

Consultation on English Language Teaching (ELT) Council Regulation

Submission of Input

February 2015

Consultation on English Language Teaching (ELT) Council Regulation

1. Introduction

In view of a Public Consultation process instituted by the Ministry for Social Dialogue, Consumer Affairs & Civil Liberties in relation to a Legal Notice proposed by the Ministry for Education and Employment regarding the English Language Teaching ('ELT') Council Regulations; and

Having reviewed the draft Legal Notice entitled 'English Language Teaching Council Regulations', and considered the effect that certain clauses may have on a number of stakeholders in the industry, it was felt that feedback ought to be given for due consideration.

The subscriber to this feedback submits that it is an interested stakeholder, being an English Language School running a modest undertaking, and one of the present 45 licensed ELT Schools in Malta. Two major issues shall be dealt with for the purpose of this submission.

2. Representation

It must be stated that 20 of the 45 licensed schools referred to earlier, are organised under an organisation called the Federation of English Language Teaching Organisations (Malta), hereinafter referred to as 'FELTOM'. The organisation represents less than half the number of licensed English Language Schools established in Malta, notwithstanding FELTOM's own portrayal as "*bringing together all accredited English language schools under one national association*" (vide: feltom.com/about-page/)

It is acknowledged that FELTOM represents the big players in the industry forming a strong lobby, to the exclusion of the majority of English Language Schools which are not organised within an association as they operate independently.

3. Current EFL Monitoring Board

The current composition of the EFL Monitoring Board is that of 2 seats, of which 1 seat is reserved to a FELTOM-appointed representative and another seat is up for grabs by all the 45 licensed schools in Malta. Due to the strong lobby, block-voting mechanisms and voting mobilisation by FELTOM, the second seat on the EFL Monitoring Board has been successively taken up by a member who is a director of a FELTOM-associated school.

As a matter of fact, 'Lobbying' is one of the three main pillars of FELTOM's Mission Statement; the other pillars being Accreditation and Marketing (vide: feltom.com/about-page/). It is therefore inherent in FELTOM's operation, to lobby and promote legislation and regulations that would, above all, benefit the interests of the Federation's members. Understandably, occupying both seats on the current EFL Monitoring Board places the Federation in a dominant lobbying position which in itself leads to unequal representation towards smaller, independent undertakings.

4. Scope of the Legislator

Citing the Explanatory Note annexed to the draft Legal Notice, *"The legislation aims at providing a structure that seeks to enhance and safeguard the ELT industry in its entirety."* The objects of these regulations are further specified in Section 3 of said draft LN. The subscriber is all for initiatives that enhance and safeguard an industry which is contributing a great deal to the Maltese economy and employing an ever-increasing workforce. However, particular attention should be afforded to the phrase *'in its entirety'* within the scope of the legislation, wherein this inclusive perspective seeks to engage all the stakeholders in the industry. It is positive to note that the legislator intends enhancing the industry and safeguarding it *'in its entirety'*.

Nevertheless, it has to be ensured that the successful trail of the industry should not impact on the operation of smaller undertakings who have long been sidelined and excluded from policy-making processes. Independent schools have invested capital, time, marketing and expanded their operation despite the pitfalls that are often set by the dominant market players. The present public consultation is a rare window where small, independent schools can effectively raise concerns on fair representation. Furthermore, the legislator intends enacting these regulations *"to address issues of major importance in the ELT industry, which LN 60 of 1996 does not delve into."* It must

be stated that LN 60 of 1996 does not effectively provide for a level playing field among various undertakings and one hopes that the new LN would seek to address this issue.

5. Definition of 'Association'

One major objection to the proposed draft Legal Notice is the definition under Article 2 afforded to the term 'Association'. The current version provides that:

"Association" means an association of English language teaching schools which in the opinion of the Minister –

(a) represents such number of schools as would in the immediately preceding year to appointment of the Council members, have serviced the largest number of students; and

(b) contributes to the establishment or has established for its member schools guidelines aimed at ensuring academic and non-academic quality standards which are at least in conformity with the requirements of these regulations;

The subscriber submits that the proposed definition, in particular sub-paragraph (a), is unreasonable and not equitable. At law, an association is constituted on the basis of membership. Associations are in themselves, legal bodies representing the very own members that are affiliated to it and who have agreed to form part of that association, obliging to the rules and constitutive setup of that organisation. It is therefore unheard of that the legislator departs from the generally established definition of an association by recognising associations on the basis of the number of students they have serviced in a given year, rather than by affiliate membership as doing so, would contribute to an inequitable and unprecedented situation that ought to be avoided.

