

12 Free movement of students within the European university

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1. Introduction

The European Education Area,¹ the establishment of European Universities Alliances,² as well as the recently proposed “European Degree”³ share a key objective: fostering the mobility of students among universities of different Member States (MSs) to enhance the quality of higher education in the European Union (EU). To better understand the remaining shortcomings and possible solutions, it is useful to illustrate how EU law regulates the situation of students willing to pursue higher education wholly or partly in a different MS from the one of their nationality.

This chapter does not aim to be an exhaustive analysis of all instruments and cases dealing with students’ mobility, but rather to synthesise the relevant legal framework and highlight the main legal and concrete issues emerged so far. In that regard, the chapter will try to identify the contribution that the European university could bring about. For the purposes of this contribution, reference will be especially made to the European Strategy for Universities and related policy documents:⁴ as further explained elsewhere in this book, the Strategy is centred on the promotion of European Universities Alliances funded by the Erasmus+ Programme⁵ and on the future creation of a European Joint Degree.⁶

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025 [2020] COM (2020) 625 final, 6.

2 Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 [2021] OJ L189/1, Annex I, Key Action 2.

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A blueprint for a European degree [2024] COM (2024) 144 final.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Strategy for Universities [2022] COM (2022) 16 final.

5 Arts 3(3)(b), 6 and Annex I to Reg. (EU) 2021/817 (n 2).

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A blueprint for a European degree (n 3).

In particular, the chapter will start by summarising the relevant EU law provisions and instruments (2). Subsequently, it will address access to higher education abroad with regard to both the case law of the European Court of Justice (ECJ) and the persistent barriers to mobility that European Universities Alliances aim to tackle (3). The analysis will then move on to the issue of financial obstacles to mobility (4). First, it will provide an overview of ECJ judgments on student grants and their portability, emphasising how they were shaped by citizenship, proportionality, and primary-law provisions on education (4.1).⁷ Secondly, the increasing importance of Article 165(2) TFEU in ensuring the financial sustainability of students' movement will be highlighted through the analysis of a case decided by the ECJ in 2025 (4.2). Finally, by having regard to the Erasmus+ Regulation and the soft-law documents devoted to the European Education Area and European Universities, it will be argued that students' mobility is becoming a key tool in the EU's strategy to promote its values and invest in its future challenges (5).

2. Free movement of students in the EU: definition(s) and legal framework

The free movement of persons between MSs is one of the four fundamental freedoms guaranteed within the EU internal market.⁸ In particular, students' mobility has been paramount in expanding free movement rights of economically inactive individuals.⁹ Since the landmark case *Gravier* in the mid-eighties, the ECJ has indeed recognised that students should be allowed to pursue their vocational training or higher education in the MS that is most attractive to them in terms of education provided and job market.¹⁰

Against this backdrop, the EU legal regime applying to the free movement of students is complex and fragmented.

First, from a systemic perspective, students' mobility has a clear connection with Article 2 TEU, as it promotes knowledge and sharing of EU values among (young) Europeans.¹¹

Second, the free movement of students is inherently linked to EU citizenship, regulated in EU primary law in Articles 20 and 21 TFEU, as well as 45(1) of the Charter of Fundamental Rights of the European Union (Charter). Indeed, it is

7 Case C-209/03 *Bidar* [2005] ECR I-02119, para. 39.

8 See also Art. 3(2) TEU.

9 Adelina Adinolfi, 'La libertà di circolazione delle persone e la politica dell'immigrazione' in Girolamo Strozzi, Adelina Adinolfi and Roberto Baratta (eds), *Diritto dell'Unione europea. Parte speciale* (Giappichelli 2017) 63, 64–65; Henrik Skovgaard-Petersen, 'Market Citizenship and Union Citizenship: An "Integrated" Approach? The *Martens* Judgment' (2015) 42 *Legal Issues of Economic Integration* 281.

