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ANNUAL REPORT FOR THE YEAR 2012 OF THE CHAIRMAN OF THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

BUDGETARY COMMITTEE

Meeting on 19 and 20 March 2013 – 9.30 – OSGES, Brussels, Room -
1/15

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The Chairman

Brussels, 5 March 2013

ANNUAL REPORT FOR THE YEAR 2012

During the year 2012, the number of complaints and appeals lodged with the Complaints Board of the European Schools was appreciably higher than the numbers recorded in 2011 and 2010, which were already substantially greater than those in the previous years. The Board endeavoured to cope with this situation in conditions which continue to show its fragility.

I - Composition, organisation and operation of the Complaints Board

As far as the **composition** of the Complaints Board is concerned, the year 2012 was marked primarily by the unavailability, followed by the resignation of Mrs Evangelia Koutoupa-Rengakou, who was the longest serving of its members. Whilst the personal reasons behind such a decision are perfectly understandable, this situation did not facilitate the job of the Complaints Board, which was reduced throughout the year to five members instead of six to deal with an ever increasing number of appeals.

It will be recalled that the Complaints Board is **organised** in two sections, the first chaired by its chairman, the second by the section chairman, the other members being assigned to one or other in rotation. For the most important cases and those which are dealt with quickly, the first section generally comprises both the two chairmen and another member. By way of an exception, the Complaints Board can convene in plenary session, comprising its six members.

The Complaints Board's **operation** is traditionally characterised by particularly sustained activity between the months of May and October, on account of the influx of appeals against refusal of enrolment decisions or refusal of promotion to the year above decisions or against decisions of the European Baccalaureate Examining Board. But it is also marked by continuation of some level of activity during the last quarter of the year, on account of settlement of appeals on which it did not prove possible to give rulings in the summer. The rest of the year is spent dealing with various other complaints and appeals, including those lodged by teaching staff, in which there was a very appreciable rise in 2012, for the reasons given below.

Whilst the **resources** available to the Complaints Board seem more or less sufficient for it to carry out its mission during the year, the situation remains very worrying during the summer holiday period. The reason is that this period implies on the one hand, virtually permanent activity for the chairman of the Complaints Board, who has to consider all the appeals personally, give rulings himself on appeals lodged in summary proceedings and propose to his colleagues the appropriate procedure for each of the other appeals, and on the other, the need for the registry, which, from the budgetary viewpoint, has only one and a half posts, to make arrangements for someone to be on duty constantly, the tasks involved being particularly onerous on account of the large number of appeals.

The **length** of ordinary proceedings before the Complaints Board generally corresponds, on account of the bureaucracy involved in the process of communication of submissions and translations and the holding of a public hearing, to the period of six months laid down by the General Rules of the European Schools and by the Regulations for Members of the Seconded Staff. Where this time period is likely to be exceeded or where it turns out to be too long because of the circumstances of the case, the Complaints Board endeavours, apart even from appeals lodged in summary proceedings, which are dealt with urgently, to use the resources of its rules of procedure to shorten the length of the proceedings, by giving a ruling, with the submissions of the parties but without a hearing (Article 19), or even by reasoned decision without the submissions of the parties (Article 32).

In view of the large increase in the number of appeals, in 2011, the Complaints Board adopted a practice inspired by the methods in use at the European Court of Human Rights for **administrative handling of appeals** prior to their registration. This practice, which allows official registration of a number of appeals that have no chance whatsoever of being successful to be avoided, is as follows:

- On reception at the registry of an appeal which seems to be manifestly inadmissible and/or unfounded in law, within the meaning of Article 32 of the rules of procedure, the legal assistant sends an e-mail to the applicant drawing his/her attention to the fact that his/her appeal has no chance of success and to the question of the legal and other costs which he/she may have to pay. She invites him/her to scrutinise relevant decisions of the Complaints Board in similar cases (reference is made to the 'Database' and to 'Practical advice for parties in dispute', which can be consulted on the website) and to notify her as to whether *or not* he/she intends to continue with the contentious procedure. All the e-mails exchanged are copied to the chairman of the Complaints Board, so that he is fully informed and can supervise matters.
- Having been duly informed of the whys and wherefores of the contentious procedure before the Complaints Board, the applicant can then decide, with full knowledge of the facts, whether or not he/she wishes to continue down this path. If he/she does so, he/she will not be surprised by the negative decision of which he/she will be notified in due course (in the form of a 'reasoned decision', without the submissions of the parties, as provided for in Article 32 of the rules of procedure). If he/she decides against continuing down the contentious appeal path, he/she will nevertheless have received the necessary justifications and explanations of which he/she was previously unaware or whose implications he/she had failed to grasp. The registry will not then need to register the case and there will be no litigation, and the members of the Complaints Board will not have to give a ruling, producing savings on time and fees.

