



**The Complaints Board
of the European Schools**

The Registry

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ANNUAL REPORT FOR THE YEAR 2013 OF THE CHAIRMAN OF THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

BUDGETARY COMMITTEE

Meeting on 11 and 12 March 2014

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The Chairman

Brussels, 13 February 2014

ANNUAL REPORT FOR THE YEAR 2013

During the year 2013, the Complaints Board:

- saw positive decisions on its composition and its structure (I);
- saw for the first time a reduction in the number of cases referred to it compared with previous years, although they were of greater legal complexity (II);
- embarked on in-depth reflection regarding the scope for strengthening legal protection within the European Schools system (III).

I - Composition, organisation and operation of the Complaints Board

Mr Henri Chavrier was reelected as chairman of the Complaints Board for a three-year period expiring on 1 July 2016. In agreement with all the members of the Board, he again designated Mr Eduardo Menéndez Rexach, as section chairman.

As far as the **composition** of the Complaints Board is concerned, the year 2013 was marked firstly by the replacement of Mrs Evangelia Koutoupa-Rengakou, who had resigned, by Mr Pietro Manzini as from 16 April 2013.

Secondly, at the meeting of the Board of Governors of 3-5 December 2013, the terms of office of the six members of the Complaints Board were renewed for a period of five years (i.e. until 21 April 2019), in accordance with Article 1.3 of its Statute. This renewal allows in particular stability and continuity to be ensured, something which is conducive to the coherence and consistency of its case law.

The Complaints Board is still **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 **activity** remains particularly sustained 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. It also continues to be substantial 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.

The **human resources** available to the Complaints Board remain limited, particularly to ensure its proper operation during the summer holiday period. 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 to make arrangements for someone to be on duty constantly and to cope with an ongoing workload. That was the case again in 2013.

The changes made to the **registry's structure** nevertheless enable the year 2014 to be envisaged with slightly more equanimity, since firstly, the legal assistant was appointed registrar with effect from 1 January 2014 (the post thus no longer being held by a member of the General Secretariat's management team but instead by a person with no hierarchical link with the Office of the Secretary-General) and secondly, an administrative assistant appointed on a full-time basis took up her post, also on 1 January 2014, under the new registrar's authority. Thus, **two full-time staff** now make their skills available to the Complaints Board, exclusively and **completely independently of the hierarchy**.

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). The Rules of Procedure also now allow, in case of urgency, **notification of the operative part of the decision to be given in advance**, before notification of the whole decision (amendment of Article 26, approved by the Board of Governors at the meeting of 16 April 2013).

As in previous years, the Complaints Board used the practice that it adopted in 2011, inspired by the methods in use at the European Court of Human Rights for **administrative handling of appeals** prior to their registration. This practice, based on an exchange between the registrar and

the applicant, allows official registration of a number of appeals that have no chance whatsoever of being successful to be avoided.

II – Judicial activity of the Complaints Board in 2013

1) Number and categories of appeals registered

The year 2013 marked a threshold in the development of the number of appeals lodged with the Complaints Board since for the first time since this Board was established under the Convention defining the Statute of the European School, the number was down on previous years: **89 appeals** (including 4 in summary proceedings) were lodged, as compared with 108 in 2012 and 97 in 2011 and 2010. The number nevertheless remained at a very high level in comparison with that of previous years (69 in 2009, 65 in 2008 and 68 in 2007, the year which, on account of the introduction of new complaints and appeals procedures, marked a spectacular rise on 2006, with 23 appeals, and 2005, with 20 appeals).

Given that administrative handling of around 20 of the appeals proved possible, thus enabling their official registration to be avoided, a total of 69 appeals, including only 4 in summary proceedings (as against 12 the previous year), were submitted to the Complaints Board for consideration.

