

Realising Education and Training 2020: a European Student Loan

Repayment Facility

Student mobility is a high priority for the European Union. The Education and Training 2020 framework envisages 20% of university graduates having studied abroad by 2020.¹ Students in the EU already have unprecedented opportunities to study abroad. The number of EU students studying in another EU, EEA or EU candidate country increased by 87% between 2002 and 2012.² Non-repayment of student loans by EU students is, however, a problem. In the financial year 2013–14, 14,400³ non-UK EU students borrowed £686.3m in tuition fee loans in England, an increase of 41.7% on the previous year.⁴ At the end of the same financial year, there were 92,000 non-UK EU borrowers.⁵ Non-UK EU students were in arrears of £38.2m,⁶ and the Student Loans Company was seeking information on the 19% of non-UK EU students who had become liable to repay but were failing to do so.⁷ For EU students returning home after studying in another Member State, it is easy to avoid being tracked by the host Member State's

¹ Council of the European Union, 'Council conclusions on a benchmark for learning mobility' [2011] OJ C372/31.

² Eurostat, 'Mobility of students in Europe – Tertiary education' (tps00064).

<<http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00064&language=en>> accessed 29 September 2015.

³ Student Loans Company, 'Student Loans for Higher Education in England: financial year 2013–14' (rev edn, 2015) <<http://www.slc.co.uk/media/5420/slcsfr012014.pdf>> accessed 30 September 2015, table 2.

⁴ *ibid*, table 1.

⁵ *ibid*, table 2.

⁶ *ibid*, table 1.

⁷ *ibid*, table 3B(ii).

authorities. For Member States, the cost of pursuing debt overseas is often greater than the value of the debt itself. The corollary of increased opportunities and funding for students, must, therefore, be stricter enforcement of students' debt obligations. If not, loan write-offs will increase, jeopardising other public spending programmes in Member States.

To address this issue, I am proposing a European Student Loan Repayment Facility (ESLRF) based on the TARGET2 cross-border payment mechanism used by the Eurosystem and the withholding tax element of the Savings Directive.⁸ This will require a Regulation and Directive.

Legal background

The Court of Justice of the European Union has developed a body of case law on students' rights.

In *Gravier*, it held that Article 18 TFEU⁹ (then Article 7 EC) permits EU students to access vocational training in a Member State on the same terms as host Member State nationals.¹⁰ 'Vocational training' was subsequently interpreted as including university education by the Court in *Blaizot*.¹¹ The consequence of these two judgments is that the same tuition fee is charged to EU and domestic students.

⁸ Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments [2003] OJ L157/38 (Savings Directive).

⁹ Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU).

¹⁰ Case 293/83 *Françoise Gravier v City of Liège* [1985] ECR 593, para 26.

¹¹ Case 24/86 *Vincent Blaizot v University of Liège and others* [1988] ECR 379, para 24.

Although *Gravier* and *Blaizot* were revolutionary, deftly bringing aspects of education policy within the scope of EU law at a time when it was not strictly within the Union's competence, their impact was limited by later judgments. Assistance provided to students was interpreted restrictively by the Court, ostensibly to reduce the financial burden on Member States that were net recipients of students. In *Lair*¹² and *Brown*,¹³ the Court held that only assistance intended to cover fees charged for access to education, such as tuition fees, fell within the *Gravier* principle. Consequently, EU students were able to access tuition fee loans on the same terms as host Member State nationals, but were excluded from access to maintenance loans intended to cover living costs.

In *Bidar*, the Court departed from its previous case law and took maintenance loans and grants within the ambit of Article 18 TFEU. There were two reasons for this change. First, education policy was conferred, on a limited basis, to the EU by the Maastricht Treaty. Second, the Court – unconvincingly – decided that Union citizenship, also introduced at Maastricht, justified the departure. There are, however, qualifications. The Court accepted that 'it is ... legitimate for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State' and approved a three-year residency requirement as a test of integration.¹⁴ There was tension between this aspect of *Bidar* and Article 24(2) of Directive 2004/38; the latter provides for maintenance loans to be granted only after five years

¹² Case 39/86 *Sylvie Lair v Universität Hannover* [1988] ECR 3161.

