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Youth on the Move: A Guide to the Rights of Mobile Students in the European Union

Accompanying document to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Youth on the Move

**An initiative to unleash the potential of young people to achieve smart, sustainable and
inclusive growth in the European Union**

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1. INTRODUCTION

1.1. Context and objectives

A European Union policy to promote learning mobility

Travelling to another EU country to study ('learning mobility') is one of the fundamental ways in which young people can boost their personal development as well as their future job opportunities. Learning mobility also benefits the EU as a whole: it fosters a sense of European identity; it helps knowledge circulate more freely; and it contributes to the internal market, as Europeans who are mobile as young learners are more likely to be mobile as workers later in life.

The Commission has promoted learning mobility for many decades. The Erasmus Programme, launched in the 1980s and now part of the EU's Lifelong Learning Programme, has been supporting student and academic exchange and knowledge transfer between institutions for over twenty years, and the feedback from students confirms the positive impact of learning mobility. The Commission is also an active partner in the Bologna Process, an agreement among 47 countries to create a European Higher Education Area.

The Commission's Europe 2020 Strategy, which charts the path for the EU for the next decade, also prioritises learning mobility as a means of raising the skills of individuals and of the Union as a whole. This paper forms part of one of Europe 2020's flagship initiatives, Youth on the Move. The goal of Youth on the Move is to enhance the performance and international attractiveness of Europe's higher education institutions and raise the overall quality of all levels of education and training in the EU inter alia by giving all young people in Europe the chance to spend a part of their educational pathway in another Member State.

Given the primary responsibility of Member States for education and training, the EU does not have the power to enact binding legislation in education. The rules are generally based on Treaty provisions interpreted by court decisions, and thus, the rights of students have developed and broadened progressively over time. Since this process is ongoing and many of the decisions are relatively recent, the rights of mobile students are not always clear. The Commission receives a number of complaints and queries from citizens who are unsure of their rights or who are encountering difficulties having their academic qualifications recognised.

The paper aims to summarise and set out the Commission's interpretation of the law in this area, as a guide for Member States, universities and other stakeholders, and to inform young people so that they may be aware of their rights, and therefore better prepared for a study period abroad.

The Commission has also announced, in its 2010 multi-annual work programme¹, its intention to issue a Communication on Citizenship identifying the broader range of obstacles that may prevent citizens from fully exercising their rights as Union citizens, and outlining the solutions envisaged by the Commission.

¹ COM(2010) 135.

Students' rights to study abroad within the EU

The Treaty² itself ensures the right of all European citizens to move between Member States – subject to certain limitations laid down in the Treaty and in legislation. Originally, the European Community³ did not have any specific powers in the area of education, other than in vocational training, so rights in this area existed only insofar as they contributed to the economic goals of the European Community. On those grounds, EU migrant workers and their family members were entitled to the same social advantages as nationals of the host Member State, including those in the area of education.

The Court of Justice of the European Union interpreted the Treaty provisions on vocational training to create rights for mobile EU students. In its *Gravier* judgment, it decided that students from other EU countries should have access to a Member State's vocational training courses on equal terms with its own nationals, on the basis that this improved people's chances on the local labour market.

The Treaty of Maastricht (1993) brought two important changes which significantly broadened the scope of the rights guaranteed under EU law: the introduction of specific powers for the European Union in the area of education; and the establishment of European citizenship.

These Treaty provisions have been interpreted by the Court of Justice to cover the rights of free movement and non-discrimination among Europeans, simply because of their status as citizens (and by extension, as students) regardless of whether they are 'economically active'. National governments remain responsible for the content and organisation of their education systems. However, this responsibility must still be exercised in conformity with European Union law. This means that EU nationals should not be discriminated against in access to any course of education, even if it is not directly linked to the later practice of a profession.

1.2. Scope

The paper concentrates on mobility for higher education and vocational training, as this is where most mobility occurs and the area where, in practice, issues tend to arise, although many of the rules also apply to education in general. The structure follows the pathway of a student who decides to go abroad to study and examines the obstacles they may encounter before, during and after a mobility period, from applying for admission to the host institution to their stay in the host Member State and finally in using the qualifications they have gained. It looks at how rights to non-discrimination and free movement, in primary and secondary law and in the case law of the Court of Justice, affect the treatment of students both by the country where they are studying and by their own country, with regard to access to education, financial assistance and other benefits, and recognition of diplomas.

The paper does not examine the question of the recognition of qualifications for professional purposes, which is regulated by a separate legal framework under the European Parliament and Council Directive 2005/36/EC, referring to this only when there is an impact on recognition for academic purposes.

² Relevant Treaty articles are included in Annex III.

³ Renamed 'European Union' by the Treaty on the Functioning of the European Union as from 1 December 2009.

2. ACCESS TO EDUCATION

2.1. The right to free movement

The first question for any student or trainee planning to travel to another EU country to study is the issue of whether, in fact, they have the right to do so, as citizens of another Member State.

Union law is clear on this point: EU students have the right to free movement in all Member States: they may not be refused access to education or training in another EU country on account of their nationality.