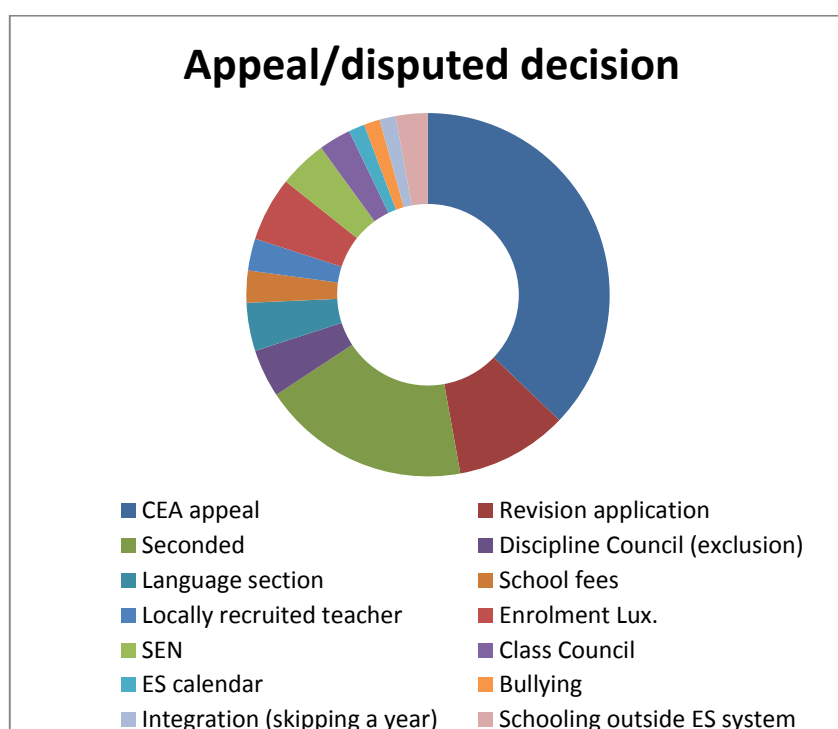
Appeals lodged direct against the decisions of the Central Enrolment Authority for the Brussels European Schools remained the most numerous: 26 main appeals (none in summary proceedings), as compared with 32 in 2012.

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:

- 15 appeals lodged by seconded staff (teachers or others) (13) or by locally recruited teachers (2), a far lower number than the previous year (27 appeals in 2012, something which was accounted for in particular by the changes to salaries applied as from the beginning of the 2011-2012 school year);
- 6 appeals in the form of revision applications (including 1 in summary proceedings), i.e. a sharp increase in relation to the 2 appeals lodged in 2012;
- 4 appeals against decisions associated with enrolments in schools other than the Brussels ones, singularly the two Luxembourg Schools on account of Luxembourg II's move to the new site at Mamer (as compared with 2011's 8 main appeals);
- 3 appeals against decisions associated with determination of the language section;
- 3 appeals (including 1 in summary proceedings) calling into question application of the SEN regulations;

- 2 appeals against decisions of Class Councils on pupils' promotion to the year above (as compared with 2012's 4 appeals and 2011's 18 appeals);
- 3 appeals in the disciplinary area (including 1 in summary proceedings), as compared with 2012's 2 appeals (none in 2011 or 2010);
- 2 appeals against a decision concerning the school fees payable for category III pupils;
- 2 appeals (including 1 in summary proceedings) against a refusal to allow a category III pupil to spend a semester in a school outside the European Schools system;
- 1 appeal against an internal organisation measure taken by a school (school calendar);
- 1 appeal against a refusal to allow a nursery pupil to move up before the statutory age to primary year 1;
- 1 appeal against acts defined as bullying.

