of education, which previously was a sole competence of national actors.

Two important aspects in the European Union governance framework are the application of the subsidiarity and proportionality principles. Basically, the subsidiarity principle defines that, outside the European Union’s exclusive competences, objectives defined by the EU shall be addressed by the lowest level of Member State governance, where these objectives can be efficiently achieved, so reciprocally, if the objectives set cannot be achieved by lower-level governance, that these duties are shifted upwards to an adequate level.⁶⁹ Proportionality, in this regard refers to the limitation of EU actions to not “*exceed what is necessary to achieve the objectives of the Treaties*”.⁷⁰ The reinforcing

⁶¹ Treaty on the Functioning of the European Union, art 256

⁶² NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland revenue Administration (1963)

⁶³ Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (1979)

⁶⁴ Warleigh (2002), p. 202

⁶⁵ Treaty establishing the European Union (2010), art 15

⁶⁶ Ziller (2008), p. 164

⁶⁷ Ibid, pp. 158; 164; 168

⁶⁸ Ibid, p. 165

⁶⁹ Treaty establishing the European Union (2010), art 5(2); Chalmers and Tomkins (2007), p. 221f.

⁷⁰ Treaty establishing the European Union, art 5(4)

aspects of proportionality and subsidiarity therefore appear to have a twofold consequence. First, making use of the subsidiarity principle enables the Member States and their subsidiary governance structures to generate detailed action programmes tailored to their specific situation. Second, proportionality can be regarded as a safeguard mechanism in case an efficient approach to achieve the objectives cannot be established on Member States and subsidiary levels, because proportionality limits the EU's ability to act on the conferred competences.

II.2 Education – Competences and Legislation

Initially, the treaties on which the European Communities were based upon were to be considered merely the status of international agreements, thus subject to international law. This implies that policy-making is exercised under full sovereignty by the signatory states, but under the obligations the states have agreed to be subordinate to by the agreement.⁷¹ The ECJ changed this perception in its judgments in a series of cases beginning with *Van Gend en Loos*⁷² and *Costa v ENEL*⁷³ by establishing sovereignty of European Community/Union law, at least in areas where competence has been conferred to the EC/EU level.⁷⁴ Sovereignty of EU law relates to three aspects, namely competence delegation, primacy of EU law and fidelity. Primacy of EU law was established in the case *Internationale Handelsgesellschaft*⁷⁵ where the ECJ held that “EU law takes precedence over all forms of national law, including national Constitutional law”.⁷⁶ Fidelity basically refers to the duty of Member States to ensure that they fulfil all obligations conferred upon them by the EU legal order and not compromise the achievement of Treaty objectives.⁷⁷ Competence delegation relates to the conferral of legal sovereignty from the Member State level to the EU level. The Union's competences regarding various policy areas are clearly limited under Title I of the Lisbon Treaty. Article 2 of the Lisbon Treaty highlights that the EU generally knows three types of competence, namely (1) exclusive, (2) shared, and (3) supportive, supplemental or coordinative competences.⁷⁸ Table 1 provides an overview of the three types of competences and the policy areas involved.

Exclusive competence relates to the ability to initiate fully fledged legislation on the EU's side and the inability to legislate without permission of the EU on the Member States' side.⁷⁹ Exclusive competences contain policy areas central to the main aspects of the European Union, such as the customs union, competition and commercial policy in the internal market or the monetary policy in the EURO-zone, and the conclusion of international agreements regarding policy areas, where the EU decides on internal legislation.⁸⁰

Shared competence implies that the legislative sovereignty is in the hands of the Member States until superseding legislation, under the primacy principle, is enacted via EU Law.⁸¹ The current wording of the Lisbon Treaty suggests that whenever a policy area falls neither into the categories *exclusive*

⁷¹ Chalmers and Tomkins (2007), p. 183

⁷² NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland revenue Administration (1963)

⁷³ Flaminio Costa v E.N.E.L. (1964)

⁷⁴ Chalmers and Tomkins (2007), p. 184f

⁷⁵ Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getriede und Futtermittel (1970)

⁷⁶ Chalmers and Tomkins (2007), p. 186

⁷⁷ Treaty on European Union, art 4(3)

⁷⁸ Treaty on the Functioning of the European Union (2010), art 2

⁷⁹ Ibid, art. 2(1)

⁸⁰ Ibid, art. 3

⁸¹ Ibid, art. 2(2)

competence nor *supportive, supplemental or coordinative competences*, the particular policy area can be regarded to be a *shared competence* area.⁸² With regard to shared competence, the doctrine of minimum harmonization has become an important issue. Minimum harmonization aims at creating a basic set of standards that have to be applied in all Member States without preventing them from establishing more restrictive measures.⁸³ Less restrictive measures, though, are not allowed.

Figure 2: European Union Competence Types and Competence Areas⁸⁴

<i>Exclusive Competences</i>	<i>Shared Competences (non-exhaustive)</i>	<i>Supportive, Supplemental and Coordinative Competences</i>
Customs Union	Internal Market	Protection and Improvement of Public Health
Competition Rules for the Internal Market	Social policy (regarding provided competences)	Industry
Monetary Policy (EURO-Zone)	Economic, Social and Territorial Cohesion	Culture
Conservation of Marine Biological Resources	Agriculture and Fisheries (excl. Conservation of Marine Biological Resources)	Tourism
Common Commercial Policy	Environment	Education, Youth, Sport and Vocational Training
	Consumer Protection	Civil Protection
	Transport	Administrative Cooperation
	Trans-European Networks	
	Energy	
	Area of Freedom, Security and Justice	
	Common Safety Concerns in Public Health	

The third type of competence areas are of supportive, supplemental or coordinative nature. Here, the sovereignty remains in the hands of the Member States, so no harmonizing measures restricting national competences can be handed down from the EU level.⁸⁵ Legal measures on the EU's side in this competence area are strictly limited to non-binding, soft legislation in the form of recommendations or guidelines⁸⁶ or the application of the OMC.⁸⁷ In the two latter competence areas the subsidiarity principle applies, where the policy initiatives by the European Union shall be implemented and addressed at the lowest possible level where these can be efficiently achieved. Following the example of education in Germany, a policy initiative is handed down from the EU level to the federal-state level, where the ministries of education of the federal states individually enact measures to implement the objectives handed down.

Especially with regard to higher education, external treaties, particularly the Bologna Process, play an important role. In addition to the activities of the European Union, the Bologna Follow-Up Group

⁸² Ibid, art. 4(1)

⁸³ Chalmers and Tomkins (2007), p. 192

⁸⁴ Treaty on the Functioning of the European Union (2010), Arts 3, 4 and 6

⁸⁵ Treaty on the Functioning of the European Union (2010), Art 2(5); Chalmers and Tomkins (2007), p. 193

⁸⁶ Chalmers and Tomkins (2007), p. 193

⁸⁷ Gornitzka (2005)

(BFUG) is employed to harmonize mobility and portability related issues outside the EU. As all Member States of the EU as well as the European Commission are members of the BFUG, the Bologna Process can be seen as an alternative to generate harmonization in biennial meetings of the Council of Ministers of Education, where the EU in general has no competence. Oversight on the reform progress made in the Bologna Member States is exercised via the Bologna stocktaking reports, by which the country's progress is evaluated and punished on a *naming and shaming* basis.

Hence, the national sovereignty regarding higher education, being subject to the third competence field, may only be influenced by the EU level through supportive, supplemental or coordinative measures. The initial inclusion of higher education to the competence area of the EU dates back to provisions in the Treaty of Rome, more precisely to the Treaty's provision on vocational training. Article 128 of the Treaty of Rome states that the institutions of the European Economic Area shall *"lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market"*.⁸⁸ The initial purpose of this provision, however, was primarily aimed at the economic sector and therefore as a function necessary for a long-term implementation of the common internal market.⁸⁹ As will be shown in a subsequent chapter, higher education programmes include aspects of vocational training, as these enable persons to acquire occupational qualifications⁹⁰, which made certain aspects of higher education subject to EU legislation.

According to the current wording of the Lisbon Treaty, the EU's mission statement is to foster cooperation between the Member States and support their initiatives, while *"fully respecting the responsibility of the Member States for the content of teaching and the organization of their education systems and their cultural and linguistic diversity"*.⁹¹ The Treaty further defines the scope of EU actions towards the goals stated in Table 2.

Figure 3: European Union Action Areas on Education⁹²

<i>Union action shall be aimed at:</i>
developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
promoting cooperation between educational establishments,
developing exchanges of information and experience on issues common to the education systems of the Member States,
encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
encouraging the development of distance education.

The internal organization of the national education systems is in this regard fully in the hand of the national sovereignty, except for areas which correspond to policy areas where the EU has either

⁸⁸ TEEC (1957), Art 128

⁸⁹ Mächtle (2010), p. 64

⁹⁰ Francoise Gravier v City of Liege (1985), § 30

⁹¹ Treaty on the Functioning of the European Union (2010), art 165

⁹² Ibid, art. 165(2))

shared or exclusive competences, or which conflict with provisions in primary legislation an example of this is Community legislation on free movement of workers and access to education. In 1968 the Council, on proposal of the Commission, established *Regulation 1612/68 on the Freedom of Movement of Workers within the Community*. The Regulation states that “*children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State’s general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory*”⁹³, which, by case law, was extended also to relatives, as these are lawful residents.⁹⁴

II.3 Higher Education and the European Court of Justice

II.3.1 Establishing EC Competences in Education Policy

As indicated before, the Treaties on the European Communities do not create competences with regard to a centralized EC/EU Education or Higher Education Policy. It will be shown in the following that the European Court of Justice, however, created EU competences in this policy area by establishing a relationship to Treaty provisions on Non-Discrimination (Art. 8EC) and the Free Movement of Persons (Art. 48 EC), which, in turn, enabled the EC to also initiate action in the field of higher education.

For more than two decades, students from one EU Member State taking up a study programme in another Member State were subject solely to the host country’s legislation, often discriminating them concerning tuition fees, maintenance grants and citizens’ rights.⁹⁵ The first step indicating a possible future transfer of competences in higher education policy to the EU level was taken in 1974, when the ECJ ruled in *Casagrande v. Landeshauptstadt München*⁹⁶, that education is “*a formal area of Community concern, insofar as it related to the creation of a common market*”.⁹⁷ Subsequently, a decade later the ECJ began providing judgments on equal treatment of students, being non-economically active persons and therefore not to be considered by EU primary law regarding Treaty provisions on non-discrimination and free movement, when the ECJ had to make preliminary rulings in the cases of *Forcheri v Belgium*⁹⁸ and *Francoise Gravier v the City of Liege*⁹⁹.

In *Forcheri* (1983), the ECJ was confronted with the question whether Forcheri’s right to take up education as a relative of an employed person in the host state, as provided for in secondary EU legislation¹⁰⁰, prevented her from being charged a specific fee for foreign students and required the application of non-discrimination provisions.¹⁰¹ The ECJ ruled that, noting that education as such is not covered by the treaties while the opportunity for instruction is, a specific fee for vocational training-related courses that differentiates between nationals and non-nationals constitutes an

⁹³ European Council (1968), Art 12

⁹⁴ Sandro Forcheri and his wife Marisa Forcheri, née Marino, v Belgian State and asbl institute Supérieur de Sciences humaines Appliquées – Ecole ouvrière Supérieure (1983), § 17f.

⁹⁵ Demmelhuber (2000), p. 58f.

⁹⁶ *Casagrande v Landeshauptstadt München* (1974)

⁹⁷ Blitz (2003), p. 202

⁹⁸ Sandro Forcheri and his wife Marisa Forcheri, née Marino, v Belgian State and asbl institute Supérieur de Sciences humaines Appliquées – Ecole ouvrière Supérieure (1983)

⁹⁹ *Francoise Gravier v City of Liege* (1985)

¹⁰⁰ European Council (1963); European Council (1968), art 12

¹⁰¹ Treaty establishing the European Economic Area (1957), art 7

infringement of the non-discrimination article, as long as the non-national is a lawful resident in the host country¹⁰², which she was due to her husband's employment in Belgium.

While in *Forcheri* the right to education was linked to the employment status of a relative, in the case of *Gravier* (1985) the applicability of EU law towards students as such was focused. *Gravier* was subject to very similar circumstances as *Forcheri*, being discriminated by the *Minerval*, except for the inexistence of a relation to the employee-status. The central point of the case was therefore the question whether students as economically inactive persons could rely on the Treaty's non-discrimination provision (Art 7 EEC), as higher education includes aspects of vocational training – a competence granted to the EC (Art 128 EEC).¹⁰³ The Court supported that view in its judgment, and held that vocational training covers any form of education that prepares for a future profession, trade or employment.¹⁰⁴ However, the ECJ established only discrimination concerning the access to education, in particular university education preparing students for professional occupations, within the scope of Community jurisdiction. The judgment was consequently confirmed by follow-up judgments in the 1988-cases *Barra*¹⁰⁵ and *Blaizot*¹⁰⁶, with the latter expanding the *Gravier*-definition to university studies, with the limitation of those studies only providing general knowledge that may provide qualification for a profession not only through the designated completion diploma, but also through the contents taught.¹⁰⁷ Hence, certain kinds of university studies constitute vocational training and therefore fall within the scope of the treaties, implying that fees such as the *Minerval* constitute a breach of anti-discrimination provisions.

Case 242/87 contested the lawfulness of the ERASMUS-programme, introduced in 1987, which provided a student and teacher mobility scheme, without mentioning a programmatic restriction such as established by previous case law. The Decision establishing the programme was contested by the Commission because the Council exceeded the scope of its competence in drafting a vocational training policy.¹⁰⁸ Primary criticism related to the applicability of the ERASMUS-programme to all forms of higher education, which exceeds the scope established in *Gravier*, *Blaizot* and subsequent cases.¹⁰⁹ By rejecting these views, the ECJ declared the scope of the ERASMUS-programmes to be lawful.¹¹⁰ Ostensibly, the judgment resulted in a manifestation of ERASMUS as the vocational training policy envisaged by art. 128EC,¹¹¹ but ultimately, the definition of vocational training, by declaring the scope of the ERASMUS-programme to be lawful, was expanded beyond what was previously established in the aforementioned cases. Although officially the conceptualization of vocational training was limited by the *Blaizot* clause – the exclusion of university studies for pure knowledge acquisition purposes - the legitimization of the ERASMUS-programme can be interpreted as to have brought an expansion also to knowledge-acquisition studies.

¹⁰² Sandro Forcheri and his wife Marisa Forcheri, née Marino, v Belgian State and asbl institute Supérieur de Sciences humaines Appliquées – Ecole ouvrière Supérieure (1983), §§ 17f

¹⁰³ Françoise Gravier v City of Liege (1985), § 9

¹⁰⁴ *Ibid*, §§ 25f, 30f

¹⁰⁵ Bruno Barra v Belgian State and City of Liege (1988)

¹⁰⁶ Vincent Blaizot v University of Liege (1988)

¹⁰⁷ *Ibid*, §§ 19f

¹⁰⁸ Commission of the European Communities v Council of the European Communities (1989), § 7f

¹⁰⁹ *Ibid*, §§ 22-25

¹¹⁰ *Ibid*, §§ 35f

¹¹¹ Mächtle (2010), p. 65

II.3.2 Social Benefits and Freedom of Movement of Workers

Having established a treaty-effective connection between vocational training and higher education through its jurisprudence over access matters, the ECJ soon became involved with case law on other aspects of student rights. In the cases *Lair*¹¹² and *Brown*¹¹³ from 1988 the issue of direct financial student support became central on the basis of article 7 of Regulation 1612/68/EEC, which conferred equal treatment regarding the right to receive social advantages for community workers.¹¹⁴

In *Lair*, the ECJ was asked for a preliminary ruling regarding the question whether a national of another Member State ceding employment in the host state to follow university studies can claim a training grant without differentiation from host state nationals.¹¹⁵ The Court found, emphasizing “*the present stage of development of community law*”, that community law covers assistance to maintenance as long as this assistance only covers costs directly related to education, not for covering maintenance costs.¹¹⁶ Therefore, such assistance constitutes a social advantage in the meaning of Community law and that nationals of other Member States are entitled to these benefits, provided there is a link between the previous occupation and the studies maintaining their status as migrant worker.¹¹⁷ The non-discrimination provision, however, only applies to access to assistance covering registration and tuition fees. Further, a conditional minimum period of previous occupation, focused in an additional question, was deemed illegal.¹¹⁸

In *Brown*, the judgment from *Lair* was expanded. The essential issue raised in *Brown* was the question whether a national of another Member State, who entered the host state for the purpose of employment and laid down his employment to take up a related study, can rely on EC legislation, independent from the duration of employment, when claiming access to social benefits exceeding enrolment and tuition fees, thus involving maintenance grants.¹¹⁹ The question was answered by the court restating its judgment in *Lair*, that EU nationals who cede employment to engage in a study must, under certain conditions, be considered migrant worker in the sense of Community law and, hence, have access to social benefits. This is made conditional upon the link between the previous occupation and the studies taken up.¹²⁰ However, *Brown* must be denied access to maintenance grants, as his subsequent university study was a reason for employment in the first place.¹²¹ The court further emphasized that payments of grants regarding the tuition fee fall within the scope of the treaty, but maintenance support generally does not¹²² and held that university studies, which result in the necessary qualifications for employment, constitute vocational training, but universities in general cannot be regarded as vocational schools in the sense of Regulation 1612/68/EEC.¹²³ The ECJ judgments in the cases *Brown* and *Lair* show that maintenance grants are within the scope of the treaty, as long as these only cover costs directly linked to education, such as tuition and enrolment

¹¹² *Silvie Lair v Universität Hannover* (1988)

¹¹³ *Steven Malcolm Brown v The Secretary of State for Scotland* (1988)

¹¹⁴ European Council, 1968, art 7

¹¹⁵ *Silvie Lair v Universität Hannover* (1988), § 8

¹¹⁶ *Ibid*, § 16

¹¹⁷ *Ibid*, §§ 28; 39

¹¹⁸ *Ibid*, § 44

¹¹⁹ *Steven Malcolm Brown v The Secretary of State for Scotland* (1988), § 6

¹²⁰ *Ibid*, §§ 25f

¹²¹ *Ibid*, § 27

¹²² *Ibid*, § 19

¹²³ *Ibid*, § 16

fees, but not living expenses. Additionally, the condition of a minimum time of employment to be able to receive grants was judged as being contrary to Community law.

