



EUA Statement on TTIP and TiSA

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The European University Association (EUA) represents over 850 universities in 47 countries, as well as 33 national rectors' conferences. It is the voice of universities in the European Higher Education Area and a full consultative member of the Bologna Process. It is in regular dialogue with the EU institutions and is a forceful and respected advocate in the full range of higher education (HE) policy fields:

- research, knowledge transfer, innovation and regional development
- internationalisation, mobility and recognition
- governance and funding
- institutional capacity building and quality assurance

EUA and its members are fully committed to the cause of international development. They work with peer organisations in other global regions, notably Africa, Asia, Latin and North America, promoting the production and exchange of cultural and scientific knowledge and the sharing of democratic and pluralist values.

EUA holds strongly to the view that HE is a public responsibility, dedicated to supporting personal fulfilment and social cohesion, as well as to contributing to the satisfaction of labour market needs. It believes in extending the benefits of HE to as many individuals as possible, on a lifelong basis, without discrimination on grounds of gender, ethnicity, disability, sexuality, religion, or the ability to pay.

In this regard, a number of trade agreements currently being negotiated give cause for concern. They are:

- the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, which is nearing completion;
- the Transatlantic Trade and Investment Partnership (TTIP) which brings together the EU and the USA;
- and the Trade in Services Agreement (TiSA), involving 23 countries and including the EU

EUA has closely followed the TTIP and TiSA negotiations¹, as a participant in the European Commission's Civil Society Dialogue. Both sets of talks have potentially significant implications for HE institutions, as well as for regional and national systems within the EU and the European Economic Area.

TTIP seeks to eliminate non-tariff barriers to the trade of manufactured and agricultural goods, boosting growth and stimulating job creation. Service sectors feature equally prominently. TTIP nevertheless goes far beyond the scope of a traditional trade agreement. It aims at maximising regulatory cooperation between the two largest internal markets in the world – the EU and the US – and at opening up a single public procurement and investment space.

TiSA is a plurilateral negotiation: it involves only some of the World Trade Organisation's (WTO) members. The EU hopes that in the course of time it will evolve into a multilateral agreement embracing all WTO member countries. Its focus is solely on services, of which the EU and the US are the largest global providers.

Both TTIP and TiSA have a strategic motivation. They are designed to set precedents in the management of global trade, compensating for the perceived failure of the Doha Development Agenda (DDA) and pre-empting initiatives which might be taken by other global economic powers.

Both potentially cover HE, adult education (AE), and 'other' educational services. In TTIP, negotiations proceed according to the principle of the negative list, in which all negotiable items are tabled at the outset, with only rare exclusions. The scope of TiSA is the same as that of the 1995 General Agreement on Trade in Services (GATS).

In the light of information currently available (published and leaked documents, official briefings, statements by governments and the European Commission) on the ongoing trade agreement negotiations, EUA notes that:

1. Negotiators regularly offer reassurances that public services will be protected. However, the GATS definition of a 'public' service is not adequate for purpose where higher education is concerned. HE is not administered by the exercise of government authority in the manner of defence, justice and police; it is not automatically excluded from trade negotiations. Moreover, HE fails to satisfy the GATS criteria which allow exemption for services supplied 'neither on a commercial basis nor in competition with one or more service suppliers'. Many HE systems include both public and private providers and many public institutions depend on a mix of public and private funding. Such hybridity at system and institutional levels means that trade negotiations such as TTIP and TiSA cannot be conducted with legal certainty and clarity.

2. The definitions of 'higher', 'adult' and 'other' educational services are also problematic. The UN's Central Products Classification code (CPC), which is used in trade negotiations, gives 'no explanatory note' for HE. 'Other' is defined in a manner more appropriate to 'higher'². The clearest definition is reserved for 'adult'³, notwithstanding which, the European Commission has been obliged to canvass Member States to ascertain in what AE actually consists.