The above figures are illustrated by the following table:



2) Decisions delivered by the Complaints Board

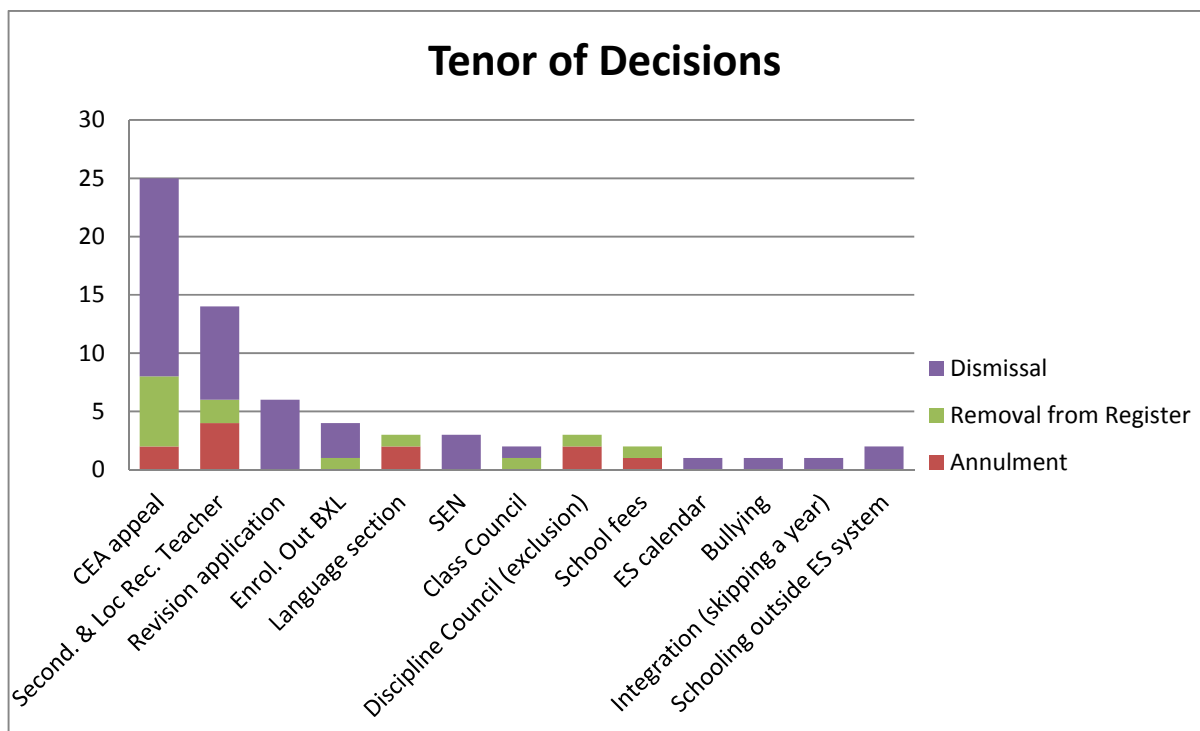
a) In accordance with the provisions of the Rules of Procedure of the Complaints Board, these different appeals were **investigated** and **ruled on**, depending on the case, by decisions delivered in proceedings with the written submissions of the parties followed by a hearing, by decisions delivered in proceedings with the written submissions of the parties, but not followed by a hearing, by reasoned decisions without the submissions of the parties, by interim orders or by orders to remove cases from the register.

As was the case last year, the Complaints Board held **4 hearing sessions** (in June, July, October and November), during which it considered more than half of the cases in which there were full written and oral proceedings. Quite exceptionally, a hearing even had to be arranged in January 2014 to consider 4 appeals lodged in 2013 whose particular complexity necessitated public debates.

b) As regards the **tenor of the decisions** delivered by the Complaints Board, the following can be said, its being specified that 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 followed a decision of the European Schools satisfying the applicant:

- Of the 26 **direct appeals** lodged against decisions of the Central Enrolment Authority, 2 resulted in annulment, 17 in dismissal and 6 in removal from the register; 1 decision is still pending.
- Of the 15 appeals lodged by seconded staff (teachers or others) (13) or by locally recruited teachers (2), 3 resulted in annulment, 8 in dismissal and 2 in removal from the register; 2 decisions are still pending.
- The 6 appeals in the form of revision applications (including the one in summary proceedings) were all dismissed.
- Of the 4 appeals against decisions associated with enrolments in schools other than the Brussels ones, 3 were dismissed and the fourth resulted in removal from the register.
- Of the 3 appeals against decisions associated with determination of the language section, one resulted in annulment and a second in removal from the register; 1 decision is still pending.
- The 3 appeals (including the one in summary proceedings) calling into question application of the SEN regulations were dismissed.
- Of 2 appeals against decisions of Class Councils, one was dismissed and the other was removed from the register after withdrawal.