The joined cases *Echternach and Moritz* (1989) went further with regard to the interpretation of the term ‘migrant worker’ and rights of their children in relation to Regulation 1612/68/EEC. *Echternach* and *Moritz*, two German citizens, applied for Dutch study finance, which was rejected on grounds that their parents were not or no longer considered migrant workers. In *Echternach*’s case, his father was not considered a migrant worker in the Netherlands, because he was employed at an international organization active within the Netherlands, but with headquarters outside the country.¹²⁴ The Dutch court demanded a preliminary ruling on the status of employees of international organizations as migrant workers and the status of children of former migrant workers, which have left the host country. Regarding *Echternach*, the ECJ held that nationals of Member States, even though their employment is based on an international agreement, must be subject to Community law. Therefore the family must be treated respecting the rights and privileges of Community Law.¹²⁵ With particular regard to *Moritz*’ situation the court ruled that a child of a former migrant worker retains his status as a family member of a migrant worker, if the continuation of his studies is not pursuable in the state of origin.¹²⁶ In addition, the ECJ found that article 12 of Regulation 1612/68/EEC, granting children or former migrant workers access to education, includes any form of education.¹²⁷ Therefore, access to study assistance for education and maintenance must be granted to children of migrant workers under the same conditions as to nationals.¹²⁸

A further issue raised deals with the ability of students to access host country student support for studies in their country of origin. In *Di Leo* (1990) the court was asked to provide a preliminary ruling on the question whether or not a child of a migrant worker is eligible to be granted student support by the host state, if the study pursued is located in the child’s country of origin.¹²⁹ In its judgment, the court argued that equal treatment should apply to migrant workers as well as to their children. Children of migrant workers should be able to access the same grants, independent from their place of residence, under the same conditions as nationals, to which the residence requirement was also not applicable for accessing the grant.¹³⁰ Therefore, access to portable student support must be granted to children of migrant workers, as the Community provision on free movement of children of workers¹³¹ prevents a limitation of applicability to the territory of the host state, also in case the student’s destination is the country of origin.

The Case *Raulin* (1992) builds upon the *Lair* and *Brown* cases, with the distinction that while in the previous cases both a workers status and a permanent residence permit were at hand, in *Raulin*’s case it was not. *Raulin* was a French national who immigrated to the Netherlands to work as an on-call waitress, without registering at the official bodies. However, without being further recognized by the Dutch administration she started her study in the Netherlands and sought access to study

¹²⁴ Joined Cases G. B. C. *Echternach* and A. *Moritz* v Minister van Onderwijs en Wetenschappen (1989), §§ 2f; 5

¹²⁵ *Ibid*, § 15

¹²⁶ *Ibid*, § 23

¹²⁷ *Ibid*, § 30

¹²⁸ *Ibid*, § 36

¹²⁹ *Carmina Di Leo* v Landeshauptstadt Berlin (1990), § 6

¹³⁰ *Ibid*, §§ 15f

¹³¹ European Council (1968), §12

finance.¹³² The ECJ became confronted with the question whether persons engaged in on-call and ancillary employment situations can rely on the Community's free movement provisions, and therefore access financial assistance when taking up a study. The Court held that worker status, and thus a residence permit, can be derived from on-call contracts, dependent on the total duration of the occupation within the host state, but not on the total duration of occupation within the Community, when evaluating genuine or ancillary character of that employment¹³³, where a genuine classification results in the ability to access support schemes intended to cover access fees.¹³⁴ Further, the ECJ, defining its decision made in *Lair*¹³⁵ more closely, held that a worker ceasing his employment to enrol in a study not linked to the previous occupation loses his status of a migrant worker.¹³⁶ However, the court established an option to restrict access for foreign students in cases of becoming an unreasonable burden for the host state, by reasons such as insufficient maintenance resources or invalid sickness insurances, in which cases article 7 EEC is not applicable.¹³⁷

In 1992, the *Bernini* cases expanded the previous judgments in *Raulin* and *Brown* by stating, first, that a trainee must be considered a worker in the sense of the treaties if the occupation is genuine, effective and with remuneration.¹³⁸ Second, the status as a worker is retained for a worker taking up a full-time study in his home country, if the previous occupation is related to his studies.¹³⁹ Last, the court, referring to its 1985-judgments in *O NEM v Deak* and *Lebon*¹⁴⁰, found that, as long as the migrant worker continuously supports his child, the grant is considered a social advantage to the worker in the meaning of Community Law. Based on the non-discrimination principle, the court argued that a residence requirement, if in existence, cannot be imposed upon children of migrant workers, if the requirement is not imposed upon the own nationals.¹⁴¹ Hence, for nationals of Community Member States, the same conditions concerning the place of residence must be applied as to nationals of the state where support is received from. As the residence requirement was not applicable to nationals of the supporting state it therefore should also not be applicable to other member state nationals.

The *Wirth* case (1993) evolved around a German national who pursued musical education at an arts college in the Netherlands for which the establishment charged fees. Upon application for the portable German study finance he was rejected, as the recently amended version of the *Bundesausbildungsförderungsgesetz* no longer enabled him to access student support abroad, due to newly introduced provisions. The national German court referred to the ECJ for preliminary ruling to clarify, amongst others, whether a course at a higher education institution charging fees would

¹³² V. M. J. *Raulin v Minister van Onderwijs en Wetenschappen* (1992), §§ 3f

¹³³ *Ibid*, §§ 11; 15; 19

¹³⁴ *Ibid*, §§ 29; 43

¹³⁵ The ECJ held in *Silvie Lair v Universität Hannover* (1988, § 39) that a worker ceasing his employment to take up a study linked to his previous occupation retains his status as a migrant worker.

¹³⁶ V. M. J. *Raulin v Minister van Onderwijs en Wetenschappen* (1992), § 22

¹³⁷ *Ibid*, § 39

¹³⁸ M. J. E. *Bernini v Minister van Onderwijs en Wetenschappen* (1992), § 17

¹³⁹ *Ibid*, § 21

¹⁴⁰ In *Office National de l'Emploi v Jozsef Deak* (1985, § 27) the Court ruled that a migrant worker may claim the same social benefits for his children as national workers. The Case *Centre Public d'aide sociale de Courcelles v Marie-Christine Lebon* (1987, § 24) limited the previous ruling towards situations, where the migrant worker continues to support his child.

¹⁴¹ M. J. E. *Bernini v Minister van Onderwijs en Wetenschappen* (1992), §§ 28f

constitute a provision of services in the sense of the treaties¹⁴², which would have been contrary to Treaty provisions prohibiting the introduction of additional barriers to the provision of services.¹⁴³ The court ruled that a consideration of a higher education establishment as provider of services is dependent on its primary source of funding. Publicly funded institutions which are part of the national education system cannot be considered to provide services in the meaning of the treaty, independent from a charge of tuition or enrolment fees contributing to operational expenses.¹⁴⁴

In the *Gaal* case (1995), the ECJ was confronted with the question whether the status of being a child of a migrant worker¹⁴⁵ is limited by a condition of age or dependency, which is set out by Articles 10(1) and 11 of Regulation 1612/68/EEC.¹⁴⁶ Gaal, at that time aged 22, applied for BAföG-support, was rejected with the reason that he was older than 21 and that he was not supported by his parents. The BAföG requirements at that time granted student support only to persons below the age of 21, except those persons being actively supported by their parents. The Court held that such conditions are not applicable to the questioned Article 12, considering that the Article itself contains no reference to age or dependency limitations, and that an interpretation as such would contradict with the decisions made in prior judgments.¹⁴⁷ A limitation of free movement, and thus denial of student support for children of migrant workers, cannot be imposed on students based on age or dependency constraints.

In 1999, the *Meeusen* case involved the right of children, whose parents carry out employment or self-employment by commuting from their country of origin and residence to the country of employment, to receive study finance from the parents' country of economic activity. The ECJ was asked to provide a preliminary ruling on the questions whether a worker having a marital relationship with the owner of her company of employment must be considered a migrant worker in the sense of the treaties, whether a child of a commuting worker can be treated differently than children of workers with residence in the state of employment and whether the child of a self-employed person with residence in another Member State can obtain study finance from the state of the parent's employment without residence requirement for the child.¹⁴⁸ Based on the economic establishment abroad, involving payment of taxes and social insurance in their country of economic activity, the child may claim student support, independent from a residence condition, under the same conditions as nationals of that state, provided the child is still supported by its parents.¹⁴⁹

Summarizing, previous case law established the ability to access student support schemes exceeding registration and tuition fees as a national of another EU Member State from a host state as being dependent on a previous genuine, effective and remunerated occupational establishment of that non-national in the host state, and a relationship between that occupation and the envisaged study regarding the contents, except for cases where the migrant worker status is sustained in case of involuntary unemployment. The case *Ninni-Orasche*¹⁵⁰ (2003) sustained these views by applying the condition of genuine, effective and remunerated character of an employment also to short- and

¹⁴² Stephan Max Wirth v Landeshauptstadt Hannover (1993), §§ 5-11

¹⁴³ Ibid, §21

¹⁴⁴ Ibid, §§ 15f; 19

¹⁴⁵ European Council (1968), Art 12

¹⁴⁶ Landesamt für Ausbildungsförderung Nordrhein-westfalen v Lubor Gaar (1995), § 16

¹⁴⁷ Ibid, § 23ff.

¹⁴⁸ C. P. M. Meeusen v Hooftdirectie van de Informatie Beheer Groep (1999), §§ 12, 18, 26

¹⁴⁹ Ibid, §§ 12; 18; 26

¹⁵⁰ Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst (2003)

fixed-term employments. The ECJ held that the decisive factor for the migrant worker status is the character of the work, not the duration, irrespective of the person's conduct prior or subsequent to his employment regarding the reasons for entering the host state or the engagement in job search or further training.¹⁵¹ It further held that the expiration of such fixed-term contracts is not necessarily decisive when classifying the reason for unemployment as voluntary or involuntary, but must be seen in relation to the common conduct within the economic sector.¹⁵² The evaluation of both factors is left to the national courts under application of objective indicators, as well as an evaluation of the abusive character concerning the engagement of migrant workers in short- and fixed term contracts for the sole purpose of accessing student support in the host state.¹⁵³ Interestingly, in *Ninni-Orasche*, the ECJ does not relate to the Opinion of the Advocate General that the status of European Citizenship grants lawfully resident, but economically non-active persons, with a considerably long residence, a right to access student support without discrimination to nationals.¹⁵⁴ The implications of European Citizenship, however, have been applied to the temporally preceding cases of *Grzelczyk* (2001) and *D'Hoop* (2002), which will be discussed in the following section.

II.3.3 European Citizenship and Access to Social Benefits

In the meantime, the 1992-Maastricht Treaty established new preconditions for the ECJ's work with regard to higher education. With direct reference to education articles 126 and 127 EC were introduced, expanding the previous article 128 EC on the establishment of a common vocational training policy. The amendments incorporated and thereby legalized the ECJ judgments effective at that time into the treaty texts and emphasized the Union's promotive competences on education, while reaffirming national sovereignty by mentioning the prohibition of harmonizing effects and the recognition clause.¹⁵⁵ The notable development brought by the Maastricht Treaty was the introduction of the European Citizenship, which was to replace the free movement provisions as legal basis in subsequent higher education case law. European Citizenship changed the citizens' rights concerning the access to social benefits¹⁵⁶ merely based on the additional citizenship and the derived right of residence¹⁵⁷, independent from the status as worker, thus having effect also on the eligibility of EU students to access maintenance grants.¹⁵⁸

One of the first cases directly referring to the Maastricht Treaty's amendments was the *Grzelczyk* case from 2001, which was built around the access of students to non-contributory minimum subsistence allowances, one form of the previously non-treaty related maintenance grants and directly connected to the *unreasonable burden* argumentation established in previous case law. The French national Grzelczyk pursued studies in Belgium before applying for the Belgian minimum subsistence allowance in his fourth year, because of increasing demand for study efforts which has

¹⁵¹ Ibid, § 25-31

¹⁵² Ibid, § 41-44

¹⁵³ Ibid, § 46f

¹⁵⁴ Geelhoud (2003), § 100(3)

¹⁵⁵ Mächtle (2010), pp. 66-70

¹⁵⁶ In *Maria Martinez Sala v Freistaat Bayern* (1998, §§ 10-13), the court decided that a EU state national may claim the same social assistance benefits as a host state's national, whenever the grant is automatically granted upon "*fulfilling [...] objective criteria, without individual and discretionary assessment of personal needs, and which is intended to meet family expenses*"

¹⁵⁷ In *Baumbast and R v Secretary of State for the Home Department* (2002, §81, 84) the ECJ established that a right of residence can be derived directly from European Citizenship, automatically granted to every EU Member State citizen.

¹⁵⁸ White (2005), p. 896

lead to inability of sustaining minor jobs. The allowance was refused on the grounds of Grzelczyk being an EEC national enrolled as a student, which did not satisfy the requirements of Belgian law for receiving the allowance.¹⁵⁹ The ECJ was confronted with the question whether the treaty provisions on non-discrimination and European Citizenship preclude the granting of such non-contributory minimum subsistence to be made conditional upon requirements of having the status of a migrant worker when this condition does not apply to the own nationals.¹⁶⁰ The Court, referring amongst others to the unreasonable burden provisions in *Raulin* (1992) and the situation of *Martinez Sala* (1998), argued in its judgment that the inability to fulfil the condition of sufficient maintenance resources cannot be the reason for a withdrawal of the permanent residence permit and that the financial situation of a student might change during his course of study.¹⁶¹ Hence, the access of such an allowance cannot be made conditional on the status as worker in the sense of Community law, when the same condition does not apply to own nationals; therefore the European Citizenship contains the right to equal treatment.

The focus on European Citizenship as the main decision-making reason in the *Grzelczyk* judgment resulted in 2002 in the *D’Hoop* case, where a Belgian national was refused maintenance grants by the Belgian state, simply because the secondary education was completed in another EU Member State. Belgian law grants a tideover allowance to students who have just completed their studies and are currently in search of employment, amongst others under the conditions that secondary education was completed in Belgium.¹⁶² Based on her unemployment, a referral to the Freedom of Movement of Workers was ineligible, therefore, the ECJ based its judgment on the European Citizenship and the derived non-discrimination provision in case of exercising free movement as a citizen of the Union.¹⁶³ The Court’s emphasis in the *D’Hoop* judgment on the right of free movement as citizen of the Union as “*fundamental right*”¹⁶⁴ points, according to Mächtle, towards a prohibition of discrimination on grounds of exercising free movement.¹⁶⁵ This suggests that nationals and non-nationals, both holding European Citizenship, cannot be made subject to disadvantages simply because of exercising free movement. The principle was subsequently also applied towards the export of social benefits on the 2006-cases *de Cuyper*¹⁶⁶ and *Tas-Hagen and Tas*¹⁶⁷ with respect to unemployment benefits and respectively compensation for war victims.

Case C-209/03 evolved around the French national *Bidar* (2005), who entered the United Kingdom in 1998. After completion of secondary school, the student took up studies in the UK receiving the same assistance as British nationals, which covered educational fees. An application for a student loan to cover maintenance costs was rejected on the grounds that Bidar was, according to the rules laid down in the Student Support Regulations of 2001, not settled in the UK.¹⁶⁸ The ECJ was confronted with the questions whether student assistance intended to cover maintenance costs, in the form of a subsidized loan or a grant, still fell outside the scope of the Treaty in the light of recent

¹⁵⁹ Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve (2001), §§ 10-13

¹⁶⁰ Ibid, § 19

¹⁶¹ Ibid, §§ 42f, 45

¹⁶² Marie-Natalie D’Hoop v Office National de l’Emploi (2002), § 3, 12

¹⁶³ Ibid, § 35

¹⁶⁴ Ibid, § 28f

¹⁶⁵ Mächtle (2010), p. 196

¹⁶⁶ Gerald de Cuyper v Office National de l’Emploi (2006)

¹⁶⁷ K. Tas-Hagen and R. A. Tas v Raadskamer WUBO van Pensioen- en Uitkeringsraad (2006)

¹⁶⁸ The Queen (on the application of Dany Bidar) v London Borough of Ealing & Secretary of State for Education and Skills (2005), §§ 20-26

developments. Further, the ECJ was asked whether national legislation may demand certain objective criteria from students in order to benefit from maintenance grants.¹⁶⁹ Referring to the outdated status of the Court's judgments in *Lair* and *Brown* due to the establishment of the Maastricht Treaty and the provisions on European Citizenship therein, the ECJ found that maintenance assistance for lawfully resident students now falls under the scope of the Treaty when non-discrimination provisions are violated.¹⁷⁰ Further, with regard to applicable conditions, the ECJ stated that establishment in the host state, together with a genuine link in the form of a certain level of integration into the society of the host state can be a suitable precondition.¹⁷¹ Hence, generally a student has the right to be treated equally as long as he or she is lawfully resident in the host country, also implying he or she entered with sufficient funds to maintain his stay. When the student's financial situation changes it has no effect on the right to reside in the host state. The rejection of Bidar's request was unlawful, as he had proven a sufficient degree of integration into society by residing a sufficient period within the host state.

