

Working Group Portability of Grants and Loans

Report to the
Bologna Follow Up Group



Summary

The research carried out within the framework of this Working Group, confirms that when countries support their students through direct grants and loans, the portability of these or similar grants and loans is necessary if countries have the objective to support their students when going abroad for studies. The implementation of portability of national grants and loans is therefore a desirable provision to facilitate the mobility of students in the European Higher Education Area.

The Working Group also concludes that introducing or expanding the portability of grants and loans is possible and generally within the capacity of individual countries. The Working Group realises that countries might be hesitant to implement portability because of the possible financial implications, but are confident that the information in this report contains the vital elements to be incorporated in the national support systems to prevent student support becoming an unreasonable burden for individual countries. To this end, the use of residence requirements, as part of general eligibility criteria, is particularly recommended.

The Working Group realises that countries only have authority within their own territory. When students are abroad, the country providing the support may lack information on the situation abroad. The extent of this 'information-gap' depends on the nature of the national student support system, and the conditions under which support is granted. Where the fulfilment of these conditions takes place in the country of destination of the student, the supporting country might have no clear view on the situation abroad. The Working Group recommends that countries undertake joint action to identify and address the situations where they can assist each other on the implementation of national systems of portable student support for students studying abroad.

The main recommendation is that the Bologna Partner Countries form a network to assist each other with the implementation of portability of grants and loans. Within the framework of this network the necessary joint actions will be identified and addressed. This report forms the foundation on which the foreseen network can be build.

The Working Group suggests the following text to be incorporated into the London Communiqué to reflect this report:

“Following on the outcome of the working group on portability of grants and loans, which demonstrates the necessity to assist each other with the implementation of portable grants and loans, Ministers agree on the establishment of a network of national experts which will facilitate the portability of grants and loans within the EHEA as well as help to identify and address obstacles, as appropriate.”

Inventory of the report

Summary

Inventory

1. Introduction on the report

2. What has the working Group done?

2.1. Writing the proposal

2.2. Establishment of the Bologna Working Group on Portability of Grants and

Loans

2.3. Organising the Working Group

2.4. Discussing the results

2.5. Finalising the report

3. Subgroup Descriptions

3.1. The purpose

3.2. Participating countries

3.3. The research method and results

3.4. Similarities

3.5. Differences

3.6. Concerns and suggested solutions mentioned in the survey

4. Subgroup Current Practice

4.1. The purpose

4.2. Participating countries

4.3. The research method and results

4.4. Residence requirement

4.5. Variety of possibilities and limited number of eligibility criteria

4.6. Specialization

4.7. Mechanisms for exchange of information

4.8. Arrangements for double claim detection

4.9. Internal arrangements for fraud detection

4.10. ICT facilities

4.11. Additional support

4.12. Concerns and possible future action mentioned in the survey

5. Subgroup on EU-law and other relevant legal issues

5.1. The purpose

5.2. Participating countries

5.3. The research method

5.4. The results

5.4.1. Specific legal instruments on portability

5.4.2. EU-law

5.4.2.1. EU-law directly relating to portability

5.4.2.2. EU law regulating entitlement to support from the host country

5.4.2.2.1. The position of students that are (family members

of) migrant workers

5.4.2.2.2. Non-discrimination and free movement in the EC-

Treaty and Directive 2004/38/EC

5.4.2.2.3. Bidar ruling

5.4.3. Findings of the EU Commission Legal Expert Group

5.4.4. Regulations concerning EEA nationals

5.4.5. The relations between Switzerland and EU/EEA-countries

5.4.6. The position of students from and in other Bologna Partner Countries

5.4.7. The European Agreement on Continued Payment of Scholarships to

Students Studying Abroad 1969

5.4.8. The European Social Charter of the Council of Europe

5.4.9. Overview of the measures to retrieve loans

5.5. Conclusions from the legal framework

6. Conclusions and recommendations

6.1. Conclusions and recommendations

6.2. The network

7. Progress made by all participating Bologna Partner countries with respect to making grants and loans portable

Appendix A: List of relevant documents

Appendix B: List of legal documents referred to in the report

Appendix C: List of all people involved in the Working group

1. Introduction on the report

In the Bergen Communiqué the following text was incorporated:

Mobility

We recognise that mobility of students and staff among all participating countries remains one of the key objectives of the Bologna Process. Aware of the many remaining challenges to be overcome, we reconfirm¹ our commitment to facilitate the portability of grants and loans where appropriate through joint action, with a view to making mobility within the EHEA a reality. We shall intensify our efforts to lift obstacles to mobility by facilitating the delivery of visa and work permits and by encouraging participation in mobility programmes. We urge institutions and students to make full use of mobility programmes, advocating full recognition of study periods abroad within such programmes. (Bergen Communiqué, May 2005)

In the above-quoted paragraph of the Bergen Communiqué it was recognised that mobility of students among all participating countries remains one of the key objectives of the Bologna Process. Though mobility is the desired outcome, portability of grants and loans - although not a panacea – should be seen as a means to that end. For this reason the Ministers have made the commitment to stimulate and facilitate the portability of student grants and loans. The Ministers have also stated that, in order to make portability work, joint action could be an appropriate mechanism. Yet, countries seem hesitant to implement portability. Hence, the objective of the working group on Portability of grants and loans was ‘making portability work’. The working group believes that its results will assist countries in facilitating mobility by providing practical advice on the implementation of the portability of the available student grants/loans. In principle, the working group confined its remit to addressing the issues affecting portability of grants and loans, directly within the remit of Ministers for Education. During the Bologna Follow-Up Group (BFUG) meeting in Vienna in April 2006 it was decided that the group would report its results to the BFUG before the 2007 ministerial conference in London.

Definition of the object of the Working Group

In order to obtain workable results, it is important to specify what the Working group has been dealing with. And, maybe even more importantly, what the Group has *not* been dealing with. The Working group has defined the portability of grants and/or loans as a system which assures students the possibility of taking similar grants and/or loans that are available for studying in the home country with them, while going abroad for studies. To be more precise in this context, studying abroad means the student eligible for support in the country of residence, has registered at a higher education institution outside that country. This makes it possible for a student to follow a complete program to obtain a degree abroad. As the Working Group operates within the Bologna Process, ‘abroad’ is to be understood as one of the Bologna Partner Countries.