The grounds for establishing students' right to free movement have evolved over time. European Union powers in education - including the EU's role of encouraging learning mobility - were initially, in the Treaty establishing the European Community, limited to vocational training (then Article 128 EEC). However, once the Court of Justice began to hear individual cases of discrimination in access to vocational training and general education from the early 1980s, the right of a student, whether in general, vocational or university education, to move freely throughout the Union for study purposes was affirmed progressively by various court judgments.

- In its *Forcheri* decision⁴, the Court held that it is discriminatory for a Member State to charge enrolment fees for vocational training courses to a national of another Member State (in this instance, the wife of a worker in the first Member State) if its own nationals are exempt from these fees.
- In the landmark *Gravier* decision⁵, the Court held that although educational organisation and policy were not as such entrusted to the Community institutions by the Treaty, the conditions of access to vocational training (according to the Court, any form of education which prepares for a profession, trade or employment) fell within the scope of the Treaty. This was the case even though the student concerned had migrated purely for the purposes of study.
- In the *Blaizot* decision⁶, the Court confirmed that higher education and university education came under the umbrella of vocational training.

The Maastricht Treaty took two further steps forward. It extended the remit of EU action on education – giving the EU the role of encouraging cooperation between the Member States in education; and of encouraging mobility of students and teachers⁷. And it introduced the concept of European citizenship – all Member State nationals are EU citizens, with the freedom to move and reside anywhere in the Union⁸.

⁴ Judgment of the Court of 13 July 1983, *Forcheri*, Case 152/82, ECR 1983 02323.

⁵ Judgment of the Court of 13 February 1985, *Gravier*, Case 293/83, ECR 1985 00593.

⁶ Judgment of the Court of 2 February 1988, *Blaizot*, Case 24/86, ECR 1988 00379.

⁷ Then Article 126 TEC; now Article 165 of the Treaty on the Functioning of the European Union (TFEU).

⁸ See Articles 20 and 21 TFEU.

2.2. Obstacles to free movement – direct and indirect discrimination

EU citizenship not only includes the freedom to move and reside anywhere in the Union; it also means that everyone should be treated the same, irrespective of their nationality. These rights have been underlined by the Court of Justice over the years, in cases where EU students studying, or wanting to study, in another EU country have been met with obstacles that run counter to the principle of equal treatment.

- In the *Grzelczyk* decision⁹, the Court said that Union citizenship is destined to be the fundamental status of nationals of the Member States. Therefore, a French national who was studying in Belgium could not be refused, purely on the basis of his nationality, a minimum subsistence allowance, to which all Belgians were entitled.

The Treaty explicitly prohibits discrimination on grounds of nationality within the scope of the Treaty (Article 18 TFEU). Direct discrimination occurs where people are treated differently on the basis of their nationality, or on the basis of a characteristic which cannot be separated from their nationality. This kind of discrimination can only be justified on the basis of explicit derogations from the Treaty. Any derogations are interpreted very strictly by the Court of Justice, since discrimination on grounds of nationality is contrary to the fundamental principles of the EU.

Indirect discrimination occurs where some other criterion is applied but with the result that a substantially higher proportion of one nationality is affected. For example, a measure which distinguishes between people on the grounds of whether they have their residence in a given Member State is likely to have a negative effect on nationals of other Member States, since non-residents are, in the majority of cases, foreigners.

Treating people differently on these grounds can only be justified if the Member State can show that it is based on objective considerations independent of nationality, and that it is proportionate to the legitimate aims in question – it cannot go beyond what is strictly necessary for that purpose.

- In the *Bressol* decision¹⁰ the Court held that setting a quota of 30% for non-resident students in certain courses of study indirectly discriminated against nationals from other Member States. Since any such restriction on access imperils the fundamental right to free movement, the Court's interpretation is very strict. The only ground that the Court has accepted for such discrimination is the need to protect public health; but the Member State would have to prove – via an objective, detailed analysis supported by solid and consistent data – that public health was in danger and that the restrictive measures were a necessary and proportionate way of protecting it.

⁹ Judgment of the Court of 20 September 2001, *Grzelczyk*, Case C-184/99 ECR 2002 I-00663
'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for' (paragraph 31).

¹⁰ Judgment of the Court of 13th April 2010, *Bressol*, Case C-73/08.

2.3. Residence rights for students

In order for students to take up their study place abroad, they must of course feel confident that they have a right to residence in the EU country concerned. Thanks to the clear regulatory framework that exists, in practice EU students have few problems in this area.

- Following on from the Court rulings on students' right to equal treatment in access to education, the Court also found in the *Raulin* case that a student's right to access included the right to residence in another Member State for the purposes of studying¹¹.

It is as EU citizens that students – and their families – have the right to move and reside anywhere in the Union. These rights are set out in Directive 2004/38/EC (on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States)¹².

EU students

Any EU student has a right to enter another EU country and to stay there for up to three months, provided they hold a valid identity card or passport.