¹³ Case 197/86 *Steven Malcolm Brown v The Secretary of State for Scotland* [1988] ECR 3205.

¹⁴ Case C-209/03 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills* [2005] ECR I-2199, paras 57–60.

of residence.¹⁵ The tension, however, appears to have been resolved in the Directive's favour. In *Förster*, the Court approved a five-year residency requirement, referring to Article 24(2) of Directive 2004/38, despite it not being relevant to the proceedings.¹⁶

The current position, then, is that EU students must be charged the same tuition fee as host Member State nationals. They also have access to the host Member State's maintenance loans and grants, although this can be made subject to an integration test. This test will probably take the form of a five-year residency requirement, although the Court has recently doubted that this is an appropriate test of integration.¹⁷

Preliminary issues

Erasmus+

The EU already guarantees loans for Master's students studying in other Member States. The Erasmus+ programme, established by Regulation 1288/2013, includes a Student Loan Guarantee Facility (SLGF).¹⁸ Under the terms of the Facility, the European Investment Fund,

¹⁵ 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77.

¹⁶ Case C-158/07 *Jacqueline Förster v Hoofddirectie van de Informatie Beheer Groep* [2008] ECR I-8507, para 58.

¹⁷ Case C-542/09 *Commission v Netherlands* [2012] 3 CMLR 27, para 86.

¹⁸ 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 and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC [2013] OJ L347/50 (Erasmus+ Regulation), art 20.

acting on behalf of the European Commission, provides limited guarantees to qualifying financial institutions offering loans to Master's students on favourable terms. Currently, 90% of each eligible loan is guaranteed, up to a maximum of 18% of the value of the lending institution's portfolio of eligible loans.¹⁹

One may wonder why this system could not simply be expanded to cover undergraduate loans. The answer is that there are legal and economic obstacles to such an extension.

University funding is the prerogative of Member States. In contrast to Master's degrees, which are often funded by commercial loans, most undergraduate degrees in the EU are either free or funded by a national student loan system. Extension of the SLGF to national student loan schemes is, however, precluded by Article 125 TFEU, as the Union would be guaranteeing Member State debt.²⁰ In any event, the cost of guaranteeing all undergraduate student loans within the EU is unaffordable. There are, obviously, far more undergraduate students than Master's students enrolled in courses across the EU. The cost, and concomitant risk, of guaranteeing all of their debt obligations would be huge. Moreover, part of the *raison d'être* of national loan schemes is to enable students from poor backgrounds, who may have weak guarantors and are thus too risky for commercial lenders, to access higher education. To extend the SLGF to their loans would involve assuming a great deal of risk.

¹⁹ European Investment Fund, 'Annex II to the Open Call for Expression of Interest to select Financial Intermediaries under Erasmus+ Master Loan Guarantee Facility'

<http://www.eif.org/what_we_do/guarantees/erasmus+master-loan-guarantee-facility/guarantee-term-sheet-annex-II.pdf> accessed 2 October 2015.

²⁰ TFEU, art 125.

TARGET2

A brief explanation of TARGET2, the cross-border payment system operated by the Eurosystem, is necessary, as it forms the basis for my proposal.