¹ ‘Reconfirmed’ because in the Berlin Communiqué the following was incorporated: *With a view to promoting student mobility, Ministers will take the necessary steps to enable the portability of national loans and grants.*

Similar grants and/or loans does not mean that the level of support provided to students studying in the home country and abroad has to be exactly the same in absolute terms. However, great discrepancies may distort student's decisions concerning the country of studies.

Grants and loans: direct support from the state to the student

Also, it should be stipulated that where the object of the Working Group is the portability of *grants and loans*, the focus of the Working Group is on *direct* support and not on indirect ways of supporting students (e.g. through tax reduction, family allowance, etc.). The Working Group recognises that each Bologna Partner Country chooses its own system of supporting students. Indirect support is therefore a national issue that advisably should be taken into consideration when making student support systems portable. If for example the main support for students in a country is disbursed in the form of child support for the parents, mobility of the student is facilitated if the parents still receive the allowance when their child is abroad for studies.

The Working group concentrated its work on contributions from the *State* to the student. Specifically, this means that grants and loans paid to students by private institutions and persons as well as the EU through Socrates or Erasmus programmes are not included in the reported work. It is worth mentioning that the Social Dimension Group looked at the full range of indirect as well as direct support available to a student for instance through the taxation system.

The Working Group realises that next to the issue of portability there remain other important issues connected with the mobility of students. The Working Group has *only* focused on issues of portability of grants and loans. In the case of several of the mobility issues some progress has already been made within the framework of the Bologna Process (e.g. facilitation of the delivery of visa, recognition of ECTS). Others are still being examined by some of the Bologna Working Groups (e.g. kinds and levels of support) or would go beyond the scope of the Bologna Process (harmonisation of educational systems).

In its work, the Working Group has concentrated on the portability of grants and loans (also) available for (national) students in the home country. No specific distinction has been made between the different cycles of education². However, since a significant amount of countries do not provide support for the third cycle in the form of grants and/or loans, because participants are not always seen as students but as employees, most obtained information relates to the first and second cycle. On the request of the BFUG-board, the question of whether the third cycle should be more explicitly included was discussed during the meeting in Glasgow in September 2006. However, given the available

² The First, Second and Third cycles correspond respectively to Bachelor, Master and Doctorate degrees.

resources, the remaining time schedule and the complexity of the problem, the Working group decided to leave the third cycle beyond the terms of reference³.

³ For specific information about the Third cycle, one is referred to the information gathered by Eurydice. Furthermore, EUA has recently devoted great attention to the Doctorate level.

2. What has the working Group done?

2.1. Writing the proposal

In the period between December 2005 and April 2006 representatives of 11 Bologna Partner Countries participated in drafting a proposal⁴ to establish a Bologna Working Group on Portability of Grants and Loans.

2.2. Establishment of the Bologna Working Group on Portability of Grants and Loans

Establishment of the Bologna Working Group on Portability of Grants and Loans was formally approved by the Bologna Follow Up Group during the meeting in Vienna on 6-7th April 2006.

In their proposal, the 11 aforementioned countries referred to the Bergen Communiqué. In the paragraph concerning the mobility of students, the Ministers of Education from Bologna Partner Countries reconfirmed their commitment to facilitate the portability of grants and loans where appropriate through joint action.

The proposal dealt also with the organisational issues regarding the proposed Working Group such as terms of reference, expected outcomes, composition of the group and prospective time schedule. Authors of the proposal suggested as well that the prospective Working Group should set up close contacts with the Working Group on Social Dimension and Data on the Mobility of Staff and Students in Participating Countries (Social Dimension Group) so as to assure that the results of these two groups complement each other. In connection with this suggestion at the early stages of their work members of the Working Group on Portability of Grants and Loans were monitoring the outcomes of the Social Dimension Group. They were also providing members of the above-mentioned Group with outcomes of their own work. Moreover, a few members of the Group on Portability of Grants and Loans participated as well in the Social Dimension Group. All these forms of exchanging information led to the conclusion that the terms of reference of both Groups did not overlap and closer cooperation was not necessary.

2.3. Organising the Working Group

After the formal approval of the Group, applications for membership started to be collected. The Bologna Secretariat advice was to limit the number of the members of the Group to 10-12 in order to work efficiently and achieve workable results. However, the number of candidates reached 18 and with a view to assuring broad representation and sustaining the involvement of candidates, all applications were accepted.⁵

During the first official meeting of the Portability of Grants and Loans Working Group in The Hague⁶, June 16th, it was decided that the Group would be split into 3 Sub-groups: EU-Law, Current Practices and Description of National Student Support Systems. Moreover, the following time schedule envisaging that the work would be carried out in 3 phases was adopted:

⁴ See appendix A for the proposal

⁵ See appendix C for the list of participants

⁶ See appendix A for the notes

- a) June – September 2006: gathering required information,
- b) September 2006 – January 2007: processing the output of phase 1,
- c) January – March 2007: winding up, reporting to the Ministerial Conference in London.

Before the Group was divided into 3 Sub-groups a few important general issues were discussed. First of all, the Group undertook the task of defining the term of “portability of grants and loans”. It was also agreed that given the tight time schedule and broad representation of Bologna-Partner Countries in the Group, the task of gathering information on all of the Bologna- Partner Countries was not necessary and too time-consuming. Hence, the Group decided that the number of respondents would be limited to the Group-members.

Afterwards, the Sub-groups started to organise themselves and plan their work. Ultimately, the whole Group approved the Sub-group proposals and agreed that the next meeting would take place in Glasgow 7-8 September.

2.4. Discussing the results

The 2nd formal meeting of the Portability of Grants and Loans Working Group was held in Glasgow, 7-8th September 2006⁷. The meeting marked out the completion of Phase 1 of the time schedule which focused mainly on data gathering and the commencement of Phase 2 in which the output of Phase 1 was to be processed.

During the first day of the Glasgow meeting the Sub-groups finalised their work and prepared short presentations to the main Group, whereas during the second day representatives of the Sub-groups presented summary of their findings. Short presentations were followed by discussions on the possible ways of making use of Sub-group results.