- Of the 3 appeals in the disciplinary area: the one lodged in summary proceedings resulted in suspension of the disputed decision, one main appeal in removal from the register because there was no further need to give a decision and the other in annulment.
- Of the 2 appeals against the decisions concerning the school fees payable for category III pupils, one was removed from the register after withdrawal and the other was annulled.
- The 2 appeals (including the one in summary proceedings) against a refusal to allow a category III pupil to spend a semester in a school outside the European Schools system were dismissed; an appeal in the form of an application for interpretation was lodged in the case of the main appeal.
- The appeal against an internal organisation measure taken by a school (school calendar) was dismissed.
- The appeal against a refusal to allow a nursery pupil to move up before the statutory age to primary year 1 was dismissed.
- The appeal against acts defined as bullying was dismissed.



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

. In its decision of 19 June 2013 delivered on appeal No **13/04**, the Complaints Board pointed out that the special appeal procedure in the form of an application for revision is designed solely to allow revision of a decision because of the emergence of a fact which is likely to have a decisive influence and which might have been unknown to the Board and to the party applying for revision prior to delivery of the decision. Apart from those circumstances alone, the procedure does not allow the calling into question of a decision of the Complaints Board, which, in accordance with the provisions of Article 27 of the Convention defining the Statute of the European Schools, has sole jurisdiction in the first and final instance and against whose judgments neither an appeal nor an appeal to a higher court may be lodged. The Complaints Board clearly cannot be criticised for the lack of the possibility of referring a case to such an appeal court or supreme appeal court judge, which results from the actual terms of the Convention, the Complaints Board being specifically charged with reviewing and monitoring the said Convention's application. Only the possible amendment of the Convention, whose authors are both the Member States and the European Union, could enable this situation to be otherwise.

. In its decision of 5 July 2013 delivered on appeal No **13/08**, the Complaints Board found that in so far as Article 56.2 of the Regulations for Members of the Seconded Staff, by disqualifying staff already at the place where the school of assignment is situated from receiving the expatriation allowance, makes an exception to the principle of entitlement to the said allowance, it must be interpreted restrictively. It therefore ruled that a teacher taken on at the European School, Munich was entitled to the allowance, even though he had spent almost two years as a contract teacher at a private school in a town not far from where the European School is situated and because he had been forced to return to his country of origin at the end of his contract, just a few months before returning to Munich to take up his new post.

. In its decision of 1 August 2013 delivered on appeal No **13/19**, concerning application of the Policy on Enrolment in the Brussels European Schools, the Complaints Board first pointed out that in accordance with Article 46 of the General Rules of the European Schools, the Central Enrolment Authority (CEA) had to decide on enrolment applications taking account of the said policy and of the instructions issued by the Board of Governors, which are fairly detailed and leave little room for discretion. After close examination of the criteria adopted by the Enrolment Policy for the current year and of the conduct of the procedure defined therein, the Board found in particular that although certain aspects of the said Policy can be criticised, the Policy in itself does not conflict with the general principles or the foundations of the European Schools system and that the CEA's decisions implementing the Policy, in following its rules strictly, appear well founded, even though they may produce unintended or unexpected results from the perspective of applicants for enrolment. It noted, however, that in view of the increasingly pronounced complexity of the system put in place each year, a greater effort should be made by the European Schools to provide applicants with information on the subject.

. In its decision of 5 August 2013 delivered on appeal No **13/26**, the Complaints Board judged, on the basis of all the documents in the file submitted to it, that the state of health of a pupil's

mother could be taken into consideration, in relation to the state and the family environment of the child, so as to be accepted as a particular circumstance within the meaning of Article IV.5.4 of the Policy on Enrolment in the Brussels European Schools. The case involved the particular situation of a person suffering from a disabling chronic condition who is the second adoptive mother of a girl abandoned by her first adoptive mother, this child needing psychological stability which is likely to be provided by, amongst other things, day-to-day parental accompaniment and support.