10 Case 293/83 *Gravier v Ville de Liège* [1985] ECR 00593, para. 24.

11 Case C-277/23 *Ministarstvo financija (Bourse Erasmus+)*, Opinion of AG Szpunar (ECJ, 4 July 2024), para. 2; Alexander Hoogenboom, 'I Study Here, and Thus I Belong? Mobile Students in the European Union' in Herwig Verschueren (ed), *Residence, Employment and Social Rights of Mobile Persons* (1st edn, Intersentia 2016) 172.

precisely in a case concerning students' mobility that the ECJ first stated that EU citizenship "is destined to be the fundamental status of [MSs] nationals".¹² By virtue of this status, and of the attached right to move and reside freely in any EU MS, students can freely pursue higher education in a MS other than their MS of nationality.¹³ When doing so, mobile students also benefit from the prohibition of discrimination on grounds of nationality in the host MS, as per Articles 18 TFEU and 21(1) of the Charter. Nonetheless, Directive 2004/38/EC lays down some limitations and conditions to the rights at hand (*infra*).¹⁴ Moreover, if their parents have exercised their freedom of movement,¹⁵ students may sometimes benefit from social advantages – including university funding – pursuant to Regulation 492/2011.¹⁶

Finally, and more specifically, the promotion of students' mobility is an objective of the EU action in the area of education according to Article 165(2), second indent, TFEU. In this policy field, the EU competence is limited to supporting, coordinating, or supplementing the actions of the Member States, under Article 6(1) (e) TFEU. This entails that the EU can adopt binding acts only insofar as they do not harmonise national laws,¹⁷ as is the case with the Erasmus+ Regulation.¹⁸ The latter is an especially relevant example since the Erasmus programme has put the promotion of students' free movement – defined as "moving physically to a country other than the country of residence, in order to undertake study"¹⁹ – as its primary goal since its foundation.²⁰ Nonetheless, due to the type of EU competence, most policy documents dealing with mobility in higher education are non-binding, such as Commission Communications and Council Recommendations (*infra*).

Bearing in mind such a synthetic illustration of the relevant legal framework, it is useful to analyse some crucial ECJ strands of case law, dealing with access to education and the financing thereof in cross-border situations.

12 Case C-184/99 *Grzelczyk* [2001] ECR I-06193, para. 31.

13 *Bidar* (n 7) para. 35.

14 Directive 2004/38/EC of the European Parliament and of 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 [2004] OJ L 158/77; the Directive repealed *inter alia* Council Directive 90/366/EEC of 28 June 1990 on the right of residence for students [1990] OJ L180/30.

15 *Adelina Adinolfi* (n 9) 121–122.

16 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L141/1; the latter codified various amendments to Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257/2.

17 Arts 2(5), 165(4) and 166(4) TFEU.

18 Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport (n 2); the latter repealed Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport [2013] OJ L347/50; the latter, in turn, repealed Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC.

19 Art. 2(2), Regulation (EU) 2021/817 (n 2).

20 *Ministarstvo Financija (Bourse Erasmus+)*, Opinion of AG Szpunar (n 11) para. 2; Art. 3(2)(a), Regulation (EU) 2021/817 (n 2).

3. Access to higher education abroad: a right to move still facing concrete obstacles

The access to higher education or vocational training in a MS that is not the student's MS of nationality has been addressed by the ECJ since the landmark *Gravier* case.²¹ In that judgment, an enrolment fee imposed only on non-Belgian EU citizens was deemed a “financial barrier to access to education for foreign students only”,²² in breach of the prohibition of discrimination on grounds of nationality.²³ Since then, the ECJ has firmly protected the free access to higher education regardless of nationality: for instance, 25 years after *Gravier*, the Court stated in *Bressol*²⁴ that “the opportunity for students coming from other Member States to gain access to higher education . . . constitutes the *very essence of the principle of freedom of movement* for students”.²⁵ On that basis, in the latter case, a domestic law restricting access to medical courses for students not residing in Belgium was deemed an unjustified indirect discrimination,²⁶ thus clashing with Articles 18 and 21 TFEU.²⁷

Therefore, the ECJ has consistently ensured that EU citizens are entitled, in an almost absolute manner, to access higher education in any MS of their choice, according to their ambitions.²⁸ This notwithstanding, and despite the efforts made since 1999 in the framework of the Bologna Process,²⁹ students willing to study abroad for a whole cycle of education or even for a shorter mobility period face persistent, concrete obstacles. As emphasised by the Commission in its Communication “on achieving the European Education Area by 2025”, those barriers can be of a practical, linguistic, and financial nature.³⁰ This issue is linked with the

21 *Gravier* (n 10).