II.4 Joined Cases C-11/06 Morgan v. Bezirksregierung Köln and C-12/06 Bucher v. Landrat des Kreises Düren

II.4.1 Background

In case C-11/06, the German national Rhiannon Morgan enrolled for studies in genetics at a university in the United Kingdom in 2004 after completing secondary education in Germany and being employed as an au pair in the United Kingdom. Morgan applied for a portable education grant under the German *Bundesausbildungsförderungsgesetz* at the *Bezirksregierung* (district council) Köln and argued that the particular study was not available in Germany. Her request was rejected on grounds that Morgan did not fulfil the requirement laid down in the BAföG. In particular, paragraph 5(2) of the BAföG requires students in point three that, in order to receive student support, the study abroad must be a continuation of a previous study period of at least one year in Germany. Consequently, Morgan went before the *Verwaltungsgericht* (administrative court) Aachen and appealed against this *first-stage studies condition*.¹⁷²

Case 12/06, has a partially similar background. Bucher, a German national, enrolled for studies in ergotherapy at a Hogeschool in the Netherlands in 2003. For this purpose she moved, sharing a residence with her partner in the following, away from her parents' residence in Bonn (Germany) to Düren (Germany), where she registered her principal residence at the German authorities. She applied for the German BAföG at the Landrat of the Kreis Düren in 2004, but was rejected on the grounds that she neither fulfilled the *first-stage studies condition*, as laid down before, nor the condition laid down in paragraph 5(1) of the BAföG, which relates to a "permanent residence condition". More precisely, paragraph 5(1) BAföG grants students study support for their studies abroad where they travel each day for study purposes from their permanent residence in Germany, which is defined as the non-temporary centre of interest. This, according to the BAföG does not

¹⁶⁹ Ibid, §§ 28; 49

¹⁷⁰ Ibid, § 48

¹⁷¹ Ibid, §§ 55ff; 63

¹⁷² Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2007), §§ 6-10

include an establishment for education purposes only. Consequently, Bucher also challenged the decision before the Verwaltungsgericht Aachen.¹⁷³

Following these developments, the Verwaltungsgericht Aachen filed the following questions regarding the two cases for preliminary ruling:

- (1) “Does the freedom of movement guaranteed for citizens of the Union under articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals for a full course of study in another Member State on the ground that the course does not represent the continuation of studies pursued at an education or training establishment in the national territory for a period of at least one year?”¹⁷⁴
- (2) “Does the freedom of movement guaranteed for citizens of the Union under Article 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals, who as a cross-border commuter is pursuing her course of study in a neighbouring Member State, on the grounds that she is residing at a border location in [the first-mentioned Member State] only for education or training purposes and that place of abode is not her permanent residence?”¹⁷⁵

In the ECJ proceedings not only Morgan and Bucher against the respective German authorities were involved as claimants and respectively defendants, but also the national governments of Germany, Italy, the Netherlands, Austria, Italy, Sweden, the United Kingdom and the Commission became involved, presumably with the intention of some to safeguard their national portability systems.

II.4.2 Argumentation

With regard to the first question, the Court initially established that the *first-stage study condition*, established in Articles 5 (1) and (2) BAföG, imposes a two-fold obligation to be fulfilled by the claimants. These are the continuation and the permanent residence provisions. Germany, the Netherlands, the United Kingdom, Austria and the Commission, siding with the defendants, claimed that these obligations do not cross the intention of Article 18 EC, and even if they would, the measures are proportionate and justifiable, whereas Italy, Finland and Sweden confronted that view, arguing that the condition restricts the claimants’ freedom of movement.¹⁷⁶

The ECJ, though agreeing with the defendant’s side on the competence of Member States to determine the contents and organize their education system, takes the view that these organisational issues “*must be exercised in compliance with community law*”¹⁷⁷, as previous case law – particularly *Di Leo*¹⁷⁸ and *Meeusen*¹⁷⁹ – already has established. Therefore, when a portable student support system exists it cannot impose obligations that are contradictory to the rights of freedom of movement and residence, except if these restrictive effects can be justified by means of

¹⁷³ Ibid, §§ 11-15

¹⁷⁴ Ibid, § 17

¹⁷⁵ Ibid, § 17

¹⁷⁶ Ibid, §§ 18; 20f

¹⁷⁷ Ibid, § 24

¹⁷⁸ Carmina Di Leo v Land Berlin (1990), §§ 15f

¹⁷⁹ C. P. M. Meeusen v Hooftdirectie van de Informatie Beheer Group (1999), § 25

proportionality and non-discriminatory, objective considerations of public interest.¹⁸⁰ Hence, Morgan and Bucher, by means of the continuation provision in the BAföG, were made subject to discouraging effects to move freely within the Union.¹⁸¹ The question on the justifiability and proportionality of such restrictions remains.

The defendant side draws upon five arguments promoting the justifiability and the proportionality of the first-stage study condition. The first argument, brought forward by the *Bezirksregierung Köln*, relates to the justification on grounds of intending to “*enable students to show their willingness to pursue and complete their studies successfully and without delay*”.¹⁸² While agreeing that the appropriately timely finalization of studies can be considered a qualified objective within an education system, the ECJ decided that the condition in itself is incapable of assuring a timely finalization, nor prevent a prolongation of study periods, and therefore is disproportionate.¹⁸³

Second, the German government puts forward that a *first-stage studies condition* helps students to determine their right choice of study, which is seen fundamentally reverse by the ECJ. According to the court this view is disproportionate, as the condition not only discourages students to find their right choice outside the German system, particularly if the aspired study is unavailable in the state of origin, but also discourages to discontinue studies, where a study is no longer considered to be the right choice.¹⁸⁴

Third, the German government refers to the promotive character of the BAföG in relation to studying abroad. Provided that the first-stage study condition is fulfilled, students are eligible to claim support for travel costs, registration fees and medical insurance and, in addition, may claim grants for an additional year, if the studies are completed in Germany. Although lauding these factors, the ECJ considers them incapable of justifying a constraint of the rights conferred to citizens of the Union in Article 18EC.¹⁸⁵

Fourth, the *Bezirksregierung Köln*, together with the Netherlands and Austria, claims that the *first-stage study condition* is justifiable with regard to the prevention of students attaining the status of becoming an *unreasonable burden*, leading to a decrease in the amounts granted under the BAföG. Sweden and the Commission add that such a condition is legitimate for reasons of ensuring “*a link between the students concerned and its society in general as well as its education system*”.¹⁸⁶ The ECJ, in response, relates to the *Bidar*-case, where a restriction of assistance can be limited to students having shown a “*certain degree of integration into the society*”.¹⁸⁷ However, the condition of one year of previous study in Germany, with regard Morgan’s and Bucher’s nationality, together with their previous education and life in Germany, is “*too general and exclusive*”¹⁸⁸ to solely prove a

¹⁸⁰ Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2007), § 33

¹⁸¹ Ibid, §§ 25-28

¹⁸² Ibid, § 35

¹⁸³ Ibid, §§ 35f

¹⁸⁴ Ibid, §§ 37ff

¹⁸⁵ Ibid, §§ 40f

¹⁸⁶ Ibid, § 42

¹⁸⁷ The Queen (on the application of Dany Bidar) v London Borough of Ealing & Secretary of State for Education and Skills (2005) §§ 55ff; Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2009), § 43

¹⁸⁸ Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2007), § 46

sufficient degree of integration into society and, thus, is disproportionate, as previously similarly held in *D’Hoop*.¹⁸⁹

The fifth and final argumentation on the defendants’ side relates to the potential duplication of grant entitlements, based on inadequate information exchange between the EU Member States regarding grants allocated, which can, in their view, be prevented by the first-stage study condition. Relating to their particular experiences in the case of Ms Morgan, the United Kingdom notes that Morgan already received allowances from the British authorities. Germany adds that a provision on the disclosure of other incomes from grant and benefits is present in Article 21(3) of the BAföG. Following its hitherto line of argumentation thus far, the ECJ misses to detect a direct relation between the *first-stage study condition* and the intention to prevent duplication of grant entitlements.¹⁹⁰

II.4.3 Judgment and Potential Impact

To recapitulate, these were the two questions raised in the case:

- (1) “Does the freedom of movement guaranteed for citizens of the Union under articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals for a full course of study in another Member State on the ground that the course does not represent the continuation of studies pursued at an education or training establishment in the national territory for a period of at least one year?”¹⁹¹
- (2) “Does the freedom of movement guaranteed for citizens of the Union under Article 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals, who as a cross-border commuter is pursuing her course of study in a neighbouring Member State, on the grounds that she is residing at a border location in [the first-mentioned Member State] only for education or training purposes and that place of abode is not her permanent residence?”¹⁹²

Having disregarded all arguments put forward by the defendant side, the ECJ finalizes its judgment on the first question filed by stating that the individual rights entailed in the Union citizenship regarding the freedom of movement precludes national law from requiring a one-year first-stage study condition in order to access student assistance.¹⁹³ Hence, a *first-stage study condition* of one year required to be fulfilled by students before legitimately accessing portable student support is held contrary to the provisions made in the Treaties. The main reason derived from the proceedings for the final judgment is that the first-stage study condition in the form it is present in German law constitutes a discouraging effect to the free movement of the students. Revisited, the main argument for this outcome is that the condition of only one year of previous studies is insufficient to prove a link to a state’s society. Hence, the first-stage study condition must be cancelled as a

¹⁸⁹ In Case Marie-Natalie D’Hoop v Office National de l’Emploi (2002, §§ 36; 40), the ECJ held that the sole condition of having completed secondary education in another Member State is too general and exclusive to grant a ‘tideover allowance’ to students having the nationality of the providing Member State.

¹⁹⁰ Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2007), §§ 47ff

¹⁹¹ Ibid, § 17

¹⁹² Ibid, § 17

¹⁹³ Ibid, § 51

condition for receiving student support abroad. An answer to the second question became unnecessary, as the result of the first question already determined the positive outcome of the second question and is therefore irrelevant for the decision on Bucher's entitlement to the BAföG.¹⁹⁴

II.5 Summary

This chapter sought to provide the basic context of the thesis. The first sub-question focused on the competences and instruments of the European Union's institutions in the field of tertiary education. It has been shown that the EU knows three areas of competence with different levels of ability to influence national legislation. Generally, the EU is capable to influence national law in two ways, precedent case law and direct regulation via hard and soft law. The relationship between the ECJ and the legislative functions of the EU can be seen as reinforcing. The ECJ interprets the legal output of the legislative bodies in precedent cases, which, as shown, have the potential to widen the competence areas of the legislator through spillover effects. Precedent case law however has to be seen as negative policy making, as it is merely capable to unjust or harmonize existing legislation towards European legislation, thereby causing necessity to amend. In contrast, direct regulation as positive policy-making can establish new standards and requirements, dependent on the competence area and the legislative tool used. The sector of education, and with it higher education, generally belongs to the third competence field, where the EU institutions may only initiate supportive, supplemental and coordinative measures in the form of soft legislation. The instruments in this regard are either instruments of soft law, as far as the third competence area is concerned, or hard law, whenever aspects of the first two competence fields are involved. ECJ case law is supreme over national legislation, directly effective and entirely binding for the addressee, from which a deterministic character can be derived for the effect of ECJ case law on the necessity to change national legislation. However, this thesis considers not only the judgment, but also the effect of the whole case proceedings on the amendment of national law. Therefore, whenever stages in the national amendment process precede the final judgment, the effect must be considered probabilistic.

The second sub-question asked how the ECJ influenced tertiary education and the standards and requirements that were established as a consequence. It has been shown that the European Court of Justice established the free movement of students within the scope of the European Communities, although it is doubtful whether this development was explicitly intended by the Treaties. Starting with the equal treatment of Member State nationals with respect to access to higher education and the consideration of university studies as subject to Community law, the ECJ expanded Community competences to equal treatment concerning fee compensation and financial support, as well as the portability thereof. These social aspects were derived from the interdependent interaction of the free movement of workers and non-discrimination provisions in the pre-Maastricht era, as well as from the free movement of persons (generalized by the introduction of the European Citizenship) and equal treatment in the post-Maastricht era. With its judgments, the ECJ has widened the Community's and later the Union's competence in the education sector beyond what was envisaged by the treaties. Over the years it was established that Union citizens have access to the same social benefits as host state nationals, provided that the former are lawfully resident in the host state. As a foreign student, the ability to claim social support is closely related to the period of previous residence proving a sufficient integration into society, or the socio-economic status as migrant

¹⁹⁴ Ibid, §§ 52f

worker or the person's marital or parental relation to a migrant worker. The status 'migrant worker' qualifying for access student support is derived from employment, previous or current, of genuine, effective and remunerated character in the host state. This status is not to be contested by means of residence or current employment status - if the previous employment suffices the character described before-, but by the choice of study, which has to be linked to the previous employment. The detachment of the residence status enables support to be accessible also for commuters and mobile students. After the introduction of the European Citizenship, foreign students with insufficient employment status seeking to access student support however still have to demonstrate a sufficient integration into society, often derived from a perennial residence for a suitable period before studies or the completion of preceding educational stages in the host state. The access is though limited on basis of the *unreasonable burden* clause, which requires students to maintain a reasonable relationship between their residence and their use of social support.

Furthermore, the treaty-version of competence classification holds true for all areas which do not contradict the states' sovereignty regarding the content and organization of the education systems or the cultural and linguistic diversity. However, as the previous elaborations on precedent case law have shown, core aspects of the education systems related to shared or exclusive competences can be influenced by the Union's legislation or jurisprudence. By creating a relationship between shared or exclusive Union competences, the ECJ seems able to initiate shift policy areas where the EU is least competent to legislate towards competence fields where the EU can enact binding legislation. The case law has shown that the ECJ increased the Union's grip on higher education and social benefits by relating these to questions of access, non-discrimination and free movement issues, and post-Maastricht also to the shared European citizenship.

The third sub-question refers to the outcomes of the joined cases *Morgan & Bucher*, their consequences for national student support portability legislation, and as such, the consequences for outbound BAföG portability. It has been shown that the *first-stage study condition*, that is, the requirement of an initial two semester study in Germany before being able to be supported under the BAföG-scheme abroad, was deemed contrary to the provisions made by the treaties. The ECJ based its judgment primarily on the discouraging effect on student mobility, but also on the insufficiency of one year of previous study to prove sufficient integration into the society of a state – a concept introduced in the *Bidar*-case, where the court failed to define a suitable period that would prove a sufficient degree of integration. The second issue contested in the case, the ban of BAföG-support when relocating to border regions for study purposes only, was disregarded during the case proceedings, as the first issue was found in the affirmative.

III) Developments on German Portable Student Support after Morgan & Bucher

This chapter discusses the change in the German *Bundesausbildungsförderungsgesetz* and the development of German outbound mobility in relation to the BAföG-scheme subsequent to the ECJ ruling in the case *Morgan & Bucher*. The main focus in this chapter is to provide an answer to the fourth and fifth sub-question. The first part will concentrate on answering the question whether the German BAföG-scheme has undergone an amendment process and, if so, what was amended. For this purpose an amended version within the timeframe 2006-2010 that can be expected to be logically and temporally related to the ECJ case, will be compared with its predecessor to trace amendments. The comparison will primarily focus on sections within the law comprising the outbound portability of BAföG-support. Peripheral attention will be directed towards the eligible nationalities. The second part sets out to answer what quantitative effects on German BAföG-supported students can be observed subsequent to the amendment. The research will comprise a statistical analysis of German outbound student mobility and the outbound portability of BAföG-support, worldwide and into the EU. The primary focus is to observe the development of the general numbers of students abroad in comparison to those who are funded with particular attention to conspicuities prior and subsequent to amendments to the German BAföG-law.

III.1 Amendments on Student Support Portability Legislation in Germany

Portability of German student support is generally regulated by the *Bundesausbildungsförderungsgesetz*, particularly in §5 *Ausbildung im Ausland* (Education Abroad). The BAföG was amended once within the timeframe of Morgan & Bucher (2006-2009). The amendment process was concluded with the 22. *Gesetz zur Änderung des Bundesausbildungsförderungsgesetzes* (22nd BAföG-Amendment Law, 22. BAföGÄndG), that became effective on January 1st 2008. Comparing the amended version with its predecessor, a significant set of amendments can be indicated, especially towards §5.¹⁹⁵

In the sequential arrangement of the amendments made towards §5 *Ausbildung im Ausland*, the first amendment relates to the *commuting clause* covered by §5 art 1. The article contains two parts, a *commuting clause* and a *permanent establishment clause*. The pre-amendment version granted portable BAföG-support to students who are travelling on a daily basis from their permanent establishment in Germany to their education facility abroad. Conditional for the support is the *permanent establishment*, which, according to the law, is considered to be not just the place where the student merely lives for the purpose of study only, but, beyond that, is also the centre of the person's life beyond the time of his or her studies. Further, support for border commuting students has a nationality conditions, limiting support to students whose nationality is included in §8 art 1 BAföG, which, summarized, excludes non-nationals without permanent establishment in Germany and not having a permanent residence permit in Germany derived from EU nationality, asylum or refugee status. In the amended version, the *commuting clause* was deleted without replacement, while the *permanent establishment clause* remained unchanged¹⁹⁶. This basically means that the condition for receiving BAföG support is redirected from the residence of a student towards the location of the student's education facility.

¹⁹⁵ See: ANNEX A, Figure 9

¹⁹⁶ BAföGÄndG (2007), Art 1 (2a)

The next set of amendments refers to the conditions for support of students abroad, having their permanent establishment in Germany. One minor amendment was made regarding the eligibility of students in joint education programmes in §5 art 2(2) BAföG. Where the law previously considered only joint programmes between one German and one foreign education facility, the amended version now also recognizes cooperative programmes involving more than two education facilities.¹⁹⁷ The major amendment of §5 Art 2, however, was made by removing the *first-stage study condition*, regulated in §5 Art 2(3) and contested by Morgan and Bucher. While the pre-2008 version of the BAföG requested a minimum duration of one year of studies at a German education facility before continuing an education in another EU Member State, in the amended version the one-year clause is removed and Switzerland is included in the potential destination states. The amended version explicitly emphasizes that support is granted to eligible students if an education is started or continued in another EU Member State or Switzerland, instead of the previous continuation-only emphasis.¹⁹⁸ In the previous version, BAföG-support according to §5 art 2 BAföG applies to students in vocational training facilities abroad, provided that the curriculum comprises language courses. The necessity of lingual education within the curriculum was deleted in the amended version¹⁹⁹. Further, the eligible nationalities, described §5 Art 2(3) and referring to §8 BAföG, were considerably expanded. The amended version introduces EU citizens, restricted by the *unreasonable burden* condition, non-nationals with residence and/or settlement permit, as well as - after 4 years of permanent residence - spouses and children of non-nationals and refugees and asylum seekers with protection from deportation.²⁰⁰

The next amendment to §5 BAföG relates to the Germans of the cultural Danish minority, which were previously eligible to receive BAföG-support for an education in Denmark, if the envisaged education was not available in Germany. Due to the restructuring of the eligible nationalities in §8 BAföG and the deletion of the *commuting clause*, the provision became unnecessary and was therefore deleted²⁰¹. Lastly, the amended §4 BAföG now includes extra-occupational academies to the education facilities, where students are supported abroad in the European Union. Further, references to the deleted *commuting clause* were deleted.²⁰²

III.2 Development of German Outbound Mobility

In the following, the potential impact of the 22nd BAföG-Amendment Law will be discussed by means of a statistical analysis of the development of the numbers of German BAföG-receiving students abroad, particularly with regard to the potential point of impact in 2008, when the law came into force. In line with the central subject of this thesis this analysis will focus primarily on the overlapping features of *Morgan & Bucher* and the amendments made to §5 of the BAföG-Law. These central features are, as previously discussed, the deletion of the *commuting clause* and the elimination of the *first-stage study condition*, which applies to students targeting European Union countries and Switzerland and, therefore broadened the list of potential recipients.