Departing from the principles and constitutive elements of an association, one should also look at the market share position being referred to. To clarify by way of example: should there be even 1 licensed school or a cluster of independent schools, which hold 50.1% of the market share in terms of students serviced in a given year, and which school/s would not be organised in an association, the proposed definition of 'Association' as given above would become impractical as there would be no 'association of ELT schools' that could be recognised as enjoying the largest number of students serviced in a given year.

Moreover, the definition as is, could also be interpreted as breaching Chapter IV of the Constitution of Malta and Article 12 of the Charter of Fundamental Rights of the European Union, to say the least.

The fact that recognition of an association would be tied to whoever attracts the 'largest number of students serviced' rather than recognising the coming together of 'the majority of licensed schools', prohibits small, independent schools from forming associations as they know that even if they enjoy a majority on the island (currently 24/45 licensed schools are non-associated), their market share is still lower than the minority of schools (20/45) affiliated to FELTOM.

Over and above the intricacies of representation, it is highly challengeable in a Court of Law of a Constitutional seat, that the legislator enacts regulations that hinder the much embraced freedom of association.

The subscriber recommends that the definition of 'Association' in Clause 2 should therefore do away with any reference related to the number of students serviced. Conversely, recognised associations should in effect be all those associations legally formed under the Laws of Malta comprising a grouping of licensed ELT schools, without any reference to the number of students serviced and irrespective of the number of members forming that association.

6. The proposed ELT Council

An amendment to the definition of 'Association' as prescribed above would impinge on the constitution of the proposed ELT Council composed of 9 members (Section 5(1)) of which, 2 members are appointed by the 'Association' (Section 5(1)(f)). The subscriber understands that the legislator may then have to amend this sub-section in a situation where more than one association is established. In such circumstance, it would then be the Minister to assign the two seats 'reserved for associations' in such way as the Minister may deem appropriate, on the basis of proportionality.

For and until such time that there is only one association of ELT schools in Malta, currently FELTOM, there is no objection that said seats are awarded to FELTOM.

The subscriber further submits that since Associations would have two reserved seats on the proposed ELT Council, the two other seats referred to in sub-section (g) of Section 5(1) of the Legal Notice, should be reserved to non-associated, independent schools.

The way the clause is being proposed by the legislator, the two seats reserved for *any* licensed school (Section 5(1)(g)) could be taken up by the strong lobby currently in place, as clearly explained in Point 3 of these submissions. At present, it is already the case that all the seats on the EFL Monitoring Board are occupied by FELTOM-associated members. The same would eventually happen should there be no specification that at

least, two of the seats on the newly formed ELT Council would be reserved to non-associated, independent schools, for which seats an election would take place among said non-associated schools. Taking on board this proposal would ensure fair and equitable representation.

7. Conclusion

The subscriber appreciates the efforts being done by the Ministry for Education and Employment on enhancing the representation of this industry, primarily by expanding the Council from 2 to 9 seats to include a broader representation of stakeholders. It is likewise positive to note the emphasis being done to maintain high standards as well as ensure that the level of service provided by ELT Schools is not only up to standard, but places Malta in a better market position vis-à-vis competing markets.

Whereas general consensus can be registered on the vast majority of clauses proposed, the subscriber limits his objections on two major points, summarised as follows:

- a. The necessity to re-define the term 'Association' in Section 2 of the draft LN, to one which recognises any association legally formed and which is constituted by a grouping of licensed ELT Schools, irrespective of which market share they so represent.
- b. With regard to the composition of the ELT Council, it is being proposed that in order to ensure equal representation and steer away from having dominant lobby groups represented to the exclusion of independent schools,
 - (i) two seats ought to be reserved to associations of ELT Schools – seats assigned by the Minister to recognised association/s; and
 - (ii) two other seats ought to be reserved exclusively to non-associated, independent ELT Schools – which seats would be up for election from within the non-associated schools themselves.

* * *

This feedback has been compiled and submitted by the undersigned, for and on behalf of Gateway School of English having consulted a number of other non-associated ELT Schools. For clarifications or further information, one could be in contact with the undersigned who would be more than available to explain further the points raised in this submission.



Dr André Borg
Legal Counsel

82, Suite 1, Melita Street, Valletta – VLT 1120
andre.borg@borgassociates.com

13th February 2015