TARGET2 (second-generation Trans-European Automated Real-Time Gross Settlement Express Transfer system) is a mechanism used by the Eurosystem to make Euro payments within the Eurozone and between the Eurozone and participating non-Euro Member States. The European Central Bank (ECB) sits at the centre of the system and operates as a clearinghouse between national central banks. Commercial banks maintain reserve accounts – that is, a proportion of their deposits – with their respective national central bank. The national central banks, meanwhile, maintain accounts with the ECB. To make cross-border payments, the national central banks' accounts with the ECB are credited or debited, depending on the direction of payment. When, therefore, a French importer pays a German exporter, the importer's commercial bank – eg BNP Paribas – reduces its liabilities to the importer by the amount of the payment. BNP Paribas also reduces its assets at the Banque de France, as, with fewer liabilities, it no longer needs to maintain the same level of reserves. The Banque de France's account with the ECB is then debited, whilst the Bundesbank's account is credited. This manifests itself as the ECB having a claim on the Banque de France and the Bundesbank having a claim on the ECB. Next, the Bundesbank's reserve liabilities to the exporter's bank – eg Commerzbank – are increased. Commerzbank then credits the exporter's account, finishing with its reserve assets at the Bundesbank and liabilities to the exporter increased by the value of the payment.

Directive 2003/48/EC (Savings Directive)

An explanation of Directive 2003/48/EC, the Savings Directive, is also necessary, as I have based the fiscal elements of my system on its principles.

The Savings Directive implements the so-called EU withholding tax. In order to achieve effective and appropriate taxation, Member States are required to divulge information on savings income, such as interest payments, earned in their jurisdiction by EU citizens resident for tax purposes in other Member States. For most Member States, information is shared automatically. Under transitional arrangements, however, Austria, Belgium, Luxembourg and some non-EU countries with bank secrecy laws were permitted to levy a withholding tax (35% since 1st July 2011) on savings income as an alternative to sharing information.²¹ 75% of the revenue collected is then transferred to the Member State of residence of the owner of the savings income.²²

The proposal

The ESLRF would ensure that students borrowing money from the student finance system of one Member State cannot evade the debt by relocating to another Member State. By shifting loan repayment to the Union level, students would be taxed in accordance with the repayment terms agreed to in the Member State where they completed their studies, no matter their location in the EU.

²¹ Savings Directive, art 11.

²² *ibid*, art 12.

The heart of the ESLRF would be a clearinghouse, analogous to the role of the European Central Bank within TARGET2. The system would operate as follows.

- (1) A record of all student loans issued by Member States would be maintained. The record would note to whom the loan was issued, its value and its terms of repayment (adjusted for exchange rate).
- (2) The current Member State of residence of all indebted students would be recorded.
- (3) The Member State in which a student is residing would be directed to withhold some of their income through the tax system (eg via PAYE in the UK), in accordance with the terms of the student's loan agreement (again, adjusted for exchange rate).
- (4) At the end of each month, Member States would be directed to transfer money withheld from resident indebted students to the Member States to which the money is owed. The clearinghouse would calculate net flows between Member States to avoid money being transferred only to be returned.

Example

For simplicity, it is assumed in the following example that there are three students, that three countries participate in the ESLRF – the Czech Republic, Italy and the United Kingdom – and that student loans are repaid in one lump sum. In practice, however, more Member States will participate and loans will be repaid in instalments.

Step 1

Student	Location
1-UK(100)	Italy
2-CZ(50)	Italy
3-IT(70)	Czech Republic

Initially, there are three students in the EU. '1-UK(100)' refers to Student 1 and indicates that he owes the UK 100. 'IT' in the adjacent column indicates that he is currently residing in Italy.

The total value of student debt within the system is therefore $100 + 50 + 70 = 220$.

Step 2

Country	Raised	Owes CZ	Owes IT	Owes UK
Czech Republic	70	N/A	70	0
Italy	150	50	N/A	100
UK	0	0	0	N/A
Total	220	50	70	100

First, this table indicates the amount raised by the three Member States withholding the income of indebted students present on their territory. The amount raised, 220, is equal to the total value of debt in the system. Similarly, the total under each 'Owes [country]' column corresponds to the amount that country is owed. Second, it shows how the money raised is to

be split between other Member States. Italy, for example, has raised 150, and will be transferring 50 to the Czech Republic and 100 to the UK.

