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Annual report of the Chairman of the Complaints Board of the European Schools

BUDGETARY COMMITTEE

Meeting on 15 and 16 March 2011 – OSGES – Brussels – Room -1/15 –
9.30

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The Chairman

Brussels, 15 February 2011

ANNUAL REPORT FOR THE YEAR 2010

During the year 2010, the Complaints Board of the European Schools again had to cope with a further substantial increase in the number of appeals lodged with it, compelling its chairman, its members and its registrar to work at a particularly sustained pace, notably during the summer period but also in the autumn.

I - Composition, organisation and operation of the Complaints Board

The year 2010 was marked by both the re-election of the chairman of the Complaints Board and the departure and replacement of its registrar.

Mr Henri Chavier, president of the Administrative Court of Bordeaux (France), was re-elected as chairman of the Complaints Board for a three-year period expiring on 1 July 2013. In agreement with all the members of the Board, he again designated Mr Eduardo Menéndez Rexach, head of the private office of the president of Spain's General Council of the Judiciary (*Consejo General del Poder Judicial*), as section chairman. It should be remembered that except when it sits in plenary session, the Board is organised in two sections, chaired respectively by its chairman and the section chairman, composed of members who are required to sit in the two sections in rotation.

Mrs Petra Hommel, registrar of the Complaints Board, whose professional and human qualities were unanimously appreciated, returned to her country of origin in January 2010

after five years in our Board's service. She was temporarily replaced by our new permanent legal assistant, Mrs Nathalie Peigneur, until the arrival in June 2010 of our new registrar, Mr Andreas Beckmann. As he simultaneously holds the post of head of unit in the General Secretariat of the European Schools, as was also Mrs Hommel's case, he necessarily requires Mrs Peigneur's assistance and support for his Complaints Board activities.

II – Judicial activity of the Complaints Board in 2010

1) Number and categories of appeals registered

In 2010, 97 appeals (including 12 in summary proceedings) were lodged with the Complaints Board, thus a far higher number than recorded in 2009 (69), in 2008 (65) and in 2007 (68), the year which marked a spectacular progression compared with 2006 (23) and 2005 (20).

As was the case in the previous years, the largest number were appeals lodged direct against the decisions of the Central Enrolment Authority for the Brussels European Schools: 53 (47 in 2009, 41 in 2008 and 44 in 2007), 6 of them in summary proceedings (15 in 2009, 9 in 2008 and only 1 in 2007).

The other 44 contentious appeals were lodged after rejection of a prior administrative appeal to the Secretary-General of the European Schools. They broke down as follows:

- 14 appeals, 2 of them in summary proceedings and 1 seeking revision, lodged against refusals of applications for enrolment at schools other than the Brussels one (4 appeals of this type in 2009, including 1 in summary proceedings, and no appeals of this type in the previous years);
- 13 appeals lodged against the decisions of class councils on pupils' promotion to the year above (6 in 2009, 17 in 2008 and 14 in 2007), including 3 in summary proceedings (1 in 2009, 4 in 2008 and 3 in 2007);
- 8 appeals concerning the Regulations for Members of the Seconded Staff and lodged by teachers, including 2 (one being an appeal seeking revision of the other) from a locally recruited teacher (as compared with 7 appeals of this type in 2009, 4 in 2008 and 5 in 2007);
- 5 appeals, including 1 in summary proceedings, concerning the application of the specific rules of the European Baccalaureate (1 in 2009, 2 in 2008 and none in 2007);
- 2 appeals lodged against decisions of the Board of Governors;
- 2 appeals whose object was not identifiable.

It should be noted that no appeals were lodged against a decision pertaining to integration of a SEN (special educational needs) child (2 appeals, including 1 in summary proceedings, of this type in 2009, no appeals of this type in 2008 and 2 in 2007), or against decisions taken by discipline councils (2 in 2009, 1 in 2008 and 2 in 2007).

2) Decisions delivered by the Complaints Board

In accordance with the provisions of the rules of procedure of the Complaints Board, these different appeals were investigated and ruled on, depending on the case, by decisions delivered in ordinary proceedings, written and oral, by decisions delivered in adversarial proceedings exceptionally without a hearing, by reasoned decisions in non-adversarial proceedings, by interim rulings or by orders to remove the case from the register.

As regards the tenor of the decisions delivered by the Complaints Board, the following can be said:

- of the 47 main appeals lodged against decisions of the Brussels Central Enrolment Authority to refuse pupils' enrolment applications, 4 led to the decisions' being declared void, 8 to orders to remove the case from the register following withdrawal or because there was no need to give a decision and 35 were rejected; of the 6 appeals lodged in summary proceedings accompanying these main appeals, 2 led to suspension of enforcement implying provisional enrolment, 1 to an order to remove the case from the register following withdrawal and 3 were rejected;
- of the 12 main appeals against refusals of applications for enrolment at schools other than the Brussels ones, 1 led to the decision's being declared void, 1 was removed from the register following withdrawal, 8 were rejected and 2 are still under investigation; of the 2 appeals lodged in summary proceedings accompanying these main appeals, one led to an order to remove the case from the register following withdrawal and the other to rejection;
- of the 10 main appeals lodged against non-promotion to the year above, 2 led to removal of the cases from the register following withdrawal or because there was no need to give a decision and 8 were rejected; of the 3 appeals lodged in summary proceedings accompanying these main appeals, 1 led to an order to remove the case from the register because there was no need to give a decision and the other 2 were rejected;
- of the 8 appeals concerning the Regulations for Members of the Seconded Staff, 1 led to the decision's being declared void, 1 led to an order to remove the case from the register because there was no need to give a decision, 1 was rejected and 3 are still under investigation;
- of the 4 main appeals, concerning the European Baccalaureate, 1 led to an order to remove the case from the register because there was no need to give a decision and 3 were rejected; the appeal in summary proceedings accompanying one of these main appeals led to suspension of enforcement (which meant an order to remove the case from the register because there was no need to give a decision on the main appeal);
- the 2 appeals lodged against decisions of the Board of Governors resulted in 1 decision's being declared void and in 1 being rejected.
- the 2 appeals whose object was not identifiable were rejected.