¹ See the background documentation at <http://www.eua.be/eua-work-and-policy-area/building-the-european-higher-education-area/international-trade-agreements.aspx>

² <http://unstats.un.org/UNSD/cr/registry/regcs.asp?Cl=9&Lg=1&Co=92390>

³ <http://unstats.un.org/UNSD/cr/registry/regcs.asp?Cl=9&Lg=1&Co=92400>

3. The ability of elected national and regional authorities to determine the nature of their HE provision is cast into doubt by some of the key features of TiSA and, by extension, of TTIP. The mechanisms of 'standstill', 'ratchet' and 'future-proofing' significantly limit the scope of legislative action once agreements have been signed. They require that the level of service liberalisation can never be reduced, that any change can operate only in the direction of further liberalisation, and that all services to be developed in the future fall automatically within the scope of the agreements.

4. This particular issue is clouded by the uncertainty surrounding the extent to which the EU is mandated to negotiate on trade in general, in which it has exclusive competence, and on education, in which it has only complementary competence. In TiSA, the EU has lodged a reservation identical to the one it lodged previously in GATS, whereby it 'reserves the right to adopt or maintain any measure with regard to publicly-funded education services.' This, the European Commission believes, offers full reassurance that Member States retain the right to discriminate in favour of publicly-funded HE. The Commission is reluctant to consider the possibility that education might be exempted from the scope of trade negotiations, as the audio-visual sector has been and as many stakeholders believe health services should be.

5. The domestic policy scope enjoyed by national and regional authorities is further threatened by the investor state dispute mechanism (ISDS) which is included in TTIP, although not in TiSA. ISDS gives private corporations the right to sue public authorities whenever they feel that local legislation impinges on their ability to generate 'legitimate' profits. This feature of TTIP is particularly controversial and has drawn 149,000 responses to a consultation launched by DG Trade.

6. Current trade negotiations have the potential to impinge not only on the learning and teaching mission of universities, but also on other aspects of HE, such as research and development, data collection and data flows, intellectual property, e-commerce, and the recognition of professional qualifications. However, the detail of the negotiations is shrouded in secrecy and it is impossible for the HE sector to discover the extent to which its operating environment might change.

EUA accordingly declares that:

A HE benefits individuals, society and the world at large in ways that are not easily quantifiable. It is a public responsibility to which all citizens have right of access and not a commodity to be transacted by commercial interests on a for-profit basis. It should not be subject to international trade regimes.

B Moreover, HE should not be transacted within a framework that puts the systems of developing countries at risk from corporate ventures located outside their borders. Developing countries must retain the autonomy to determine how their universities should participate in the growth of international HE.

C The internationalisation of HE has proceeded at considerable pace in recent years. Collaborative research, joint curriculum development, staff and student mobility, open and distance learning have all flourished, on a not-for-profit basis and outside the scope of trade agreements. A greater degree of global governance is desirable, but it should develop on the model of the UNESCO-supported academic recognition frameworks, designed and implemented with full participation by appropriate sectoral bodies.

D Intellectual property rights are inevitably at issue in trade agreements. It is essential that TTIP and TiSA protect both individuals' rights to privacy and universities' codes of conduct in respect of the openness of scientific collaboration, particularly with regard to the international transfer and secondary processing of data.

E The global HE context is rapidly evolving. There is an urgent need for the categories of 'public', 'private', 'higher', 'adult' and 'other' to be redefined on the basis of stakeholder consensus. Knowledge import- and export markets clearly exist and must be regulated to the benefit of all, but ISDS, standstill, ratchet and future-proofing have no place in this process.

F The inclusion of items of 'other education services' in trade agreements must be undertaken on a positive list basis, following full consultation with appropriate sectoral bodies at European level, together with extensive *ex ante* impact assessment.

G In every other respect, the EU should not make commitments in the categories of HE and AE. It should make absolutely clear to its negotiating partners that elected Member State governments reserve the right to determine the character of their HE and AE systems.

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- Irish Universities Association
- Conference of Italian University Rectors
- Latvian Rectors' Council

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