

Acquis communautaire in the field of education

- Directives
- Recommendations (subject normally presented by another speaker)
- Case law of the Court of Justice

A. Directives

- Directives are the normal tool for the harmonization of legislations in other areas of Community action (internal market, taxation, social policy...)
- This tool is almost impossible in the area of education : *read Article 149 paragraph 4 of the Treaty.*
 - In order to contribute to the achievement of the objectives referred to in this Article, the Council shall adopt :
 - **Incentive measures**, « excluding any harmonisation of the laws and regulations of the Member States » ;
 - **Recommendations.**

- Areas in which harmonization by Directives or other compulsory EC acts is excluded :
 - European dimension in education
 - Teaching and dissemination of the languages of the Member States
 - Mobility of students and teachers
 - Academic recognition of diplomas and periods of study
 - Cooperation between educational establishments
 - Exchanges of information and experience on issues common to the education systems of the Member States
 - Youth exchanges and exchanges of socioeducational instructors
 - Development of distance education.

- Education areas in which adoption of Directives remains possible :

= Areas connected to other spheres of Community action

- Example 1 : Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers
- Example 2 : Council Directive 93/96/EEC on the right of residence for students = Directive replaced by Directive 2004/58/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)

- Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers

- Article 1 : This Directive shall apply to children for whom school attendance is compulsory under the laws of the host State, who are dependants of any worker who is a national of another Member State, where such children are resident in the territory of the Member State in which that national carries on or has carried on an activity as an employed person.
- Article 2 : Member States shall, in accordance with their national circumstances and legal systems, take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory to the children referred to in Article 1, including, in particular, the teaching - adapted to the specific needs of such children - of the official language or one of the official languages of the host State.
Member States shall take the measures necessary for the training and further training of the teachers who are to provide this tuition.
- Article 3 : Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1.
- Article 4 : The Member States shall take the necessary measures to comply with this Directive <...> and shall forthwith inform the Commission thereof.
- REMARK : The Directive is intended in particular to Member States « importing » workers

Comment to Directive 77/486

The directive was adopted in a context of European integration very different compared to that of today. The notion of migrant worker was different and the needs for schooling for the children of these workers were also different.

The Treaty of Maastricht has put the concept of the European citizenship in a very privileged place = the statute of citizen of the Union (and not of the worker) has now the vocation to be the fundamental statute of the nationals of the Member States = principle of non-discrimination; equal treatment of all citizens of the Union

Can one currently speak about repatriation of migrant worker ('reintegration in the Member State of origine') – in the same manner as in 1977 ?

Is the Directive easily applicable on the one hand with a number always growing of people who circulate in the territory of the Member States and, on the other hand, of the number of languages spoken in the Union ?

What's the relationship between this Directive and the provisions of article 149 par. 2, first indent, of the Treaty which sets as one of the objectives of the Community action in the area of education the teaching and the dissemination of the languages of the Member States ?

Conclusions on Directive 77/486

The directive, never repealed, remains applicable. No case was carried before the Court of Justice on the application of the directive. Nevertheless, some complaints and petitions based on the Directive are being currently investigated.

Even if the Court rules a day that the Directive does not generate directly rights which the European citizens can (directly) claim before the national authorities, this Directive, like any other Directive, binds the Member States as to the results to be achieved (the choice of form and methods being left to the national authorities - article 249 EC).

Therefore, the applicant countries have the obligation to take measures to comply with this Directive and they have the choice of form and methods - even while being "exporters" of workers towards other Member States - rather than "importers",

DG Education is currently working with the legal Service and the DG Employment and Social affairs on the question of the reasonable and adapted application of this Directive, in the current context of the Union

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)

Council Directive 2004/114/EC of 13 december 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

These directives fall within the competence of the DG Justice, Freedom and Security

B. Recommendations

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 trainers

Proposal for a Recommendation of the European Parliament and of the Council on transnational mobility within the Community for education and training purposes: European Quality Charter for Mobility

« Recommendations shall have no binding force » (article 249 CE)

C. Case law of the Court

- The Member States shall be required to take the necessary measures to comply with the judgment of the Court of Justice (general rule, Article 228 CE)
 - Judgments for failure to fulfil an obligation
 - Preliminary rulings
- The interpretation given by the Court of Justice to a provision of the Treaty or of secondary EU Law is obligatory for the Member States
- In the field of education, the judgments of the Court are related above all to the respect of principle of non-discrimination on grounds of nationality

- Typical cases in the field of education:
 - Equality in the access to studies (Article 12 CE).
 - Case Forcheri (152/82, judgment of 13 July 1983)
 - Case Gravier (293/83, judgment of 13 February 1985)
 - Case Commision / Austria (C-147/03, judg. of 7.7.2005)

The first and the second case are related to the payment of registration fees and tuition fees ; the third case is related to the conditions of admission, except the financial ones

- Mobility of students – free movement (Article 18 CE).
 - Case D’Hoop (C-224/98, judgment of 11.7.2002).
 - « Community law precludes a Member State from refusing to grant the tideover allowance to one of its nationals, a student seeking her first employment, on the sole ground that that student completed her secondary education in another Member State. »



- Financial assistance for students. Typical case:
 - Case Bidar (C-209/03, judg. of 15.3.2005). The Court ruled :
 - Assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the EC Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC.
 - The first paragraph of Article 12 EC 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.
- Recognition of diplomas
 - For recognition of the professional qualifications, DG in charge = DG for Internal Market (current Directive = 2005/36/EC, which replaced the Directive 89/48/EEC, 92/51/EC etc.)
 - For academic recognition, responsible the Member States. Not yet a very specific judgment of the Court...
- Right of residence for students
 - In this field, judgments of the Court made start the legislative process which led to the adoption of Directive 93/96/CEE