

# **EXPLANATORY MEMORANDUM TO THE DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE RESPONSIBILITY OF PUBLIC AUTHORITIES FOR ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY**

The Preamble places the Recommendation in its proper context by recalling the relevant Council of Europe Conventions and Recommendations as well as important legal and political texts adopted in other frameworks with particular relevance to the topic of the present Recommendation as well as the fundamental agreed principles on which it builds. The already existing international framework provides the basis for a common understanding of academic freedom and institutional autonomy as well as the public responsibility for higher education and research. This is the basis on which the current recommendation, which focuses on the roles and responsibility of public authorities for ensuring academic freedom and institutional authority, builds.

The action foreseen in the Recommendation is that which is typically included in Recommendations concerning States party to the European Cultural Convention, whereas the subject matter of the Recommendation is described in the Appendix. It recognises that member states are responsible for the organisation and content of their educational systems.

## **I Scope and definitions**

### **Paragraphs 1 - 3**

The recommendation focuses on the roles and responsibilities of public authorities.

The latter are defined for the purposes of this recommendation in paragraph 3. The definitions are those given in Recommendation Rec(2007)6 of the Committee of Ministers to member states on the public responsibility for higher education and research. The competent public authorities may, according to the constitutional arrangements of the country concerned, be located at national, regional, local or other levels but the principles for the exercise of public responsibility remain the same. The Recommendation is mainly concerned with defining the principles of public responsibility, which various countries may choose to exercise and organise in different ways. Public responsibility may be exercised directly by the competent public authority or authorities or by another body – public or private – mandated to exercise the responsibility on behalf of the competent authority. In the latter case, public responsibility is delegated but not abdicated: the competent public authority may withdraw the mandate of the body exercising public responsibility on its behalf and will have a duty to do so should the body to which responsibility is delegated exercise it irresponsibly or in other ways unsatisfactorily.

The exercise of public authority in ensuring academic freedom and institutional autonomy is particularly complex. The student body is increasingly diverse in a number of ways, including social background, age and national and cultural origin, and at the same time, student numbers have increased dramatically over the past generation or so that most European countries now have not only mass but what is often referred to as “universal” higher education, defined as systems having at least 50 per cent of the relevant age group enrolled in higher education<sup>1</sup>. In the current political and economic context, public discourse

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<sup>1</sup> Alex Usher: “Ten Years Back and Ten Years Forward: Developments and Trends in Higher Education in Europe Region” (Bucharest 2009; UNESCO-CEPES), p. 4.

strongly emphasises the economic function of higher education. This is a very important function but higher education also has other functions, including the promotion of democratic citizenship, as defined in Recommendation Rec(2007)6. Public authority should be exercised in cooperation and dialogue with other stakeholders, including higher education institutions and the academic community of staff and students. The need for broad consultation and dialogue is even stronger in the case of higher education than for other areas of education.

Public authorities provide the overall framework for higher education and have a responsibility to encourage the strategic development of higher education and research within the system for which they are responsible. Institutions should have the authority to set their own priorities but are bound by general provisions, such as legislation. The relationship between public authorities, higher education institutions and the academic community is largely a question of finding an appropriate balance based on fundamental values and principles.

### **Paragraphs 4 - 6**

This recommendation refers to the role and responsibility of public authorities for academic freedom and institutional autonomy. The definitions of academic freedom and institutional autonomy are given for the purposes of this recommendation, while national public authorities, international organisations or any other bodies may use these terms differently in their respective contexts.

Academic freedom and institutional autonomy are values which have been long discussed within the academic community and for which many definitions have been given. Concerning academic freedom, the recommendation primarily takes into account the Magna Charta Universitatum of the European Universities adopted in Bologna in 1988, along with numerous academic works in the field and the provisions of European constitutional texts. Concerning institutional autonomy, the recommendation takes into account the long standing efforts of European higher education institutions through the European University Association in fully developing the definition of institutional autonomy. Moreover, the definitions given in the recommendation correspond to the provisions of Recommendation 1762 (2006) by the Parliamentary Assembly of the Council of Europe on Academic Freedom and Institutional Autonomy.

As constitutional and internationally accepted principles, academic freedom and institutional autonomy are universal values embedded within the context of democracy, human rights and rule of law. The implementation of those values requires a dynamic and continuous deliberation of all relevant stakeholders so as to ensure a shared understanding.