The amendments can be generally thought of as being conducive to an increase of BAföG-supported students abroad and, to a lesser extent, beneficial to the outbound mobility of German students in

¹⁹⁷ Ibid, Art 1 [2b (aa)]

¹⁹⁸ Ibid, Art 1 [2b (bb)]

¹⁹⁹ Ibid, Art 1 [2b (cc)]

²⁰⁰ Ibid, Art 5; Classen (2007), p. 7f

²⁰¹ BAföGÄndG (2007), Art 1 (2c)

²⁰² Ibid, Art 1 (2d)

general. Therefore, it can be hypothesised that, after the amended law became effective in 2008, the share of BAföG receiving students abroad in the European Union (EU-13) in the total German students abroad in the EU-13 should significantly increase in comparison to the share before 2008²⁰³. Further, due to the amendments' focus on the European Union and Switzerland, it can be hypothesised that between 2008 and 2010 the number of BAföG-recipients targeting these entities should show a higher acceleration in growth than the total number of BAföG-recipients abroad. Figure 4 provides an overview on the development of student numbers abroad²⁰⁴ and BAföG-receiving students abroad²⁰⁵ in total and in the EU-13.

It can be observed that German students abroad as well as BAföG-receiving students abroad show annually increasing numbers between 2000 and 2010, except for students abroad in the EU-13 in 2004. In the total period the number of German students abroad increased by 142.53% while the total number of BAföG-receiving students abroad increased by 361.61%. Similar developments can be indicated for their respective subgroups, students targeting EU-13 countries, with increases by 157.46% for students abroad and 339.65% for BAföG-receiving students abroad. Generally, comparing the numbers of 2000 and 2010, there are three trends that can be derived from these statistics. First, the number of German students going abroad to EU-13 states has grown stronger than the number of students going abroad outside the EU-13. Second, the number of BAföG-receiving students outside the EU-13 has grown stronger than inside the EU-13. Third, for both destinations, the number of BAföG-receiving students has grown stronger than the number of students abroad.

Figure 4: Statistical Development of Students Abroad and BAföG receivers abroad, (2000-2010)

Category	Statistic	Year										
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
BAföG-receivers (EU-13)	Count	6572	7295	8927	10251	11976	12028	13045	13694	17048	23208	28893
	%Annual Growth Rate		11,00%	22,37%	14,83%	16,83%	0,43%	8,46%	4,98%	24,49%	36,13%	24,50%
	%Growth (period)	108,37%								110,99%		
	%Average Annual Growth Rate (periods)	11,27%								28,37%		
	%Total Growth	339,64%										
BAföG-Receivers (Total)	Count	9361	10860	13648	15832	18400	19518	21728	22947	28026	36185	43197
	%Annual Growth Rate		16,01%	25,67%	16,00%	16,22%	6,08%	11,32%	5,61%	22,13%	29,11%	19,38%
	%Growth (period)	145,13%								88,25%		
	%Average Annual Growth Rate (periods)	13,85%								23,54%		
	%Total Growth	361,46%										
Students abroad (EU-13)	Count	33091	33524	37554	41636	41193	49226	53915	59804	69245	76208	85197
	%Annual Growth Rate		1,31%	12,02%	10,87%	-1,06%	19,50%	9,53%	10,92%	15,79%	10,06%	11,80%
	%Growth (period)	80,73%								42,46%		
	%Average Annual Growth Rate (periods)	9,01%								12,55%		
	%Total Growth	157,46%										
Students Abroad (Total)	Count	52200	53400	58700	65600	67400	78200	85300	93400	106800	115500	126600
	%Annual Growth Rate		2,30%	9,93%	11,75%	2,74%	16,02%	9,08%	9,50%	14,35%	8,15%	9,61%
	%Growth (period)	78,93%								35,55%		
	%Average Annual Growth Rate (periods)	8,76%								10,70%		
	%Total Growth	142,53%										

²⁰³ As explained in the Methodology, the category EU-13 excludes Greece, because of incomplete and unreliable data, and the 2004- and 2007-EU-enlargements, to rule out the Accession effect. These are, however, included in the total numbers.

²⁰⁴ Statistisches Bundesamt (2012), p. 29, See also: Annex B, Figure 10

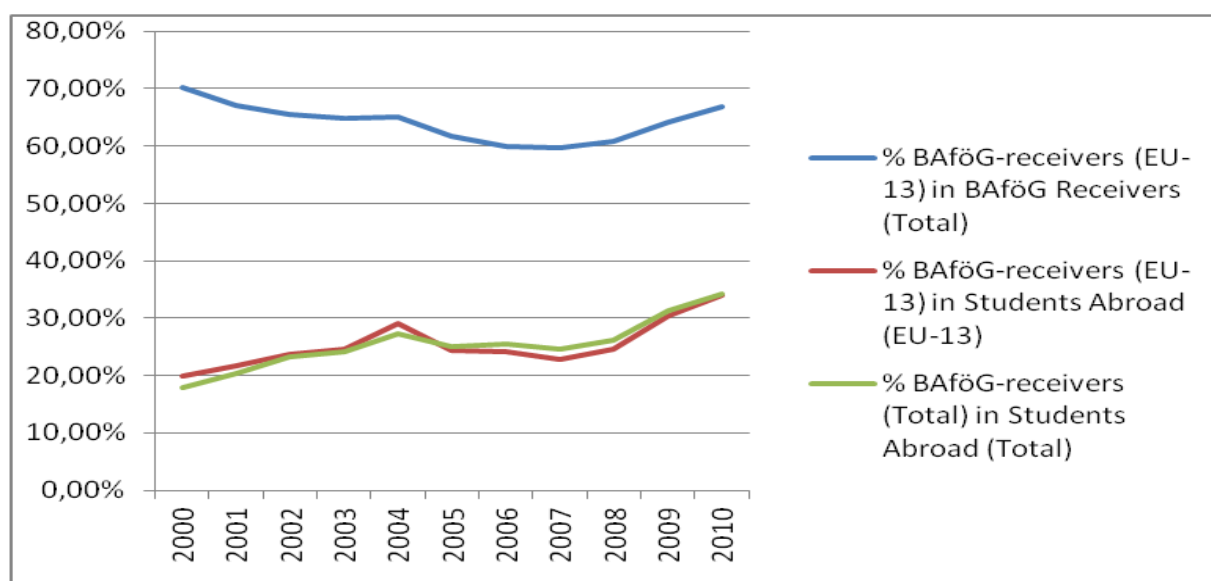
²⁰⁵ Deutscher Bundestag (2012), p. 21f, See also: Annex B, Figure 11

Considering the annual percental growth, it can be observed that the total number of BAföG-receiving students shows three different phases of increased intensity. Between 2001 and 2004 a phase of annual increases between 16% and 25.67% can be indicated, which is followed by a phase of diminishing increases between 5.61 and 11.32% between 2005 and 2007 and a final phase of intense increases between 19.38% and 29.11% (2008-2010). The same trend can be indicated for the EU-13 subgroup, with initial increases between 11.00% and 22.37% (2001-2004), 0.43% to 8.46% in 2005 to 2007 and a final period with increases between 24.49 and 36.13% (2008-2010). At this point, two statistical peculiarities can be observed that indicate a potential external impact: the sudden deceleration in development in 2005 and the intense acceleration in 2008. As the central interest of the thesis lies in a potential impact in 2008, the 2005-impact will not be discussed in the following. Comparing the average annual growth rates (AAGR) of total BAföG receivers abroad, it can be observed that after the peculiarity the AAGR is 23.54%, exceeding the pre-impact value by 9.69%. An even more intense development can be indicated for the EU-13 subgroup after the potential impact, which exceeds the pre-2008 development even by 17.10%, generating an AAGR of 28.37%. In comparison, the developments of German students abroad as of its EU-13 subgroup shows less intense AAGRs, both before and after the impact, with the subgroup slightly outperforming its superior respectively by 0.25% and 1.85%. In addition, a lesser divergence between the AAGRs can be observed before and after. Therefore, it can be concluded that, in relation, the development in numbers of BAföG-receiving students generally exceeds the development of students abroad. Interestingly, the effect is more apparent for the EU-13 subgroups, implying that the amendment taking effect in 2008 was clearly directed towards the European level.

The trend of stronger performance within the EU-13 after the impact is supported by the development of shares of EU-13 BAföG-students in the aggregate group. Initially, and especially until the 2008-impact, the share of EU-13 BAföG-students is generally diminishing from 70.21% to 59.68%. After the impact, however, a trend reversal can be observed, peaking at 66.89% in 2010 and promising to surpass the initial share of 70.21% in 2013²⁰⁶, assuming a similar trend continuation. Hence, two-thirds of BAföG-receivers tend to choose an EU13-country as a target country for studies abroad, with an increasing tendency towards three-quarters. A similar, but more linear and less intense trend is observable in the relation between total German students abroad and its subgroup, with a share development from 63.39% (2000) to 67.30%(2010). Here, a significant impact in 2008 is not observable, which suggests that the policy had an impact only on BAföG-receivers, not on students abroad.

²⁰⁶ Forecast calculation on basis of the given values from 2008 to 2010 provides respective shares of 68.45%, 69.70% and 70.66% for 2011, 2012 and 2013.

Figure 5: Share Development of BAföG-receivers abroad (Eu-13) in other Groups abroad, (2000-2010)²⁰⁷



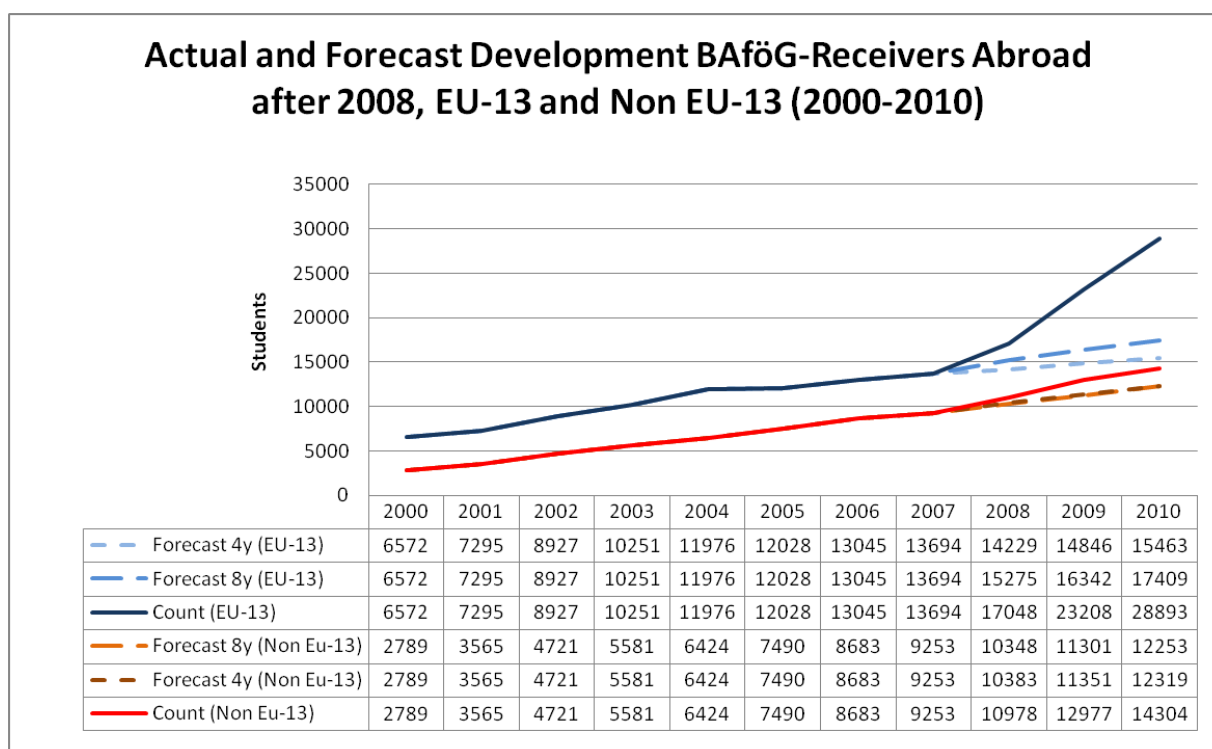
The development of BAföG-students in German students abroad shows for both the total and its subordinate group, a significant increase in share in comparison to the year 2000 values. In 2000 roughly between one-fifth and one-sixth of students abroad received BAföG-support, which increased to slightly below one-fourth in 2007. Apparent is a sudden increase in 2004, followed by a diminishing (EU-13) or stagnating (Total) development phase between 2005 and 2007. After the policy impact, the development again shows an increasing trend, constituting a share of above one-third, 34.12% for total and 33.91% for EU-13, of students abroad receiving BAföG support, although with a flattening curve. The trends discussed above show that the 2008-policy amendment is likely to have widened the list of recipients of BAföG-support.

The question emerges as to how the numbers of BAföG-receivers would have developed without the impact in 2008. Generating forecasts on the developments in 2008 to 2010 for the EU-13 and non-EU-13 subgroups, based on the periods 2000 to 2007 and 2004 to 2007, and contrasting these with the actual development provides an idea of the possible alternative developments. It can be observed that for both subgroups and base periods, the forecasted developments evolve substantially below the actual development²⁰⁸. As described before, the actual development of BAföG-supported German students abroad in the EU-13 has undergone a sudden increase after the implementation of the BAföG-Amendment law, peaking at 28893 students in 2010. In contrast, the forecasted developments evolve notably below the actual development. Peaking at 15463 and 17409 in 2010 respectively for the four-year-basis and the eight-year-basis forecast, the divergence between the actual and forecasted developments is respectively 13420 and 11484 students. The actual growth from 2007 to 2010 is 110.99%, which significantly contrasts with the predicted growth of 12.92% and 27.13%. Further, the EU-13 forecasts show a significant diversity between each other, which is based on the heterogeneity of the previously emphasized development phases. Based on the inclusion of the strong development period 2000 to 2004 in the eight-year-basis forecast, this forecast supersedes the four-year-basis forecast by 1934 students in 2010.

²⁰⁷ Based on: Statistisches Bundesamt (2012), p. 29; Deutscher Bundestag (2012), p. 21f, See also: Annex B, Figures 10 and 11

²⁰⁸ See: Figure 6: Actual and Forecast Development BAföG-receivers abroad, EU-13 and non-EU-13 (2000-2010)

Figure 6: Actual and Forecast Development BAföG-receivers abroad, EU-13 and non-EU-13 (2000-2010)²⁰⁹



The Non-EU-13 subgroup shows very similar forecasts, based on the more homogeneous development between 2000 and 2007. The final 2010 values for both forecasts show only a minor variance of 69 students. In contrast, the actual development shows a 2010-value of 14304 students, while the forecasts peak at 12319 and 12253 students for the four-year-basis and the eight-year-basis forecast respectively. Hence, instead of the forecasted total periodic increases by respectively 33.14% and 32.42%, the actual growth was 54.59%, which leads to the conclusion that an effect is also existent for non EU-13 countries. Summarizing, it can be observed that for both subgroups, EU-13 and non EU-13, the actual development outperforms the forecasted trends based on both periods. The effect, however, is unambiguously more dominant for BAföG-students targeting EU-13 states, based on the greater disparity of the EU-13 actual development with the forecasted values than in the non EU-13 group. It can be concluded that the impact of the BAföG-amendment law was more intense towards the EU-13 countries than towards countries outside the EU-13.

Surprisingly, the outstanding performance concerning the growth of BAföG-receiving students abroad can be attributed to a rather small set of countries²¹⁰. Within the EU-13, countries with the highest total growth between 2008 and 2010 are the Netherlands (1234%), Belgium and Luxembourg (130.77%), Austria (98.32%) and Great Britain (88.16%).

²⁰⁹ Own calculations, based on: Statistisches Bundesamt (2012), p. 29; Deutscher Bundestag (2012), p. 21f. See also: Annex B, Figures 10 and 11

²¹⁰ Here, only Countries with a minimum value of 100 supported students in 2008 are considered.

