



**The Complaints Board
of the European Schools**

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**ANNUAL REPORT FOR THE YEAR 2014 OF THE CHAIRMAN OF THE
COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

BUDGETARY COMMITTEE

Meeting on 10 and 11 March 2015



ANNUAL REPORT FOR THE YEAR 2014

As far as the Complaints Board is concerned, the year 2014 was marked by:

- stability as regards its composition and its structure (I);
- a marked reduction in the number of appeals (II);
- the continuation of in-depth reflection regarding the scope for strengthening legal protection within the European School system (III).

I - Composition, organisation and operation of the Complaints Board

1.

The Complaints Board is still organised in two sections, the first chaired by its Chairman, Mr Henri Chavier, and the second by the section chairman, Mr Eduardo Menéndez Rexach.

The other members are still Mr Andreas KALOGEROPOULOS, Mr Mario EYLERT, Mr Paul RIETJENS and Mr Pietro MANZINI. They are assigned to one or other section in rotation, so as to prevent any compartmentalisation between the two formations.

All the terms of office have been confirmed until April 2019, which will ensure the stability and continuity conducive to the Board's smooth operation.

2.

Ms PEIGNEUR was confirmed in her post of Registrar and Ms FERRARIN in her post of administrative assistant, both on a full-time basis since 1 January 2014.

The members of the Complaints Board very much welcome the fact that these two full-time members of staff now make their skills available, exclusively and in total hierarchical independence, to the Board.

3.

As in other years, the Complaints Board's activity continues to be most sustained between May and October (dealing with appeals against refusal of enrolment decisions or refusal of promotion to the year above decisions or against decisions of the European Baccalaureate Examining Board). The last quarter of the year is spent settling 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 appeals, including those lodged by teaching staff.

To ensure the Complaints Board's smooth operation, its Chairman is permanently available throughout the summer to consider all the appeals personally, to give rulings himself on appeals lodged in summary proceedings and to propose to his colleagues the appropriate procedure for each of the other appeals. The registry, for its part, makes arrangements for someone to be on duty constantly and copes with a sustained workload during the summer. That was the case again in 2014.

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 is also continuing to use 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 registry and the applicant, allows official registration of a number of appeals that have no chance whatsoever of being successful to be avoided.

4.

Finally, the registry embarked upon a **process of dematerialisation of files** (no more 'paper' files but only electronic files) in 2014.

II – Judicial activity of the Complaints Board in 2014

1) Number and categories of appeals registered

1.

The year 2014 was marked by a further decline in the number of appeals lodged with the Complaints Board, as for the second consecutive time since this Board was established under the Convention defining the Statute of the European Schools, the number was down on previous years: **84 appeals** (including 3 in summary proceedings) were lodged, as compared with 2013's 89 appeals (including 4 in summary proceedings).

Given that administrative handling of a large proportion of those appeals proved possible, thus enabling their official registration to be avoided, reflecting the effectiveness of the registry's work to that end, **54 appeals (including 3 in summary proceedings) were submitted to the Complaints Board for consideration.**