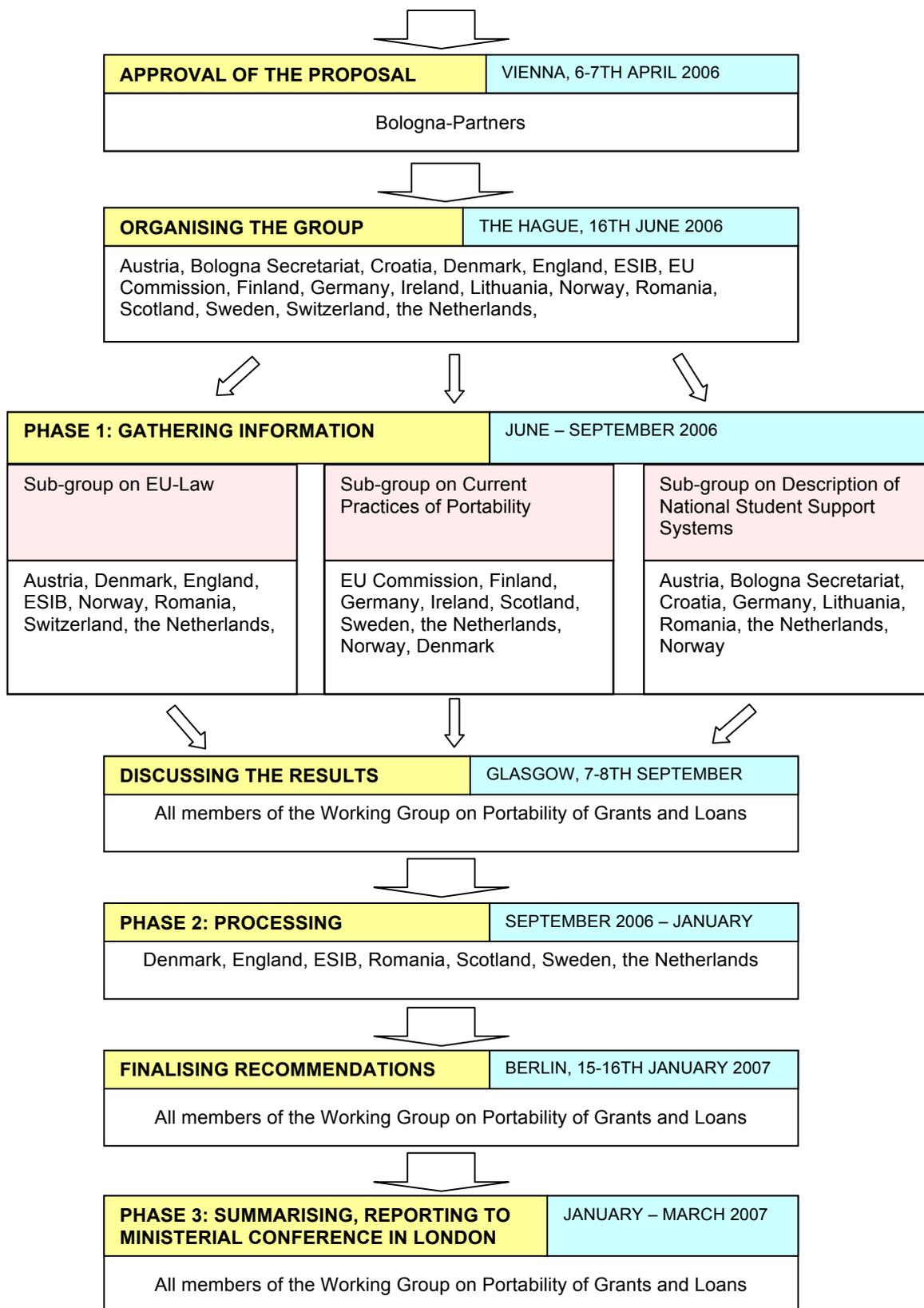
It was also agreed that in Phase 2 a smaller task force would undertake the task of the formulation of an outline report which was intended to provide recommendations and guidance for the Ministers of Education from the Bologna-Member States. More specifically, it was agreed that the report would provide advice on joint actions and examples of good practice as well as information on possible problems and barriers countries might encounter when implementing portability of student grants and loans. According to the Group, the report should also provide advice on measures which could be applied by countries without portable student support systems with the aim of facilitating other countries' portability.

2.5. Finalising the report

At the third formal meeting of the Working Group in Berlin, 15-16 January 2007, a draft version of this report was discussed. Recommendations to be made to the Bologna Follow Group were formulated as was a draft text to be incorporated in the London Communiqué.

One of the main recommendations of the Working Group would be the establishment of a network. The form of the network and the mode of operation were discussed, to get a good understanding how this network will actually contribute to the implementation of portability of grants and loans.

⁷ See appendix A for the notes



3. Subgroup Descriptions

3.1. The purpose

The goal of the Sub-group on Descriptions was to gain an overall picture of the diversity of national systems of grants and loans, their current portability and restrictions.

3.2. Participating countries

The 13 Bologna Partner Countries that participated in this survey were: Austria, Denmark, England, Finland, Germany, Ireland, Lithuania, Romania, Scotland, Sweden, the Netherlands, Norway, and Switzerland.

3.3. The research method and results

The research method for this study was a survey based on a questionnaire filled in by representatives of participating countries chosen from brain-trust experts in the field of student support.⁸ The applied research method enabled the Sub-group to gather a wide scope of information concerning national systems of grants and loans in the terms of types of grants and loans available in selected European countries, conditions determining eligibility for support, statistical data on the number of students entitled to support, forms of support and other relevant aspects. Simultaneously, participating countries gained the opportunity to express their concerns and share their views on the issue of portability.

3.4. Similarities

The results of the aforementioned survey show that many similarities between all systems exist. All considered systems offer at least one financial form of support that is a non-returnable grant or a returnable loan. It is widely accepted that granted or loaned funds are supposed to contribute towards the costs of living, however support for covering other costs e.g. tuition fees is also offered in some countries. The eligibility criteria for student support also overlapped with similar groups of students being eligible to apply for support. In general, full-time bachelor and master level students can acquire the right to some form of support in almost all countries, although eligibility for support is often restricted. There is also almost a general consensus that disabled students or students with dependants should be eligible for higher or additional support. All of the systems of the countries participating in this sub-group offered some scope for portability, although potential restrictions varied among countries as well. With the added research done by ESIB in a number of Bologna Countries not represented in the Working Group, the portability varies from 'not at all' to fully portable to the whole world.

⁸ See appendix A for the questionnaire and the collected data.