Any EU student has the right to stay in another Member State for longer than three months, once they fulfil certain conditions. They must:

- be enrolled in a course of study at an educational establishment, whether private or public, accredited or financed by the host Member State
- have comprehensive sickness insurance cover in the host Member State, and must inform the relevant national authority in line with the national rules
- have enough resources not to become an unreasonable burden on the social assistance system of the host Member State.

Depending on the Member State, the student may be required to register with the authorities.

¹¹ Judgment of the Court of 26 February 1992, *Raulin*, Case C-357/89, ECR 1992 I-01027. Following the case law establishing the right to equality of treatment regarding the conditions of access to vocational training, higher education and university education, the Court held in the early 1990's that this right applied not only to the requirements laid down by the educational establishment in question, such as enrolment fees, but also any measure that may prevent the exercise of that right. The Court decided that the principle of non-discrimination with regard to conditions of access to vocational training deriving from Articles 18 and 166 TFEU (ex Articles 7 and 128 EEC) implied that a national of a Member State who has been admitted to a vocational training course in another Member State enjoys, in this respect, a right of residence for the duration of the course.

¹² Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 229, p.35. See Articles 6 and 7 of the Directive. In accordance with Article 7(4) of this Directive, Member States have the option to limit the family members who have a right to join or accompany an EU citizen who move for study purposes to the spouse, the registered partner and dependent children. See Annex II for more detail.

Like any other EU citizen, a student who has resided legally for a continuous period of five years in the host Member State acquires the right to live there permanently and the right to be treated exactly the same as local students¹³.

In general terms, the members of the student's immediate family have the right to accompany him or her, although different conditions apply, depending on whether the family members are EU nationals or not. See Annex II for further information on the rights of family members.

Non-EU students

Non-EU students also have the right to travel to the EU for study purposes, under certain conditions. Their situation is dealt with in Council Directive 2004/114/EC¹⁴, which aims to harmonise national legislation in this area. See Annex II for further information¹⁵.

According to the Directive, Member States must facilitate admission for non-EU national students taking part in EU mobility programmes¹⁶. However, the Commission is concerned in certain cases about the length of procedures for delivering visas to enter EU countries for those students, which has sometimes prevented students from benefitting from EU programmes.

2.4. Tuition fees

Whether or not tuition fees are charged varies from Member State to Member State. Equally, loans or grants to help meet the cost of tuition fees may also be available in some Member States. In either case, where either fees or tuition fee loans/grants exist, students from an EU country have the same rights and/or obligations as local students – both, to pay the fees charged, and to receive a tuition fee loan/grant from the Member State where the student will study.

- In the *Brown* decision, a student with French nationality wished to study in Scotland. The Scottish authorities refused him a 'student's allowance' comprising the payment by the state of his tuition fees. The Court held that the principle of non-discrimination applied where the assistance was intended to cover the costs of access to education – so, he was entitled to have tuition fees paid on his behalf¹⁷.

This is because a tuition fee loan or grant forms part of the conditions of access to education. Therefore, to prevent students studying abroad from having access to such financial support would be to discriminate on the grounds of nationality, which would run counter to the prohibition of such discrimination in the Treaty.

¹³ See Article 16 of the Directive.

¹⁴ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. In accordance with the Protocols on the position of the United Kingdom, Ireland and Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, these Member States are not bound by Council Directive 2004/114/EC or subject to its application

¹⁵ In accordance with Article 21 of the Directive, the Commission is to present a report on the application of the Directive this year.

¹⁶ Article 6(2).

¹⁷ See ECJ decisions of 21 June 1988, *Lair*, Case 39/86, ECR 1988 03161, paragraph 16; and *Brown*, case 197/86, ECR 1988 03205, paragraph 17.

The rules on tuition fee loans/grants are different from maintenance loans/grants, which are dealt with in Chapter 3.

2.5. Language requirements

Students travelling abroad for study or vocational training may have to show knowledge of the host country language, and may have to take a test in order to be accepted by a university or higher education institution.

While a Member State is entitled to stipulate a certain level of language knowledge – whether for an individual to practise a profession or to take a course of study – the requirements have to be proportionate. In other words, the level of language knowledge that the student has to demonstrate should be enough to meet the purpose, but need not go beyond that.

- In the *Angonese* decision¹⁸, a bank in the German-speaking region of Bolzano in Italy required all applicants for employment to have a certain certificate proving that they were bilingual in German and Italian. The Court said that only allowing proof of language skills via one particular certificate (which could only be acquired in Bolzano) was disproportionate. The Commission considers that the same principle applies to language tests for access to education.

2.6. Distance learning

Distance learning is formal learning, where student and instructor are in different geographic locations and usually communicate today via ICT. Students do not have to travel physically to another country for distance learning; but students wanting to access distance learning from another Member State might still be discriminated against, either in terms of access to distance learning, or for the payment of tuition fees.

There is as yet no case-law covering distance learning. But the Union has a specific objective of encouraging distance education (article 165, para 2, sixth indent TFEU)¹⁹ which thus brings distance learning within the scope of non-discrimination.