Step 3

From	To	Out	In	Sum
Czech Republic	Italy	70	50	20
Italy	Czech Republic	50	70	-20
Czech Republic	UK	0	0	0
UK	Czech Republic	0	0	0
Italy	UK	100	0	100
UK	Italy	0	100	-100

This table demonstrates how flows between Member States will be set off against one another. As can be seen from Step 2, Italy must transfer the Czech Republic 50, whilst the Czech Republic must transfer Italy 70. Instead of Italy transferring 50 only for it to be returned with an additional 20, the transfers are set off against one another. The final value and direction of transfers between pairs of Member States is indicated by the positive number for each pair in the 'Sum' column. In this example, there are three Member State pairs. Were all 28 Member States to participate, however, there would be 378 pairs.²³

²³

$$\frac{28!}{2! \times 26!} = 378$$

Using the Czech Republic and Italy as an example, the positive value for that Member State pair is 20. Its location on the 'From CZ to IT' row indicates that 20 will move from the Czech Republic to Italy. By discarding all rows where the value in the 'Sum' column is less than or equal to zero and the 'In' and 'Out' columns used for calculations, one is left with the final transfers between Member States:

From	To	Sum
Czech Republic	Italy	20
Italy	UK	100

Figure 1 below depicts the foregoing calculations in graphical form.