3.5. Differences

In spite of many similarities, one should be aware of the existence of some significant differences. Principles on which the systems are based are alike, but not identical. Some countries provide all full-time bachelor and master level students with selected forms of support, other make the support restricted to specific groups of full-time bachelor and master level students e.g. those with outstanding results or those whose average income per family member is not higher than an established threshold. In some cases eligibility for support is expanded on wider groups of students and comprises e.g. part-time or post-graduate students. Additional conditions make the systems more complex and expand the scope of required information. The need for gathering information about students intensifies even more in the case of systems which provide students with repayable forms of support. In some systems repayment of loans depends on the final results, income or other characteristics of graduates. Effective collection of repayments also requires information about graduates' place of residence. As a result, information concerning students' personal and financial situation can be perceived as the most crucial input in all the systems.

3.6. Concerns and suggested solutions mentioned in the survey

Countries which participated in the survey gained the opportunity to express their opinion on the issue of portability of student support. In general, concerns raised by respondents might be divided into 3 groups regarding:

- a) migration flows,
- b) financial matters,
- c) legal and organisational problems.

Results of the survey reveal the existence of fears of losing national students in favour of other Bologna Partner Countries. This kind of fear might be especially found in countries where the brain-drain scenario seems to be the most realistic, namely in the countries where the number of outgoing students outweighs the number of incoming ones. Opposite concerns might be observed in countries with considerable migration inflow and a generous student support system. Additionally, there are some fears of misuse of the system by students only passing by a particular country for the sole purpose of obtaining portable support.

The second group of concerns raised by countries participating in the survey comprises possible financial consequences of the introduction and/or expansion of portability. According to some respondents the whole system might be very expensive in connection with considerable complexity and variety of national student support systems. Possible costs of portability might be even higher in the case of countries where these systems are exceptionally developed or offer additional support to students choosing studies abroad. A majority of countries subject to the survey expressed the opinion that introduction and/or expansion of portability might increase the possibility of "double financing" or "double claim".

The third group of possible obstacles identified by respondents includes various legal and organisational problems. Some legal systems have to be adjusted for portability. This lack of adjustment is especially apparent in the field of security of personal information. In some cases

problems result from practical reasons e.g. data concerning enrolled students, their income, place of residence etc. are not collected. In the opinion of some respondents portability would entail restructuring their whole student support system e.g. in some systems grants or loans are defined as means for only financing the costs of living and do not cover tuition fees which means that the goal of encouraging student mobility might be achieved only if tuition fees are calculated, adjusted to actual costs and included in the portable support. Finally, there was a concern that the differences in the costs of living among participating countries may still impede students mobility.

The responding countries proposed various ways of overcoming aforementioned obstacles to the introduction and/or expansion of portability:

- a) intensification of the exchange of information about national student support systems,
- b) establishment of arrangements to exchange information about students directly between the national authorities of the countries that introduced portability,
- c) implementation or expansion of portability in many countries in cooperation with each other,
- d) promotion of mobility among students from participating countries,
- e) creation of a special Bologna fund in order to finance the difference in the costs of living.

4. Subgroup Current Practice

4.1. The purpose

The Sub-group on Current Practice of Portability undertook the task of collecting and summarising information on administrative and practical arrangements facilitating portability of grants and loans in countries with the most extensive experience in this area. Potential results were to form a basis for a toolkit for introducing portability in Bologna Partner Countries.

4.2. Participating countries

The Nordic countries (Sweden, Finland, Denmark and Norway) as well as Germany, Ireland and the Netherlands participated in the survey.

4.3. The research method and results

The research method applied by the Sub-group on Current Practice of Portability was a survey based on a template sent out among experts in the area of student financing from all participating countries.⁹ The template consisted of three sections:

- a. General Information,
- b. Description of Administration Systems,
- c. Lessons that can be learned from Experience of Administrating Portability Model.

The results acquired by the Sub-group on Current Practice of Portability to some extent overlap with the outcomes of the Sub-group Descriptions. Nevertheless, the work of Sub-group on Current Practice of Portability brought additional, thorough information concerning specific solutions applied in the countries which introduced portability of students support. What is more, participating countries gained also the opportunity to express their opinion on strengths of their systems. On the basis of this information the most advantageous administrative and practical arrangements might be identified

4.4. Residence requirement

In the Nordic countries, that have the longest experience of providing portable grants and loans to their students on a broad scale, the number of students eligible for taking the available support abroad is controlled by residence requirements. This means that a student that is entitled to support, can only take that support abroad if he has at least lived a certain amount of time in the country supplying the support before going abroad. The background of the residence requirement is that a lot of emigrants from the Nordic Countries applied for support from their country of origin, to use in their new home country. Such a residence requirement can also prevent 'U-turns': students only staying in a country

⁹ See appendix A for the questionnaire and the collected data.

for a short period, becoming entitled to support and taking the support abroad to study in another country, which might be their country of origin.¹⁰

4.5. Variety of possibilities and limited number of eligibility criteria

In the opinion of a few respondents a wide variety of choice in geographical terms is one of the strengths of their systems as it can substantially contribute to the intensification of students mobility. On the other hand, members of the Sub-group concluded that if the number of countries had been restricted it would have been easier to gather all necessary information on courses and educational institutions and simultaneously handle the whole system.

Some of the countries which participated in the survey emphasised that keeping the number of additional eligibility criteria (e.g. requirements concerning the educational institution abroad) which students wishing to study abroad must meet to a minimum, helps to promote mobility.

4.6. Specialization

Certain participating countries expressed the conviction that specialised or expert authorities responsible for students support are the next strength of their student support systems. These authorities are charged with various informative and/or administrative tasks e.g.:

- a) collection and dissemination of information concerning foreign educational systems and institutions,
- b) recognition of academic certificates, scholarships, etc.,
- c) consideration of applications,
- d) disbursement of support,
- e) collection of information about students.

Sweden not only established a specialised authority responsible for student support (the Swedish National Board of Student Aid (CSN)) but it also based the internal organisational structure of this institution on the principle of geographical specialisation. As a result each CSN-official concerned with the portability of student support is specialised and only handles applications concerning specific countries.

The aim of the above-mentioned forms of specialisation is the same. Specialisation facilitates the process of acquisition and accumulation of knowledge.

4.7. Mechanisms for exchange of information

Participating countries introduced several forms of arrangements for exchange of information.

In the case of Nordic countries these mechanisms are the most advanced and comprise multilateral cooperation at both ministerial and agency level. The cooperation at the ministerial level is

¹⁰ For the Legal implications of the residence requirement in the EU Legal framework, one is referred to chapter 5, paragraph 4.2.2.2 and 4.2.2.3.

organised by a working group, within the framework of the Nordic Council of Ministers which exchanges information etc. At agency level the executives meet on a regular basis. Every other year the agencies organise a Nordic student support conference in connection with the executive meeting.