Equal treatment is guaranteed under the Treaty, irrespective of whether the institution offering distance learning is commercial (providing a service in return for payment), or not-for-profit.

A commercial institution offering distance learning across borders is part of the internal market. The free movement of services across national borders is one of the 'four freedoms' of the internal market, guaranteed under Article 56 TFEU²⁰. Therefore, a student wishing to access for-profit distance learning from any EU Member State has the right to be treated on the same basis as a local student, since any difference in treatment would amount to a disruption of the internal market.

¹⁸ Judgment of the Court of 6 June 2000, *Angonese*, Case C-281/98, ECR 2000 I-04139.

¹⁹ "Union action shall be aimed at:...encouraging the development of distance education,...".

²⁰ "Article 56 (ex Article 49 TEC).

Within the framework of the provisions set out below, restrictions on the freedom to provide services within the Union shall be prohibited in respect of nationals of Member State who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union".

Cross-border distance learning offered by a not-for-profit educational institution (one financed essentially out of public funds) is not a service in this sense. However, as citizens of the EU, students who want to access distance learning offered in another Member State cannot be discriminated against on grounds of nationality (Articles 18 and 20 TFEU). Thus the distance learning should be offered on the same basis to any student within the EU, no matter what is their Member State of origin.

3. RIGHTS OF STUDENTS IN THE HOST MEMBER STATE

3.1. Eligibility for benefits

Once a student takes up their study place in another EU country, their student status may make them eligible for certain benefits or for preferential access to particular goods and services – for example, reduced-cost public transport or student accommodation.

Access to these types of benefit was initially based on the legislation for EU migrant workers²¹, which was also extended to workers' family members by the Court of Justice.

However, with the establishment of Union citizenship under the Maastricht Treaty, it is as citizens of the Union, and not just as EU migrant workers, that people now have the right to move and reside freely within the territory of Member States²². EU students who are studying abroad thus have the same right to access benefits as local students do, except where a benefit is expressly exempted from the principle of equal treatment, as in the Directive 2004/38/EC²³.

3.2. Differential access to maintenance grants and loans

Financial help from the home Member State

Many Member States provide loans or grants to help students with their living costs ('maintenance costs') when studying. In some cases students might have access to this type of assistance when studying abroad (the principle of 'portability' of grants or loans). Under the current law, Member States are free to decide whether to allow this. According to the Eurydice network, few Member States allow for full portability of maintenance aid in

²¹ Article 7 of Regulation 1612/68 provides that: "1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment;
2. He shall enjoy the same social and tax advantages as national workers".

²² Articles 20 and 21 TFEU.

²³ "Article 24:

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families."

practice²⁴. This can present a significant disincentive to nationals wishing to study abroad. However, if they do allow for such portability, they must make sure that the eligibility rules do not unduly restrict a student's right to free movement within the EU.

- This was decided in the *Morgan* judgment²⁵. The rule contested in that case said that students could be given a grant for studies abroad only if these were a continuation of studies of at least one year in their home country. The Court held that this condition was likely to discourage citizens from studying abroad because of the costs and inconvenience which it could cause.

If a Member State provides grants to its nationals for distance learning courses in its own territory, it must also provide them for distance studies at an institution in another Member State, under the same conditions.

Financial help from the host Member State

- In the *Bidar* ruling²⁶, the Court said that maintenance grants and loans came within the 'scope' of the Treaty – which means that, in principle, an EU citizen cannot be discriminated against in this area. However, it also recognised that Member States should not have to take on the unreasonable burden of giving financial assistance to students from another Member State who have no link with that country, other than having decided to move there for study purposes.

Directive 2004/38/EC explicitly excludes maintenance grants and loans from the principle of equal treatment²⁷. This means that Member States are not obliged to extend grants or loans for maintenance to students from another Member State, unless they have been living there for a certain length of time. However, once a student, after five years' residence in accordance with Directive 2004/38/EC, has obtained the right of permanent residence, he or she has exactly the same rights as a local student.

Another reason behind this exemption is to avoid a situation where an individual could benefit twice over from a student grant or loan, if they can take the grant from their home country with them. One State loan or grant cannot be added to another State's funding, if they target the same study objective.

- In the *Förster* decision²⁸, the Court stated that a condition of five years' prior residence could not be held to be an excessive period of time for a non-national to become integrated in the host Member State²⁹.

²⁴ Of the 27 EU Member States, only 3 provide support to students studying anywhere in the European Higher Education Area, without additional conditions to those which apply when they study in their home country - Belgium (German-speaking Community), Luxembourg and the Netherlands. Four Member States do not provide for portability at all- Italy (with the exception of two autonomous regions), Latvia, Poland, and Romania. See Eurydice Report on Higher Education in Europe: Developments in the Bologna Process (March 2009) for more details.

²⁵ Judgment of the Court of 23 October 2007, *Morgan and Bucher*, Joined cases C-11/06 and 12/06, ECR 2007 I-09161.