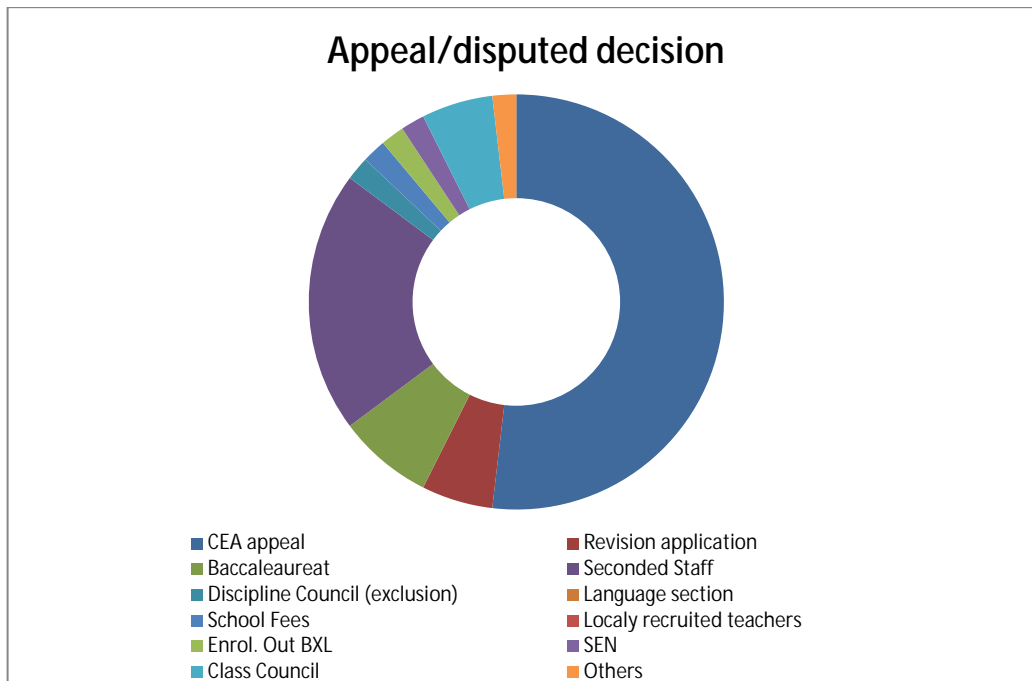
As in previous years, **appeals lodged direct** against the decisions of the Central Enrolment Authority for the Brussels European Schools remained the most numerous: 28 appeals (including 1 in summary proceedings), as compared with 26 appeals (none in summary proceedings) in 2013.

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:

- Ø 11 appeals (including 1 in summary proceedings) lodged by seconded staff (teachers or others), a lower number than the previous year (15 appeals in 2013, something which was accounted for in particular by the changes to salaries applied as from the beginning of the 2011-2012 school year);
- Ø 4 appeals (including 1 in summary proceedings) concerning the application of the European Baccalaureate's specific rules, as compared with no such appeals in 2013;
- Ø 3 appeals in the form of revision applications, i.e. a marked fall in relation to the 6 appeals in 2013;
- Ø 3 appeals against decisions of Class Councils on pupils' promotion to the year above (as compared with 2013's 2 appeals and 2012's 4 appeals);
- Ø 1 appeal against decisions associated with enrolments in schools other than the Brussels ones, singularly the Luxembourg I School (as compared with 2013's 4 main appeals);
- Ø 1 appeal calling into question application of the SEN regulations;
- Ø 1 appeal in the disciplinary area, as compared with 2013's 3 appeals;

- Ø 1 appeal against a decision concerning the school fees payable for category III pupils;
- Ø 1 appeal against the refusal of voting rights to the association of Parents' Associations at a meeting of the Board of Governors.

The above figures are illustrated by the following table:



2.

This marked fall in the number of appeals is probably accounted for by different reasons:

- **applicants are better informed** thanks to the website and the database;
- a degree of reluctance with regard to lodging an appeal because of the **risk of having to pay legal and other costs:**

The members of the Complaints Board are aware of the fact that the risk of being ordered to pay the legal and other costs of proceedings remains a barrier to the lodging of an appeal or a reason for discontinuance.

This issue is not new and has been amplified by the finding that the amounts claimed as legal and other costs by the European Schools (between €700 and €1000) have escalated to some extent, even though the statistics show that in the end, applicants are rarely (5%)

ordered to pay them and/or are ordered to pay amounts lower than those claimed (€460 on average).

- **The European Schools' authorities draw lessons from the decisions delivered by the Complaints Board:**

Thus, following decisions delivered in the context of disputes regarding determination of the language section at the time of enrolment, Article 47(e) of the General Rules of the European Schools was amended.

Following decisions delivered in the context of disputes regarding the Baccalaureate, a process of reform of the Arrangements for implementing the Regulations for the European Baccalaureate was also undertaken.