Figure 7: Individual Country Statistics - Growth in Inbound German BAföG-Students (2008-2010)²¹¹

Region	Country	Annual Increase			Total Growth	AAGR	%Country Growth in Subgroup Growth	%Country Growth in Total Growth
		2008	2009	2010	2008-2010	2008-2010	2008-2010	2008-2010
EU-13	Netherlands	301,30%	128,75%	46,33%	1243,29%	158,79%	62,74%	47,09%
	Great Britain	18,99%	22,12%	29,49%	88,16%	23,53%	13,22%	9,93%
	Austria	33,32%	35,58%	9,72%	98,32%	26,21%	13,88%	10,42%
	Spain	0,38%	10,14%	14,95%	27,09%	8,49%	4,18%	3,14%
	France	-15,86%	3,98%	17,71%	2,98%	1,94%	0,48%	0,36%
	Sweden	17,22%	10,08%	-0,57%	28,30%	8,91%	2,03%	1,53%
	Italy	-5,41%	6,58%	-5,94%	-5,18%	-1,59%	-0,30%	-0,22%
	Denmark	21,32%	13,33%	8,91%	49,75%	14,52%	1,34%	1,00%
	Finland	9,20%	7,33%	-2,39%	14,40%	4,71%	0,47%	0,36%
	Belgium and Luxembourg	9,13%	23,79%	70,82%	130,77%	34,58%	1,79%	1,34%
	Ireland	-2,85%	-20,78%	19,44%	-8,08%	-1,40%	-0,22%	-0,17%
	Portugal	-3,33%	0,00%	31,53%	27,14%	9,40%	0,38%	0,28%
	EU-13 (Total)	24,49%	36,13%	24,50%	110,99%	28,37%	75,06%	75,06%
Non-EU-13	USA	29,04%	13,16%	-0,97%	44,61%	13,74%	19,40%	4,84%
	Australien	5,74%	6,56%	2,24%	15,20%	4,85%	4,30%	1,07%
	Switzerland	113,32%	51,59%	20,36%	289,20%	61,75%	22,79%	5,68%
	China	-2,27%	21,73%	38,65%	64,95%	19,37%	6,24%	1,56%
	Poland	12,16%	-2,65%	26,59%	38,21%	12,03%	3,05%	0,76%
	Kanada	13,48%	6,70%	4,66%	26,72%	8,28%	2,16%	0,54%
	Türkei	4,00%	20,94%	49,82%	88,44%	24,92%	3,94%	0,98%
	Japan	3,48%	5,39%	23,32%	34,49%	10,73%	1,96%	0,49%
	Norwegen	-9,31%	9,09%	1,08%	0,00%	0,29%	0,00%	0,00%
	Hungary	41,76%	31,78%	9,41%	104,40%	27,65%	3,76%	0,94%
	Neuseeland	-0,61%	13,11%	-4,85%	6,97%	2,55%	0,46%	0,11%
	Russia	-11,99%	20,62%	1,61%	7,88%	3,42%	0,46%	0,11%
	Czech Republic and Slovakia	0,43%	4,74%	6,17%	11,69%	3,78%	0,53%	0,13%
	Island	-17,39%	15,79%	9,09%	4,35%	2,50%	0,04%	0,01%
	Total (Non-EU-13)	18,64%	18,21%	10,23%	54,59%	15,69%	24,94%	24,94%
Total	Worldwide	22,13%	29,11%	19,38%	88,25%	23,54%	100,00%	100,00%

These countries' contribution to the total growth in all EU-13 countries between 2008 and 2010 is respectively 62.74% (Netherlands), 13.88% (Austria), 13.22% (Great Britain) and 1.79% (Belgium and Luxembourg), together accounting for 91.63% of the total growth within the EU-13 countries. Outside the EU-13, comparable total growth rates were achieved by Switzerland (289.2%), Hungary (104.4%) and Turkey (88.44%). Individually, these contributed with 22.79% (Switzerland), 3.94% (Turkey) and 3.76% (Hungary), together with 30.49% to the total growth outside the EU-13. Other main contributors are the USA (19.40%), China (6.24%) and Poland (3.05%). Hence, 59.68 % of total growth outside the EU-13 is distributed among 6 countries. Interestingly, six of the eleven previously mentioned target countries that experienced the strongest growth of BAföG-students are countries sharing a land border with Germany. Together, the growth in BAföG-students abroad to all neighbouring states of Germany between 2008 and 2010 accounts for 66.67% of total growth in BAföG-students abroad worldwide. Therefore, it can be derived that measures aiming at cross-border BAföG-student mobility are likely to have had the strongest effect on the outward mobility of BAföG students.

²¹¹ Own calculations, based on: Statistisches Bundesamt (2012), p. 29; Deutscher Bundestag (2012), p. 21f. See also: Annex B, Figures 10 and 11

III.3 Conclusion

This chapter concentrated on whether and how the German student support portability scheme, as regulated under the *Bundesausbildungsförderungsgesetz*, has been amended as a potential consequence of the *Morgan & Bucher* ECJ-case and how the amendment potentially affected the outbound mobility of German students, particularly those receiving BAföG-support.

It has been shown that the 22nd BAföG-Amendment Law has decreased the barriers to outbound mobility of BAföG-supported students. The deletion of the *commuting clause* increased the possibilities of German students planning to go abroad as it excluded the *permanent residence condition*, previously demanding the student to have the centre of life in the place from where he or she commutes, from the conditions for receiving BAföG as a commuter. Hereby, also students only planning to move to a border location only for the purpose of studying abroad in the neighbouring country can access BAföG. Further, the elimination of the first-stage study condition enabled students to go abroad with BAföG-support without being obligated to pursue a one-year study in Germany first. In addition, the list of potential recipients of the German portable BAföG-support was further increased and now legitimately also EU citizens, restricted by the *unreasonable burden* condition, non-nationals with residence and/or settlement permit, as well as - after 4 years of permanent residence - spouses and children of non-nationals and refugees and asylum seekers with protection from deportation are eligible to receive support.

Quantitatively, it can be said that overall student mobility has increased in all groups of students between 2000 and 2010. In comparison, BAföG-receiving students, going abroad worldwide and to the EU-13, show notable increases of more than 300 percent from 2000 to 2010, while in general the number of German students abroad merely increased by between 140 to 160 percent within the same period. Especially after the hypothesized policy impact in 2008 the average annual growth rates of BAföG students show significant improvement over the pre-impact period. This view is also supported by the forecast analysis, where a significantly different development can be indicated from 2008 onwards. While the forecasted developments, based on the periods 2000 to 2007 and 2004 to 2007, continue to grow insignificantly different from the pre-2007 values, the actual development shows a significantly higher growth post-2008. This holds true for students with the destination EU-13, but also with a similar, but less intense effect, for those going abroad outside the EU-13. The development of the shares of the BAföG-students targeting the EU-13 countries in those receiving BAföG-support abroad worldwide has been generally decreasing from around 70% to around 60%, until 2007; thereafter a trend reversal can be indicated. Further, to both destinations, worldwide and EU-13, the share of BAföG-students in students abroad generally also shows an increasing tendency, particularly after the policy impact in 2008.

Considering individual countries instead of the constructed groups, especially the countries neighbouring Germany face an increasing inflow of BAföG-students after the amendment became effective. Great Britain, Austria as well as Belgium and Luxembourg deserve an explicit mention with total increases between 2008 and 2010 of 88 to 130 percent, achieving a share of 91.63 percent of the increases of German BAföG-students going abroad to the EU-13. Outstanding is the development of outflow to the Netherlands, which increased by 1243.29 percent between 2008 and 2010, constituting an average annual growth of 158.79 percent. Impressive is also the increase in shares of BAföG-students abroad worldwide of all neighbouring countries of Germany, which accounted for 66.67 percent of worldwide growth between 2008 and 2010.

IV) Evaluation of Inter-variable Relationships

This chapter will focus on answering the final sub-questions. First, whether the 22nd BAföG-Amendment Law is likely to be related to the ECJ case proceedings in *Morgan & Bucher* and, second, whether the significant developments in the numbers of BAföG-receivers are likely to be related to the amendment law. One additional interpretation from the confirmation of both relationships is that the ECJ case is related to the developments in student numbers. To recapitulate, the hypothesized causal chain was that the ECJ case of *Morgan & Bucher* is related to amendments made to German portable student support, which in turn is related to the developments in the numbers of German BAföG-receiving students abroad. Visualized, the chain looks as follows:

Figure 8: Hypothesized Causal Chain



For both relationships, Babbie's condition for causal relation will be applied, which comprise correlation, time order and non-spuriousness. Contrary to the visualization, this thesis will focus on the second relation first to prevent a back and forth between purely national and national-to-European involvements.

IV.I Relationship: Change in BAföG – German Outbound Mobility

To recapitulate, the primary amendments to the BAföG law that became effective on January 1st 2008 involved the deletion of the *commuting clause*, the abrogation of the first-stage study condition and the restructuring, and thereby widening, of eligible nationalities. As the official BAföG statistics at the German statistics office, as well as at the *Bundesministerium für Bildung und Forschung* do not give indication of the nationality of the recipients, only the first two amendments will be considered in the evaluation.

First it needs to be established that both variables are correlated. This thesis observed the changes made to the BAföG with particular attention to its §5 *Ausbildung im Ausland* (Education Abroad) and the development of German BAföG-supported students abroad. §5 BAföG and the investigated quantitative data on outbound mobility both feature BAföG-supported education abroad. The amendment abolishes barriers to the outbound mobility of BAföG-recipients going abroad, especially to the European Union, which can be observed by the positive developments in the statistics of supported students abroad in the EU. Therefore, it can be concluded that the variables are correlated.

As a second feature, the time order needs to be considered, which, according to Babbie, means that the cause must precede the effect.²¹² In this thesis, it has been shown that after the policy impact in 2008 the entering into force of the 22nd BAföGÄndG all quantitative criteria related to BAföG-supported students show substantial differences to the pre-amendment period. As the thesis primarily focused on developments of student statistics with particular attention to the policy impact in 2008 the time order relation is accurate.

Third and last, the non-spuriousness of variables needs to be evaluated. It has become clear that the post-2008 statistical peculiarities pointed out before are likely to be related to the amendments on the BAföG in 2008. But also tertiary variables might have had an influence on the development. Potential tertiary effects are policy amendments in the receptive states and the introduction of tuition fees in several German federal states. An impetus to the increase in numbers might be attributed to the introduction of tuition fees in seven German federal states in the winter semesters 2006 and 2007, among them Lower Saxony and North Rhine-Westphalia as direct neighbours to the Netherlands and Bavaria and Baden-Württemberg as neighbours to Austria.²¹³ Migration effects related to the introduction of tuition fees have been validated before by several studies.²¹⁴ This effect, however, cannot be observed in France, which borders Baden-Württemberg and Saarland, two other federal states where tuition fees were introduced. Furthermore, a comparable increase in Belgium, neighbouring North Rhine-Westphalia, is only present after 2009.

Another possible alternative explanation is that policy amendments in the receptive states might have been beneficial to education-immigration. This view is supported by the extraordinary post-2008 increases of German students targeting the Netherlands, Austria and Great Britain for their studies, while a larger portion of other EU Member States faced less, partially insignificant growth or even decreases of BAföG-supported education-immigration from Germany. In this relation, the education-emigration of BAföG –receivers towards all neighbouring states is notable, but it is unlikely that all of the neighbouring states have changed their policies within the same period. Therefore the generally positive development cannot be attributed to national amendments in the receptive states. The increases of BAföG-receivers studying in neighbouring countries of Germany after 2008 can be partially explained by the inclusion of border commuting students into the statistics in 2008, which were not considered in statistics of previous years.²¹⁵ This purely statistical effect helps to explain the sudden increase beginning in 2008; it, however, fails to explain the continuation of this trend in 2009 and 2010. The non-spuriousness of the relation between the amendment and the statistical developments therefore has to be seen as established. Alternative explanations might also have had benefits for outbound mobility, but not all effects observed can be explained by means of these alternatives. Reinforcing effects of all alternative explanations might be able to cover the findings, but are unlikely to have become effective at the same time.

Based on the major development towards the neighbouring states in comparison to other EU Member States, it needs to be concluded that the deletion of the commuting clause is responsible for the lion's share of the general growth. However, it cannot be concluded that the deletion of the *commuting clause* is solely responsible for all increases, as the amendment to the *first-stage study*

²¹² Babbie (2007), p 91

²¹³ Baier & Helbig (2011), p. 3

²¹⁴ Alecke & Mitze (2012); Dwenger, Storck and Wrohlich (2010)

²¹⁵ Deutscher Bundestag (2012), p. 20

condition also enabled students already abroad to access BAföG-funding and can be expected to be beneficial to going abroad in the first place. The study by Isserstedt and Weber confirms that view, as 48 percent of students that participated in their study would not or less likely have gone abroad if they hadn't been eligible to receive BAföG-support.²¹⁶

IV.2 Relationship: Morgan & Bucher – Change in BAföG

However, another interesting question is whether the amendments made by the 22nd BAföGÄndG can be attributed to the Morgan and Bucher Case. Comparing the amendments made to the BAföG to the ECJ ruling in *Morgan & Bucher* it is apparent that both BAföG-provisions disputed in the Cases have undergone amendments. Both, the *first-stage study condition* and the *commuting clause* were deleted in the new version of the law. Hence, a correlation can be indicated as regards the contents, which leads to the conclusion that, from a content-correlation perspective, a relationship is likely to be present between the case and the amendment.

The evaluation of the time order, however, results in a controversial outcome. Reconstructing the temporal sequence of the case before first the national court and later the ECJ and cross-referencing it with the policy-making process of the 22nd BAföGÄndG, the cause does not precede the effect in a deterministic sense.²¹⁷ To recall, it has been argued before that, in the relation between European law and national law, only the final judgment of the ECJ has deterministic effects on national law. This is because the court's rulings have a legal status equivalent to Decisions, thus being thoroughly legally binding to the addressee. A probabilistic influence, however, does in this set-up not refer to the final judgment, but to the ongoing proceedings, where the final outcome of the case may be anticipated, but is not definitive yet. The cases entered the *Verwaltungsgericht* (administrative court) Aachen respectively in November 2004 (Case *Bucher*) and February 2005 (Case *Morgan*). The administrative court suspended the proceedings in November 2005 and submitted the request for a preliminary ruling to the ECJ, received on January 11, 2006. The preparations on both sides predated the oral proceedings before the ECJ, held on January 30, 2007; the Opinion of Advocate General Colomer was heard before the Court on March 20, 2007; the final judgment was published on October 23, 2007.

The first inter-ministerial consultation on a draft version of the 22nd BAföG-Amendment Law, however, was completed on December 15, 2006²¹⁸, which was preceded by the BMBF's decision to draft an amendment in June 2006, already featuring both of the *Morgan & Bucher* topics.²¹⁹ The draft was officially concluded by the federal cabinet and announced on February 14, 2007.²²⁰ The final draft is dated April 27, 2007²²¹, concluded by the German Upper and Lower houses until December 20, 2007 and announced on December 23, 2007 before it became effective on January 1, 2008.²²² As the first draft, which already contained all contents relevant to the case, was completed before the oral proceedings, it can be concluded that the Amendment was neither affected by the oral proceedings, nor by the final judgment. A deterministic relationship can therefore be disregarded. However, solely based on the time order it cannot be suspended with absolute certainty that the

²¹⁶ Isserstedt and weber (2005), p. 22

²¹⁷ See: Annex D

²¹⁸ Witte and Brandenburg (2007), p. 33;

²¹⁹ BMBF (2012)

²²⁰ Bundesministerium für Bildung und Forschung (2007)

²²¹ Bundesregierung Germany (2007)

²²² BaföGÄndG (2007)

creation of the first draft was influenced by the written proceedings, or the preparations thereof. This is supported by the possibility that contents of the emerging Case could have been known to the policy makers at least since the request for preliminary ruling. Therefore, the time order suggests that the Amendment Law might have been influenced by the ongoing proceedings, as the first draft of the Amendment Law is likely to be prepared by the policy-makers with knowledge of the contents of the case. It should be noted however that the political discussion to delete the *first-stage study condition* already took place in 2001, which however had been disregarded at that point²²³, and that the *Deutsches Studentenwerk* officially demanded the deletion of that condition.²²⁴ Connected to these developments, the BMBF commissioned a report in 2004 to investigate the motives and plans for studies abroad.²²⁵

Evaluating the possible spuriousness of the relationship the involvement of third variables needs to be discussed. Direct and clear references mentioning *Morgan and Bucher* having a potential impact on the Amendment Law are not present in official legislative documents published by the German federal state. Nevertheless, indirect references, point towards the possibility that *Morgan & Bucher* might have influenced the Amendment Law. In the motivation statement submitted to the German Bundestag it is mentioned that the Federal Government pursues the goal to set new structural accentuations and focus, *next to clarifications and amendments in details, that have become necessary by developments in the meantime.*²²⁶ The necessity to respond to developments might be related to developments on the European level, amongst others the *Morgan & Bucher* case. Scientific literature supports this view. The authors Blanke and Deres mention in a footnote that the *first-stage study condition* was abandoned as a direct cause of the *Morgan & Bucher* judgment²²⁷, but without further reference to the source of their information. In turn, Witte and Brandenburg mention, that discussions about an amendment concerning the *first-stage study condition* already took place in 2001 and were maintained throughout all political parties since then; a resulting amendment, however, was disregarded at that point.²²⁸ The authors nevertheless point out that, in their views, *Morgan and Bucher* provided an additional impulse for the discussions.²²⁹ While the academic literature and legal documents point towards *Morgan and Bucher* having at least a considerable influence on the formulation of the Amendment Law, the German official bodies negate this view.

Upon request for a statement concerning the influence of the ongoing proceedings in the *Morgan & Bucher* case on the elaborations of the Amendment Law, the German *Bundesamt für Bildung und Forschung* replied that *all amendments concerning the portable BAföG were initiated volitionally and politically independent from the overhauling ECJ-Decision.*²³⁰ A questionnaire forwarded to the head of division for policy-making on the 22nd BAföGÄndG at the BMBF resulted in a diversified assessment of the intentions at the time of draft.²³¹ It is stated that the policy-making process on the amendment

²²³ Witte and Brandenburg (2007), p. 32ff

²²⁴ Deutsches Studentenwerk (2002), p. 1

²²⁵ BMBF (12 Oct 2012); see also: Annex C4; Isserstedt and Weber (2005)

²²⁶ Bundesregierung Germany (2007), p. 13: “[...]neben einigen Klarstellungen und Korrekturen in Detailregelungen, die durch zwischenzeitliche Entwicklungen erforderlich geworden sind[...].”

²²⁷ Blanke and Deres (2009), p. 22, Footnote 28 mentions: „Der früher [...] zwingend vorgeschriebene einjährige Besuch einer inländischen Ausbildungsstätte vor Beginn (d.h. Fortsetzung) der Ausbildung im Ausland ist als Folge der EuGH-Entscheidung in den verbundenen Rechtssachen Morgan/Bucher [...] aufgegeben worden.“

²²⁸ Witte and Brandenburg (2007), p. 32ff

²²⁹ Ibid, p. 34

²³⁰ BMBF (23.Oct 2012), see also: Annex C1

²³¹ BMBF (12 Dec 2012), see also: Annex C4

was thoroughly independent from the ongoing proceedings in *Morgan & Bucher* and included both *Morgan & Bucher* topics already since the initiation in June 2006. The amendment must be seen as a sole consequence of the national educational-political credo in Germany at that time. However, the influence of the ongoing proceedings and the predictability of the final judgment, as well as the Bologna Process, are rated as a beneficial and reinforcing factor to the decision-making process. The BMBF's assessment of the ongoing processes is also largely shared by the *Deutsche Studentenwerke*.²³² He does not see a deterministic relationship between the case and the amendment, but suggests that the amendment, in legal-philosophical tradition, reacted to societal developments.

