



ETUCE Statement on the European Commission's amended proposal for a Services Directive of 4 April 2006

Adopted by the ETUCE Executive Board on 10-11 May 2006

Based on the vote in the European Parliament on 16 February 2006 in their first reading of the draft Services Directive, the European Commission has on 4 April issued an amended proposal for the Directive. ETUCE acknowledges that the Commission has sought to secure greater legal certainty in relation to the Directive's application to the education sector, such as the re-drafting of recital 16 which now explicitly states that the Directive does not cover the national education systems. However, in the opinion of ETUCE, the approach taken by the Commission does not ensure sufficient legal certainty.

As set out below, numerous uncertainties remain regarding how the Directive will affect the education sector. The consequence of these legal uncertainties will undoubtedly be an increased number of court cases at the European Court of Justice (ECJ) determining the application of the EU trade and competition laws in the education sectors at national level. Based on the firm belief that the power to organise, fund, and regulate the education sectors should lie fully with national governments, ETUCE strongly calls on the Council of Ministers to secure a complete exclusion of the education sector from the draft Services Directive.

- The question of whether education activities are covered by the Directive depends on whether the given course of education falls within the category of Services of General Interest (SGI) or the category of Services of General Economic Interest (SGEI), with the former excluded and the latter covered by the Directive. No legal basis exists however for the definition of SGI or SGEI; the definition rests on the case-by-case judgements of the European Court of Justice. Although Member States have the right to define their national application of the categories SGI/SGEI in accordance with Community law, it is ultimately the ECJ who decides in case of disputes about the national definitions.
- In the opinion of ETUCE, a question as crucial as whether certain parts of the education sector should be governed by open competition and market regulations in the EU internal market or whether it should be governed by public regulations, should be entirely determined at national level and should, most importantly, be subject to political accountability at national level, not subject to the judicial practice of the ECJ.
- Considering the various mix of private/public funding and/or provision of education courses, the categories of SGI and SGEI are by no means easily transferable to the national level. Private institutions receiving public funding, public institutions receiving private funding, or public-private partnerships of various kinds, are familiar phenomena in many Member States. Based on the previous rulings of the Court of Justice, the category of SGI can be defined as comprising courses of education funded “*essentially out of public funds*”, provided by a non-profit making institution, and serving a general interest purpose, whereas the category of SGEI can be defined as comprising education courses “*funded essentially out of private funds*”, provided by an institution aiming to make a

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profit, and entrusted with a specific public interest task by the authorities at national level. But does the Court of Justice's interpretation of the boundary between SGI and SGEI ensure sufficient legal clarity, considering the mix of private/public funding and/or mix of private/public provision in education.

- In addition, ETUCE will question whether the approach in the Services Directive does not undermine the competences in education and vocational education and training granted to member states in article 149 and 150 of the Treaty? According to article 149 and 150, Member States maintain full responsibility over the organisation and content of the national education and training systems. But, evidently, if education is included in the Services Directive, the adoption of the Directive will in fact mean that parts of the competences to regulate the education sector is moved from the national level to a decision taken by a majority vote in the Council of Ministers, i.e. the decision to let education courses in terms of SGEIs be covered by the Directive's trade provisions.

ETUCE highlights that the issue at stake is whether the protection of the right to free trade and free establishment should stand above Member States' efforts to ensure high quality in their education systems. EU Member States evidently have great interests in a highly educated population, particularly raising the educational attainment levels of the less educated groups of the population. But genuine equal access and high quality in education are not brought about by increased commercialisation of the education sector and increased trade in education services. The draft Services Directive and its implications for the education sector gives rise to a crucial political question: What should be granted higher value, the right to free trade in an open education market or member states' right to fully regulate their education sector with a view to securing high quality and equal access throughout life to its population?

In conclusion, ETUCE urges the Council of Ministers to eliminate all legal uncertainties and exclude the education sector from the Services Directive.