22 *Ibidem*, para. 18.

23 *Ibidem*, para. 26.

24 Case C-73/08 *Bressol and Others* [2010] ECR I-02735.

25 *Ibidem*, para. 79; emphasis added.

26 *Ibidem*, paras 42–46.

27 Although discriminatory measures may in some instances be justified under EU law (*ibidem*, paras 62–73), in this case the ECJ framed a particularly strict proportionality test, and impliedly suggested that it was not satisfied in the case at hand (*ibidem*, paras 74–82). The Belgian normative framework at issue in *Bressol* has been recently brought to the ECJ's attention once again, and currently forms the object of Case C-131/25 *Dris* [still pending]. In his Opinion delivered on 16 April 2026, Advocate General Richard de la Tour suggested that the Court rule that “[I]es articles 18 et 21 TFUE doivent être interprétés en ce sens qu'ils s'opposent à une réglementation nationale qui n'assimile pas à des résidents en Belgique des étudiants qui ont accompli tout ou une grande partie de leur enseignement secondaire, sanctionné par l'obtention du diplôme de fin d'études secondaires, en Belgique, tout en étant domiciliés dans un autre État membre, aux fins de limiter le nombre d'étudiants non-résidents pouvant s'inscrire pour la première fois dans le cursus en sciences médicales d'établissements de l'enseignement supérieur” (English version not yet available).

28 Alexander Hoogenboom (n 11) 163, 165, 173.

29 The so-called Bologna process stems from a joint declaration of the European ministers of education, including from some countries that were not, or *are* not, part of the EU: <https://eha.info/page-how-does-the-bologna-process-work>. More details can be found elsewhere in this book.

30 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025 (n 1) 6.

limits to EU competencies: MSs' "responsibility . . . for the content of teaching and the organisation of education systems"³¹ does indeed lead to fragmentation in several respects. Besides being confronted with varying grades and inconsistent implementation of the ECTS³² system,³³ students face the risk of subsequent non-recognition of the learning-mobility period, varying duration of academic years, strict linguistic requirements, as well as different approaches to registration fees and *numerus clausus*.³⁴

Not only do such differences dissuade students from pursuing education abroad in individual cases, but they also hamper the full promotion of students' mobility from an institutional perspective, by hindering the cooperation between universities of different MSs.³⁵ In this discourse, the European Strategy for Universities³⁶ and the related implementation of European Universities Alliances and Joint Degrees are especially relevant, as they aim to foster learning mobility by addressing, *inter alia*, the discrepancies outlined previously. To provide a recent example, in that framework, the Council has adopted two Recommendations aiming for a coordinated approach to quality assurance and accreditation,³⁷ as well as for the promotion and recognition, in career assessments, of activities carried out by academic staff to develop cross-border cooperation between universities.³⁸ The goal of such initiatives is to promote, albeit through non-binding instruments, converging standards among MSs. This would, in turn, facilitate forms of institutionalised cooperation between universities, such as Joint Degree programmes set up by European Universities Alliances. *Via* the progressive elimination or reduction of the concrete barriers highlighted previously, the

31 Art. 165(1) TFEU.

32 <https://education.ec.europa.eu/education-levels/higher-education/inclusive-and-connected-higher-education/european-credit-transfer-and-accumulation-system>.

33 Council Recommendation on building bridges for effective European higher education cooperation [2022] OJ C160/1, Recital 3.

34 Commission Staff Working Document. Report on the Final Outcomes of the Erasmus+ Policy Experimentation Projects: European Degree (Label) and Institutionalised EU Cooperation Instruments [2024] SWD (2024) 291 final, 29, 31. As regards previous education, see also Council Recommendation on promoting automatic mutual recognition of higher education and upper secondary education and training qualifications and the outcomes of learning periods abroad [2018] OJ C444/1.