Since the UK is considered as the most popular destination for Irish students, Ireland has developed informal bilateral relationships with the relevant authorities involved. In the Netherlands the Informatie Beheer Groep (institution responsible for disbursement of student support) established direct contacts with selected foreign universities regarding enrolment of Dutch students in academic courses. Germany has not set up an institutionalized network for permanent international cooperation but sporadically cooperates with institutions abroad on a case-by-case basis. However with regard to its specific system a cross government group was established involving officials dealing with student support on federal and land-level.

4.8. Arrangements for double claim detection

In the case of countries which developed extensive mechanisms for exchange of information (e.g. Nordic countries) the task of double claim prevention is implemented through these contacts. In practice, agencies responsible for student support exchange lists of names of students who receive financial support from the host country. Additionally, a student applying for support in Finland, Norway and Sweden is obliged to state whether he or she receives financial support from other countries.

In Germany there are no specific arrangements against double claims laid by students studying abroad, however, aforementioned structure of the German administrative system resulted in establishing such arrangements at the national level. Double claims are detected by the federal office of administration to which local authorities report the support they have granted.

4.9. Internal arrangements for fraud detection

In general respondents did not report that their countries had established international arrangements for fraud detection. However, such arrangements apply internally. In Germany, for instance, a student lodging an application for support is obliged to declare his income and will be prosecuted in the case of fraud. Additionally, information provided by a student is confronted with data collected by fiscal authorities. Similar arrangements apply also in other countries. Identification of students and detection of fraud is usually facilitated by personal identity numbers.

4.10. ICT facilities

Several respondents highlighted the importance of ICT solutions (e.g. websites, electronic signature) in supporting their systems of students grants and loans. Due to these facilities students have equal access opportunities to various services from all over the world. These services include online applications, disbursement of support directly to students accounts and access to relevant information concerning e.g. payment plan.

4.11. Additional support

Some respondents offer additional forms of support to students studying abroad. This additional support is provided with the aim of covering specific extra costs e.g. travel costs and tuition fees (when they are higher in the country of destination) as well as balancing in general the difference in purchasing power between home and host countries.

4.12. Concerns and possible future action mentioned in the survey

The current practice sub-group identified a number of concerns and obstacles to portability:

- double claiming issues around comparability of data or information on the identification of individuals between countries arise
- general issues around data exchange and data protection rules should be explored
- difficulty in gaining confirmation of level of qualification in comparison with home higher education qualification
- potential lack of capacity of existing bodies like ENIC-NARIC
- difficulty in verifying legitimacy of institutions and courses – in “new” countries or situations
- comparability of home – host nation support and eligibility criteria

The sub-group proposed that ways of overcoming these issues should be considered as part of future action arising from the work of the Working Group.

5. Subgroup on EU-law and other relevant legal issues

5.1. The purpose

The Sub-group on EU-Law undertook the task of examining the legal issues of the portability of grants and loans. Above-mentioned group defined two specific goals:

- a) gaining a clear view of the legal position of the students from each of the different kind of Bologna Partner Countries into each of the different kind of Bologna Partner Countries and of the influence of EU-law or other sources of law on these positions,
- b) obtaining an overview of measures provided by EU-law or other sources of law to retrieve loans from persons residing outside their home country.

It might seem curious that a lot of attention is being paid to the entitlement of students to support from the host country, where as, by definition, portable support is support from the home country of the student. However, as was mentioned in the chapters 3 and 4 of this report, one of the concerns of some Countries is the fact that if too many students can get support from the host country, there is a real danger that by making a u-turn, students from country A will use portable support from country B to study in country C. Further more, by showing whether or not international mobile students are entitled to support from their host country, it becomes clear whether there is a necessity for portable support.

5.2. Participating countries

The sub-group on EU-Law included representatives of 7 European countries: 4 EU countries (Austria, Denmark, England and the Netherlands), 1 EEA-Member State (Norway), 1 EU-candidate State (Romania¹¹) and Switzerland. ESIB provided the sub-group with additional information concerning Serbia. A colleague from Denmark had been previously involved in the Legal Expert Group, installed by the European Commission and volunteered to update the Working Group on the findings of the Legal Expert Group.

5.3. The research method

With the aim of reaching above-mentioned results all members of the Sub-group on EU-Law agreed to prepare three kinds of analyses from the perspective of their own country:

- a) analysis of the position of students from all kinds of Bologna Partner Countries coming to their country and of the influence of EU-law or other sources of law on this position,
- b) analysis of the presumed position of their students in all other kinds of Bologna Partner Countries,
- c) overview of the known and/or used measures to retrieve loans from persons residing outside their home country.

The sub-group intended to prepare a matrix on the basis of above-mentioned analyses with the aim of comparing views of participating countries on the issue of student support.

¹¹ At the time of the survey, Romania was an EU-candidate Member State.

Colleagues from Denmark were asked to report the findings of the Legal Expert Group which led the European Commission to the conclusion that the decision whether to implement portable student support systems is at EU Member States discretion.

5.4. The results

As was to be expected, the experts involved were capable of describing the position of students coming to their respective country from all the different kind of Bologna Partner Countries. They were much less sure about the presumed position of students going from their own country to the different Bologna Partner Countries. Although this meant that the matrix objective was not reached, it was concluded that the combined knowledge on the position of mobile students and the relevant legal backgrounds shows a thorough overview of the main legal regulations influencing portability of grants and loans as well as measures applied to retrieve loans. All regulations identified are summed up in Appendix B to this report.

5.4.1. Specific legal instruments on portability

It has to be underlined that up to now no specific legal instrument dealing with the topic of portability of student grants and loans has been established with the Exception of the European Agreement on Continued Payment of Scholarships to Students Studying Abroad 1969 of the Council of Europe¹². The legal environment of portable student support has to be therefore derived from other, more general provisions. Often this will result in researching the regulations on the entitlement of students to support from the host country.

5.4.2 EU-law

5.4.2.1. EU-law directly relating to portability

It should be emphasised that with respect to portability up to now neither the Community law nor the European Court of Justice has defined portability or laid down the conditions when students are entitled to grants or loans of their home country when studying abroad. As a result every State can stipulate the prerequisites of making study grants or loans portable.¹³

There are some other legal, but not binding instruments that contain the topic of portability. For example the 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 trainers¹⁴. This Recommendation, which in particular is based on Article 149(4) and Article 150(4) of the Treaty establishing the European Community states that the portability of scholarships and national aids can be promoted.