. In its decision of 29 July 2013 delivered on appeal No **13/27**, the Complaints Board accepted the plea of illegality of Article 58.7 of the Regulations for Members of the Seconded Staff, in so far as that provision makes payment of a resettlement allowance conditional upon the applicant's having resettled with his or her family at a place situated not less than 70 km from the school where he or she was in post. The reason is that it found that according to the case law of the General Court of the European Union, there is no difference in functions between the installation allowance and the resettlement allowance. It is therefore difficult to see how such a distance limitation, which is not imposed for award of the installation allowance, can constitute in itself an objective criterion for award of the resettlement allowance. It should be pointed out, moreover, that the said allowance does not cover reimbursement of travel expenses and removal expenses, for which there is express provision under Articles 60 to 62 of the Regulations, but is designed, as, incidentally, is the installation allowance, to take account of expenditure, other than transport costs, resulting from a change of residence and whose amount is in no way linked to the distance separating the place of employment from the place of resettlement. Whilst other considerations could no doubt be taken into account, such as that of fixing the place of residence in another Member State, implying different formalities, they are in no way associated with distance, since the borders between Member States can be situated at both a shorter and a greater distance than the one adopted.

This decision of the Complaints Board is a remarkable illustration of the consequences of the impossibility for it of referring to the Court of Justice of the European Union for a preliminary ruling a question concerning the interpretation or the validity of an act of the European institutions. In discounting the disputed condition imposed by the Regulations for Members of the Seconded Staff, even though that condition is equivalent to the one imposed by the Staff Regulations of Officials of the European Union, the Complaints Board was thus led, the Court of Justice never having ruled on that specific point, partially to call into question itself the validity of a measure taken by a European institution.

. In its decision of 25 November 2013 delivered on appeal No **13/30**, concerning a refusal to allow a pupil to move up to a higher year before the statutory age, the Complaints Board noted that the General Rules of the European Schools do not contain any provisions on the subject and that such a scenario, which is exceptional in nature, is considered only in the context of integration of special educational needs (SEN) pupils for exceptionally gifted or talented pupils requiring differentiation measures. Although the pupil in question does not fit that description as such, the Board agreed that the procedure laid down for SEN pupils could be applied to his case by analogy and on the basis of Article 57(c) of the General Rules, which refers to it. It considered that in the case in point, the refusal to allow the pupil to move up to a higher year

before the statutory age, a decision taken in compliance with the said procedure, was not flawed or irregular in any way.

. In its decision of 10 February 2014 delivered on appeal No **13/45**, the Complaints Board judged that by deciding that the revised salary scales of seconded staff were applicable to staff who joined the European Schools system as from 1 September 2011, the Board of Governors could not legally, without undermining equal treatment for staff already in post, restrict at the same time application of the old salary scales to those members of staff who continued to hold the same posts. Whatever the conditions in which the latter are led to change posts, they are in fact in the same position, with respect to application time-wise of the reform in question, as all staff who joined the European Schools system before 1 September 2011. It therefore seems illogical and unfair to allow those members of staff already in post and who do not change posts to retain the remuneration resulting from the old salary scales and to impose on those who move to posts that are higher graded than or at least equal to their former posts application of the new salary scales, leading to a drop in their salaries.

. In its decision of 31 January 2014 delivered on appeal No **13/50**, the Complaints Board annulled the decision whereby the Administrative Board of the European School, Munich increased by 30% the school fees payable for category III pupils newly enrolled at the school at the beginning of the 2013-2014 school year in September 2013. The reason for the annulment was the failure to state reasons, in the documents accessible to the parents concerned, for such an increase, even though a communication from the Secretary-General to the Directors of the schools clearly stated that any decision of an Administrative Board departing from the 25% increase rate decided by the Board of Governors had to be “duly justified”.