This new practice, which had enabled the official registration of 22 appeals to be avoided in 2011, enabled 15 to be similarly avoided in 2012.

II – Judicial activity of the Complaints Board in 2012

1) Number and categories of appeals registered

In 2012, **108 appeals** (including 12 in summary proceedings) were lodged with the Complaints Board, i.e. a number more than 11% higher than that of the years 2011 and 2010 (97 appeals) and very much higher than the figures for the previous years: 69 in 2009, 65 in 2008, 68 in 2007, the year which, as a result of the introduction of new appeal procedures, marked a spectacular progression compared with 2006 (23 appeals) and 2005 (20 appeals).

Given that administrative handling of 15 of the appeals proved possible, thus enabling their official registration to be avoided, a total of 93 appeals (as compared with 75 in 2011), including 12 in summary proceedings, were submitted to the Complaints Board for consideration.

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 in total (32 main appeals, 7 in summary proceedings and 14 which were not registered), as compared with 55 appeals in 2011 (33 main appeals, 5 in summary proceedings and 17 which were not registered).

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

- 27 appeals, including 1 in summary proceedings, lodged by seconded or locally recruited teachers, a far higher number than in previous years (6 appeals of this type in 2011 and 8 in 2010), something which is accounted for in particular by the changes to salaries applied as from the beginning of the 2011-2012 school year;
- 11 appeals (including 2 in summary proceedings and 1 which was not registered) lodged against decisions associated with enrolments in schools (or language sections) other than the Brussels ones, as compared with 10 such appeals in 2011 (including 2 in summary proceedings);
- 7 appeals (including 1 in summary proceedings) concerning the application of the specific rules of the European Baccalaureate, as compared with 3 such appeals in 2011 (including 1 in summary proceedings);
- 4 appeals (including 1 in summary proceedings) lodged against decisions of class councils on pupils' promotion to the year above, a number which is down very sharply, as compared with 18 such appeals in 2011 (including 3 in summary proceedings and 5 which were not registered);
- 2 appeals in the disciplinary area (pupils), as compared with 2 such appeals in 2009 (none in 2010 and 2011);

- 1 appeal lodged against a decision of the Board of Governors, as compared with 3 such appeals in 2011 (including 1 in summary proceedings) and 2 in 2010;
- 1 appeal lodged against an internal organisation measure taken by a school;
- 2 appeals in the form of revision applications.

2) Decisions delivered by the Complaints Board

a) 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 proceedings with the written and oral submissions of the parties, by decisions delivered in proceedings with the written submissions of the parties but without a hearing, by reasoned decisions without the submissions of the parties, by interim rulings or by orders to remove the case from the register.

In 2012, the Complaints Board held four hearing sessions (in June, July, October and November), during which it considered 43 cases, meaning that there were full written and oral proceedings in 53% of the main appeals.

b) As regards the **tenor of the decisions** delivered by the Complaints Board, the following can be said, its being specified that all a number of the removals from the register because there was no need to give a decision and a proportion of those resulting from withdrawal follow a decision of the European Schools satisfying the applicant:

- of the 32 main appeals registered and lodged against decisions of the Brussels Central Enrolment Authority, 6 resulted in annulment, 2 in removal from the register and 24 in dismissal; the 7 appeals lodged in summary proceedings were dismissed;

- of the 26 main appeals concerning teachers, 2 resulted in annulment and 7 in removal from the register, 14 were dismissed and 3 are still pending; the single appeal lodged in summary proceedings was dismissed;