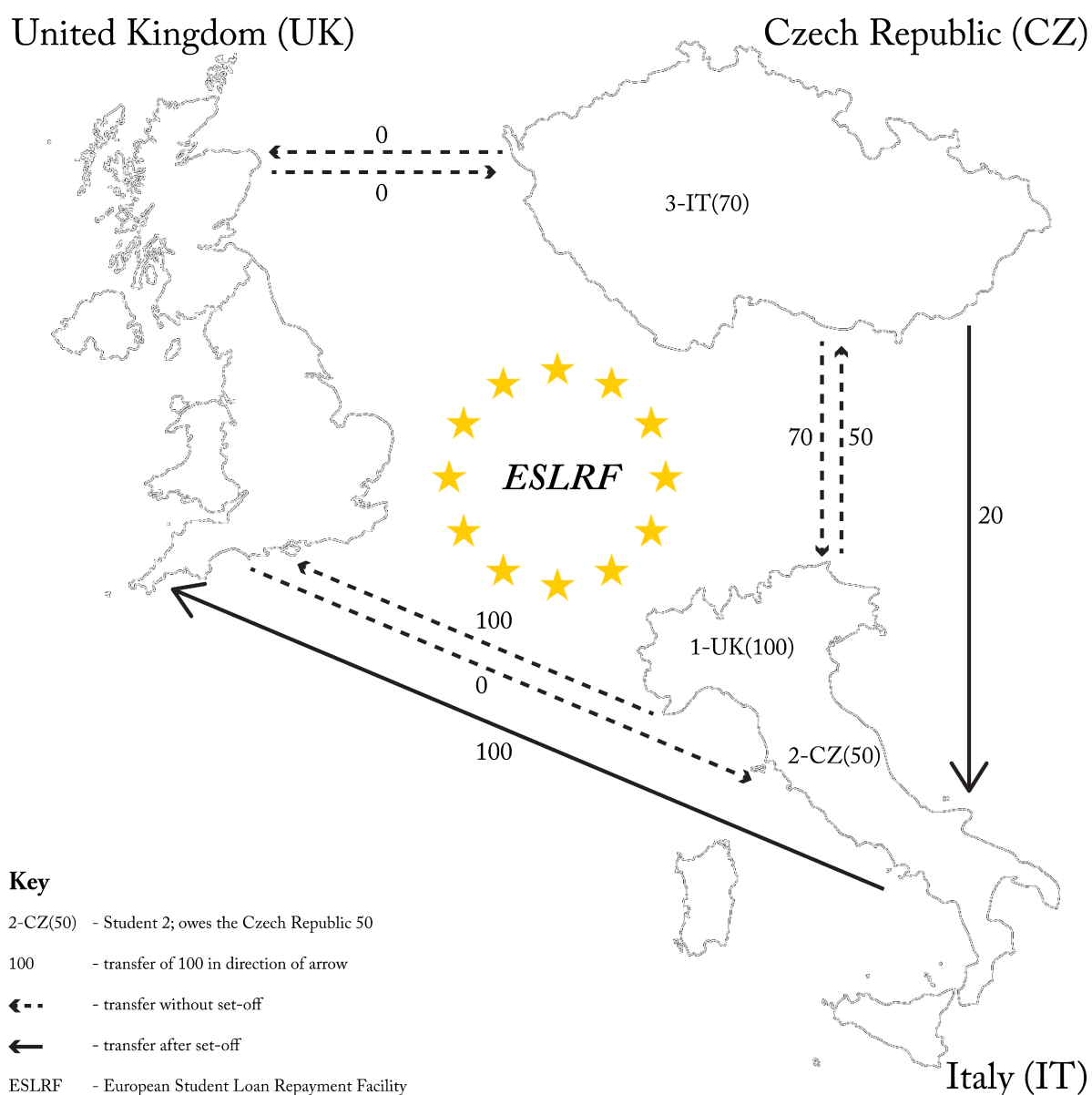


Figure 1. Operation of the European Student Loan Repayment Facility²⁴

²⁴ Diagram created by the author.

Legal basis

The ESLRF would require a Regulation and a Directive for its establishment and functioning.

The Regulation would establish the co-ordinating body, whilst the Directive would implement the fiscal aspects of the regime.

Regulation

The Regulation would be based on Article 165(4) TFEU.²⁵ This allows the EU to adopt measures (except harmonising measures) via the ordinary legislative procedure on certain aspects of education policy.

The proposed Regulation would comply fully with the principles of subsidiarity and limited conferral. Article 5(3) TEU permits the Union to act in areas of shared competence

... only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.²⁶

Likewise, Article 165(1) TFEU provides that within education policy, the Union shall encourage cooperation between Member States ‘by supporting and supplementing their action’.

²⁵ TFEU, art 165.

²⁶ Consolidated version of the Treaty on European Union [2012] OJ C326/13 (TEU).

Currently, it is either impractical or unaffordable to pursue indebted students residing in other Member States. Clearly, recovering student debt can be better achieved at the Union level.

Directive

The Directive governing the withholding of income from students and the fiscal transfers between Member States would be based on Article 115 TFEU. Article 115 TFEU permits the Union to issue Directives for the ‘approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.’²⁷ Article 26(2) TFEU defines the internal market as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’.²⁸ Students fall under the ‘persons’ heading.

The proposed Directive would operate analogously to Articles 11 and 12 of the Savings Directive. That Directive, also based on Article 115 TFEU (then Article 94 TEC), required the levying of a withholding tax and the transfer of collected revenue to other Member States. The only differences between Articles 11 and 12 and the proposed Directive would be the type of income upon which the tax is levied, the amount of the tax, and when and to whom the revenue is transferred. Transfer would instead be directed by the ESLRF, and the Directive would make provision for this.

²⁷ TFEU, art 115.

²⁸ *ibid*, art 26.

Conclusion

Education is one of the most successful aspects of the European Union. Students have unprecedented opportunities to study abroad, and the 'Erasmus generation' has been identified as a foundation for a strong, pan-European identity. The European Union rightly seeks to extend these opportunities to more students. In doing so, however, the sustainability of student mobility needs to be considered. Students currently benefiting from these opportunities have financial obligations to their host Member States. These obligations must be met if the next generation of European students is to enjoy even greater experiences. Moving student loan repayment to the Union level safeguards student mobility and paves the way for current 'Erasmus babies' to follow in the footsteps of their parents.

Table of cases

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Table of European Union legislation

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