

To UK alumni of the College of Europe

12 January 2010

As a former student at the College of Europe we are sure that you will be shocked to hear that the UK government as well as the devolved authorities in Wales and Northern Ireland have decided to cease funding scholarships to the College. These scholarships cover tuition fees (€13,450 in 2009-10) and up to €7,000 in subsistence costs. From September 2010 the number of scholarships available to some of the brightest and most able graduates from the United Kingdom will be reduced from the current 28 to almost none. At most two scholarships will be available to successful applicants from Scotland; and this assumes the Scottish Executive decides not to follow the example of the UK government.

We have been informed that the UK government's decision is based primarily on a ruling of the Court of Justice (Morgan and Bucher, C-11/06 and C-12/06). However, the legal advice we have received from several sources (enclosed) sees no reasonable grounds for ceasing funding on the basis of this ruling. Of course we surmise that financial considerations may lie behind the decision.

As current and former chairs of the UK Selection Committee we have, along with the Rector of the College, Prof. Demaret, been seeking a reversal of the appalling decisions taken to cease funding scholarships. To this end a number of representations have been made to the Department for Business, Innovation and Skills, regrettably so far to limited effect.

You will appreciate that we are keen to increase the pressure on the UK government and the devolved administrations to continue funding Scholarships to the College. Without these scholarships the already small number of UK graduates attending the College will drop alarmingly. It may well reduce to close to zero.

We are therefore calling on alumni, visiting professors and other 'friends of the College' to register their dismay at the UK government's decision to cease funding scholarships to the College. To this end we enclose a draft letter which we would encourage you to edit accordingly and send to both Lord Mandelson, Secretary of State for Business, Innovation and Skills, and David Lammy, Minister of State for Higher Education and Intellectual Property.

We hope that you share our concern at the drastic decision of the UK government to withdraw the scholarship funding.

Yours sincerely



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UK Government Decision to Cease Funding Scholarships for the College of Europe from 2010 Entry

Legal Appraisals

Prof Bruno de Witte, Professor of law, European University Institute:

When David Lammy writes that they have decided to scrap the Bruges grants "in light of developing EC law and emerging priorities and pressures", then the only credible argument is the "emerging priorities and pressures". Indeed, EC law cannot stop a government from abolishing an existing scheme of scholarships for study abroad. But it is absolutely not true that EC law, in particular the Morgan and Bucher judgment, would *require* to terminate the College of Europe funding. This is not only counterintuitive, but is based on a plainly wrong interpretation of the consequences of that judgment. Funding scholarships for selected foreign institutions, and not for others, is neither a discrimination on grounds of nationality, nor is it a restriction of the free movement of persons. Indeed, it is the opposite, and the abolition of the Bruges grants would reduce the chances of mobility. In Morgan and Bucher, the Court found a needlessly restrictive element within the German grants-abroad scheme, and struck down that element but obviously not the grant scheme as a whole which is in fact pro-European in nature. There is no such restrictive element in the UK scheme for Bruges, Bologna and Florence and no doubt as to its compatibility with EC law.

Prof. Dominic Hanf, Professor of European Law at the College of Europe

A. Facts

1. The UK does in principle not provide scholarships for postgraduate studies; exceptions were made for studies at the College, Bologna and the EUI.
2. The UK-government considers that the preferential treatment given to funding courses can breach Articles 21 and 54 TFEU (ex-articles 18 and 48 EC-Treaty)¹ and decided to cease these scholarships.
3. An exception is made for the EUI since the UK government considers that in this case there would exist "an EC Treaty obligation to contribute".

B. Legal appraisal on EU Law & Funding of postgraduate studies outside the UK

1. *Equal treatment of integrated EU citizens and nationals from the UK*
 - a) When offering scholarship-schemes to students, member states need to make sure that they do not restrict their freedom to move across EU-borders without providing for a valid justification. Students from other member states (and nationals having made use of the freedom to move) can hence claim non-discriminatory treatment for the award of grants and scholarships. Exceptions are possible when the student concerned has not yet developed "a certain degree of integration into the society of [the host] State".²
 - b) This imposes on the UK the duty to treat integrated "EU-foreigners" - i.e. EU nationals who have completed at least a substantive part of their studies in the UK - on equal footing with nationals.
 - c) It seems that the scholarship scheme hitherto applied for studies at the College, Bologna and EUI respects this obligation.
2. *Exceptional funding for students admitted to the College, Bologna and EUI*
 - a) The question is whether or not the preferential treatment given to applicants/students at the College, Bologna and the EUI could be contrary to EU law. In other words, could students admitted to European studies organised by other post-graduate institutions claim a right of equal treatment and hence an equal application of the scholarship scheme?

¹ With reference to the ECJ's judgment of 23 September 2007 in cases C-11/06 and C-12/06 (*Morgan & Buchner*).

² See point 57 of the ECJ's judgment of 15 March 2005 in case C-209/03 (*Bidart*).

- b) The *Morgan & Bucher*-case quoted by BIS does not itself support such a conclusion: it dealt with the question to which extent member states can submit the application of a *general* (national) *educational funding scheme* to specific additional - and more restrictive - conditions in case that a student seeks funding of his studies abroad. In our case, the grant is specifically designed for students admitted to undertake their studies at three specific postgraduate institutions.
- c) It is very questionable whether this preferential treatment - i.e. the recognition of the particular character and quality of three specific postgraduate institutions - can be considered as (indirectly) imposing an obstacle for (British and assimilated) students wishing to pursue their postgraduate studies at other universities abroad.
- d) In the unlikely case that this would be regarded as a (potential) obstacle by the ECJ, it would be most likely justified given the purpose and the limited extent of the "preferential treatment", on the one hand, and the particular character of the education provided for by these three institutions, on the other hand.
- e) The special case of the EUI:
Should the BIS maintain its (inappropriate) legal appraisal, the schemes would also needed to be ceased for studies at the EUI. In fact, the EUI has been established on the basis of an international Convention³ and not of the EU Treaties. It is established case law that member states' obligations stemming from EU Law override national provisions - including those deriving from international agreements concluded by (and among) the member states.⁴

C. Conclusion

1. The scheme as it stands complies - or could easily comply - with the requirements of EU Law concerning the *students* equal access* to the scholarships (no forbidden discrimination on grounds of nationality).
2. On the basis of the ECJ's case law at hand, including the *Morgan & Bucher* rulings, the *limitation of the - limited - scholarship scheme to three particular institutions* offering very specific postgraduate programmes in EU affairs cannot be regarded as a potential restriction of the students' right to move within the EU. In any case, it would be justified by the specific character of these institutions/scholarships.
3. There is no legal reason to treat the EUI differently from the College (or Bologna).

³ The text of the Convention is available on <http://www.eui.eu/About/Convention.aspx>.

⁴ This follows from Article 351 TFUE (ex-Article 307 EC Treaty). See, for a case concerning educational scholarships Case 235/87 *Mateucci* [1988] ECR 5589.