Without academic freedom and institutional autonomy, it is difficult to envisage the progress of democratic societies. Innovation requires an environment without prejudices, dogmas or any threat or interference.

## **II General principles**

### **Paragraphs 7 - 8**

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Public authorities set the framework within which higher education is developed and provided, including the legal framework, and foster sustainable long term strategies. Already, Recommendation 1762 (2006) by the Parliamentary Assembly of the Council of Europe on Academic Freedom and Institutional Autonomy argued in favour of the adoption of institutional autonomy and academic freedom as fundamental values within the legislative, possibly constitutional, frameworks of member states. Safeguarding and developing institutional autonomy and academic freedom requires that public authorities abstain from action in certain policy areas and that they take a proactive approach in others.

Two aspects are crucial for the role of public authorities in academic freedom and institutional autonomy. The first one is that the implementation of institutional autonomy and academic freedom requires a systematic approach and monitoring on the overall system level. For public authorities to act as the safeguards of those values, together with higher education institutions, within the education system for which they are responsible, they need insight into the proper implementation. The second aspect of the role of public authorities is that they should foster a continuous dialogue among all relevant stakeholders, in an atmosphere of trust and respect. .

### **Paragraph 9**

Public authorities have the primary responsibility for organising higher education and research at the system level. This recommendation takes into account the diversity of the higher education systems and institutions in Europe. As diversity should be encouraged by public authorities, equally the principles of institutional autonomy and academic freedom should be safeguarded regardless of whether the higher education institution in question is public or private and, in the latter case, non-profit or for profit. Public authorities need to ensure the implementation of institutional autonomy and academic freedom on an equal partnership basis with higher education institutions. All higher education institutions in Europe should operate in accordance with the principles of institutional autonomy and academic freedom, and public authorities should establish the conditions for this to become a reality through the overall system framework.

## **III Regulatory mechanisms**

### **Paragraphs 10 -12**

Public authorities are vital to the development of sustainable strategies for higher education, in continuous cooperation with all other relevant stakeholders. Public authorities also have the exclusive responsibility for a wide range of legislative and other frameworks, e.g. labour legislation, safety and financial regulations. All these regulations have an impact on higher education and they should be taken into account in the development of the overall strategies for higher education and research. These regulations should be continuously monitored with a view to ensuring that they are compatible with the exercise of institutional autonomy and academic freedom. In some cases, general regulations may need to be adapted, or exceptions may need to be made, in order to safeguard academic freedom and institutional autonomy.

The strategic approach to higher education also includes the creation of a collegial environment which nourishes mutual ownership and respect among all stakeholders of the academic community as well as good and open cooperation with stakeholders outside of the academic community. Higher education must not be subject to any imposition of particular political, economic or other interests.

Academic freedom cannot be achieved and maintained without careful consideration of the status of academic staff. This includes doctoral students where they are early stage researchers throughout their degree programmes. As all higher education systems have the authority to establish different regulations for the status of academic staff, whether these are considered as belonging to the civil service or not, all of these arrangements need to fully respect the right to academic freedom. The academic staff and students have the right to an environment without any repressive or restrictive impositions, which might influence their research.

### **Paragraph 13**

The demands of efficiency and efficacy have introduced new modes of management in higher education institutions and the organisational autonomy includes decentralised management models. Nevertheless, public authorities keep a number of administrative and normative functions with regard to the institutions, including accreditation processes, funding, etc. With a view to ensuring institutional autonomy and academic freedom, higher education institutions may wish to alleviate the administrative burden of academic staff in order to enable them to focus on the key missions of teaching, research and service to society while enabling them to participate in key strategic decisions. Public authorities may wish to simplify, as appropriate, administrative procedures and requirements in order to allow institutions and staff to focus on their main mission as appropriate.

## **IV The professional working environment**

### **Paragraphs 14 – 16**

As stated by the ministers at the launch event of the European Higher Education Area in Budapest/Vienna in March 2010, a more supportive working environment is necessary for the development of higher education and full academic freedom of staff. The supportive working environment should be established in close dialogue with higher education institutions and academic staff. One of the elements of a supportive environment is guidelines for ethical standards in the academic community as appropriately developed by higher education institutions. The introduction and implementation of such guidelines or similar documents should be encouraged by public authorities, who also have responsibility for establishing a framework for fighting corruption within which institutions should be encouraged to develop institutional measures.