²⁶ Judgment of the Court of 15 March 2005, *Bidar*, C-209/03, ECR 2005 I-02119. This case was decided after the Directive was drawn up but before it could be enforced by the Court.

²⁷ See footnote 23.

²⁸ Judgment of the Court of 18 November 2008, *Förster*, C-158/07, ECR 2008 I-08507.

3.3. Reduced-cost public transport

This is a fairly common student benefit in many Member States. However, the Commission has been contacted by students studying abroad who have been denied this benefit, on the grounds that they are not nationals of the Member State, or have not fulfilled the conditions for permanent residence.

The Commission considers that reduced-cost public transport qualifies as 'maintenance aid' under Article 24 of Directive 2004/38/EC. However, since it is not a student grant or loan, it cannot be withheld from students on grounds of nationality.

3.4. Student accommodation

This is another area where the Commission has received complaints. The Commission response is that EU students are entitled to have access, on the same terms as local students, to accommodation offered exclusively to students by the Member State, or by organisations acting on its behalf.

3.5. Tax benefits in the Member State of origin

The Member State of origin may grant **tax benefits** to students or their families, allowing them to deduct study expenses from taxable income. While this applies principally to students studying in their home country, the expenses of studying in another Member State are also tax-deductible, within reasonable limits (Member States are entitled, for example, to place an upper limit on the amount of tuition fees deductible in order to avoid an excessive financial burden).

- In the *Schwarz* decision³⁰, the Court held that a Member State which allowed a child's school fees to be deducted from their parent's income tax, but only if the child went to school in that Member State, restricted the child's right to freedom of movement.

Rights of non-EU students ('third-country nationals')

Non-EU students have the right to study in the Union provided they fulfil certain conditions, which will vary according to their status and to the legislation of the host Member State (e.g. they may be excluded by quota mechanisms). However, the right to study does not automatically confer other rights that EU students enjoy (e.g. the right to pay the same tuition fees as local or EU nationals; the right to reduced transport costs, etc.). However, outside their study time and as from their second year of residence, students must be allowed to work for a minimum of 10 hours per week, or the equivalent in days or months per year³¹.

Non-EU nationals who fulfil the conditions for long-term residence acquire the right to be treated in principle exactly the same as local students.

See Annex II for further information.

²⁹ At paragraph 54 of the judgment.

³⁰ Judgment of the Court of 11 September 2007, *Schwarz and Gootjes Schwarz*, Case C-76/05, ECR 2007 I-06849.

³¹ Article 17 of Directive 2004/114/EC.

4. RECOGNITION OF QUALIFICATIONS

4.1. Establishing academic recognition

Once a student has successfully completed their study period abroad, they are entitled to some form of certification from the university where they have studied – whether this is a diploma or degree, or a statement of the learning undertaken. The issue then arises of having this document recognised, either on returning to the home country, or in another Member State.

This is a vital stage, but also one where difficulties can arise. Every EU country has its own, unique education system, so there is a great deal of variety, both in terms of what is learned, and in the diplomas awarded.

There is an EU-wide system of mutual recognition of qualifications for the purpose of carrying out a profession, laid down in European Parliament and Council Directive 2005/36/EC³². This applies to 'regulated' professions, i.e. professions which cannot be taken up or practised in the host Member State without certain specified professional qualifications, and to citizens who are fully qualified to practise a profession in one Member State and who wish to practise the same profession in another Member State. Whether a profession is considered 'regulated' will depend on the law of the Member State where the citizen wishes to practise their profession³³.

In contrast, this document will deal rather with the more general question of **academic recognition (recognition for the purposes of further study) of diplomas and study periods abroad**. Academic recognition may also be useful for people seeking employment in non-regulated professions, as it can help potential employers understand the value of a candidate's foreign qualification. Because of the variety of education systems, establishing whether a diploma gained in one country is equivalent to one gained in another country can be time-consuming and potentially contentious. Many of the letters, complaints and petitions that the Commission receives from students concern issues of academic recognition (although it should be remembered that in the vast majority of cases, recognition is a smooth process: these complaints in fact represent only a tiny proportion of the very large numbers of students who actually take up study mobility opportunities).

4.2. Member States' and the European Union's responsibilities

Academic recognition is the responsibility of the Member States; however, they must exercise this competence in accordance with EU law. This means that in refusing to recognise a diploma, they cannot discriminate on grounds of nationality or hinder a citizen's right to free movement. In a 2001 Recommendation on mobility for students, persons undergoing training, volunteers, teachers and trainers, Member States were called on to take appropriate measures so that the decisions of the authorities responsible for academic recognition are adopted

³² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255 , 30/09/2005 P. 0022 – 0142. Further information on the rules for the recognition of qualifications for professional purposes may be found at http://ec.europa.eu/internal_market/qualifications/index_en.htm

³³ To find out whether a profession is regulated in a particular country, you can consult http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home

within reasonable timescales, are justified and can be subject to administrative and/or legal appeal³⁴.