35 *Ibidem*.

36 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Strategy for Universities (n 4).

37 Proposal for a Council Recommendation on a European Quality Assurance and Recognition System in Higher Education [2024] COM (2024) 147 final; Council Recommendation of 12 May 2025 on a European quality assurance and recognition system in higher education [2025] OJ C/2025/3006.

38 Proposal for a Council Recommendation on attractive and sustainable careers in higher education [2024] COM (2024) 145 final, recitals 4, 6 and point 1(a); Council Recommendation of 25 November 2024 on attractive and sustainable careers in higher education [2024] OJ C/2024/7282, recital 6, points 1(a)(i) and 3.

ultimate goal of such transnational initiatives is the promotion and streamlining of students' mobility.³⁹

4. Students' mobility and (the removal of) financial obstacles

4.1. *Mobility and funding: the allocation of costs among Member States*

The vast majority of cases brought before the ECJ in the field of free movement of students concern not the *access* to higher education abroad in itself, but rather the entitlement to maintenance grants or loans and/or to their portability (i.e., the use of funding granted by a MS to study in a different one). This should come as little surprise: no comprehensive EU-law instrument regulates this topic, due to a lack of political will, the persistently different views regarding the fairest allocation of responsibility between the home and the host MSs, and the criteria that should guide the normative choice on the point.⁴⁰ Therefore, MSs retain broad discretion in the organisation and funding of higher education and are not obliged to provide portable study grants.⁴¹ In this context, it should also be borne in mind that, until the Maastricht Treaty, even the ECJ had (almost) no possibility of intervening in matters of students' financing. As it affirmed in *Brown and Lair*, "assistance given to students for maintenance and for training [fell] in principle outside the scope of the EEC Treaty", with the sole exception of fees relating to the very access to higher education or vocational training.⁴²

Nonetheless, two changes occurred with the Maastricht Treaty: on the one hand, it introduced EU citizenship and attached rights; on the other hand, the EU acquired competence to support and supplement MSs' action in the development of quality education. This brought student financing within the scope of the treaties, at least in cases with cross-border elements.⁴³ The ECJ thus specified that national legislation shall be compatible with the EU legal framework defined previously (*supra*, 1), and developed a rich case law which devised some common rules and principles.⁴⁴ Such case law has already been extensively commented on in several scholarly

39 Council conclusions on a European strategy empowering higher education institutions for the future of Europe [2022] OJ C167/9, para. 16; see also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A blueprint for a European degree (n 3).

40 Those are the reasons mentioned by some scholars, e.g., Henrik Skovgaard-Petersen (n 9) 296. Still, some difficulties may also arise from the legal regime of EU competences in this area: for a detailed analysis, see Chapter 1 in this book.

41 Case C-275/12 Elrick (ECJ, 24 October 2013), para. 25.

42 Case 39/86 *Lair v Universität Hannover* [1988] ECR 03161, paras 14–15; Case 197/86 *Brown v Secretary of State for Scotland* [1988] ECR 03205, paras 17–18.

43 *Grzelczyk* (n 12) paras 34–37; *Bidar* (n 7) paras 38–42.

44 *Ex multis* Joined Cases C-523/11 and C-585/11 *Prinz and Seeberger* (ECJ, 18 July 2013), paras 28–30.

contributions.⁴⁵ The analysis hereunder will thus merely synthesise the rules emerging from the various strands of judgments. In particular, the ECJ has dealt with student financing mostly in preliminary ruling procedures arising from the following different sets of circumstances: economically inactive students claiming financial support in the MS where they study and live⁴⁶; economically inactive students applying for portable financial support in a MS where a parent works⁴⁷; former students asking financial support for job seekers from the MS of nationality and residence, but having completed parts of their studies in a different MS⁴⁸; students applying in their MS of nationality for study grants and loans to study abroad.⁴⁹

