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Blijft Europa's HO toegankelijk?

Eric Beerkens van de universiteit van Sydney geeft een analyse van het recente bericht op ScienceGuide over de opening van een procedure door de Europese Commissie tegen België en Oostenrijk inzake de toegankelijkheid van hun HO voor EU-studenten. Daarin pikt hij meteen de reactie van ESIB-voorzitter Koen Geven op dit fundamentele beleidspunt voor de toekomst mee. Lees Beerkens' betoog hier.

On the 24th of January, a so-called '*letter of formal notice*' has been sent by the European Commission to the governments of Austria and Belgium. The letter concerns the 'Europeanisation by stealth' that I have addressed before. These governments thought they found a solution for the high influx of foreign students (respectively German and French) in some of their universities. European law - Article 12 of the EC Treaty - prohibits discrimination on the basis of nationality. In Austria, they thought they found a way to circumvent European law by discriminating not on the basis of nationality (which was addressed by the European Court of Justice (ECJ) in July 2005) but on the basis of the location where students obtained their secondary education. Now it seems that the Commission considers that Austria has still not complied with the ECJ's ruling:

"In the case of Austria, this is a follow-up to the judgement of the European Court of Justice in July 2005. The Austrian legislation had required that the holders of secondary education diplomas from other Member States had to prove that they have met conditions governing access to the higher education in their home country (e.g. passing the entrance exams). The Court held that Austria's legislation discriminated against holders of secondary education diplomas awarded in another Member State, since they could not gain access to Austrian higher education under the same conditions as holders of the equivalent Austrian diploma (Article 12, 149, 150 of the EC Treaty). As regards a possible justification of such discrimination, the ECJ stated in particular that Austria "failed to demonstrate that ... the existence of the Austrian education system in general and the safeguarding of the homogeneity of higher education in particular would be jeopardized", in the absence of restrictive measures, by the number of students coming from other countries, mainly Germany.

Following the Court's decision, Austria provisionally amended the relevant Universities Act twice, firstly in July 2005 to abide the Court's decision then, in June 2006, to re-establish restrictions to the access. The latter amendment specified that, for some studies, 75 % of the study places could be reserved to applicants with a secondary education diploma acquired in Austria (and 20 % to other EU students, the remaining 5% to third-countries students). A subsequent decree stipulated that these quotas were to be introduced for medicine and dental studies till the end of 2007.

Today's letter of formal notice – based on Article 228 of the Treaties (i.e. non-application of an ECJ ruling)- indicates that the Commission, having analysed the justifications put forward so far by the Austrian authorities, considers at this stage that Austria has still not complied with the ECJ's ruling and invites accordingly Austria to submit its observations." Reforms in Belgium (the Wallonian part) last year restricted the number of foreign students in particular degrees like veterinary science and physiotherapy. Many French students studied in Belgium because they are required to go through entrance exams in France. While writing about that case in March last year, I already predicted that this might constitute a breach of Article 12.

In their letter, the Commission seems to agree: "With today's letter of formal notice, the European Commission indicates – for similar reasons as in the Austrian case – that this system has discriminatory effect on the EU nationals not residing in Belgium and that Belgium

failed to justify the introduction of this system." Both Member States have now 2 months to respond to the letter of formal notice of the Commission. A letter of formal notice has no direct legal consequences but it is considered the first step of infringement proceedings which could lead to cases before the ECJ. Most likely there will be more similar cases like this in the near future.

So why do I keep coming back to this issue? The cases in themselves of course do have a significant local impact. But it is more about the bigger picture: the loss of national sovereignty over an issue that has always been firmly within the authority of national governments. To what extent can a 'non discrimination' principle function in a service that is still seen as very important for the advancement of national society, national culture and the national economy.

Here, it could be interesting to make a comparison with the United States. In the US, discrimination on the basis of the 'state of origin' is a normal practice. Public universities (the State Universities) have a clear mandate to recruit a certain part of their student population from their own region and are allowed to charge higher tuition to out-of-state students. One could conclude that higher education in the United States of Europe is more integrated than in the United States of America...

The pressure from the Commission and the rulings of the ECJ can especially have an important impact upon policies regulating student fees. If selection on the basis of nationality is no longer possible, it will become unsustainable to provide free education in some countries. After all, this is likely to create an influx of foreign students from other EU member countries (for which the tax payers in the host country are probably unwilling to pay). As we have seen in the cases above, not only tuition fees, but also other barriers to access might cause such an outflux.

In the [ScienceGuide](#) I read the reaction of the chairman of the National Unions of Students in Europe (ESIB), Koen Geven. He says that the letter of the Commission came too late and is too soft. Nevertheless, they are happy the Commission is finally taking action, because these two countries (Belgium and Austria) have been neglecting one of the most fundamental principles in the European Union - non discrimination - for too long.

I would think that the ultimate consequences of this increased Europeanisation of higher education might turn out to be very much contradictory to the guiding principles of some national student unions (for instance with regards to tuition fees and other financial issues, like providing financial student support to - national - students). I wonder what the Austrian and Belgium members of the ESIB think of the Commissions letter!

Geven also says that the countries where the students come from should reconsider their regulations with respect to access to higher education. Indirectly that would mean - in this case - that Germany and France should harmonise their policies towards 'a European standard', leading to further convergence in the field and threatening the - so much treasured - diversity in European higher education.

I think the Commission is well aware of the sensitivity of the issue on the longer term. It clearly shows that in the press release: "The Commission recognises the sensitivity of the issue of access to universities in various Member States. While pursuing its role as guardian of the Treaties, it remains open to continue the dialogue with both the Austrian and Belgian authorities."