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LISBON TREATY

The Lisbon Treaty is an international agreement that organizes cooperation between the member states of the European Union (EU) across multiple policy fields. It lays the legal foundation for European integration, identifying which issue areas are for supranational policy cooperation and which areas are excluded. Signed on December 13, 2007, the Lisbon Treaty entered into force on December 1, 2009. For those interested in higher education policy developments in Europe, the Lisbon Treaty is relevant because the implementation of its articles introduced by earlier treaties has led to a robust set of EU higher education law despite the limited treaty basis for action in this sector. To start with, the Lisbon Treaty demarcates education policy as a supplementary competence for the EU. What this means is that the EU cannot pass any laws that harmonize the member states' education systems. This strict prohibition on harmonization means that the EU can only pass measures to support or to supplement member states' efforts for closer cooperation in the higher education sector. This entry first describes the limited legal bases for higher education policy cooperation according to the Lisbon Treaty before explaining how the Court of Justice of the European Union (CJEU) developed higher education law by connecting education with enacting the four freedoms of the internal market, and expanded higher education law through enforcing EU citizenship provisions.

Higher Education in the Lisbon Treaty

The Lisbon Treaty is a complex and extensive agreement that brings together and revises two key EU treaties: Treaty on European Union (TEU) and Treaty Establishing the European Community (TEC), now referred to as Treaty on the Functioning of the European Union (TFEU). It should not be confused with the Lisbon Strategy or Lisbon Agenda, which presented a set of plans and policy targets for transforming the EU into the most competitive and dynamic knowledge economy in the world. EU's main legal competence in the education sector is set out in Articles 165 and 166 TFEU, although education is also mentioned in Articles 6(e), 9, and 53.

Article 165 TFEU identified six action lines for the EU in education: develop a European dimension through language teaching and dissemination, encourage academic mobility through mutual recognitions of diplomas and study periods, promote cooperation between educational institutions, develop information exchange on common educational issues, encourage the development of exchange programs for youths and socioeducational instructors, and encourage the development of distance education. Article 166 TFEU called on the EU to implement a vocational training policy to support or to supplement member states' actions. Both articles stipulated that the EU has only supplementary competence on education and vocational training, and they were explicit in prohibiting harmonization of member states' laws in these areas.

The Lisbon Treaty did not introduce EU competence in education policy and, like several preceding treaties, it merely renumbered existing articles. It was the Treaty establishing the European Economic Community (1957) that introduced vocational training as an area for European policy cooperation, and it was the Treaty of Maastricht (1992) that added general education. It is thus essential to look beyond the treaty bases for higher education policy

cooperation to understand how EU higher education law was created despite the limited treaty basis for action.

How EU Higher Education Law Emerged: Free Movement and EU Citizenship

The CJEU developed EU higher education law by introducing education as an area of concern for establishing the internal market. By linking education to the four freedoms of the internal market, particularly the free movement of workers and services, the CJEU created a connection between education, where treaty bases for action were limited, and enforceable treaty provisions and secondary legislation. A key regulation that paved the way for developing EU higher education law was Regulation 1612/68 (old codification of Regulation 492/2011) on free movement of workers. It was based on Regulation 1612/68 that the CJEU made its rulings concerning *Casagrande* 1974 and *Forcheri* 1983. In *Casagrande* 1974, the CJEU ruled that a child of an Italian worker exercising free movement should not have to pay more for secondary education than his German classmates. Similarly in *Forcheri* 1983, the CJEU reiterated its stance on nondiscrimination: The spouse of an Italian worker should have equal access to vocational training on same financial terms as member states' nationals. In both cases, the CJEU ruled that the additional costs associated with accessing education and vocational training constituted discriminatory treatment and thus a barrier to free movement of workers.

The CJEU expanded EU competence in the area of higher education through its landmark rulings in *Gravier* 1985 and *Blaizot* 1988. *Françoise Gravier* was a French national who was not allowed to continue her art studies in Belgium when she refused to pay an additional fee, which Belgian nationals did not have to pay. Unlike *Forcheri*, *Gravier* was exercising free movement as a student and not as a worker nor as his/her family member. The CJEU ruled in *Gravier* 1985 that

higher education prepared for a profession and hence charging EU nationals additional fees to study at universities should be dismissed. Gravier 1985 was remarkable for linking vocational training with “general education” and universities—a linkage that was further developed in Blaizot 1988. The CJEU ruled in Blaizot 1988 that the exclusion of university training from vocational training would lead to unequal application of the treaty in the EU. Hence, it argued that treaty provisions are also applicable to university training.

The CJEU further expanded EU competence in higher education after the Treaty of Maastricht introduced European citizenship provisions, specifically, through its rulings based on antidiscrimination on grounds of nationality (Article 18 TFEU), EU citizenship (Articles 20 and 21 TFEU), and free movement of workers (Articles 45 and 46 TFEU).

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***See also* Bologna Process; Curriculum; Erasmus Programme; European Higher Education Area (EHEA); European Research Area (ERA); European Union, Higher Education in**

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