IV.3 Relationship: Morgan and Bucher – German Outbound Mobility

The previous elaborations lead to a final question. As the relation between the amendment and mobility has been confirmed with certainty while the relationship between the case and the amendment was negated, despite the presence of a strong correlation regarding the contents, it needs to be asked whether the final judgment of the court would theoretically have been able to cause similar effects on the outbound mobility of German students. The following discussion is therefore based on the assumption that the existent BAföG-ÄndG did not occur, but instead a similar amendment would have been adopted that is deterministically the result of the case, which affected German outbound mobility.

The developments on outbound mobility of German students can be largely attributed to the elimination of the *first-stage study condition*, primarily responsible for the increase in general EU mobility of BAföG receiving students, and the *commuting clause*, the main factor for the increased mobility towards countries neighbouring Germany²³³. As both were central points in the *Morgan & Bucher* case, the form of a hypothetical BAföG-Amendment is likely to have taken a similar direction as the actual amendment. A content-correlation between *Morgan & Bucher* and German outbound mobility is therefore given in the hypothetical situation.

The time-order does not relate to a similar development of outbound mobility. As the actual policy-making process of the BAföG-ÄndG took about one and a half years from the initial decision to amend at the ministry in June 2006 to the final agreement on the amendment law in December 2007, a similar period of time must be estimated after the final judgment of the ECJ. The resulting effects would have occurred one and a half years after the final judgment in October 2007, therefore in mid-2009. Based on the procedure of collecting annual statistics, the effects would have been visible in the 2010 statistics at the earliest. Therefore, a deterministic effect of *Morgan & Bucher* on German outbound student mobility would have occurred considerably later than in the actual situation, which, considering the previously forecasted developments, would have led to a considerably lower growth of BAföG-receivers abroad, as well as German students abroad, until 2010.

Non-spuriousness is difficult to establish for a hypothesized situation. To recall, it is assumed that the German authorities had not taken efforts to reform portable students support until 2010, which, however, would have resulted in similar effects on outbound mobility, postponed for two years. By that time, the minor beneficial effects of tuition fees in Germany between 2006 and 2007 might

²³² Studentenwerke (2012), see also: Annex C3

²³³ At the point of policy impact all neighboring states are either EU Member States or have, in the meaning of the BAföG, a similar status, due to the inclusion of Switzerland.

already have been reduced by the redemption of tuition fees in three of seven German federal states between 2008 and 2010, as well as the announcement of two more states to abolish tuition fees until 2012, reducing the potential effect on the willingness to go abroad. The effect of tuition fees is therefore marginal in the hypothetical situation. Beneficial policy amendments in the receptive states however might nevertheless have become effective independent from the case. As has been argued, such policy amendments would only have effects towards the individual countries, which failed to explain the overall increasing numbers in general. The effect therefore is also only marginally applicable.

In conclusion, a deterministic relationship between the case and German outbound student mobility would have resulted in similar developments, but postponed by two years due to the necessary intermediate step of an amendment law initiated by *Morgan & Bucher*. In this relation, the potential effect of tuition fees in Germany would have had an even lesser impact.

IV.4 Summary

This chapter featured the questions, first, whether the 22nd BAföG-Amendment Law is likely to be related to the ECJ case proceedings in *Morgan & Bucher* and, second, whether the significant developments in the numbers of BAföG-receivers are likely to be related to the amendment law. It has been shown that, under application of Babbie's condition for causality, the relation between the BAföG-Amendment and the development of student numbers is very likely to exist. The necessary correlation, time order and non-spuriousness of the variables are given, although with a minor deficiency regarding the non-spuriousness, which also might have been affected by third variables, such as education-immigration friendly developments in the receptive states or the effect of introduction of tuition fees in Germany, which is likely to have had beneficial effects on outbound mobility.

With regard to the relationship between the ECJ case and the amendment law it can be said that the hypothesis of a deterministic relationship can be rejected with certainty. Although the variables are strongly correlated with regard to the contents, the time-order and the non-spuriousness conditions lack sufficient evidence. First, the cause does not precede the effect, deterministically, as the final decision by the ECJ was published after the draft versions of the amendment law, which already contained both contended items of *Morgan & Bucher*. Second, the relationship was denied by evidence from scientific literature, as well as by the expert interviews with officials at the responsible ministry and the stakeholder organisation. Also a probabilistic relationship is unlikely to exist. Although in this view the strong correlation remains and the time-order allows potential influence on the law, with policy-making initiation being subsequent to the emergence of the cases and the filing of the cases at the ECJ, the non-spuriousness condition was not met. Both interview partners suggest that external factors had led to the policy-making process, such as potentially the Bologna Process, the results of the report commissioned by the BMBF in 2004 or demands by stakeholders such as the DSW in their resolution from 2002.

A relationship between *Morgan & Bucher* and the development of German outbound mobility would have only been possible through an intermediate step of an alternative BAföG-Amendment, which would have been deterministically caused by the case. Due to the time-order (the effect that the law would have been prepared subsequent to the court's decision) the effect on outbound student mobility would have taken effect two years later than the actual development, but nevertheless,

similar effects can be assumed. In this hypothetical situation also the third explanation of tuition fees in Germany having an effect on mobility, is marginalized.

V. Conclusion

This thesis discussed the question whether the ruling of the European Court of Justice in the Joined Cases C-11/06 and C-12/06 (*Morgan & Bucher*) has had an effect on the provisions on portability of student support under the German BAföG and the number on BAföG-supported German students abroad in the European Union.

In the preparations, it has been shown that the European Union, although being only capable of initiating supportive, supplemental and coordinative actions in areas confronting with national competences, may affect national higher education legislation. An important tool in this regard is the ECJ, which is capable to relate different policy areas in different competence areas under precedent rulings. The ECJ is therefore capable to expand policy competences of the European Union by creating spillover effects between competence areas. This is due to spillover effects with Treaty provisions, primarily with regard to the free movement of workers, non-discrimination and the European Citizenship. Regulation 1612/68/EEC on the free movement of workers has to be mentioned here specifically due to its importance in establishing a relation between the status of children of workers and their access to higher education. These spillover effects enabled the European Court of Justice to have a binding influence on national higher education legislation, at least with regard to matters of access, equal treatment and, at a later point, social advantages. However, regarding policy-making case law has one flaw in comparison to direct regulation. Case law is only capable of declaring existing behaviour unjust and harmonizing existing national legislation among the Member States towards existing EU legislation, instead of generating new routes as direct regulation mostly does. Generally, the relation between case law and direct regulation can be described as reinforcing. Case law is capable of expanding policy competences to be applied in policy-making, and policy-making, in turn, generates potential bases for new precedents in case law. ECJ-judgments generally have a deterministic character for the addressee, due to their legal similarity to Decisions. During the case proceedings, however, a probabilistic influence of case law cannot be explicitly denied. The Joined Cases *Morgan and Bucher*, due to the similarity of the main contested issues - the *first-stage study condition* and the *commuting clause*– and the amendments made to the German law, had the potential to constitute a deterministic relation.

The main research question, however, must be answered negatively. No evidence has been found that the decision of the European Court of Justice in *Morgan & Bucher* has affected either the BAföG-Amendment or the German BAföG-supported outbound student mobility deterministically. It has been shown that the Morgan and Bucher case and the temporally antecedent amendments on the German student support portability scheme are scientifically unrelated from a deterministic perspective. Although the contents disputed in the Case and amendments made to the BAföG are perfectly concordant, the ECJ judgment being the definite cause for the amendment must be doubted based on the time order and contradictory evidence from scientific literature and government statements. The time order rules out an effect of the judgment on the amendment, as the first-draft amendment precedes the judgment temporally. Evidence from scientific literature must be weighed against more valuable sources at the BMBF, declaring political and volitional

independence of the amendment from the ECJ decision, although a beneficial effect on the decision-making process is acknowledged.

However, considering the strong correlation of the contents in the case and the amendment, the case would have constituted a sufficient cause for the amendment. The amendment law that would have been the deterministic result of the case would likely have caused similar effects on BAföG-supported German outbound student mobility, only postponed by the period of time necessary to enact that amendment in Germany. It has been shown that the number of students receiving BAföG abroad has been constantly increasing, however with a notable increase in annual growth after the amendment taking effect in 2008. Both main issues disputed in the case are likely to have contributed to the acceleration in growth. However, certain third criteria such as the effect of introduction of tuition fees in the four German federal states neighbouring the top-3 target EU-countries Netherlands and Austria, or potential beneficial policy amendments fostering the education-immigration of students cannot be denied.

This study faced certain limitations, of which two are the reliability of statistical data and the critical discussion of potential third variables. First, the reliability of statistical data used in the elaboration on the development of German outbound mobility stems from two different sources. While the data on BAföG-receivers abroad was collected from a report processed in the German *Bundestag*, relying on information from the *Bundesministerium für Bildung und Forschung*, the data on students abroad in general stems from the German statistics office, therefore not from the same database. An example for a possible inconsistency when combining both datasets are the contradictory values that were given for Greece, with German BAföG-receivers in Greece exceeding the number of total German students abroad in Greece. The unavailability of an official dataset containing both variables caused the necessity to combine.

Second, the thesis failed to determine the effects of potential alternative explanations for the development of student numbers more exactly, as the additional research would have exceeded the scope of a bachelor thesis. This does not imply that there is doubt that the developments in outbound mobility are based on the amendment of the BAföG amendment, but the thesis failed to rule out a definite effect of these alternatives. Therefore, it is suggested that alternative explanations for the development of student numbers would constitute a suitable path for future research, hypothesizing that the effect is solely based on the amendment. What remains in this regard is the question why the German outbound mobility concentrates on the one hand intensively on the neighbouring states, and on the other hand, what are the reasons for the extraordinary developments of German students targeting the Netherlands, Austria, Great Britain, Belgium and Luxembourg, but not other states in the same frequency.

Annex A: Synopsis of §5 Bundesausbildungsförderungsgesetz

Figure 9: Synopsis of §5 Bundesausbildungsförderungsgesetz before and after the 2008-amendment

Articles	§5 before amendment, valid until January 1st 2008	§5 after amendment, valid from January 1st 2008	Amendments
Art. 1 Commuting Clause	Den in § 8 Abs. 1 bezeichneten Auszubildenden wird Ausbildungsförderung geleistet, wenn sie täglich von ihrem ständigen Wohnsitz im Inland aus eine im Ausland gelegene Ausbildungsstätte besuchen.		Commuting Clause deleted without replacement
Permanent Establishment Clause	Der ständige Wohnsitz im Sinne dieses Gesetzes ist an dem Ort begründet, der nicht nur vorübergehend Mittelpunkt der Lebensbeziehungen ist, ohne daß es auf den Willen zur ständigen Niederlassung ankommt; wer sich lediglich zum Zwecke der Ausbildung an einem Ort aufhält, hat dort nicht seinen ständigen Wohnsitz begründet		
Art. 2 Conditions when established abroad	Auszubildenden, die ihren ständigen Wohnsitz im Inland haben, wird Ausbildungsförderung geleistet für den Besuch einer im Ausland gelegenen Ausbildungsstätte, wenn		
2.1 Benefit and Creditability Condition	er der Ausbildung nach dem Ausbildungsstand förderlich ist und zumindest ein Teil dieser Ausbildung auf die vorgeschriebene oder übliche Ausbildungszeit angerechnet werden kann oder		
2.2 Joint Education Condition	im Rahmen der grenzüberschreitenden Zusammenarbeit einer deutschen und einer ausländischen Ausbildungsstätte die aufeinander aufbauenden Lehrveranstaltungen einer einheitlichen Ausbildung abwechselnd von der deutschen und der ausländischen Ausbildungsstätte angeboten werden oder	im Rahmen der grenzüberschreitenden Zusammenarbeit einer deutschen und mindestens einer ausländischen Ausbildungsstätte die aufeinander aufbauenden Lehrveranstaltungen einer einheitlichen Ausbildung abwechselnd von den beteiligten deutschen und ausländischen Ausbildungsstätten angeboten werden oder	Joint Education now also recognized when more than one education institutions abroad are involved.
2.3 First stage-study Condition	eine Ausbildung nach dem mindestens einjährigen Besuch einer inländischen Ausbildungsstätte an einer Ausbildungsstätte in einem Mitgliedstaat der Europäischen Union fortgesetzt wird	eine Ausbildung an einer Ausbildungsstätte in einem Mitgliedstaat der Europäischen Union oder in der Schweiz aufgenommen oder fortgesetzt wird	First-stage study condition deleted; continuation of studies complemented by first enrolment ; BAföG support now covers also studies in Switzerland
Lingual Competence Condition	und ausreichende Sprachkenntnisse vorhanden sind. Bei Berufsfachschulen gilt Satz 1 nur, wenn der Besuch im Unterrichtsplan zur Vermittlung von Kenntnissen der Sprache des jeweiligen Landes vorgeschrieben ist.	und ausreichende Sprachkenntnisse vorhanden sind. Bei Berufsfachschulen gilt Satz 1 nur, wenn der Besuch im Unterrichtsplan vorgeschrieben ist.	Condition of necessary lingual education at vocational schools in order to receive portable support deleted
Minimum Duration Condition	Die Ausbildung muß mindestens sechs Monate oder ein Semester dauern; findet sie im Rahmen einer mit der besuchten Ausbildungsstätte vereinbarten Kooperation statt, muß sie mindestens zwölf Wochen dauern.		

Nationality condition	Satz 1 Nr. 3 gilt nicht für die in § 8 Abs. 2 bezeichneten Auszubildenden.	Satz 1 Nr. 3 gilt für die in § 8 Abs. 1 Nr. 6 und 7, Abs. 2 und 3 bezeichneten Auszubildenden nur, wenn sie die Zugangsvoraussetzungen für die geförderte Ausbildung im Inland erworben haben oder eine Aufenthaltserlaubnis nach § 25 Abs. 1 und 2 des Aufenthaltsgesetzes besitzen.	portable support for persons having the status of refugees, stateless persons or non-EU nationals with residence permit and employment periods made conditional upon having acquired the necessary admission requirements in Germany and having incontestable asylum-seeking or refugee status
Art. 3 Danish Minority Clause	Deutschen im Sinne des Grundgesetzes, die ihren ständigen Wohnsitz im Inland haben und der dänischen Minderheit angehören, wird Ausbildungsförderung für den Besuch einer in Dänemark gelegenen Ausbildungsstätte geleistet, wenn die Ausbildung im Inland nicht durchgeführt werden kann.		Provisions regarding Danish minority deleted
Art. 4 Eligible Types of Schools for portable support	Absatz 1 gilt nur für den Besuch von Ausbildungsstätten, der dem Besuch einer der in § 2 Abs. 1 und 2 bezeichneten oder nach § 2 Abs. 3 bestimmten, im Inland gelegenen Ausbildungsstätten gleichwertig ist. Absatz 2 gilt nur für den Besuch von Ausbildungsstätten, der dem Besuch der im Inland gelegenen Gymnasien ab Klasse 11 oder, soweit der Auszubildende die Hochschulzugangsberechtigung nach zwölf Schuljahren erwerben kann, ab Klasse 10, Berufsfachschulklassen nach § 2 Abs. 1 Nr. 2, Höheren Fachschulen, Akademien und Hochschulen gleichwertig ist. Absatz 3 gilt nur für den Besuch von Ausbildungsstätten, der dem Besuch der im Inland gelegenen Höheren Fachschulen oder Hochschulen gleichwertig ist. Die Prüfung der Gleichwertigkeit erfolgt von Amts wegen im Rahmen des Bewilligungsverfahrens.	Absatz 2 Nr. 1 und 2 gilt nur für den Besuch von Ausbildungsstätten, der dem Besuch der im Inland gelegenen Gymnasien ab Klasse 11 oder, soweit der Auszubildende die Hochschulzugangsberechtigung nach zwölf Schuljahren erwerben kann, ab Klasse 10, Berufsfachschulklassen nach § 2 Abs. 1 Nr. 2, Höheren Fachschulen, Akademien und Hochschulen gleichwertig ist; Absatz 2 Nr. 3 gilt nur für den Besuch von Ausbildungsstätten, der dem Besuch der im Inland gelegenen Berufsfachschulklassen nach § 2 Abs. 1 Nr. 2, Höheren Fachschulen, Akademien oder Hochschulen gleichwertig ist. Die Prüfung der Gleichwertigkeit erfolgt von Amts wegen im Rahmen des Bewilligungsverfahrens.	Equivalence clause for vocational schools; technical college deleted from eligible schools; extra-occupational academies added;

Annex B: Statistical Data on German Students Abroad

Figure 10: German students abroad with BAföG Support by Destination and Year (2000-2010)²³⁴

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
European Union											
Netherlands	224	235	286	341	298	337	523	767	3078	7.041	10.303
Great Britain	2.418	2.305	2.383	2.459	2.527	2.543	2.312	2.280	2.713	3.313	4.290
Austria	171	416	757	684	895	1.101	1.756	2.146	2.861	3.879	4.256
Spain	842	1.084	1.321	1.766	2.295	2.355	2.435	2.348	2.357	2.596	2.984
France	1.095	1.264	1.613	1.850	2.366	2.211	2.340	2.446	2.058	2.140	2.519
Sweden	449	508	769	925	1.039	993	1.083	1.092	1.280	1.409	1.401
Italy	562	561	644	770	932	950	931	868	821	875	823
Denmark	110	115	190	296	363	363	369	408	495	561	611
Finland	210	278	391	486	497	382	470	500	546	586	572
Belgium and Luxembourg	55	83	79	108	122	122	175	208	227	281	480
Ireland	362	386	424	449	491	516	452	421	409	324	387
Portugal	74	60	70	117	151	155	199	210	203	203	267
Total EU-17	6572	7295	8927	10251	11976	12028	13045	13694	17048	23208	28893
World											
USA	1024	1324	1771	1939	2007	2105	2148	2197	2835	3208	3177
Australia	228	341	458	747	850	1052	1234	1428	1510	1609	1645
Switzerland	225	214	297	332	304	265	391	398	849	1287	1549
China	121	108	143	153	160	224	367	485	474	577	800
Poland	42	75	119	155	265	357	433	403	452	440	557
Canada	173	213	227	321	294	384	401	408	463	494	517
Turkey	7	9	14	12	45	106	174	225	234	283	424
Japan	60	82	105	115	115	91	174	287	297	313	386
Norway	128	159	227	275	306	308	257	376	341	372	376
Hungary	28	44	56	61	96	161	179	182	258	340	372
New Zealand	72	119	151	232	425	317	351	330	328	371	353
Russia	100	126	129	116	200	283	299	292	257	310	315
Czech Republic and Slovakia	42	50	78	90	140	183	241	231	232	243	258
Iceland	7	13	25	32	43	56	52	46	38	44	48
Total Non-EU-17	2789	3565	4721	5581	6424	7490	8683	9253	10978	12977	14304
Total Worldwide	9361	10860	13648	15832	18400	19518	21728	22947	28026	36185	43197