- The number of **administrative appeals** has itself fallen (for more details see the Annual Report of the Secretary-General to the Board of Governors of the European Schools for the year 2014).
- The marked fall in the number of appeals in the form of applications for revision is probably due to the fact that all such appeals were dismissed in 2013, which is likely to have discouraged certain potential litigants from lodging them in 2014. In any event, this shows the interest of questions associated with the strengthening of legal protection in the European School system (see point 4 below).
- The uncertainty surrounding the Complaints Board's jurisdiction with respect to so-called **part-time (i.e. locally recruited) teachers:**

The Complaints Board considers that it has jurisdiction to hear appeals lodged with it by locally recruited teachers, in accordance with its case law, with the judgment of the Court of Justice of the European Union in the Miles case (C-196/09) and with the judgment of the *Tribunal du travail de Bruxelles* (Brussels Labour Court) of 23 April 2012.

However, it should be pointed out that the Erfurt *Bundesarbeitsgericht* (Federal Labour Court) (No 7 AZR 930/11) decided, on the basis of Article 267 of the EU Treaty, to refer to the Court of Justice for a preliminary ruling four questions concerning the conditions of employment of part-time/locally recruited teachers (case C-464/13).

The submissions were presented in May 2014, the opinion of the Advocate-General, Mr Paolo MENGOLZI, was delivered in September 2014 and the Court of Justice's decision is awaited with great interest (announced for March 11th, 2015) as it will clarify the situation of part-time/locally recruited teachers.

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.

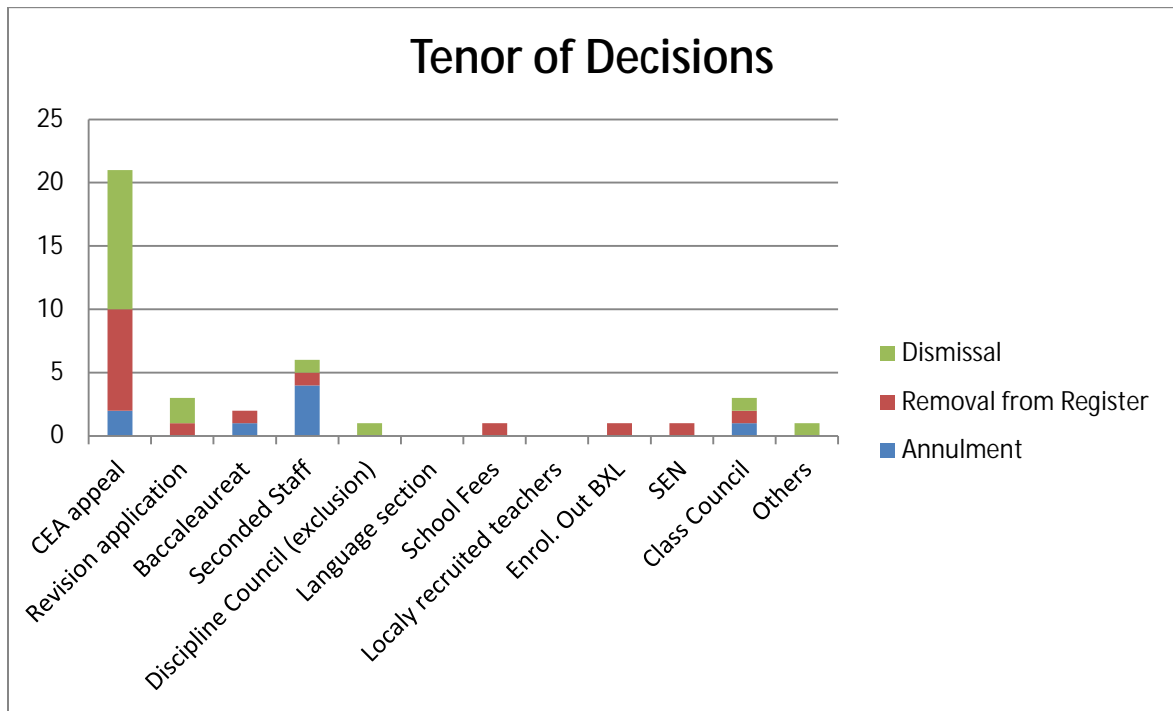
As was the case last year, the Complaints Board held **4 hearing sessions** (in April, June, July and November), during which it considered more than half of the cases in which there were full written and oral proceedings.