In the first type of situation, the issue of entitlement to financial support is settled by the ECJ based on EU citizenship and the principle of non-discrimination on grounds of nationality, read in light of Directive 2004/38/EC.⁵⁰ In *Bidar* and *Förster*, the ECJ accepted that host MSs may award study grants and loans only to students who could demonstrate “a certain degree of integration”: this is partly due to budgetary considerations, in that it allows a given MS to avoid non-nationals becoming “an unreasonable burden” affecting its overall assistance capacity.⁵¹ Especially in *Förster*, the ECJ corroborated such reasoning by referring to Article 24(2) of Directive 2004/38/EC.⁵² This provision specifies that the host MS is not obliged to provide economically inactive students, “prior to acquisition of the right of permanent residence, [with] maintenance aid for studies . . . consisting in student grants or student loans”. The ECJ thus accepted that a national provision requiring five years of continuous residence⁵³ to receive a maintenance grant was appropri-

45 *Ex multis* Alexander Hoogenboom (n 11) 166–172; Lorenzo Dello Iacovo, ‘Free Movement of Students and Access to Social Advantages: The “EU Student” as a Holder of Individual Rights’ (2024) 2 FSJ 191; Stefano Montaldo, ‘Us and Them: Restricting EU Citizenship Rights Through the Notion of Social Integration’ [2017] FSJ 34.

46 *Grzelczyk* (n 12); *Bidar* (n 7); Case C-158/07 *Förster* [2008] ECR I-08507.

47 Case C-308/89 *Di Leo v Land Berlin* [1990] ECR I-04185; Case C-337/97 *Meeusen* [1999] ECR I-03289; Case C-20/12 *Giersch and Others* (ECJ, 20 June 2013); Case C-238/15 *Bragança Linares Verruga* (ECJ, 14 December 2016); Case C-410/18 *Aubriet* (ECJ, 10 July 2019). This issue has also been the object of infringement proceedings: Case C-542/09 *Commission v Netherlands* (ECJ, 14 June 2012). Floris De Witte, ‘Who Funds the Mobile Student? Shedding Some Light on the Normative Assumptions Underlying EU Free Movement Law: *Commission v. Netherlands*’ (2013) 50 *CMLR* 203.

48 Case C-224/98 *D’Hoop* [2002].

49 *Joined Cases C-11/06 and C-12/06 Morgan and Bucher* [2007] ECR I-09161; *Prinz and Seeberger* (n 44); *Elrick* (n 41); Case C-220/12 *Thiele Meneses* (ECJ, 24 October 2013); Case C-359/13 *Martens* (ECJ, 26 February 2015).

50 The ECJ had taken a more favourable stance in *Grzelczyk* (n 12); see Helen Toner and Anastasia Iliopoulou-Penot, ‘Case C-184/99, *Rudy Grzelczyk v. Centre Public d’Aide Sociale d’Ottignies-Louvain-La-Neuve*, Judgment of the Full Court of 20 September 2001, [2001] ECR I-6193’ (2002) 39 *CMLR* 609.

51 *Bidar* (n 7) paras 56–57; *Förster* (n 46) paras 48–49.

52 While the directive was not applicable to the facts of that case, yet, the Court used that provision to corroborate its reasoning, which also relied on the *Bidar* precedent: *Förster* (n 46) para 55.

53 After five years of lawful residence, EU citizens have a right to permanent residence in the host MS: Art. 16, Directive 2004/38/EC (n 14).

ate and proportionate to the aim of ensuring integration.⁵⁴ The same rule applies to measures aimed at covering students' public transportation costs when they are regulated as a grant or loan.⁵⁵

The normative framework is more favourable to students applying for funding in the MS where their parent works. Under Article 7(2) of Regulation (EU) No 492/2011 (or its predecessor, Regulation No 1612/68), read in conjunction with provisions on the free movement of workers, such pupils are in principle entitled to social benefits at the same conditions of nationals' children, as long as they are dependent on their parent(s).⁵⁶ Nonetheless, when children of *frontier* workers apply for a portable grant, the legal framework is more nuanced. In the *Giersch* case, the ECJ has "transposed" to this context the affirmation whereby MSs may award student grants only to those who prove a certain degree of integration: such students are indeed more likely to return to that MS, thereby increasing the resident population with a high education degree and benefitting its national job market.⁵⁷ Still, as a member of the student's family has economic ties with the MS where the study grant is sought, a residence requirement would be disproportionate.⁵⁸ Regard shall be had only to other factors, such as the length of the student's parents' employment in that MS,⁵⁹ which shall be assessed with a certain degree of case-by-case flexibility.⁶⁰