²³⁴ Deutscher Bundestag (2012), p. 21f

Figure 11: German Students Abroad by Destination and Year (2000-2010)²³⁵

Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
EU											
Austria	5889	4979	5486	6151	7069	10174	11961	14789	20019	23706	27350
Netherlands	3176	4194	5239	6479	8604	11896	13988	16550	18972	20805	23831
United Kingdom	10115	9770	10495	10760	11040	11600	12145	11670	12895	13970	14950
France	5378	5412	5792	6496	6509	6867	6939	6787	6071	6213	6252
Sweden	2033	2234	2392	2820	2882	2999	3000	3417	3752	3750	4000
Spain	4111	4411	5049	5659	1350	1478	1480	1638	1966	1970	2700
Denmark	524	548	658	700	866	1002	1186	1395	1696	1700	2200
Italy	764	870	1189	1293	1410	1607	1607	1591	1584	1580	1250
Belgium and Luxembourg	375	371	372	381	371	442	484	800	1014	1168	1190
Ireland	240	240	289	319	401	443	465	435	556	511	538
Finland	190	195	292	274	322	423	399	423	446	478	516
Portugal	296	300	301	304	369	295	261	309	274	357	420
Total EU-13	33091	33524	37554	41636	41193	49226	53915	59804	69245	76208	85197
World											
Switzerland	5142	5444	6131	6716	7132	7839	8868	9836	11005	12388	13426
United States	10128	9613	9302	8745	8640	8829	8656	8907	9679	9548	9458
China	m	m	m	1280	2187	2736	3090	3554	4417	4239	4800
Hungary	520	518	518	765	1149	1403	1519	1639	1753	1970	2101
Australia	471	569	1330	1941	2440	2764	2825	3259	3418	3480	2044
New Zealand	237	321	387	837	840	970	970	1040	1326	1438	1458
Canada	770	1404	1400	1400	1400	1083	1014	1077	1116	1120	1350
Norway	439	439	437	485	482	570	653	720	776	854	1004
Turkey	96	96	115	125	143	202	200	389	552	790	1060
Czech Republic and Slovakia	36	50	70	85	191	255	287	508	682	786	784
Poland	154	133	148	182	290	344	398	469	521	630	716
Japan	255	262	267	315	308	352	400	439	471	438	557
Holy Sea	180	194	190	229	200	161	160	200	220	220	220
Iceland	27	49	59	70	100	98	115	105	121	156	167
Total Non-EU-13	19109	19876	21146	23964	26207	28974	31385	33596	37555	39292	41403
Total Worldwide	52200	53400	58700	65600	67400	78200	85300	93400	106800	115500	126600

²³⁵ Statistisches Bundesamt (2012), p. 29

Annex C: Results of Statement Requests and Questionnaire/Interview

C1 Response

Sehr geehrter Herr Strotmann,

vielen Dank für Ihre E-Mail vom 10. Oktober 2012 an Frau Bundesministerin Prof. Dr. Schavan, in der Sie sich danach erkundigen, ob der Regierungsentwurf zum 22. BAföGÄndG durch die Verhandlungen in den Rechtssachen Morgan und Bucher beeinflusst wurde. Als für Gesetzgebungsfragen im Ausbildungsförderungsrecht zuständige Referentin bin ich gebeten worden, Ihnen unmittelbar zu antworten.

Nach Auskunft des für den Regierungsentwurf zum 22. BAföGÄndG seinerzeit federführend zuständigen Referatsleiters (Referat 413 - Ausbildungsförderung - Gesetzgebung), Herrn Ministerialrat (...), waren die im Regierungsentwurf enthaltenen Änderungen im Bereich des Auslands-BAföG politisch unabhängig von der später überholenden EuGH-Entscheidung gewollt und angestoßen worden.

Für Ihre Abschlussarbeit wünsche ich Ihnen viel Erfolg.

Mit freundlichem Gruß
Im Auftrag

(...)

C2 Questionnaire

Fragebogen zum 22. Gesetz zur Änderung des Ausbildungsförderungsgesetzes (22. BAföGÄndG) – BAföG-Bezug im Auslandsstudium

Meine Arbeit befasst sich mit dem möglichen Einfluss der verbundenen Rechtssachen C-11/06 Morgan v Bezirksregierung Köln und C-12/06 Bucher v Landrat des Kreises Düren des Europäischen Gerichtshofes (EuGH) auf das 22. Gesetz zur Änderung des Ausbildungsförderungsgesetzes (22. BAföGÄndG). Im speziellen sind parallelen zwischen den zentralen Fragen der Rechtssachen und den Änderungen an §5 BAföG auffällig. So befassen sich die EuGH-Rechtssachen mit denen in Art. 1 Satz 2a und 2b(bb) des 22. BAföGÄndG geänderten §5 Abs. 1 BAföG(Pendlerförderung) und §5 Abs. 2 Nr. 3 BAföG (Erfordernis der ersten Ausbildungsphase). Da eine Auswirkung des finalen Urteils des EuGH auf das 22. BAföGÄndG durch die zeitlichen Überschneidungen jedoch unwahrscheinlich ist bezieht sich meine Arbeit primär auf den möglichen Einfluss der laufenden Verhandlungen in beiden Rechtssachen vor sowohl der Verwaltungsgerichts Aachen als auch vor dem EuGH auf die Konzipierung des 22 BAföGÄndG. Hierzu hätte ich folgende Fragen an sie:

1. Wann wurde eine Änderung des Bundesausbildungsförderungsgesetzes, die im 22. Gesetz zur Änderung des Ausbildungsförderungsgesetzes mündete, zuerst thematisiert?
2. Wann wurde eine erste Ausarbeitung der Änderungsgesetzes vom zuständigen Ministerium initiiert? Warum zu diesem Zeitpunkt? Wann wurde sie fertiggestellt?
3. Waren die Änderungen bezüglich §5 Abs. 1 BAföG(Pendlerregelung) und §5 Abs. 2 Nr. 3 BAföG (Erfordernis der ersten Ausbildungsphase in Deutschland) von Beginn an Bestandteil der Änderungsbemühungen? Wenn nicht: In welchem Zeitraum wurden ebenjene Änderungen Bestandteil des Ausarbeitungsprozesses?

4. Inwiefern waren externe Interessenverbände aus Deutschland (z.B. Studentenwerk, Deutscher Akademischer Austauschdienst, Hochschulrektorenkonferenz, o.ä.) an der Ausgestaltung des 22. BAföGÄndG beteiligt?
5. Inwiefern hatten Entwicklungen im Rahmen des Bologna Prozesses Einfluss auf die Änderungen?
6. Welchen Einfluss hatte die europäische Bologna Gruppe und/oder das nationale Bologna-Komitee auf die Änderungen?

Konzipierung der 22. BAföGÄndG und möglicher Einfluss der EuGH-Rechtssachen C-11/06 Morgan v Bezirksregierung Köln und C-12/06 Bucher v Landrat des Kreises Düren

7. Wurde der Gesetzgebungsprozess für eine Änderung des BAföG gänzlich unabhängig von den Rechtssachen auf nationaler und Europäischer Ebene initiiert?
8. Inwiefern wurde der Prozess der Konzipierung des 22. BAföGÄndG durch die laufenden Verhandlungen in beiden Rechtssachen vor dem Verwaltungsgericht Aachen und/oder dem Europäischen Gerichtshof beeinflusst?
9. Falls die Änderung des BAföG durch das 22. BAföGÄndG bereits vor oder während der Verhandlungsphase der Fälle Morgan und Bucher vor dem EuGH beschlossen war, warum wurde diese Verhandlung dennoch fortgeführt? Warum argumentierten die deutschen Verantwortlichen im EuGH-Prozess mit derartigem Widerstand wenn diese Änderungen bereits vorgesehen bzw. initiiert waren?
10. Hatte eine mögliche Antizipierbarkeit des EuGH-Urteils vor Urteilsverkündung oder während früherer Prozessphasen auf nationaler und Europäischer Ebene Einfluss auf speziell die Änderungen an §5 BAföG? Wenn ja, inwiefern?

C3 Questionnaire Response Deutsches Studentenwerk

Sehr geehrter Herr Strotmann,

vielen Dank für Ihre Mail. Herr (...) hat mich gebeten, Ihnen zu antworten. Sie schreiben gerade eine wissenschaftliche Abschlussarbeit zu einer gewählten These. Herr Vossensteyn betreut diese Arbeit. Bitte richten Sie Herrn Vossensteyn unsere herzlichen Grüße aus.

Ihre wissenschaftliche Abschlussarbeit basiert auf einer interessanten These, des Zusammenspiels von Rechtsprechung und Politik. In einer Metapher gesprochen wollen Sie herausarbeiten, was zuerst da war – Henne (EuGH) oder Ei (22. BAföG-Novelle).

Auf unserer öffentlichen Homepage sind die Beschlüsse der DSW-Mitgliederversammlungen seit dem Jahr 2001 dokumentiert. Unsere Forderung nach einem Wegfall des Erfordernisses eines zunächst einjährigen Inlandsstudiums besteht mindestens seit dem Jahr 2002.

http://www.studentenwerke.de/mv/2002/b_2002.pdf

Auf unserer Homepage informieren wir ebenfalls über die EuGH-Rechtsprechung: Unter Nr. 17 haben wir deutlich gemacht, dass das EuGH-Urteil vom **23.10.2007** datiert, aber „die Bundesregierung hatte bereits am **14.2.2007** den Gesetzentwurf einer 22. BAföG-Novelle beschlossen, der die BAföG-Förderung sofort mit dem Studienbeginn in der EU und der Schweiz zulässt. Durch das 22. BAföGÄndG vom 23.12.2007 (BGBl. I S. 3254)

<http://www.bgbportal.de/BGBL/bgb1f/bgb1107s3254.pdf> (Nur Lese-Version) ist das Erfordernis des zunächst einjährigen Studiums in Deutschlands entfallen und damit wurde auch die Grenzpendlerregelung obsolet. Dies ist zum 1.1.2008 in Kraft getreten.“

http://www.studentenwerke.de/pdf/Europ.%20Rechtsprechung_2009.pdf

Nach dieser Fundstelle hat die These keine Basis.

Die Zusammenführung der Basisdaten von Prozessdaten (Homepage des EuGH) mit denen des Gesetzgebungsverfahrens (Homepage des Deutschen Bundestages: Dort kann der Gesetzgebungsgang nachvollzogen werden) in einer Tabelle ergibt folgendes Bild.

	EuGH	BAföG-Gesetzgebungsverfahren
22.11.2005	Vorabentscheidungsersuchen VG Aachen	
11.1.2006	Eingang beim EuGH	
24.11.2006		Ressortabstimmung Entwurf 17. Bericht der BReg. nach § 35 BAföG
15.12.2006		Ressortabstimmung Referentenentwurf 22. BAföG-Novelle*
16.1.2007		Bundeskabinett beschließt 17. Bericht der BReg. nach § 35 BAföG http://dipbt.bundestag.de/dip21/btd/16/041/1604123.pdf
14.2.2007		Bundeskabinett beschließt Gesetzentwurf einer 22. BAföG-Novelle = BR-Drs. 120/07 vom 16.2.2007 http://dipbt.bundestag.de/dip21/brd/2007/0120-07.pdf
20.3.2007	Schlussanträge des Generalanwalts	
30.3.2007		1.Durchgang Bundesrat (22. BAföG-Novelle) http://dipbt.bundestag.de/dip21/brd/2007/0120-07B.pdf
10.5.2007		1.Lesung im Plenum Bundestag http://dipbt.bundestag.de/dip21/btd/16/051/1605172.pdf
21.5.2007		11:30-15:30 Uhr öff. Anhörung im BT-Bildungsausschuss zur 22. BAföG-Novelle http://webarchiv.bundestag.de/cgi/show.php?fileToLoad=1268&id=1134
23.10.2007	Urteil Große Kammer	
16.11.2007		2./3. Lesung 22. BAföGÄndG im Plenum Bundestag
20.12.2007		Plenum BRat stimmt 22. BAföG-Novelle zu
31.12.2007		Verkündung der 22. BAföG-Novelle vom 23.12.2007 im Bundesgesetzblatt
1.1.2008		Inkrafttreten 22. Novelle

Ausführlicher:

http://dipbt.bundestag.de/dip21.web//searchProcedures/simple_search_list.do;jsessionid=DA77FAB3D7AA4413B49EAA5971DFC52F.dip21?method=SchnellDruck&selId=9013

Auch auf Basis dieser Übersicht ist die These unhaltbar.

Bitte haben Sie Verständnis dafür, dass wir die internen Abläufe im Bundesministerium für Bildung und Forschung (BMBF) nicht kennen. Die öffentlich zugängliche Gemeinsame Geschäftsordnung der Bundesministerien (GGO)

http://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/ggo.pdf?__blob=publicationFile lässt in § 47 Abs. 3 erkennen, dass eine Verbändeanhörung stattgefunden haben muss.

Ich sende Ihnen – wegen Zeitablaufs – einmal den vertraulichen Referentenentwurf zu, der uns zur Verbändeanhörung zugeleitet wurde.

Die These einer in 2006 begonnenen - einer Entscheidung des EuGH vorweggreifenden Gesetzesänderung – ist damit nicht belegbar. Häufig hat sich der EuGH meist nicht den Vortrag des jeweiligen Generalanwalts zu Eigen gemacht, der sehr weitreichende Forderungen zur Mobilität aufstellte. So hätte es auch in diesem Verfahren entschieden werden können.

Selbst wenn man der Bundesregierung unterstellen wollte, die Entscheidung als absehbar kommen zu sehen, wäre dies kein Skandal: Rechtsphilosophisch reagiert Recht immer nur auf gesellschaftliche Veränderungen und agiert nicht präventiv. Dies wäre also systemkonform.

Mit freundlichen Grüßen

(...)

C4 Questionnaire Response Bundesministerium für Bildung und Forschung

Sehr geehrter Herr Strotmann,

ich nutze die Gelegenheit der etwas ruhigeren Tage vor der Jahreswende dazu, noch auf Ihre Anfrage zur Geschichte des deutschen Auslands-BAföG zurückzukommen. Ich habe in der Anlage in Ihrem Fragebogen meine persönlichen Einschätzungen als seinerzeit im BMBF für das Gesetzgebungsverfahren zum 22. BAföGÄndG zuständiger Referatsleiter gekennzeichnet. Eine regierungsamtliche objektive Beantwortung Ihrer Fragen in dieser Detaillierung kann es naturgemäß nicht geben. Ich hoffe, meine Einschätzungen helfen Ihnen trotzdem für Ihre Bewertungen und Schlussfolgerungen weiter. Mehr kann ich beim besten Willen nicht mehr beisteuern.

Beste Grüße, auch an Hans Vossensteyn, und beste Wünsche für den bevorstehenden Jahreswechsel,

(...)

Referatsleiter

1. In der politischen Diskussion war die Frage einer vollen Auslandsförderung schon seit der ersten Öffnung des BAföG für eine Auslandsförderung bis zum Studienabschluss nach einjähriger Orientierungsphase im Inland durch das Ausbildungsförderungsreformgesetz 2001. Das Bundesbildungsministerium hat – auch in diesem Kontext – im Jahr 2004 eine Projektstudie an die HIS-GmbH zum Thema „BAföG-Auslandsförderung. Entwicklung der Auslandsmobilität und Erfahrungen der Studierenden“ über eine Studierendenbefragung

durchführen lassen, bei der auch nach Wünschen und Motivationen für Auslandsaufenthalte und deren Dauer gefragt wurde.

2. Die Leitungsentscheidung wurde im zuständigen Bundesbildungsministerium im Juni 2006 getroffen. Der Referentenentwurf zum 22. BAföGÄndG wurde im Dezember 2006 innerhalb der Bundesregierung zur Abstimmung gestellt.
3. Ja.
4. Zeitgleich mit den Bundesressorts wurde im Dezember 2006 auch die förmliche Beteiligung der betroffenen externen Interessenverbände eingeleitet.
5. Die Mobilitätsziele innerhalb des Bologna-Prozesses waren sicher hilfreich zur politischen Durchsetzung der Ausweitung der Auslandsförderung.
6. Spezifischer Einfluss lässt sich nicht messen und belegen.

Konzipierung der 22. BAföGÄndG und möglicher Einfluss der EuGH-Rechtssachen C-11/06 Morgan v Bezirksregierung Köln und C-12/06 Bucher v Landrat des Kreises Düren

7. Uneingeschränkt: ja
8. Der Prozessverlauf vor dem EuGH hat die politische Willensbildung bis zur Verabschiedung des 22. BAföGÄndG verstärkend befördert.
9. Die Frage der bildungspolitischen Zielsetzung des nationalen Gesetzgebers, Auslandsmobilität auch für Vollausbildungen im Ausland zu gewähren, ist von der unionsrechtlichen Bewertung und Kompetenzzuweisung sorgfältig zu trennen. Die Gesetzesänderung war nur als Folge der nationalen bildungspolitischen Überzeugung und Zielsetzung Deutschlands, nicht aber wegen einer EU-freizügigkeitsrechtlichen Verpflichtung erfolgt.
10. Vgl. zu Frage 8.