It should also be pointed out that 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:

- Ø Of the 28 **direct appeals** (including 1 in summary proceedings) lodged against decisions of the Central Enrolment Authority, 2 resulted in annulment, 18 in dismissal and 8 in removal from the register.
- Ø Of the 11 appeals (including 1 in summary proceedings) lodged by seconded staff (teachers or others), 4 resulted in annulment and 1 in removal from the register, the one lodged in summary proceedings having been dismissed; 5 decisions are still pending.
- Ø Of the 4 appeals (including 1 in summary proceedings) pertaining to the European Baccalaureate, 1 resulted in annulment, 1 was dismissed and 1 was removed from the register, the one lodged in summary proceedings having resulted in interim measures.
- Ø Of the 3 appeals in the form of revision applications, 1 resulted in removal from the register and the other 2 were dismissed.
- Ø Of the 3 appeals against decisions of Class Councils, 1 resulted in annulment, 1 was dismissed and 1 was removed from the register.
- Ø The sole appeal against decisions associated with enrolments in schools other than the Brussels ones resulted in removal from the register.
- Ø The appeal calling into question application of the SEN regulations was dismissed.
- Ø The appeal in the disciplinary area was dismissed.
- Ø The appeal against decisions concerning the school fees payable for category III pupils was removed from the register after withdrawal.

- Ø The appeal against refusal of voting rights to the association of Parents’ Associations at a meeting of the Board of Governors was dismissed.



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

Ø **The decisions which found in favour of the applicants are as follows:**

. In its decision 14/20 of 18 August 2014, the Complaints Board had to rule on the nature of the random **ranking of applications for enrolment in the Brussels European Schools** and on the consequences of a second random ranking intended to replace the first one and made necessary by a mistake which it had been the administration’s responsibility to correct. Thus the Complaints Board first stated that “although the random ranking cannot in any way be regarded as an act giving rise to a right to enrolment in one of the Brussels European Schools, it confers on non-priority applicants the right to see their applications considered in the order determined by that ranking (...).” Secondly, in so far as it appeared that the new ranking had been made public “in conditions hardly allowing applicants to be provided with information properly”, the Board considered that the enrolment procedure was marred by irregularities, the lack of information “having contributed to compounding the disproportionate nature for certain applicants of the damaging consequences of the decision to produce a new ranking.” The Board emphasised, however, that these irregularities “are unlikely to affect the legality of the decision

contested in the case in point if it is demonstrated that the same decision would have been taken on the basis of the initial ranking.” In the case in point, the contested decision was annulled.

. In its decision 14/22 of 18 August 2014, the Complaints Board stated, with reference to enrolments in the Brussels Schools and the priority criterion resulting from a medical condition (Is attendance at the school designated “**an essential measure for the treatment of the condition from which the person concerned suffers?**”), that “the measure requested can emerge from both an evaluation contained in a medical certificate and an overall assessment of the reasons set out by the applicant and the supporting documents appended to the application.” It therefore considered that **in case of doubt**, it is incumbent upon the administration pursuant to the principle of good administration to request further details about the nature of the illness and its disabling effects.

. In its decision 14/28 of 5 February 2015, the Complaints Board noted in particular that as payment of the severance grant provided for by Article 72 of the Regulations for Members of the Seconded Staff is recognised in general as an entitlement which a member of staff whose service terminates can claim, its method of calculation, in similar conditions based on the national authorities’ certificate, must be the same for all the teachers concerned. It concluded, in the case of Spanish teachers, that if in all the schools bar one, the basic national salary was considered to include solely the basic national salary and length of service, the same principle should be applied to all teachers, including those assigned to the only school where a different calculation system had been adopted, and even though the latter could be regarded as possible depending on the interpretation of Article 72.