. In its order of 11 January 2014 issued on appeal No **13/65 R**, the Complaints Board judge hearing an application for interim measures suspended implementation of a disciplinary measure involving ten days’ exclusion imposed on a pupil. To do so, he first declared the main appeal admissible, even though the General Rules of the European Schools allow for the possibility of such an appeal only against exclusions of more than ten days, judging that the absence of any possibility of appeal against disciplinary measures requiring consultation of the Discipline Council could be regarded as constituting infringement of the principle of the right to effective legal protection. Secondly, he judged that the absence, in the minutes of the Discipline Council’s hearing, of any mention of the result of the vote and of the grounds for the disciplinary measure proposed was of such a nature as to create serious doubts as to the legality of the decision taken. Finally, the judge hearing the application for interim measures found that as the conditions for granting suspension of enforcement had been met, such a measure could not be regarded as being likely to be seriously detrimental to the interests of the European Schools, since mere suspension of the disciplinary measure would in no way act as a barrier to its deferred enforcement should the Complaints Board decide to dismiss the main appeal.

III – Outlook for the years to come

Despite the fall observed in 2013, the upward trend in the number of appeals has been confirmed and may well continue in the years to come, given the case law on respect for the right to an effective remedy and the measures envisaged to improve legal protection in the European Schools system.

Other aspects need, moreover, to be highlighted:

- a) **The greater complexity of the pleas put forward by applicants** in support of their appeals: their arguments are increasingly diversified, detailed and complex, something which compels the Complaints Board to carry out substantial analysis and case law research work and to develop lengthy legal arguments.
- b) **The revision of translations:** translations very often have to be ‘reworked’ for the sake of clarity and consistency – something which represents not inconsiderable extra work for the registry and the members of the Complaints Board concerned. The reason is that the translators made available to the Complaints Board are not generally lawyer-linguists and, with exceptions, they do not master the terms specific to the regulations applicable in the European Schools system.
- c) **The increase in the number of appeals in the form of revision applications** (6 in 2013, as compared with the 2 registered in 2012): this trend is probably accounted for by the absence of a second-tier appeals system, which litigants before the Complaints Board attempt to circumvent by lodging appeals in the form of revision applications, also incidentally containing, in most cases, applications for interpretation and for rectification of material errors and complaints.

Whilst the changes decided in 2013, designed in particular to ensure the complete independence of the staff of the registry, are to be welcomed, **the Complaints Board’s situation is still fragile**. The reason is that it, and it alone, is expected, with very limited resources if they are compared with those of the courts and tribunals of the European Union, to provide the ‘adequate legal protection’ foreseen within the European Schools system, which is *sui generis*.

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** not only the rules resulting from the Convention defining the Statute of the European Schools but also 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 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 benefit from legal protection comparable with that enjoyed by any citizen of the European Union, obviously can only continue to subscribe to such a suggestion.

It is with that in mind that the Chairman of the Complaints Board chairs the **ad hoc working group** set up in October 2013 under the mandate given to the Secretary-General by the Board of Governors at its meetings of 16-18 April 2013. The working group is charged with submitting to it as soon as possible a proposal as to how to strengthen legal protection in the European Schools system.

At the inaugural meeting of 15 October 2013, it was agreed that a distinction needed to be made between two types of measures which are conceivable with the aim of improving legal protection:

- those requiring amendments to the Convention defining the Statute of the European Schools, which means using the cumbersome amendment and ratification procedure laid down by Articles 31.4 and 33 of the said Convention;
- those requiring amendments to the Convention's implementing texts (including the Statute and Rules of Procedure of the Complaints Board, the General Rules of the European Schools, the Regulations for Members of the Seconded Staff and the Service Regulations for Locally Recruited Teachers), which fall within the competence of the Board of Governors.

The working group's work will be continued in 2014 for the purpose of proposing to the Board of Governors concrete measures coming into one or other of these two categories.

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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 2013, in still 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