As well as this, the Treaty explicitly opens Union action, not just to encouraging mobility of students and teachers, but also to encouraging the academic recognition of diplomas and periods of study³⁵. The importance of this issue has led the Commission to tackle it on a number of fronts.

4.3. EU soft law

The Commission has set up a network of National Academic Recognition and Information Centres (NARIC)³⁶ to provide information on the recognition of qualifications gained abroad.

NARIC aims at improving academic recognition of diplomas and periods of study within the EU, the European Economic Area (EEA) countries and Turkey.

NARIC centres in all member countries can provide students, higher education institutions or employers with authoritative advice and information concerning the academic recognition of diplomas and periods of study undertaken in other States.

Institutions of higher education are largely autonomous, taking their own decisions on admitting foreign students and on granting students exemptions from parts of study programmes on the basis of education undertaken abroad. As a result, most NARICs do not take a decision, but offer on request information and advice on foreign education systems and qualifications.

The Commission has also developed a number of tools for EU-wide use all of which aim, in one way or another, to demystify and give recognition to the learning that takes place in another European country:

- **European Qualifications Framework:** a device which relates different countries' qualifications to a common European reference framework. When it is fully implemented, it should make it easy to compare the level of qualifications from different EU Member States.
- **Diploma Supplement:** a document attached to a degree or diploma which gives a description of the content and level of the studies carried out. It is up to the university or other institution which issues the diploma whether to attach a diploma supplement, but institutions are strongly encouraged to do so. Ministers in charge of higher education of the countries participating in the Bologna Process (including all EU Member States) decided in

³⁴ Recommendation of the European Parliament and the Council of 10 July 2001 on mobility for students, persons undergoing training, volunteers, teachers and trainers (2001/613/EC), OJ L 215, 09/08/2001, p. 30.

³⁵ Article 165:
Union action shall be aimed at:
- 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,...

³⁶ www.enic-naric.net/

2003 that as from 2005, every graduating student should receive the Diploma Supplement automatically and free of charge, issued in a widely spoken European language³⁷.

- European Credit Transfer and Accumulation System: this allows students to collect credits for learning achieved for higher education, based on the learning outcomes and workload of a particular course. Most Member States have introduced ECTS into their national higher education legislation for study programmes of the first and second cycles (Bachelor and Master).

All of these tools can then help universities or employers in other EU countries to understand the qualification that a graduate holds.

4.4. EU legal measures

In certain exceptional cases, the Commission has opened infringement procedures against Member States. These procedures do not necessarily reach the Court, since the issue is often resolved in dialogue with the Member State.

Over the years, several cases based on the recognition of professional qualifications under Directive 89/48/EC (now 2005/36/EC, see above), or Treaty provisions, indirectly refer to academic recognition, and the principle of free movement of EU citizens which underpins it.

- For example, the Commission considered that a government was charging excessive fees for the act of recognising qualifications gained in another Member State. If the amount charged is demonstrably higher than the actual administrative costs involved, the Commission considers that these higher costs may be penalising the student for having chosen to study abroad, making this level of fees incompatible with EU law³⁸.
- In a *Commission v Spain* decision, engineers were being denied promotion on the grounds that their qualifications had been obtained in another Member State. The Court emphasised that promotion within the public service, where a worker practised a 'regulated profession' under the recognition of professional qualifications directive, cannot be contingent on having to seek academic equivalence, in addition to professional recognition³⁹.
- In a *Commission v Greece* ruling⁴⁰, a State refused consistently to recognize diplomas from franchised universities. These are institutions which have made an agreement with a foreign university where the training is provided in the franchised establishment, but is validated by the training institution situated in the other Member State and the qualification is awarded by that institution. Diplomas from these universities are therefore qualifications from another Member State. The Court held that it is the Member State issuing the diploma that has the right to assess the quality of the education. Since they are qualifications from another Member State, diplomas from these institutions can fall under Directive

³⁷ Berlin Communiqué,

http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/MDC/Berlin_Communique1.pdf

³⁸ The Commission's reasoning was based by analogy on the judgment of the Court in *D'Hoop* of 11 July 2002, case C-224/98, ground 31. ECR 2002, p. I-06191.

³⁹ Judgment of the Court of 23 October 2008, *Commission v Spain*, case C-286/06, ECR 2008, p. I-08025 See operative part of the judgment. Similar decision in Order of the Court of 13 November 2008, *Maria Kastrinaki*, joined cases C-180/08 and C-186/08, ECR 2008 I-00157.

⁴⁰ Judgment of the Court of 23 October 2008, *Commission v Greece*, case C-274/05, ECR 2008, p. I-07969.

2005/36/EC under certain conditions⁴¹. The Greek authorities were therefore obliged to recognise them for the purposes of access to a regulated profession. The same principle applies to qualifications awarded by distance learning.

- In addition, any blanket ban that refuses to recognise diplomas from franchise universities is likely to deter students from attending these courses and thus hinder the freedom of establishment of the university⁴².
- Lastly, it was decided in the *Kraus* ruling that Member States can require their nationals to have administrative authorisation to use an academic title (such as 'Dr.'). This is due to the need to protect the public against abuse of academic titles which might not have been properly awarded. But the procedure for authorisation must be fair and proportionate⁴³.