¹² See paragraph 5.4.7. of this report

¹³ In a pending case (Morgan and Bücher, C-11&12/06) the Court is expected to give a ruling on portability of the German student support. This ruling is expected shortly before the summer of 2007.

¹⁴ OJ L 215, 9.8.2001, p. 30

The “Recommendation of the European Parliament and of the Council on transnational mobility within the Community for education and training purposes: The European Quality Charter for Mobility of 18 December 2006”¹⁵ states that attention should be paid to the issue of the portability of loans, grants and social security benefits. Moreover it points out that adequate logistical support should be provided, which could include the portability of government grants and loans from the country of origin to the host country should be provided.

In the Commission Communication “Delivering on the Modernisation agenda of universities”¹⁶ it is also emphasised that ‘national grants and loans should be fully portable within the EU’.

5.4.2.2. EU law regulating entitlement to support from the host country

There are regulations with reference to obligations of the host country. The situation of the mobile student depends whether the student is a worker or a family member of a worker who therefore can rely on the Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community¹⁷.

5.4.2.2.1. The position of students that are (family members of) migrant workers

According to Article 7 thereof (Employment and equality of treatment) 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.

According to Article 7 par. 2 thereof a worker who is a national of a Member State shall enjoy the same social and tax advantages as national workers. According to settled case-law educational grants and loans are defined as social advantages. Article 7 in conjunction with Article 12 means that the children of a national of a Member State who is or has been employed in the territory of another Member State shall enjoy the same social and tax advantages as national workers. The same, means ‘under the same conditions’.

5.4.2.2.2. Non-discrimination and free movement in the EC-Treaty and Directive 2004/38/EC

If the student cannot rely on Regulation (EEC) No 1612/68 his right to student support from the host country may be derived from the Articles 12 and/or 18 of the Treaty establishing the European Community and/or the article 24 of the directive 2004/38/EC¹⁸.

In accordance with Article 12¹⁹ of the Treaty establishing the European Community, any discrimination on grounds of nationality shall be prohibited within the scope of application of the

¹⁵ OJ L 394,30 Dec 2006, page 5

¹⁶ Brussels 10-5-2006, COM (2006) 208 final

¹⁷ Regulation (EEC)No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2)

¹⁸ OJ L 229, 29/06/2004.

¹⁹ Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Treaty, and taking into account the special provisions in the Treaty. Article 18, paragraph 1²⁰, provides the right of free movement and residence for all European citizens in all Member States of the EU.

Article 24, paragraph 1 of Directive 2004/38/EC, which is based on Article 18 of the Treaty, specifies the position of EU-citizens exercising their right of free movement and states that all Union citizens (as well as their family members who have the right of residence or permanent residence) residing in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State. With regard to access to national educational institutions this rule applies without exceptions. This means that every incoming EU-student pays the same tuition fee as the nationals of the hosting EU-country²¹ and if the national students are supported to pay the tuition fee, the incoming EU-student receives that as well²². The same means 'under the same conditions'.

The situation is different with regard to maintenance support. In accordance with article 24, paragraph 2 of the directive 2004/38/EC, a host Member State is not obliged to grant maintenance aid to citizens of other EU-Member states before they acquire the right of *permanent* residence in its territory. This provision does not concern workers, self-employed persons, persons who retain such status and members of their families, as was mentioned above. In accordance with Article 16 of Directive 2004/38/EC, EU-citizens who have resided legally for a continuous period of five years in the host Member State are entitled to the right of permanent residence there.

Paragraph 1 of the article 24 of the directive 2004/38/EC in conjunction with paragraph 2 thereof means that host EU-Member States are obliged to grant assistance covering maintenance costs only to the following groups of students from other EU-Member States:

- a) workers, self-employed persons, persons who retain such status and members of their families,
- b) persons who have resided legally for continuous period of five years in the host Member State. A Member State might decide to grant maintenance aid sooner than after five years of residence, because the Directive only states that the Member State is not obliged to do so.²³

²⁰ 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 this Treaty and by the measures adopted to give it effect.

²¹ Case C-293/83 (Gravier)

²² Case C-357/89 (Raulin)

²³ From other sources (Cheps reports under Dutch Presidency of the EU in 2004) it is known that some countries (for example Spain) do provide support to EU-incoming students on the same basis as national students. However, the conditions are such, that only few incoming students actually receive support. Furthermore, this host country approach is seen mostly with countries that provide most of the support through indirect channels. If national students are supported through family allowances paid to the parents, an incoming EU-student can only benefit from that support if he is joined by his parents.

5.4.2.2.3. Bidar ruling

Judgement of the European Court of Justice in the Bidar case²⁴ of 15th March 2005 brought additional developments concerning assistance for students in the form of subsidised loans and related provisions limiting the grant of such loans to students *settled* in national territory.

The European Court of Justice ruled that it is permissible for an EU-Member State to ensure that the grant to cover the maintenance costs of students from other Member States does not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State. It is thus 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. The European Court of Justice observed also that the requirement of previous lawful residence or settlement in the host country may be used to establish the existence of a certain degree of integration.

It should be noted that the English residence requirement applied to all students, whether they have the UK-nationality or the nationality of another EU-Member State. Nevertheless, the Court decided that "the first paragraph of Article 12 EC [prohibition of discrimination on the ground of nationality] must be interpreted as precluding national legislation which grants students the right to assistance covering their maintenance costs only if they are settled in the host Member State, while precluding a national of another Member State from obtaining the status of settled person as a student even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a genuine link with the society of that State".

This judgment does not exclude the possibility of the Member States to prevent that a student becomes an unreasonable financial burden for the host country, but it specifies a case in which the principle of non-discrimination must be extended. Consequently, a UK regulation has been declared discriminatory, only on the grounds that the concerned person (Mr. Bidar) had been lawfully resident for three years and has received a substantial part of his secondary education in the UK and has consequently established a genuine link with the society of that State.

5.4.3. Findings of the EU Commission Legal Expert Group

In response to concerns regarding the evolution of community law in the area of student support, in October 2004 the EU Commission took steps towards establishing a group of legal experts to deal with legal issues concerning portability of student support.