It was noted last year that one of the decisions delivered by the Complaints Board in 2009 (decision of 25 May 2009 on appeals 08/51 and 09/01) was distinguished by the fact that the Board was led, for the first time, in a case concerning the detailed rules for calculation of the

remuneration of UK teachers in the different European Schools, to refer the matter to the Court of Justice of the European Communities (which has since become the Court of Justice of the European Union) for a preliminary ruling, under the procedure provided for by the Treaty establishing the European Community (posing the question, *inter alia*, as to whether or not this procedure was open to it). In her opinion delivered on 16 December 2010, the advocate general required to give an opinion on this case to the Court of Justice of the European Union, Mrs Eleanor Sharpston, proposed in particular that it should consider that the Complaints Board was amongst the courts and tribunals which might refer matters to it for preliminary rulings. It will be very interesting to learn whether or not the Court of Justice, whose judgment is expected in the coming months, will follow this opinion.

In 2010, the Complaints Board, sitting in plenary session, delivered a further decision which attracted a great deal of attention (decision 22 July 2010 on appeal No 10/02), by acknowledging that it could be competent, pursuant to the principle of the right to effective legal redress and notwithstanding the absence of an *ad hoc* contentious procedure foreseen by the texts in force, to rule directly on the legality of certain decisions of a general nature taken by the Board of Governors of the European Schools. Such is the case of a decision laying down administrative procedure rules which directly affect a prerogative granted to a category of persons in whose case it has not been established that they have the capacity to act, and an interest in doing so, against individual decisions taken in accordance with the procedure laid down by the said decision and can thus call its legality into question by way of exception.

Finally, it should be pointed out that at the instigation of its legal assistant in particular, in 2010, the Complaints Board set up a database of its case law, which can be consulted on the European Schools' website and which should greatly facilitate knowledge and awareness of its decisions amongst all litigants. Because adequate translation resources are lacking, however, whilst searches by key words can be made in three languages (English, French and German), the actual decisions are available only in the language most commonly used by the Complaints Board, namely French.

III - Outlook for the years to come

The very appreciable increase in the number of appeals in 2010 leads to speculation once again about the Complaints Board's future conditions of operation should such a trend continue.

It should be remembered that the Complaints Board is composed of six members who, being involved in activities in different Member States, are not assigned to it exclusively and that its registry is staffed only by a part-time registrar and a legal assistant. The situation with which it has to cope is all the more difficult to manage as it is concentrated mainly during the summer period, which implies that the chairman virtually has to give up his own summer holidays in order to be able to examine all the appeals personally and to propose to his colleagues the appropriate procedure for each case, and that the registry has to arrange for someone to be on duty throughout this period, with a particularly heavy workload.

By way of comparison, the European Union Civil Service Tribunal, a standing tribunal composed of seven members attached exclusively to it, each one assisted by a legal secretary, and which is based, moreover, on the premises of the Court of Justice, and by the services attached to it, in the linguistic area in particular, was set up several years ago, when the

number of appeals likely to be referred to it was of the order of a hundred or so annually. With a number of appeals now roughly comparable, the Complaints Board is very far from having such resources available to it, even though it has jurisdiction in the first and final instance.

These findings are all the more worrying as the texts in force will inevitably need to be supplemented and clarified in order to ensure that the right of litigants before the Complaints Board to effective legal redress, a right expressly recognised by the Convention defining the Statute of the European Schools, is fully respected. However, such changes will inevitably result in a further increase in the number of appeals.

This means that it is likely that the Board of Governors will be required, in the short or medium term, to deliberate on the reforms to be undertaken to ensure that the legal system of the European Schools, created *sui generis* but designed to bring about a form of cooperation between the legal systems of the European Union and of the Member States, does not prove in practice to be of a level markedly lower than those systems. It should perhaps envisage to that end, in addition to a substantial increase in the number of staff assigned to the registry, the possibility of certain members of the Complaints Board, such as the section chairmen, being attached solely to it. It is conceivable, on the model of certain special courts and tribunals in different Member States (for example, in France, the Right of Asylum National Court (*Cour nationale du droit d'asile*)), for the Board to be composed of both full-time chairmen and part-time associate judges.

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Until such time as the scenario outlined above becomes a reality and in conclusion to this report, the chairman of the Complaints Board wishes to thank publicly his colleagues and the members of staff of the registry for the diligence which they again showed during the year 2010, at the service of all litigants – teachers, pupils, parents and the European Schools themselves alike.

Henri Chavrier