- of the 8 main appeals registered and lodged against decisions connected with enrolments at schools (or language sections) other than the Brussels ones, 1 resulted in annulment, 2 were removed from the register, 4 were dismissed and the final one is still pending; of the 2 appeals lodged in summary proceedings, one was removed from the register and the other was dismissed;

- of the 6 main appeals concerning the European Baccalaureate, 1 was removed from the register and the other 5 were dismissed, as was the single appeal lodged in summary proceedings ;

- the 3 main appeals registered and lodged against decision of the class councils refusing pupils' promotion to the year above were dismissed, as was the single appeal lodged in summary proceedings ;

- the 2 appeals in the disciplinary area were dismissed;

- the main appeal lodged against a decision of the Board of Governors was dismissed;
- the appeal lodged against an internal organisation measure taken by a school was dismissed;
- of the 2 appeals in the form of revision applications, one was dismissed and the other is still under investigation.

c) Amongst the most **interesting decisions** delivered by the Complaints Board this year, some deserve to be mentioned.

. In its decision of 21 August 2012, delivered on appeal No 12/12, the Complaints Board found that it had jurisdiction, on the basis of careful reading of the combined provisions of Articles 3.2 and 3.4 of the Conditions of Employment for Part-time/Locally Recruited Teachers, to hear the case in a dispute between a locally recruited teacher and a European School, even though overhasty reading of those two articles might have led it to be considered that the dispute was subject to the jurisdiction of the courts of the School's host country.

. In its decision of 28 August 2012, delivered on appeal No 12/35, the Complaints Board found that the simplest disciplinary measures, such as reprimands or detentions, which form part of the means which are generally recognised as being available to the persons responsible for any education system in order to ensure its proper operation, do not affect pupils' rights or prerogatives in conditions such that they should be given particular judicial protection. It also found that in most national judicial systems such measures, often described as merely measures under house rules, cannot be challenged by means of an appeal procedure before a court.

. In its decision of 8 November 2012, delivered on appeal No 12/56, the Complaints Board ruled that while the staff of the Member States' central banks, who come under national service regulations or contracts, cannot be treated overall in the same way as staff of European institutions and bodies, the governors of those banks and those of their staff reporting to them who are required to participate directly in the guidance and decision-making mechanisms of the European System of Central Banks (ESCB) are, on the same basis as the members of the Executive Board of the European Central Bank (ECB) and those of their staff reporting directly to them, amongst the current employees of the centralised organisation of this European system. The Complaints Board therefore concluded that children of employees of national central banks who are required to participate directly in the guidance and decision-making mechanisms of the ESCB must, if such employees fulfil the dual employment and duration condition laid down by the Board of Governors, be admitted to the European Schools as category I pupils.

. In its decision of 19 December 2012, delivered on appeal No 12/74, the Complaints Board applied to enrolment in the Luxembourg European Schools the principles derived from its decision of 30 July 2007, delivered on appeal No 07/14, for enrolment in the Brussels European Schools. The Board pointed out in particular that although it clearly follows from the objectives of the Convention defining the Statute of the European Schools that children of the staff of the European Schools have the right of access to the education provided in those Schools, such a right does not necessarily imply that it must be exercised in the school of their choice, in terms of the location of their place of residence or of their place of work and organisation of travel as the sole considerations. In the same decision, the Board also found that whilst it is true that Article 1 of the Convention defines their purpose as being "to educate

together children of the staff of the European Communities”, such a stipulation in no way implies that all the Schools comprise the full range of language sections corresponding to the official languages of the Member States. Indeed, the linguistic and cultural richness underpinning the mission which the European Schools are expected to carry out follows from the co-existence of several of the sections corresponding in particular to the languages most commonly used in Europe, without its being possible to demand, in view of the increasingly large number of Member States, the existence in each School of the full range of language sections.

