

Position of the European Office for Catholic Youth and Adult Education to TTIP and TiSA

As representatives of many European institutions of the Catholic youth and adult education, we follow with great interest the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) as well as the Trade in Services Agreement (TiSA).

In this context, we wish to recall the following aspects:

- The European Union (EU) is a community which is not only a purely economic one but also one of values in that it places - as stated in the Preamble to the Charter of Fundamental Rights - the individual at the center of its actions.
- The EU contributes to the development of the common values while respecting the diversity of cultures and traditions of the people of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local level.

As an educational institution, we have a special interest in regards to framework conditions for youth and adult education and, therefore, we feel induced to this statement.

The Treaty of Maastricht of 1992 recognized education as an EU-competence. It says: “The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.”

In the context of trade agreements the EU-Commission categorized education and public services as a sensitive sector. The EU-Commission emphasizes that the EU will refrain from making any commitments concerning publicly funded health, education or social services. Thus it lays down that the Member State governments will retain their right to take measures with regard to certain services according to their own discretion. This may include the way in which they provide public funding or state support and decide who can operate or invest in their market. Governments will be free to do so even if it means that they will treat EU suppliers or investors differently from the ones based in the state of the respective contracting party. Publicly-funded education are included in the services mentioned, primary and secondary schools and colleges and universities in particular. We welcome and appreciate the sensitive approach taken. However, it is vital that the same approach should be taken towards the entire field of education, including publicly funded non-formal education. Municipal public services are at the core of a citizen orientated Europe. It is therefore essential that states and regions remain sovereign, with the full capacity to decide their own future.

We are therefore concerned that the inclusion of "private" youth and adult education into the trade agreements' scope of application could lead to serious risks for the educational policy as a whole, affecting schools, teachers and students and educational institutions in non-formal education in the EU. If private education or any form of mixed-financed education services are not specifically excluded in the negotiations, we fear that the FTA commitments will restrict the efficiency of public services and accelerate the general process of commercialization and privatization.

At this point, the “devil is in the details“: the term “services of general interest” does not necessarily include all areas and services (formal and non-formal ones) in the sector of education. The term “public education” does not automatically include “publicly funded education” – i.e., services offered by free educational providers that are government-funded (e.g. in Austria, Germany). Also the term “services offered on a non-commercial basis” would in most countries not suffice to protect education.

This is due to the fact that nowadays it is not uncommon for non-profit institutions to cooperate with commercial providers.

This tendency to cut down public services is a threat to the crucial and sensitive service of “education”. In our opinion, the Member States – and, in terms of Germany, also the federal states – ought to establish education as a public good. After all, we believe that incorporating any education services would undermine the democratically legitimized decision-finding process in this sector.

1. We reject the investment protection regulations (including the Investor-to-State Dispute Settlement).

Investment protection might undermine EU standards, as established by the Member State governments in order to ensure high-quality education for the respective countries. Likewise, it might prevent new and necessary regulations. Foreign investors might claim that these standards are a trade barrier and enforce their claims in front of international courts of arbitration. The 2009 Lisbon Treaty transferred the regulation authority for foreign direct investments from the EU member states to the EU (cf. European Commission, “Towards a Comprehensive European International Investment Policy”, KOM (2010) 343, 2010). So far, the EU has not entered into any investment agreement with any third country. The investment promotion and protection agreements (IFV) are thus still considered a valid legal basis for the Member States. New investment agreements such as the “Comprehensive Economic and Trade Agreement, (CETA)”, TTIP or TiSA are supposed to differ from former agreements. In particular, the Investor-to-State Dispute Settlement is expected to deviate from previous standards. The rules for investment protection are supposed to be defined in a clearer manner in order to e.g. prevent unjustified lawsuits (cf. European Commission, Fact Sheet: Investment Protection and Investor-to-State Dispute Settlement in EU Agreements, 11/2013, S. 4).

Former German constitutional judge Prof. Dr. Siegfried Broß does not see any basis for investor-state arbitration. According to the German constitutional law, general courts, so he says, are the only competent ones to decide on lawsuits brought forth against states. This fact does not exclude supranational courts of justice (e.g. within the scope of the United Nations or the EU) - however, it does exclude private courts of arbitration. Also the EU Commission’s recently published report on the consultation regarding investment protection reveals the people’s skepticism. The largest share of the answers - about 145,000 (which is 97 %) - was communicated through various online platforms by lobbies whose negative responses had been pre-worded.

2. We reject the barring clause (“ratchet clause“), according to which countries are not entitled to re-nationalize sectors once privatized.

Another agreement that is left for negotiation is the Agreement on Trade in Services (TiSA). It contains a barring clause (“ratchet clause“), according to which countries are not entitled to re-nationalize sectors once privatized. With respect to the public education system, the EU Commission takes a clear stand within the scope of TiSA. “Companies from third countries will not be entitled to offer any services in this sector. The same also applies to any other EU trade agreement. When it comes to privately financed education services, the EU’s position differs from member state to member state. Within the scope of TiSA negotiations and any other EU trade negotiations, each member states is entitled to decide independently whether or not it will allow non-EU companies to offer education services in its territory and - if so - which requirements the respective companies will have to meet.“ (cf. http://ec.europa.eu/trade/policy/in-focus/tisa/questions-and-answers/index_de.htm).

3. We call for a positive list-approach. However, if the decision is made for a negative list-approach, all education services financed by public and private means have to be excluded from TTIP and TiSA. In order to ensure this, experts in non-formal education are to be involved at an early stage.

In order to avoid the risk coming from a too wide room for interpretation, we advocate the positive list-approach, thereby dismissing (as in TTIP) the negative list-approach. The so far scheduled negative list-approach would mean that all sectors and industries are included. Only that which is explicitly excluded will fall out of the agreement. When it comes to reducing risks related to privatizing education services, the positive list-approach is more reliable and easier to handle. The only subject areas included will be those that are actually supposed to be covered by the trade agreement.

4. We demand increased involvement and further publishing of service-related documents as well as especially more precise information for the education sector.

We appreciate and support the EU Commission's new transparency campaign. Nevertheless: the agreements between the EU and the US are of enormous importance, which is why we demand a transparent course of negotiations will be ensured. Specifically, this means that all significant documents are to be published and all negotiation principles are to be revealed - in particular in relation to services.

Summary:

- We reject the investment protection regulations (including the Investor-to-State Dispute Settlement).
- We reject the barring clause ("ratchet clause"), according to which countries are not entitled to re-nationalize sectors once privatized.
- We call for a positive list-approach. However, if the decision is made in favor of a negative list-approach, all education services financed by public and private means have to be excluded from TTIP and TiSA. In order to ensure this, experts in non-formal education are to be involved at an early stage.
- We demand increased involvement and further publishing of service-related documents as well as more precise information for the education sector in particular.

Brussels, 29th of January 2015

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Bundesarbeitsgemeinschaft e.V. (Catholic Adult Education of Germany - Federal Association-KEB Deutschland e.V.) and network Rete Juventutis. The catholic network for European youths is financed by organizations engaged with youth work, youth pastoral care, political education, youth social work, and volunteer services as well as by representatives of national episcopal conferences.