Equal opportunities and anti-discrimination measures are among the primary responsibility of public authorities. The principles of equality and anti-discrimination represent fundamental values of European democratic societies and require implementation throughout society, including higher education and research. It is recognised that equal opportunities will in some cases imply favourable treatment of members of disadvantaged groups in order to compensate for their lack of opportunities in their earlier study careers and to allow individuals to develop their full potential. Equal opportunities need to be provided for students in both accessing and completing higher education. Equal opportunities should also be implemented as part of the staffing policies of higher education institutions. In many countries, the legal and constitutional frameworks require implementation of anti-discrimination measures.

Anti-discrimination measures influence academic freedom as well. Academic freedom is subject to the legal and constitutional framework prohibiting discrimination and incitement to hatred or violence as well

as to academic standards with regard to the factual evidence on which statements are based. The academic community is accountable to society also through the values and ideas it promotes. Public authorities, together with higher education institutions and the academic community, need to act as safeguards against the misuse of academic freedom and institutional autonomy.

Access to research is a fundamental requirement for knowledge-based societies. Institutional autonomy and academic freedom demand respect of intellectual property rights. No particular political, economic or other interests should prevent access to research, especially the research of fundamental importance for the future development of humanity, e.g. medical innovations which might present a breakthrough in health care. The publication and use of research results should be understood as encompassed within institutional autonomy and academic freedom. Access to research stimulates further development of knowledge by academic staff and students.

## **V Financing of higher education**

### **Paragraphs 17 - 18**

The second sentence of paragraph 17 originates with Recommendation Rec(2007)6 by the Committee of Ministers on the public responsibility for higher education and research. The Prague and Berlin Communiqués of the Bologna Process, adopted by European ministers responsible for higher education in 2001 and 2003 respectively, emphasise that higher education is considered a public good and a public responsibility.

While public authorities need to provide transparent frameworks for the financing of higher education, they should also ensure the appropriate conditions for the financial autonomy of higher education institutions. Financial autonomy requires that public funding, lump sum or ear-marked, should reflect the principal aim of the activities planned for the particular funding scheme. No institutional autonomy or academic freedom can be exercised without corresponding financial means.

### **Paragraph 19**

Transparency is an essential requirement in and by democratic societies. The use of funding from the variety of sources in accordance with the priorities established by the institutions should be ensured. The private funding sources should be provided within and comply with the legal framework for funding. Such funding should respect and comply with the principles of academic freedom and institutional autonomy.

### **Paragraph 20**

Public authorities should also ensure appropriate funding for disciplines of importance to society which might not be perceived as attractive to private funding sources. Higher education and research in a number of disciplines is crucial for the development of our societies and require the development of fundamental sciences (i.e. basic physics or mathematics) and/or disciplines essential for the overall development of the multicultural and democratic nature of European societies (i.e. minority languages, history of art, philosophy, theology).

## **VI Responsibility for the system level framework**

### **Paragraph 21**

Public authorities have the primary responsibility of the development of the overall framework, including the national qualifications frameworks and the external quality assurance mechanisms. These instruments should be developed in close cooperation and dialogue with higher education institutions, academic staff, students and other stakeholders. They should take account of the diversity of the missions of higher education institutions and the diversity of purposes of higher education and be developed in a way so as to enhance institutional autonomy and academic freedom.

### **Paragraph 22**

Transparency is one of the crucial values of democratic societies. Pressures for alternative funding and demands for excellence could, in some cases, endanger institutional autonomy and academic freedom. Society demands impartial and transparent information about higher education systems as well as about specific higher education programmes and offers. Public authorities have the responsibility to ensure transparent information about their respective higher education systems and should ensure that different transparency tools do not contradict the principles of institutional autonomy and academic freedom. To that aim, public authorities should monitor the implementation of transparency tools and the public right to information.

## **VII Internationalisation**

### **Paragraph 23**

In an era of the growing internationalisation of higher education, which contributes to the openness and development of democratic European societies, public authorities should encourage mobility programmes and international higher education cooperation. Public authorities should also monitor the implementation of institutional autonomy and academic freedom within the implementation of those international cooperation agreements and mobility programmes. The values of institutional autonomy and academic freedom, as common values of the European Higher Education Area which emanated from the Bologna Process, must also be basic values international cooperation.