

ELA-CONFERENCE 2009

QUESTIONNAIRE 1 (please do not limit your answers with yes or no only)

Competition law in education

1. Is providing free education a commercial service according to national legislation?
2. Is providing paid education a commercial service according to national legislation?
3. Please describe other activities provided by educational institutions and their qualification as (public) services or otherwise?
4. Are schools allowed to have commercial activities, and if affirmative, under what conditions?
5. Is there any case-law on the applicability of competition law to activities of HEIs?
6. Is competition law applicable on the competition for students?
7. Are state funded HEIs selling courses at marketprices which are also provided by commercial educational institutions operating on the market?
8. Has there been case law on the extent of the activity of public interest of HEIs?
9. Which commercially attractive activities are performed by state funded HEIs?
10. Is competition law applicable on spin-offs? Is there any caselaw?
11. Does liberalisation of the education market means that in the country universities and member states are loosing their freedom to cooperate and to stimulate cooperation between institutions?
12. Have there been case law or rulings on fusions of educational institutions, and the consequences for the competition and choice of educational provisions?

Commercialisation in education case law on fair trading

1. Is there any case-law on unfair clauses (clauses abusives) in school contracts by national Fair Trading agencies in state funded education and in private non-state funded education?
2. Is there any case-law on publicity and advertising by educational institutions, eventually by the national advertising standards authority?
3. Is there any case-law on publicity in educational institutions? Is there a special controlling organization?
4. Is there any case-law on commercial activities by educational institutions?
5. Have there been any ruling by national offices for fair trading?
6. Has Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') been implemented in national law?

Liberalization of the education market with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

1. How was national legislation on registration fees amended to allow free mobility of persons on the basis of non-discrimination in access to education (ECJ, 13-02-1985, case 293/83, Gravier <http://curia.europa.eu/en/content/juris/c1.htm>)
2. How was national legislation on scholarships amended to allow free mobility of persons on the basis of non-discrimination in education (ECJ, 18-11-2008, C-

158/07, Jacqueline Förster, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=nl>, ECJ, 15-03-2005, C-209/03, Dany Bidar, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=nl>; ECJ, 23-10-2007, C-11/06, Rhiannon Morgan, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=nl>, ECJ, 11-09-2007, 318/05, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=nl>

3. How was national legislation amended after the diploma directives?
4. When was Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market implemented in national legislation?
5. What legal and practical changes in the organization, governance and funding of universities have been introduced?
6. Which legal changes were brought to the core activities of research and teaching?
7. What is the legal framework for control of research and higher education in the member state?

Liberalization versus standardization as a means of controlling higher education

1. What standards on the basis of compatibility are set/ are institutionalized for quality regimes in the member states?
2. What are the organizational solutions for standard setting in quality assurance, at national level?
3. What is the impact of European standards in higher educational legislation?
4. How do standards become effective in national law?
5. What are the standards on the research side, and how is the 'European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers' implemented in national legislation?
6. What kinds of political-administrative standard setting in auditing was introduced where states have regulatory autonomy?
7. What kinds of political-administrative standard setting in accreditation structures and procedures was introduced where states have regulatory autonomy?
8. What kinds of political-administrative standard setting in common national curricula was introduced where states have regulatory autonomy?
9. How are standards dealt with at the university level?
10. What national conditions work against penetration of European standards in national legislation and higher education institutional practices?
11. In which fields are national and European standards (systemic performance indicators) being developed parallel with each other, as an alternative to hard law?
12. Where are indicators (statistical category, quantified standard, numerical information) used for ideational based control?
13. Is the legislation on funding based on system performance?

QUESTIONNAIRE 2 (please do not limit your answers with yes or no only)

I. What is the definition(s) of corruption

Please define the notion of corruption.

What is the legal definition of the term corruption used in your country?

II. Where does corruption occur in education?

1. At the policy level (e.g. biased allocation of resources)
2. At the ministerial level (e.g. corruption by administrators, public officials and politicians, accreditation of universities)
3. At the university level

- a. personnel (secure opportunities or avoid punishment through petty bribes, others, corruption in teacher recruitment and promotion and tenure lowers the quality of public teaching, admissions (parents may pay bribes to ensure their children's school access), graduation (parents may pay bribes to ensure their children's good grades and graduation), private tutoring)
 - b. allocation of resources (to research: public research commissions, private research commissions, internal research commissions)
 - c. publication of results
 - d. conference participation (conference grants)
 - e. other
4. What kind of benefits are available for staff in case of corruption? Money? Promotion? Grants? Publicity?
 5. Who is willing to influence the decision making process in educational institutions by corruption?

III. What can be done to hold responsables accountable?

6. Is there case law? Publications?
7. Public awareness? Media awareness?
8. Are there Codes of Conduct regarding corruption?
9. Is corruption in education a crime under the criminal code of your country?
10. Is corruption in education a crime under the disciplinary code?
11. Is there a special office within the state or the university administration for corruption problems? Is there an internal supervision process?
12. Does the administration make use of special rapporteurs in case of corruption?
13. Is there an independent institution outside the administration like an ombudsman or similar?
14. Is there regular reporting on corruption in education?
15. Are there centralized university admissions?
16. Is the decision making process within the university public or secret?
17. Is it parliamentary or bureaucratic?
18. Are the independent commissions for certain decisions? As for exams or research commissions?
19. Are the protocols available?
20. Can the administration and/or the university be sued in case of corruption?
21. Are there means of redress?
22. How high is the percentage of public and of private money?
23. Do the universities have lump sum budgets?
24. Are the universities autonomous in administering the budget?
25. Who is responsible for the controlling?
26. Are there rich and poor universities in your country?