5. CONCLUSION

As this paper shows, the Treaties, as interpreted by court decisions, have established certain rights of migrant students.

- On applying to a university or other educational institution abroad, EU citizens should be admitted on the same terms as local applicants.
- Tuition fees should be at the same level for all EU students, and tuition fee loans, where they exist, should be available on the same basis to all, including for distance education.
- If a student needs financial support while studying abroad, they may be able to get a grant from their own government, and governments who make grants portable may not put disproportionate conditions on that portability. However, governments do not have to make maintenance loans available to students who have travelled to their country to study, unless they have the status of permanent residents.
- If the course a student wishes to take is through a language which is not their first language, the university may require them to show language qualifications or to take a proportionate language test to make sure they will be able to complete the course.
- Once in the new country, students must be treated in the same way as local students.
- When they return to their own country, and want recognition of the qualifications granted abroad, the authorities must ensure that they are not penalised for having made use of their right to mobility.

Despite the comprehensive legal framework which favours student mobility, problems continue to arise in many individual cases because the rules are not properly applied. The

⁴¹ For the Directive to apply to a 'franchised diploma', the training given in the franchised establishment must have been formally validated by the institution that awards the diploma. The 'franchised' diploma must also be the same as the diploma awarded when the training is undertaken completely within the Member State where the establishment that awards the diploma is situated. Lastly, the 'franchised' diploma must give the same access rights to the profession in the Member State where the establishment that awards the diploma is situated.

⁴² Judgment of the Court of 13 November 2003, *Valentina Neri*, case C-153/02, ECR 2003, p. I-13555.

⁴³ Judgment of the Court of 31 March 1993, *Kraus*, case C-19/92, ECR 1993 Page I-01663.

Commission services hope that the present guidance will help to bring added clarity, thereby making easier the exercise by citizens of their right to free movement for education.

These requirements are minimum standards. Member States remain free to go beyond what is strictly necessary under the law and to take other measures to encourage mobility; for example, in some countries, any EU student can be provided with a grant, regardless of how long they have been living there⁴⁴. The Union's objective is to significantly increase learning mobility and therefore the Commission strongly encourages such action. The Commission services will continue to work with the Member States to resolve individual cases in light of the principles set out in this paper.

Alongside the legal framework described above, a number of practical obstacles continue to hinder student mobility. A European Parliament and Council Recommendation from 2001⁴⁵ called on Member States to remove such obstacles to mobility, inter alia by making it easier for students to draw down home-country scholarships and national aids when studying abroad; to consider to what extent mobile students could benefit from the host State's support for students; and to facilitate academic recognition in the home Member State of study periods abroad. A 2006 Recommendation encouraged Member States to adopt a Quality Charter for Mobility⁴⁶. As part of the *Youth on the Move Package*, the Commission is putting forward a proposal for a Council Recommendation on promoting the learning mobility of young people. The proposal will tackle issues such as the provision of information on opportunities for learning mobility, on linguistic and cultural preparations for mobility with curricula, improving the quality of mobility, and encouraging mobility partnerships between various stakeholders.

⁴⁴ Students should check with the national authorities to find out what they are entitled to. Some useful links and other information can be found on the Europa website at http://ec.europa.eu/youreurope/citizens/education/university/fees/index_en.htm?profile=0

⁴⁵ Recommendation of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers (2001/613/EC).

⁴⁶ Recommendation of the European Parliament and of the Council on transnational mobility within the Community for education and training purposes: European Quality Charter for Mobility (2006/961/EC).

ANNEX I: RIGHTS OF ERASMUS STUDENTS

In addition to the general rights outlined in the paper, students participating in the EU's Erasmus Programme have the right to expect the following under the Erasmus Student Charter:

- Your home and host universities to have an inter-institutional agreement.
- The sending and receiving institutions to sign with you and before you leave a Learning/Training Agreement setting out the details of your planned activities abroad, including the credits to be achieved.
- Not to have to pay fees to your host university for tuition, registration, examinations, access to laboratory and library facilities during your Erasmus studies.
- Full academic recognition from your home university for satisfactorily completed activities during the Erasmus mobility period, in accordance with the Learning/Training Agreement.
- To be given a transcript of records at the end of your activities abroad, covering the studies/work carried out and signed by your host institution/enterprise. This will record your results with the credits and grades achieved. If the placement was not part of the normal curricula, the period will at least be recorded in the Diploma Supplement.
- To be treated and served by your host university in the same way as their home students.
- To have access to the Erasmus University Charter and Erasmus Policy Statement of your home and host universities.
- Your student grant or loan from your home country to be maintained while you are abroad.

