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## Study Grants in the EU

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## A free movement of workers perspective

# 1. Current state of the law

## Three major positions

The student-(Union)worker

The child of the Union worker

The family member of the Union worker

## 1.2 The student-worker

Full equal treatment → study grants, export thereof.

*Lair*

*Matteucci*

Ex-workers

Link vs no link with prior employment

No prior minimum period of employment (*Lair*)

No residency requirement? (*Meeusen*)

What about frontier workers?

# 1.3 Child of the Union worker

Two options:

Article 10 of Reg. 492/2011 (Casagrande, Di Leo)

Requires residency in host Member State (Teixeira).

Age, dependency, subsequent worker-status of parents irrelevant (Gaal).

Article 7 (2) of Reg. 492/2011 (Bernini)

Requires dependency, retention of worker-status? (*Bernini, Fahmi*)

Why useful? → Frontier-workers (Bernini, Meeusen).

# 1.4 Family Member of Union worker

Two options:

Article 24 of Dir. 2004/38.

Requires residency

Requires 'family member' status under Directive

Not useful for child!

Article 7 (2) → frontier-worker.

## 2.1 The Big Issue

Case C-542/07, Commission v Netherlands.

Dutch law on study grants: Wet  
Studiefinanciering 2000.

Dutch nationals ipso facto eligible; equal  
treatment for EU nationals.

Change of law in 2007: export of study grants.

Article 2.14 (2)(c): 3 out of 6 rule for export.

Some mitigation: Beleidsregel Uitzonderings  
Verblijfsvereiste.

Challenge by the Commission on basis Art. 45  
TFEU / 7 (2) of Reg. 1612/68.

Dutch defence: genuine link.

## 2.2 Three grounds of challenge

### 1. Resident Union workers and their families

Grounds: Article 7 (2) / Article 10 Reg. 492/2011.

Amounts to durational residency requirement for social advantage

Court usually not impressed.

Directive 2004/38 24 (2) a contrario



## 2.2 The Frontier-worker

### 2. Frontier workers and their families

Grounds: Article 7 (2) Reg. 492/2011.

Similar reasoning as previously applies (Meints, Meeusen).

However: Geven/Hartmann (Hendrix).

Inconsistent?

## 2.3 The 'pure' student

Dutch national

Other EU nationals unlikely: *Förster*.

3 out of 6 rule → liable to put Dutch national at a disadvantage (*Morgan and Bucher*).

Grounds for justification: genuine link

Proportional?

Inconsistent

Too general and exclusive?

Stewart.

# 3.1 Member States case studies

General trends: Export based on minimum residency period

Varies: Five full years in Austria to 2 out of 10 in Denmark.

Implementation of Directive 2004/38

Problematic: Child of Union worker.

Finland, Hungary, Ireland, Luxembourg, Poland, Slovenia, Sweden, possibly the Netherlands.

Denmark

Worker-student position

France, Germany, possibly Slovenia

Some definitely unlawful criteria

Austria, Flanders (→ diploma requirements).

(Directly discriminatory) residency (*permit*) requirements

Hungary, Estonia, Latvia, Slovenia

## 3.2 Member State case studies (1)

UK: Complicated (devolved) system

Study grants: England Education (Student Support) Regulations 2009

Belong to categories specified to receive equal treatment (in principle ok).

Ordinary residency *in England*

Exception: EEA frontier workers

However: definition only applicable for Union worker residing *outside the UK*.

Therefore: EU worker + family members residing in Scotland excluded. Unlawful: Walloon case.

Residence 3 out of 5 years in EEA/Swiss territory?

Honestly not sure what this supposed to achieve →  
Genuine link with the EU/EEA?

## 3.3 Member State case studies

### Luxembourg

Loi de l'aide financière: Implements Directive 2004/38.

However:

Residency requirement in Luxembourg (for non Luxembourgers only).

Unlawful: Meeusen

Child Union worker → definition Directive 2004/38

Teixeira, Ibrahim.