Particularly, attention was to be given to the following issues:

- a) existing and pending case law on the portability of student grants, taking into consideration different categories of students,
- b) home or host country approach: how to avoid double student support,
- c) possibility of introducing new legal instruments dealing with the issue of portability of grants.

The final conclusion of the EU Commission and the Legal Expert Group was influenced by the above-mentioned ruling of the European Court of Justice in Bidar case. Since the ruling of the ECJ

²⁴ Case C-209/03 (Bidar).

has not affected the applicability of Directive 2004/38/EC in generally, and specifically of its Article 24, paragraph 2 (which enables Member States to apply restrictions to financial assistance to students prior to acquisition of the right of permanent residence), members of the Legal Expert Group agreed that there was no longer an urgent need for an action on Community level. As a result, the official conclusion of the EU Commission in cooperation with the Legal Expert Group was as follows: 'due to the Bidar decision of the European Court of Justice (ECJ) the expert group came to the conclusion that further activities on the EU-level are neither necessary nor useful.'²⁵

5.4.4. Regulations concerning EEA nationals

EEA nationals derive their rights to student support when going to another EU/EEA-country from Article 31 of the Agreement on the European Economic Area or from Article 7(2) of the Regulations 1612/68 only in their capacity as workers, or as dependant descendant of such a worker.

Directive 2004/38/EC has not yet been incorporated in the EEA Agreement. Consequently, the Directive is not yet applicable for European Union citizens in EEA Member States and vice versa.

As to the Bidar case, the judgement of the Court is based on Article 12 of the EC Treaty – prohibition of discrimination – which falls within the EEA. However, the Court states that the application of the Treaty within the meaning of Article 12, that article must be read in conjunction with the provisions of the Treaty on citizenship of the Union. Citizen of the Union does not fall within the scope of the EEA Agreement.

5.4.5. The relations between Switzerland and EU/EEA-countries

The relations between Switzerland and EU/EEA-countries in the area of student support are regulated on the basis of bilateral agreements. General rules are provided by the Agreement between European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (EU-Switzerland agreement)²⁶. Incoming EU and EEA students that are (family members of) migrant workers in Switzerland are entitled to Swiss student support. Swiss students that are (family members of) migrant workers in one of the EU or EEA Countries are entitled to support from the hosting EU/EEA-country.

Directive 2004/38/EC does not apply in relation to Switzerland. Furthermore, there are no intentions to adapt the substance of the Agreement on free movement of persons to the standards of this directive.

On the free movement of persons there is very little reference to Community legislation in the EU-Switzerland agreement. In addition, the EU-Switzerland agreement provides explicitly an exemption from the non-discrimination rules as regards student fees. Thus Swiss universities may charge higher fees from EU-nationals compared to the fees they request from Swiss nationals. The reverse goes for EU-universities.

²⁵ Quote from the Education Committee meeting 26-27 September 2005.

²⁶ OJ L 114/6 , 30/04/2002.

Concerning student grants and loans the situation is as follows: EU nationals residing for study purposes in Switzerland have no right to receive a Swiss study grant or loan. On the contrary, the lack of own funding could be a reason for withdrawing the residence permit.

As regard Swiss students in the EU, Member States are not obliged to treat Swiss students on equal footing with their own nationals.

5.4.6. The position of students from and in other Bologna Partner Countries

The position of students from and in other Bologna Partner Countries is regulated by national law. In general one can conclude that mobile students that have only moved to another country for the purpose of studies, are not entitled to the general support available for the national students of the hosting country. From country to country the conditions vary under which persons can apply for a residence permit that entitles them to financial assistance by the hosting state. Usually this requires some years of residence or special circumstances as marriage or adoption.

5.4.7. The European Agreement on Continued Payment of Scholarships to Students Studying Abroad 1969

While the above-mentioned EU-legislation provides a legal basis for integration of some students in the support system of the host country, the European Agreement on Continued Payment of Scholarships to Students Studying Abroad 1969²⁷ aims at supporting students studying abroad by their home country. The Agreement applies, as referred to in Article 1 thereof, to all forms of direct financial support granted to students, undergraduate and post graduate, provided by the State or other authority, including grants towards the payment of fees, maintenance awards and study loans. The Agreement does not cover, however, grants for full studies abroad. In accordance with Article 3 thereof, there are three conditions for transferring support abroad:

- a) starting of the study program in the home country,
- b) execution of the study at a recognized foreign educational institution,
- c) recognition of the courses and exams in the home country.

The following countries signed the Agreement: Austria, Bosnia and Herzegovina, Croatia, Cyprus, Finland, France, Germany, Great Britain and Northern Ireland, Iceland, Liechtenstein, Luxemburg, Malta, the Netherlands, Slovenia, Spain, Sweden, Switzerland Yugoslavia and the former Yugoslav Republic of Macedonia.

As was mentioned above, binding EU-legislation and the Agreement on Continued Payment of Scholarships to Students Studying Abroad 1969 provide a legal basis for two diverging solutions concerning portability of student support. This situation entails the risk of double-financing.

²⁷ European Treaty Series - No. 69

5.4.8. The European Social Charter of the Council of Europe

Article 10 paragraph 5 of the Revised European Social Charter²⁸ may influence the position of students who are nationals of Parties of this Charter. However, the scope of this provision does not influence the portability of student support.

5.4.9. Overview of the measures to retrieve loans

Norwegian State Educational Loan Fund has reported that the legal instrument they use to retrieve loans is the Convention of Lugano of January 3, 1993. England for such purposes applies domestic legislation and, if necessary, Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters²⁹.

5.5. Conclusions from the legal framework

There are few regulations on portable grants and loans. This means that Bologna Partner Countries are free to support their students with grants and loans for the purpose of studying abroad under their own conditions.

The regulations on the entitlement of students to support from the hosting country show that, in general, when students are going from one country to another for studies, they are not entitled to the same support as the national students. This stipulates the necessity to support mobile students with portable grants and loans from the home country.

EU-law provides some mobile students from EU/EEA-countries and Switzerland going to one of these countries with entitlement to support from the host country. In most cases student derive these entitlements from other capacities, for example being a migrant worker. Although limited, the fact that some students can get support from the hosting country could result in students receiving double support when they are also entitled to portable support from their home country.

²⁸ European Treaty Series - No. 163.

²⁹OJ L 12/1.

6. Conclusions and recommendations

6.1. Conclusions and recommendations

The research being done in the framework of this Working Group, confirms that when countries support their students through direct grants and loans, the portability of these grants and loans is necessary if countries have the objective to support their students when going abroad for studies.