Finally, the strongest responsibility for funding education, also when pursued abroad, is still incumbent on the student's MS of nationality. In this context, since the 2002 judgment in *D'Hoop*, the ECJ has consistently held that MSs are, in principle, in breach of Articles 20 and 21 TFEU if they discourage their nationals from exercising their freedom of movement in the future, or they penalise the previous exercise thereof.⁶¹ Admittedly, the ECJ had initially recognised that MSs may apply certain restrictions to the awarding of portable grants even to their *own* citizens,

54 *Förster* (n 46); given the reference to Art. 24(2) of Directive 2004/38/EC (n 14) the ECJ's reasoning should still be valid in cases to which the instrument applies: Alexander Hoogenboom (n 11) 169.

55 Case C-233/14 *Commission v Netherlands* (ECJ, 2 June 2016). Conversely, no discrimination is justified if transportation costs borne by nationals are covered as a mere consequence of being enrolled in higher education: Case C-75/11 *Commission v Austria* (ECJ, 4 October 2012).

56 *Di Leo v Land Berlin* (n 47) paras 13–15, concerning a portable study grant; *Meeusen* (n 47) paras 19–23, regarding a grant financing higher education in the awarding MS.

57 *Giersch and Others* (n 45) paras 53–68.

58 *Ibidem*, paras 76–77. Still, at the same time, the Court did accept that (children of) *frontier* workers can, in some circumstances, be treated differently from (children of) *resident* workers, as the former could be less integrated in the host MS: *ibidem*, para. 65; see Stefano Montaldo (n 45) 43–44.

59 *Giersch and Others* (n 45) para. 68; this ruling has been deemed a step back as compared to *Gravier* or *Meeusen*, with Directive 2004/38/EC (n 14) contributing to such a restrictive reasoning: Siofra O'Leary, 'The Curious Case of Frontier Workers and Study Finance: *Giersch*' (2014) 51 *CMLR* 601.

60 *Bragança Linares Verruga* (n 47); *Aubriet* (n 47); see Lorenzo Dello Iacovo (n 45) 198–199.

61 *D'Hoop* (n 48) paras 30–31; in that particular case, Ms. D'Hoop was discriminated against by her MS of nationality (Belgium) because she had pursued part of her education in a different MS (France).

justified by the need to avoid them becoming an unreasonable financial burden.⁶² Nonetheless, since *Martens*, the ECJ has only focused on the integration requirement, without referring to the concept of “economic burden”.⁶³

Most importantly, in this line of case law, the legitimacy of measures aimed at awarding grants only to students having a certain degree of integration is subject to a particularly strict proportionality test. Not only are residence requirements deemed “too exclusive”, but the ECJ lays out a non-exhaustive list of criteria that may, on a case-by-case basis, prove sufficient integration, “such as the nationality of the student, his schooling, family, employment, language skills or the existence of other social and economic factors”.⁶⁴

Against this backdrop, legislative intervention is widely advocated for in literature, also considering that the ECJ’s jurisprudence does not provide for an exhaustive legal regime. Clearly enough, a somewhat casuistic approach is inherent in the very nature of case law. Still, in this context, it has been argued that the case law is fragmented to the point that it would be difficult for MSs to understand how to render their legislation fully compatible with EU law.⁶⁵ Some further inconsistencies in the ECJ’s approach have been pointed out, depending on the different relationships between the student and the MS where they seek financing. For instance, the integration requirement applied to children of frontier workers entails that they may not receive funding from an MS with which their parents *do* have economic ties (*supra*). In this field, the ECJ’s case law has been criticised for being particularly oscillating, and for giving increasing – albeit not exclusive – importance to quantitative factors such as the length of the parents’ employment.⁶⁶ More important, the integration requirement has been deemed to contradict the very essence of the initial approach towards students’ mobility: it would give an excessive weight to the likely *return* of the student to the MS that financed their higher education, rather than promoting the student’s *movement* as such.⁶⁷ In addition, and from a more systemic standpoint, the wide application of that requirement may lead to *lacunae*, resulting in situations in which students would risk not being entitled to *any* funding.⁶⁸ Nonetheless, *Martens* has been considered a step forward for the rights of students, considered as individual EU citizens regardless of