. In its decision of 21 December 2012, delivered on appeals No 12/40 and No 12/41, the Complaints Board found, *inter alia*, that the changes made by the Board of Governors to the basic salaries of seconded staff as from the beginning of the 2011-2012 school year were connected with the modernisation and reform of the European Union civil service and of the EU institutions. It follows from the case law of the Court of Justice that the broad discretionary power in the area given to European legislators allows them to make substantial changes to the rules governing remuneration and to the structure of salary scales and also to the level of salaries, even when the effects of such changes result in deterioration of the conditions of employment of the staff concerned. The reason is that they cannot be bound by an obligation to maintain a given set of staff regulations. Thus, pursuant to the powers vested in it to issue regulatory provisions and to the broad discretionary power to do so which it enjoys, the Board of Governors was able itself to reform the remuneration structures for seconded staff and to adjust them to the revised Staff Regulations of EU officials and the Conditions of Employment of other EU staff. It was also able to take steps leading to an appreciable reduction in the salaries of seconded staff taking up their posts as from 1 September 2011.

III – Outlook for the years to come

The appreciable increase in the number of appeals in 2012 confirms a ‘burdensome’ trend, leading it to be considered that despite the administrative innovations designed to cope with that trend, **the Complaints Board’s situation is increasingly fragile.**

Without returning to the comparison often made with the European Union Civil Service Tribunal, a standing tribunal composed of seven members attached exclusively to it and with incomparable resources available to handle a number of appeals of the same order of magnitude, it can seriously be wondered whether the Complaints Board is still really in a position to provide the ‘adequate **legal redress**’ which justified its setting up by the Convention defining the Statute of the European Schools.

It should be pointed out that it follows from the important judgment delivered on 14 June 2011 by the Court of Justice of the European Union that the Complaints Board, which has jurisdiction in the first and final instance, is expected, unlike the supreme courts of the Member States, **to interpret alone and without any control** the rules of law of the European Union applicable in the disputes referred to it. It is therefore understandable that at the end of its judgment, the Court of Justice should have ‘suggested’ possible amendment of the Convention defining the Statute of the European Schools by the States which are signatories to it, with a view to allowing uniform interpretation of those rules and to guaranteeing effective respect of the rights which the persons referred to in the said Convention derive from the rules.

The Complaints Board, which, as is known, had itself wondered about the **link to be established with the Court of Justice** to ensure that its litigants have the right to legal redress comparable with that enjoyed by any citizen of the European Union, obviously can only continue to subscribe to such a suggestion. And it continues to believe that should the trend towards an increase in the number of appeals be confirmed and should there be a desire to put an end to the fragile situation in which it finds itself today, consideration needs to be given to granting it **resources** more akin to those of a standing tribunal, in particular by attaching to it exclusively at least some of its members and of its staff.

It should be pointed out, moreover, that the issue of the **staff made available to the Complaints Board** has become very sensitive, with the recent lodging of two appeals in the form of revision applications, one of which clearly calls into question the Board's actual operation. The applicant argues, not without some pertinent references to the principles governing fair trials under the European Convention for the Protection of Human Rights, that the independence of the staff of the registry is in no way guaranteed, in so far as the registrar is himself a senior member of the staff of the General Secretariat of the European Schools and is based, as is the chairman's legal assistance, on the same premises.

Admittedly, budgetary savings reasons can be put forward to justify such a situation and it can be pointed out that Article 6.2 of the rules of procedure expressly provides that "Should the registrar or the staff of the registry perform other duties within the administration of the European Schools, they may not, in that capacity, be party to any matter likely to be brought before the Complaints Board." Be that as it may, it **is very difficult to get litigants to understand** that the registrar can hold an important post within the administration of the European Schools and at the same time participate in operation of the judicial body charged with ruling on appeals lodged against that administration.

For that reason it seems essential to envisage completely **separating the duties** performed, respectively, for the Complaints Board and within the administration of the European Schools. This ultimately means the appointment of a registrar and of an assistant or a secretary whose job would be to work for the Complaints Board exclusively. Moreover, given the increase in the number of appeals, the Board's operation requires **the registry to be staffed by at least two people with full-time posts** on a permanent basis.

In conclusion to this report, the chairman of the Complaints Board wishes to thank publicly his colleagues and the members of staff of his registry for the diligence which they again showed during the year 2012, in even more difficult conditions, at the service of all litigants, namely on the one hand, teachers, pupils and parents and on the other, the European Schools themselves.

Henri Chavrier