The Working Group also concludes that introducing or expanding the portability of grants and loans is possible and generally within the capacity of individual countries. The Working Group realises that countries might be hesitant to implement portability because of the possible financial implications, but are confident that the information in this report contains the vital elements to be incorporated in the national support systems to prevent student support becoming an unreasonable burden for individual countries. To this end, the use of residence requirements, as part of general eligibility criteria, is particularly recommended.

The Working Group realises that countries only have authority within their own territory. When students are abroad, the country providing the support may lack information on the situation abroad. The extent of this 'information-gap' depends on the nature of the national student support system and the conditions under which support is granted. Where the fulfilment of these conditions takes place in the country of destination of the student, the supporting country might have no clear view on the situation abroad. The Working Group recommends that countries undertake joint action to identify and address the situations where they can assist each other on the implementation of national systems of portable support for students studying abroad.

The main recommendation is that the Bologna Partner Countries form a network to assist each other with the implementation of portability of grants and loans. The outlines of the foreseen network are drawn underneath.

The Working Group suggests the following text to be incorporated into the London Communiqué to reflect this report:

“Following on the outcome of the working group on portability of grants and loans, which demonstrates the necessity to assist each other with the implementation of portable grants and loans, Ministers agree on the establishment of a network of national experts which will facilitate the portability of grants and loans within the EHEA as well as help to identify and address obstacles, as appropriate.”

6.2. The network

The aim of the network is to facilitate the implementation of portability grants and loans in order to promote mobility. This will be instrumental for the relevant authorities who deal with student support.

The outcome should make work easier for the national authorities concerned with the disbursing of support abroad.

The participants will be experts on student support systems, both on implementation and execution and on policy.

The following tasks are foreseen for the network. The sharing of experience and structuring of information needed for the implementation of portability of grants and loans. The members of the Working Group experienced the value of sharing experiences and collecting the information presented in the report. This will assist countries that did not participate in the Working Group to oversee the implications of the implementation of portable grants and loans.

Provide an electronic platform for (public) information, as part of the Bologna Follow Up Group information infrastructure (not a working group or public service). The day to day management (not policy) of the e-platform could be the responsibility of the Bologna Secretariat 2007-2009.

Reach practical, multilateral, cooperative outcomes on specific issues that have been identified and made concrete by the working group:

- 1) Collect and provide general information on the national student support systems and the educational systems of the Bologna Partner Countries
- 2) Address the issue of data-protection:
 - to prevent double payment of grants and loans (by both the home and the host country)
 - to facilitate the repayment of loans
- 3) Collect and provide statistical data on the international mobility of students in the EHEA

The following mode of operation is foreseen:

The network:

- should be a long term structure
- will be open to all Bologna partners that wish to participate
- will be chaired and co-ordinated by a joint effort of three countries Providing (after London Ministers Conference) the opportunity for all Bologna partners to participate. The joint chair is to stimulate and ensure the tasks identified to be done are carried out, involving regular structures as much as possible, for instance the Bologna structure and the ENIC-NARIC network
- will have a thematic approach: issues identified to be taken up by small groups of countries
- New issues would be taken up after a round of open information on the specific issue and suggestions regarding participants in an ad-hoc group to suggest possible multilateral solutions
- will meet annually to share experiences and maintain momentum
- will produce a progress report to the Bologna Follow Up Group in 2009

7 Progress made by participating Bologna Partner countries with respect to making grants and loans portable

The following countries reported progress:

Austria: The Austrian student support is partly portable. Students entitled to receive study grants are entitled to an additional support of the studies abroad for a maximum of 20 months. Students at Universities must have completed the first stage of their studies (or 2 semesters in case a study does not consist of stages of a degree program). At the moment there is no intention to change the legal situation concerning portability. But there are considerations to expand the portability.

Denmark: The Danish government (ministry of education, ministry of science, technology and innovation and the ministry of culture) is working on introducing portable support for tuition fees in addition to the existing portable maintenance support. Portable support for tuition will be offered for a maximum of 2 years for study periods abroad as part of a Danish degree as well as for post-graduate programs abroad.

Germany: The German federal government has forwarded a draft law to amend the German BAföG-act especially with respect to portability abroad. It is planned to open student support by BAföG for complete studies abroad within EU-member states and Switzerland, thus offering full portability starting from autumn of this year (2007). The only prerequisite for students being applicable for portable support of more than one year duration is a minimum of three years of residence in Germany prior to the study period abroad. Those who study within Germany or just want to spend a short part of their German study-courses up to one year's duration abroad, don't have to fulfill this additional residence criterion. At the same time the draft law provides for an expansion of the circle of foreigners from outside the EU being applicable for German student support when studying within Germany. Roughly spoken everybody who fulfills the general prerequisites for training assistance will be applicable when legally living in Germany with a long stay perspective and not having come to Germany just for training and educational purposes. If parliament agrees the new law will come into force starting from academic winter term 2007/2008.

Ireland: Student support is fully portable in some cases and partly portable in others. New legislation (the Student Support Bill, 2007) is currently being prepared for introduction to the Irish parliament which will unify and rationalise the various existing student support grant schemes. Although it is proposed to further strengthen the existing residency requirements, the legislation will also legally underpin arrangements for the portability of student support grants.

Lithuania: Recently there were not many changes in the field of loan portability in Lithuania. This is partly because Lithuania is just about to undergo a reform of the whole educational system in the country and therefore, for now, Lithuania is only implementing student exchange (short term) programmes with certain countries.

The Netherlands: A draft law is being discussed in parliament, expanding full portability to all countries in the World. Students that are eligible for full support and have lived in the Netherlands for three out of six years before starting their studies abroad will be allowed to take their support abroad

for full studies. The studies abroad must be at higher education level, according to Dutch/Bologna standards.

Scotland: Scottish Ministers have approved a study on the feasibility of a pilot introducing Portability of higher education student support for students studying in a restricted number of countries. If feasible, the intention is to have a pilot scheme available to students for academic year 2010/11 at the latest.

Sweden: Since Sweden has full portability already, there is nothing new to report.

Appendix A: List of relevant documents (like Terms of reference, minutes, filled in questionnaires; the full documents will be placed on a website)

**Appendix B: List of legal documents referred to in the report
(the full documents will be placed on a website or links can be
offered)**

Appendix C

**List of all people involved in the Working group
(name, country/organisation, e-mailaddress)**