62 *Morgan and Bucher* (n 49) paras 43–44.

63 *Martens* (n 49) para. 37. See Henrik Skovgaard-Petersen (n 9) 297–298.

64 *Martens* (n 49) para. 41; see also *Prinz and Seeberger* (n 44) para. 38.

65 Siofra O’Leary (n 59) 617.

66 Stefano Montaldo (n 45) 43–44. In that connection, the very fact of admitting a distinction between (children of) resident migrant workers and frontier workers by imposing a “genuine link” requirement has been deemed a step back compared to the first cases on students’ financing: Siofra O’Leary (n 59) 610.

67 Siofra O’Leary (n 59) 613–614, comparing the ECJ’s stance in *Gravier* and *Giersch*. Still, it could also be argued that the different ECJ’s approach also stems from the different underlying situation, the former case dealing with *access* to vocational training in the host MS, not with the granting of portable economic financing.

68 Alexander Hoogenboom, ‘Mind the Gap: Mobile Students and Their Access to Study Grants and Loans in the EU’ (2015) 22 *MJ* 96. See also Alexander Hoogenboom (n 11) 183.

their – or their parents’ – economic activity.⁶⁹ It could indeed be argued that, in light of that case, students are in principle entitled to receive a portable grant or loan by their MS of nationality,⁷⁰ possibly regardless of any other link thereto.⁷¹ In this sense, the responsibility incumbent on the MS of nationality is coherent with legal obstacles existing, under Article 24(2) of Directive 2004/38/EC, in the host MS.⁷² Therefore, it seems that the *MS of nationality* is called to ensure the full effectiveness of a right attached to *EU* citizenship, namely students’ freedom of movement.⁷³

Against such a fragmented framework, the Commission has recently drawn MSs’ attention to the fact that financial obstacles still represent a barrier to mobility⁷⁴ and has invited them to provide appropriate incentives to enhance physical mobility.⁷⁵

4.2. Tax allowances and Erasmus+ funding: the increasing impact of Article 165(2) TFEU

In the 2025 *Ministarstvo financija (Bourse Erasmus+)* case,⁷⁶ the ECJ was called to rule on a novel issue: whether an MS may consider the Erasmus+ funding received by a student dependent on a parent when calculating the latter’s income, with the risk of losing entitlement to basic tax allowances.

Despite the lack of EU competence on matters of direct taxation, the ruling recalled that the Erasmus+ objective is ensuring students’ free movement, and such an objective is also enshrined in primary law.⁷⁷ It follows that “if a Member State participates in the Erasmus+ programme, it must ensure that the arrangements for the allocation and taxation of grants to support the mobility of beneficiaries of that programme do not create an unjustified restriction on the right to move”.⁷⁸ As the Erasmus+ grant aims to cover costs that the student *wouldn’t have borne* without mobility, the ECJ ruled that considering such funding within the calculation of the

69 Henrik Skovgaard-Petersen (n 9); according to De Witte, it is still unclear whether students are more protected in their capacity as EU citizens or as workers’ dependent children: Floris De Witte (n 47) 210–212.

70 As long as the MS provides such type of funding at all.

71 See for instance the factual circumstances in *Thiele Meneses* (n 49), where the same proportionality test was prescribed, with no further ECJ guidance as to whether it should be considered fulfilled.

72 Henrik Skovgaard-Petersen (n 9) 289–293.

73 Lorenzo Dello Iacovo (n 45) 214–216.

74 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025 (n 1) 10.