ANNEX II: FAMILY MEMBERS AND NON EU STUDENTS

1. RIGHTS OF RESIDENCE

Family members who have the right to accompany or join EU students on the basis of Directive 2004/38/EC⁴⁷:

- the spouse,
- the registered partner (if the legislation of the host Member State treats registered partnerships as equivalent to marriage),
- children under the age of 21 or dependants, including those of the spouse or partner,

These family members, regardless of their nationality, have the right to reside with an EU student in another Member State, as long as the student fulfils the conditions in Article 7(1) of the Directive for a stay of longer than three months.

Other dependant family members, such as parents or grandparents, and partners that the host Member States do not recognise as registered partnerships, do not have automatic right of residence, but the Member State's authorities should try to facilitate their entry and residence⁴⁸.

For family members who are **not EU citizens** and not already residents of an EU country the host Member State may require them to apply for an entry visa which should be granted free of charge and without undue formalities.

Non-EU students

A non-EU student who wants to enter the EU for study purposes needs to fulfil certain conditions. They must:

- have been accepted by an establishment of higher education to follow a course of study;
- provide evidence of sufficient resources to cover subsistence, study and return travel costs;
- have sickness insurance which covers the individual for the risks normally covered for nationals of the Member State;
- provide evidence (if requested by the Member State) of sufficient knowledge of the language in which the course is taught;
- provide evidence (if requested by the Member State) that the study fees have been paid.

Non-EU students also need to hold a valid travel document Member States may require the travel document to be valid for at least the duration of the planned stay

⁴⁷ Article 7(4).

⁴⁸ Article 3(2).

Member States should try to facilitate admission for non-EU students who are taking part in EU programmes that encourage mobility towards or within the Union.

The student should be issued with residence permit valid at least one year, and renewable if the holder continues to meet the required conditions.

2. NON-EU STUDENTS – RIGHTS OF LONG-TERM RESIDENTS

Non-EU nationals who reside legally for a continuous period of five years in a Member State acquire the status of long-term resident⁴⁹. However, special conditions apply to non-EU nationals who reside for the purposes of study. In order to apply for the status of long-term resident, they must have acquired a title of residence (for example, a residence permit granted on the basis of permanent work) which enables them to be granted this status. In that case, only half of the periods of residence for study purposes or vocational training may be taken into account in calculating the five-year period.

Long-term residents have the right to be treated the same as nationals in the Member State which is their registered or usual place of residence as regards, inter alia, education and training (including in access to study grants⁵⁰), social assistance⁵¹ employment and social security in accordance with national law. However, in the same way as residents of other EU Member States, they may have to show proof of language proficiency for study purposes.

A long-term resident may travel to another Member State for study purposes.

They can acquire the right to reside in the latter Member State for longer than three months, once they fulfil certain conditions. They must:

- have stable and regular resources so as to be able to maintain themselves and their family, without calling on the Member State's social assistance;
- have sickness insurance covering all risks in the second Member State;
- provide evidence (if required by the second Member State) that they are enrolled in an accredited establishment.

As soon as a non-EU national is granted the status of long-term resident in the second Member State, he/she must enjoy equal treatment in that Member State.

⁴⁹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. In accordance with the Protocols on the position of the United Kingdom, Ireland and Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, these Member States are not bound by Directive 2003/109/EC or subject to its application

⁵⁰ However, the notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Moreover, Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin.

⁵¹ In this matter, Member States are entitled to limit the benefits for long-term residents to core benefits (minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care).

ANNEX III: EXTRACTS FROM THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Article 18 (ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

Article 20 (ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21 (ex Article 18 TEC)

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

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative

procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 165 (ex Article 149 TEC)

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

- 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,

- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,

- the Council, on a proposal from the Commission, shall adopt recommendations.

Article 166 (ex Article 150 TEC)

1. The Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

2. Union action shall aim to:

- facilitate adaptation to industrial changes, in particular through vocational training and retraining,

- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,

- facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people,

- stimulate cooperation on training between educational or training establishments and firms,

- develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

- 4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States, and the Council, on a proposal from the Commission, shall adopt recommendations.*

ANNEX IV: LIST OF MOST RELEVANT CASE LAW RELATING TO MOBILITY IN EDUCATION AND TRAINING

Access to education

Gravier v. City of Liège, Case 293/83

Blaizot v. University of Liège, Case 24/86

Lair v. Universität Hannover, Case 39/86

Brown v. The Secretary of State for Scotland, Case 197/86

Commission v Belgium, Case C-65/03

Commission v Austria, Case C-147/03

Bressol and others v. Gouvernement de la Communauté française, Case C-73/08

Maintenance grants/loans

Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, Case C-184/99

D'Hoop v. Office national de l'emploi, Case C-224/98

Bidar v. London Borough of Ealing & Secretary of State for Education and Skills, Case C-209/03

Morgan v. Bezirksregierung Köln and Bucher v. Landrat des Kreises Düren,

Joined Cases C-11/06 and C-12/06

Förster v. Hoofddirectie van de Informatie Beheer Groep, Case C-158/07

Recognition of qualifications

Kraus v. Land Baden-Württemberg, Case C-19/92

Neri v. European School of Economics, Case C-153/02

Commission v Greece, Case C-274/05

Commission v. Spain, Case C-286/06