Annex D: Timetable Case Proceedings Morgan & Bucher and Policy Proceedings BAföG-Amendment

Figure 12: Timetable Case Proceedings Morgan & Bucher and Policy Proceedings BAföG-Amendment²³⁶

Date	Case Processdings	Policy Proceedings
2001		Political discussion on deleting first-stage study condition (disregarded) ²³⁷
3./4.12.2002		Deutsches Studentenwerk officially demands deletion of first-stage study condition ²³⁸
Nov 04	Case Bucher enters Verwaltungsgericht Aachen ²³⁹	
Feb 05	Case Morgan enters Verwaltungsgericht Aachen ²⁴⁰	
22.11.2005	Decision to file request for Preliminary Ruling from ECJ	
11.01.2006	Request Received at ECJ	
June 2006		Decision on necessity of Amendment at the BMBF ²⁴¹
24.11.2006		Inter-Ministerial Consultation on draft of 17. BAföG-Report (17. Bericht der BReg. nach § 35 BAföG)
15.12.2006		Inter-Ministerial Consultation Draft of 22. BAföG-Amendment Law
16/18.01.2007		Federal Cabinet concludes 17. BAföG-Report (17. Bericht der BReg. nach § 35 BAföG)
30.01.2007	Oral Proceedings before ECJ	
14.02.2007		Federal Cabinet concludes draft of 22nd BAföG-Amendment Law = BR-Drs. 120/07 vom 16.2.2007 http://dipbt.bundestag.de/dip21/brd/2007/0120-07.pdf
20.03.2007	Hearing of Opinion of Advocate general Colomer	
30.03.2007		First Reading of 22nd Amendment Law in Upper House (Bundesrat) (22. BAföG-Novelle)
10.05.2007		First Reading in Plenum Chamber of the Lower House (Bundestag)
21.05.2007		Public Hearing of the 22nd Amendment Law in the Education Committee of the Lower House (Bundestag)
23.10.2007	Final Judgment by ECJ	
16.11.2007		2nd and 3rd Reading of 22. BAföGÄndG in the Plenum of the Lower House (Bundestag)
20.12.2007		Plenum of Upper House (Bundesrat) agrees on 22. BAföG-Amendment Law

²³⁶ If not indicated otherwise: Studentenwerke(2012)

²³⁷ Witte and Brandenburg (2007), p. 33

²³⁸ Deutsches Studentenwerk (2002)

²³⁹ Joined Cases Rhiannon Morgan v. Bezirksregierung Köln and Iris Bucher v. Landrat des Kreises Düren (2007),

§15

²⁴⁰ Ibid, §10

²⁴¹ BMBF (2012)

31.12.2007		Announcement of the 22nd BAföG-Amendment Law dated 23.12.2007 in the Federal Law Gazette (Bundesgesetzblatt)
01.01.2008		22nd BAföG-Amendment Law becomes effective

Bibliography

- Alecke, B., & Mitze, T. (2012). Studiengebühren und das Wanderungsverhalten von Studienanfängern: Eine Panel-Ökonometrische Wirkungsanalyse. *GEFRA Working Paper Nr. 6*, 1-51.
- Apap, J., & Sitaropoulos, N. (2001). The right to family unity and reunification of third country migrants in host states: Aspects of International and European Law.
- Babbie, E. (2007). *The Practice of Social Research - International Student Edition* (11 ed.). Belmont, USA: Thompson Wadsworth.
- Baier, T., & Helbig, M. (2011). War all die aufregung umsonst? Über die Auswirkung der Einführung von Studiengebühren auf die Studienbereitschaft in Deutschland. *Wissenschaftszentrum Berlin für Sozialforschung - Discussion Paper P 2011-001-*, 1-31.
- Bartels, S. (2010). Students as Subject to EU Law - The role of the European Court of Justice in the enhancement of students' rights and the impact of ECJ case law on the national systems of tuition fees and educational grants. *University of Twente - Bachelor Thesis*, 1-86. Abgerufen am 28. August 2012 von http://essay.utwente.nl/60302/1/BSc_S_Bartels.pdf
- Baumbast and R v Secretary of State for the Home Department, C-413/99 (European Court of Justice 17. September 2002).
- Beukel, E. (2001). Educational Policy Institutionalization and Multi-Level Governance. In S. Anderson, & K. Eliassen, *Making Policy in Europe* (pp. 124-139). London: Sage.
- Blanke, E. A., & Deres, R. (2009). *Ausbildungsförderungsrecht - Vorschriftensammlung mit einer erläuternden Einführung* (35 ed.). Stuttgart: W. Kohlhammer.
- Blitz, B. K. (2003). From Monnet to Delors: Educational Cooperation in the European Union. *Contemporary European History*, 12(2), 197-212.
- BMBF. (27. December 2012). 22. Gesetz zur Änderung des Ausbildungsförderungsgesetzes (22. BAföGÄndG) - BAföG-Bezug im Auslandsstudium. (C. Strotmann, Interviewer)
- BMBF. (23. October 2012). Request for Statement on the Relationship between ECJ Cases Morgan and Bucher and the 22. BAföG Amendment Law. (C. Strotmann, Interviewer)
- Bologna Declaration. (19. June 1999). The European Higher Education Area. Bologna, Italy.
- Bruno Barra v Belgian State and City of Liège, C-309/85 (European Court of Justice 2. February 1988).
- Bundesministerium für Bildung und Forschung. (14. February 2007). *Schavan: "BAföG wird familienfreundlicher und internationaler"* (Press Release 032/2007). Abgerufen am 12. September 2012 von Bundesministerium für Bildung und Forschung web site: <http://www.bmbf.de/press/1976.php>
- Bundesregierung Austria. (19. March 2001). Gesetz zur Reform und Verbesserung der Ausbildungsförderung - Ausbildungsreformgesetz (AföRG). *BGBI 2001 I (13)*, 390-402. Bonn, Germany.

- Bundesregierung Germany. (27. April 2007). Entwurf einer Zweiundzwanzigsten Gesetzes zur Änderung des Bundesausbildungsgesetzes (22. BAföGÄndG). *Deutscher Bundestag Drucksache 16/5172*, S. 1-36. Abgerufen am 4. October 2012 von <http://dipbt.bundestag.de/dip21/btd/16/051/1605172.pdf>
- Bundesregierung Germany. (31. Dezember 2007). Zweiundzwanzigstes Gesetz zur Änderung des Bundesausbildungsförderungsgesetzes (22. BAföGÄndG). *BGBI 2007 I (70)*, 3254-3262. Bonn, Germany.
- Buzer. (2012). *Synopse zu §5 des Bundesausbildungsförderungsgesetz (BAföG)*. Abgerufen am 27. August 2012 von Buzer Web site: <http://www.buzer.de/gesetz/1936/al11137-0.htm>
- C.P.M. Meeusen v Hoofddirectie van de Informatie Beheer Groep, C-337/97 (European Court of Justice 8. June 1999).
- Carmina di Leo v Land Berlin, C-308/89 (European Court of Justice 13. November 1990).
- Casagrande v Landeshauptstadt München, C-9/74 (European Court of Justice 13. November 1974).
- Centre public d'aide sociale de Courcelles v Marie-Christine Lebon, C-316/85 (European Court of Justice 18. June 1987).
- Chalmers, D., & Tomkins, A. (2007). *European Union Public Law*. Cambridge: Cambridge University Press.
- Classen, G. (December 2007). Aus der Beratungspraxis: Neuregelung der Ausbildungsförderung für MigrantInnen. *Asylmagazin*, 12/2007, S. 5-9.
- Commission of the European Communities v Council of the European Communities, C-242/87 (European Court of Justice 30. May 1989).
- Commission of the European Communities v Kingdom of Belgium, C-42/87 (European Court of Justice 27. September 1988).
- Demmelhuber, W. (2000). The European Court of Justice advancing Student Mobility. *European Journal Vocational training*, 21, 58-61.
- Deutscher Bundestag. (2012). *Unterrichtung durch die Bundesregierung - Neunzehnter Bericht nach § 35 des Bundesausbildungsförderungsgesetzes zur Überprüfung der Bedarfssätze, Freibeträge sowie Vomhundertsätze und Höchstbeträge nach §21 Absatz 2*. Köln: Bundesanzeiger. Abgerufen am 30. October 2012 von http://www.bmbf.de/pubRD/neunzehnter_bafoeg_bericht.pdf
- Deutsches Studentenwerk. (2002). Die Bildungsbeteiligung erhöhen - Das Studienfinanzierungssystem weiterentwickeln. 63. *ordentliche Mitgliederversammlung des Deutschen Studentenwerks* (S. 1-3). Berlin: Deutsches Studentenwerk. Von http://www.studentenwerke.de/mv/2002/b_2002.pdf abgerufen

- Dwenger, N., Storck, J., & Wrohlich, K. (2010). *Do Tuition Fees Affect the Mobility of University Applicants? Evidence from a Natural Experiment*. Berlin: Deutsches Institut für Wirtschaftsforschung.
- European Commission. (2010a). *EUROPE 2020 - A European Strategy for Smart, Sustainable and Inclusive Growth*. Brussels: European Commission.
- European Commission. (15. September 2010b). Commission Staff Working Document - Youth in the Move: A Guide to the Rights of Mobile Students in the European Union. *SEC(2010) 1047*. Brussels.
- European Commission. (2012). *ERASMUS - Facts, Figures and Trends*. Luxembourg: Publications Office of the European Union.
- European Council. (2. April 1963). 63/266/EEC: Council Decision of 2 April 1963 laying down general principles for implementing a common vocational training policy. *OJ 63, 20.04.1963, p. 1338-1341*.
- European Council. (15. October 1968). Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. *OJ L 257, 19.10.1968, p. 2-12*.
- European Council. (2000). Presidency Conclusions - Lisbon European Council - 23 and 24 March 2000. Lisbon: European Council.
- Eurydice Network. (2012). *The European higher Education area in 2012: Bologna Process Implementation Report*. Brussels: Education, Audiovisual and Culture Executive Agency.
- Flaminio Costa v E.N.E.L., C-6/64 (European Court of Justice 15. July 1964).
- Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst, C-413/01 (European Court of Justice 6. November 2003).
- Françoise Gravier v. City of Liège, C-293/83 (European Court of Justice 13. February 1985).
- Gérald De Cuyper v Office national de l'emploi, C-406/04 (European Court of Justice 18. July 2006).
- Gornitzka, A. (2005). Coordinating Policies for a Europe of Knowledge - Emerging Practices of the Open Method of Coordination in Education and Research. *ARENA Working Papers, 16*.
- Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide und Futtermittel, C-11/70 (European Court of Justice 17. December 1970).
- Isserstedt, W., & Weber, S. (2005). *Projektbericht BAföG Auslandsförderung- Entwicklung der Auslandsmobilität und Erfahrungen der Studierenden*. Hannover: Hochschul-Informations-System.
- Joined Cases G. B. C. Echternach and A. Moritz v Minister van Onderwijs en Wetenschappen., C-389/87 and C-390/87 (European Court of Justice 15. March 1989).

- Joined Cases Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren, C-11/06 und C-12/06 (European Court of Justice 23. October 2007).
- K. Tas-Hagen and R. A. Tas v Raadskamer WUBO van de Pensioen- en Uitkeringsraad, C-192/05 (European Court of Justice 26. October 2006).
- Kofler, B. (2008). Studienförderung für Auslandsstudien - Das Urteil Morgan und Bucher des EuGH. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik*, 7(3), 81-90.
- Landesamt für Ausbildungsförderung Nordrhein-Westfalen v Lubor Gaal, C-7/94 (European Court of Justice 4. May 1995).
- Lenaerts, K. (2006). Union Citizenship and the Principle of Non-Discrimination on Grounds of Nationality. In B. Vesterdorf, N. Fenger, & K. Hagel-Sørensen, *Festschrift til Claus Gulmann - Liber amicorum* (S. 289-309). Copenhagen: Thomsen Reuters.
- M. J. E. Bernini v Minister van Onderwijs en Wetenschappen, C-3/90 (European Court of Justice 26. February 1992).
- Maassen, P., & Musselin, C. (2009). European Integration and the Europeanization of Higher Education. In P. Maassen, & J. Müller, *European integration and the Governance of Higher Education and Research* (Bd. 26, S. 3-14). Springer Netherlands.
- Mächtle, C. I. (2010). *Bildungsspezifische Implikationen des allgemeinen Diskriminierungsverbots und der Freizügigkeit*. Frankfurt a. Main: Peter Lang.
- María Martínez Sala v Freistaat Bayern, C-85/96 (European Court of Justice 12. May 1998).
- Marie-Nathalie D'Hoop v Office National de l'Emploi, C-224/98 (European Court of Justice 11. July 2002).
- Mietens, A. L. (2008). The Europeanization of Student Financial Support Systems - A Case Study of the Changes of the Dutch and German Student Financial Support Systems. *University of Twente - Master Thesis*, 1-98. Abgerufen am 29. August 2012 von http://essay.utwente.nl/59039/1/Europeanisation_Master_Thesis_Anne_Lena_Mietens.pdf
- Natali, D. (2010). The Lisbon Strategy, Europe 2020 and the Crisis in Between. In E. Marlier, & D. Natali, *Europe 2020: Towards a More Social EU* (S. 93-113). Berlin: Peter Lang.
- NESSIE Network of Experts on Student Support in Europe. (2012). *Report of the Network of Experts on Student Support in Europe*. Bucharest: European Higher Education Area Ministerial Conference.
- NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, C-26/62 (European Court of Justice 5. February 1963).
- Office national de l'emploi v Jozsef Deak, C-94/84 (European Court of Justice 20. June 1985).
- Olsen, J. P. (2007). *Europe in Search of Political Order: An Institutional Perspective on Unity/Diversity, Citizens/ Their Helpers, Democratic Design/Historical Drift, and the Co-existence of Orders*. Oxford: Oxford University Press.

- Plümper, T., & Schneider, C. J. (2007). Too much to die, too little to live: unemployment, higher education policies and university budgets in Germany. *Journal of European Public Policy*, 14(4), 631-653.
- Regent, S. (2003). The Open Method of Coordination: A New Supranational Form of Governance? *European Law Journal*, 9(2), 190-214.
- Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), C-120/78 (European Court of Justice February 20, 1979).
- Rottiers, S. (2008). European Union Constraints on Regional Social Policy Making: The Pioneering Case of Flemish Care Insurance and its general Consequences. *Regional and Federal Studies*, 18(4), 353-373.
- Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, C-184/99 (European Court of Justice 20. September 2001).
- Sandro Forcheri and his wife Marisa Forcheri, née Marino, v Belgian State and asbl Institut Supérieur de Sciences Humaines Appliquées - Ecole Ouvrière Supérieure, C-152/82 (European Court of Justice 13. July 1983).
- Schrauwen, A. (2011). Access to and Portability of Student grants and Loans. Where Targets Meet Free Movement Law. *Amsterdam Centre for European Law and Governance Research Paper*, 2011-07, 1-21.
- Shuibhne, N. N. (2008). Case C-76/05 Schwarz and Gootjes-Schwarz v Finanzamt Bergisch Gladbach; Case C-318/05 Commission v Germany; Joined Cases C-11/06 & C-12/06 Morgan v Bezirksregierung Köln; Bucher v Landrat des Kreises Düren. *Common Market Law Review*, 45, 772-786.
- Sorbonne Joint Declaration. (25. May 1998). Joint Declaration on Harmonization of the Architecture of the European Higher Education System. Paris, France.
- Statistisches Bundesamt. (2012). *Deutsche Studierende im Ausland - Statistischer Überblick 2000-2012*. Wiesbaden: Statistisches Bundesamt. Abgerufen am 6. December 2012 von <https://www.destatis.de/DE/Publikationen/Thematisch/BildungForschungKultur/Hochschule/StudierendeAusland5217101127004.pdf>
- Stephan Max Wirth v Landeshauptstadt Hannover, C-109/92 (European Court of Justice 7. December 1993).
- Steven Malcolm Brown v The Secretary of State for Scotland., C-197/86 (European Court of Justice 21. June 1988).
- Studentenwerke. (12. December 2012). 22. Gesetz zur Änderung des Ausbildungsförderungsgesetzes (22. BAföGÄndG) - BAföG-Bezug im Auslandsstudium. (C. Strotmann, Interviewer)
- Sylvie Lair v Universität Hannover, C-39/86 (European Court of Justice 21. June 1988).

- Szyszczyk, E. (2006). Experimental Governance: The Open Method of Coordination. *European Law Journal*, 12(4), 486-502.
- Teichler, U. (2009). Internationalization of Higher Education: European Experiences. *Asia Pacific Education Review*, 10(1).
- Teichler, U., & Janson, K. (2007). The professional value of temporary study in another European country: Employment and work of former ERASMUS students. *Journal of Studies in International Education*, 11, 486-495.
- The Queen (on application of Dany Bidar) v London Borough of Earling and Secretary of State for Education and Skills, C-209/03 (European Court of Justice 15. March 2005).
- Tomuschat, C. (2000). Maria Martinez Sala v. Freistaat Bayern. *Common Market Law Review*, Vol. 37, 449-457.
- Treaty Establishing the European Economic Community (TEEC) (25. March 1957). Abgerufen am 15. August 2012 von http://eur-lex.europa.eu/en/treaties/dat/11957E/tif/TRAITES_1957_CEE_1_EN_0001.tif
- Treaty on European Union (TEU), Official Journal C 83/15 (30. March 2010).
- Treaty on the Functioning of the European Union (TFEU), Official Journal C 83/49 (30. March 2010).
- V. J. M. Raulin v Minister van Onderwijs en Wetenschappen, C-357/89 (European Court of Justice 26. February 1992).
- van der Wende, M. (2001). The International Dimension in national Higher Education Policies: What has changed in Europe in the last five years? *European journal of Education*, 36(4), 431-441.
- van der Wende, M., & Huisman, J. (2004). Europe. In J. Huisman, & M. van der Wende, *On Cooperation and Competition: National and European Policies for the Internationalization of higher education*. Bonn: Lemens.
- Vincent Blaizot v University of Liège and others, C-24/86 (European Court of Justice 2. February 1988).
- Vlaams Ministerie van Onderwijs en Forming. (2012). *Participating Countries and Institutions*. Abgerufen am 27. August 2012 von Official Bologna Process website July 2007 - June 2010: <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/pcao/>
- White, R. C. (October 2005). Free Movement, Equal Treatment, and Citizenship of the Union. *The International and Comparative Law Quarterly* 54(4), 885-905.
- Witte, J., & Brandenburg, U. (2007). *Finanzierungsmodelle für das Auslandsstudium* (2 ed.). Gütersloh: Centrum für Hochschulentwicklung - Arbeitspapier Nr. 86.
- Ziller, J. (2008). Separation of Powers in the European Union's Intertwined System of Government. *Il Politico*, 3, 133-179.