75 Commission Staff Working Document. Report on the Final Outcomes of the Erasmus+ Policy Experimentation Projects: European Degree (Label) and Institutionalised EU Cooperation Instruments (n 34) 62.

76 Case C-277/23 *Ministarstvo financija (Bourse Erasmus+)* (ECJ, 16 January 2025).

77 *Ibidem*, paras 34–35, 40–41.

78 *Ibidem*, para. 44.

parent's income for the purposes of tax allowances runs counter to Articles 20 and 21, read in light of Article 165(2), second indent, TFEU.⁷⁹

This judgment is noteworthy in at least three respects. First, when stating that taxation arrangements *vis-à-vis* Erasmus+ grants shall not restrict students' free movement, the ECJ relied "by analogy" on its previous case law on "purely national" portable study grants issued by the student's MS of nationality.⁸⁰ Secondly, whereas Article 165(2) TFEU has always played a role in the ECJ's reasoning,⁸¹ in this judgment it gained its place in the ruling's operative part, thus becoming a normative standard against which national provisions are tested.⁸² Finally, this case seemingly unveils the ECJ's willingness to favour students' mobility and to acknowledge the role of financial support in this regard.⁸³

5. Conclusion: "European universities" and a broader, value-driven idea of students' mobility

Over the last years, higher education and mobility have gained increasing and broader significance in the EU, as is clear from the Commission's and Council's policy documents linked to European universities. In particular, mobility is no longer merely associated with employment opportunities, but is most of all considered a key tool in the EU's endeavour to increase respect for its values within and outside its borders, and in supporting the "twin" green and digital transition through quality education.⁸⁴ Such a strong, value-oriented role of students' mobility is indeed emphasised in the Erasmus+ programme,⁸⁵ which also provides funding to European Universities Alliances. In this connection, new solutions are put forward in various policy documents to overcome the persistent obstacles to physical mobility. In particular, the recourse to blended learning and virtual mobility through IT tools is

79 Ibidem, paras 59–63.

80 Ibidem, para. 44.

81 *Inter alia*: *Elrick* (n 41) 24; *Thiele Meneses* (n 49) 24; *Martens* (n 49).

82 Katarina Hyltén-Cavallius, 'Op-Ed: "Direct Taxation Rules Dissuading Student Mobility within the EU: Case C-277/23, Ministarstvo Financija (Bourse Erasmus+)"' (2025) *EuLawLive* <https://eulawlive.com/op-ed-direct-taxation-rules-dissuading-student-mobility-within-the-eu-case-c-277-23-ministarstvo-financija-bourse-erasmus/>, accessed 19 September 2025.

83 *Ministarstvo financija (Bourse Erasmus+)* (n 76) paras 41, 46.

84 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Strategy for Universities (n 4) *passim*, referring to higher education institutions' role; Council conclusions on a European strategy empowering higher education institutions for the future of Europe (n 39) *passim*; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A blueprint for a European degree (n 3) *passim*.

85 Art. 4(1)(f), Regulation (EU) No 1288/2013 (n 2); Recitals 1, 2, 28 Regulation (EU) 2021/817 (n 2).

increasingly encouraged as a means to maximise mobility and render it more inclusive for students with less financial means, from remote regions or with disability.⁸⁶

It will thus be interesting to see how and to what extent such emphasis on the non-market-oriented aspects of mobility will shape future case law and legislation at the EU level.

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86 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025 (n 1) 13; Council Recommendation on building bridges for effective European higher education cooperation (n 33) Recital 3.

Commission Staff Working Document. Report on the Final Outcomes of the Erasmus+ Policy Experimentation Projects: European Degree (Label) and Institutionalised EU Cooperation Instruments (n 34) *passim*; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Strategy for Universities (n 4) *passim*, referring to higher education institutions' role; Council conclusions on a European strategy empowering higher education institutions for the future of Europe (n 39) *passim*; Commission Staff Working Document. Report on the Final Outcomes of the Erasmus+ Policy Experimentation Projects: European Degree (Label) and Institutionalised EU Cooperation Instruments (n 34) 39–40.