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ETUCE Statement

Education should clearly be exempted from the proposed directive on services in the internal market

In the light of European Commission President Barroso's announced plans to revise the proposed directive on services in the internal market,¹ the European Trade Union Committee for Education (ETUCE) calls upon the European Commission to clearly exempt education from the scope of the proposed directive.

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The proposed directive covers "services" as set out in the definition: "*any self-employed economic activity, as referred to in Article 50 of the Treaty, consisting in the provision of a service for consideration.*"² According to this definition, the directive will not cover "*non-economic activities, nor activities performed by the State for no consideration as part of its social, cultural, education and judicial functions where there is no element of remuneration.*"³ However, whereas public education activities normally fall within the category of services of general interest, no clear boundary exists between services of general economic interest (SGEI) and services of general interest (SGI). Ultimately it is not in the power of member states to draw this boundary, but for the Court of Justice to decide if a given activity constitutes a service of an economic nature or not.

According to article 149-150 of the Treaty, EU's competences in the area of education are limited to the adoption of incentive measures and recommendations, while member states retain full responsibility "*for the content of teaching and the organisation of education systems*". If any form of education activity is to be covered by the proposed directive on services, as indeed is possible in the current proposal, the EU trade policy risks bypassing the distribution of competences set out in the Treaty by assuming the power of interfering with the national organisation of education.

For example, in a specific case, the Court of Justice has ruled that a company offering university courses constitutes an economic activity and, as such, is a service in the definition given in article 50 of the Treaty.⁴ The current proposal for a directive on services would, in regard to similar cross-border education services, restrict the right to undertake quality assurance to the authorities in the country of origin, the country in which the service provider is established. In addition to the precarious status of such a regulation vis-à-vis the competences in the field of education retained for member states by the Treaty, the enforcement of the country-of-origin-principle radically risks lowering the ability of citizens to judge the quality of the education service prior to undertaking the course of education in question.

¹ "Proposal for a Directive of the European Parliament and of the Council on services in the internal market", 13 January 2004. COM(2004)2final/3.

² COM(2004)2final/3. Chapter 1, art. 4,1.

³ COM(2004)2final/3. Explanatory memorandum, 7a.

⁴ Case C-153/02, *Neri*, paragraph 39. See "Explanatory note on the activities covered by the proposal". Commission Services. Interinstitutional File: 2004/0001 (COD), 25 June 2004, 10865/04.

In the light of the conflict in competences between the EU trade policy and education policy on this issue, as well as due to the lack of clarity between services considered SGEIs and SGIs, ETUCE finds the current definition of the scope of the directive utterly inadequate and calls for the exclusion of education services *per se* from the proposed directive on services in the internal market.

Furthermore, in line with the view of the European Trade Union Confederation and the European Federation of Public Service Unions among others, ETUCE strongly urges the European Commission to focus its efforts on the follow-up of the Green Paper and the White Paper on SGIs and on securing a legal framework for SGIs, prior to adopting a directive aimed at expanding the internal market for services.

Contrary to the provisions in the Treaty of Nice, the Constitutional Treaty will not make it possible to limit the consequences of the proposed directive for education. The Constitutional Treaty lacks the clear safeguarding of education being exposed to trade included in the Treaty of Nice, article 133. Even though the Constitutional Treaty contains a provision for the introduction of unanimous voting rules in the Council when decisions on trade in education are judged to seriously disturb national education systems, ETUCE still worries about a possible impact from decisions taken outside the legal framework of the European Union as in the negotiations on GATS. The possible interplay between the proposed directive, the change of article 133 from the Treaty of Nice to the Constitutional Treaty, a potential result of GATS and the complimentary directives on the internal market, raises a big question mark about possible consequences for our education systems, or may even cause the Treaty itself to be undermined.

The European Commission, as well as EU Heads of States, include education among the main tools to achieve the goals set out in the Lisbon Strategy, which aim at improving the European economy and achieving greater social cohesion. ETUCE strongly encourages the European Commission to enforce its work on strengthening the quality of the EU's public education systems, rather than adopting directives potentially facilitating trade in education and potentially detrimental to the quality of the range of education courses on offer to our citizens.

Unless governments are willing to commit themselves to let the Court of Justice in the future rule on whether a proposed education activity is covered by the directive, education should clearly be exempted from the directive. Only by this action is it possible to uphold the clear division on competencies in the Treaty.