. In his interim order 14/37R of 6 August 2014, the Chairman of the Complaints Board firstly pointed out that “suspension or any other interim measure may be requested of the judge hearing the application in summary proceedings **without awaiting a ruling on the prior [administrative] appeal**, in so far as the person concerned has provided supporting evidence, by producing a copy of that appeal, that he/she has made the necessary representations to the competent authority, seeking annulment or reversal of the contested decision. Secondly, considering that “the judge hearing an application in summary proceedings may be led, where the conditions for suspension of enforcement or other interim measure are fulfilled, to order **provisional rectification of a candidate’s mark or overall average**” and, finding that the Chairman of the Baccalaureate Examining Board, after having acknowledging the existence of a “procedural irregularity jeopardising the uniformity of the examination papers of the different language sections” failed to draw conclusions from that specific irregularity, the Chairman of the Complaints Board allowed the application made in summary proceedings.

. In its decision 14/42 of 24 September 2014, the Complaints Board annulled a decision to reject an administrative appeal taken by the Chairman of the European **Baccalaureate Examining Board**, on the grounds that the contested decision had been taken in violation of the rights of the defence (belated access to the different markers’ assessments) and that it gave a manifestly erroneous interpretation of the concept of “**substantial difference**” referred to in Article 6.5.9.8. of the AIREB.

. In its decision 14/44 of 24 September 2014, the Complaints Board considered that “the question of **who is invested with parental authority (...)** must be and is in reality tacitly resolved at

the time of pupils' admission to a ES. The reason is that anyone who submits an application for a pupil's admission signed by him or her and is actually granted admission must, since there would otherwise be an inadmissible contradiction, subsequently be regarded as the person invested with parental authority and consequently must be entitled to perform the acts provided for and authorised in everyday relations between parents and the school, but must also be entitled to lodge administrative and contentious appeals." As regards the substance, the Complaints Board annulled a decision taken by a **Class Council**, in so far as, as the applicants contended without being challenged by the ES, the marks supposed to be those of their son were erroneous, "something which constitutes both an irregularity in terms of the reasons given and an error of fact."

Ø **Amongst the decisions rejecting the applicants' claims, mention can be made of the following:**

. In its decision 14/02 of 15 May 2014, the Complaints Board clarified important details with respect to the scope of the provision of Article 9 of the Convention defining the Statute of the European Schools, which restricts the voting rights of the staff representatives and parents' representatives on the Board of Governors to the adoption of decisions on educational matters, excluding those having financial or budgetary effects. It found first of all that the exclusion of questions having a financial or budgetary effect does not constitute a particular exception that ought to be interpreted strictly in the light of a right conferred generally, but is additional to an already strict limitation of the said right. It then judged that to assess whether a planned decision involving educational matters and submitted to the Board of Governors for examination and approval has financial or budgetary effects within the meaning of that article, it is not sufficient to refer to the potential effects alone that the decision envisaged might have in the financial or budgetary area; in so far as most of the educational matters mentioned in Article 11 of the Convention are likely to have such effects, even if only indirectly, taking the contrary view might result in the voting rights recognised and conferred by Article 9(d) being rendered virtually ineffective. Generally speaking, it is advisable, therefore, to check whether the documents communicated to the Board of Governors with a view to considering and possibly adopting a planned decision on educational matters enable it to be established that the decision envisaged really has financial or budgetary effects; in that connection, it is in particular examination of the financial statement presented in support of such a plan which should enable the reality of its financial or budgetary impact to be determined. Finally, the Complaints Board noted that the consequences of the measures in question need to be gauged, in the absence of any further details on the subject in the text of the Convention, against the background not only of an increase in expenditure but also of a reduction in expenditure; to the extent that a plan entails both an increase and a reduction in the budget funding required, and even though comparison of the two enables a degree of balance to be achieved, it cannot be regarded as having no financial or budgetary effects.

. In its decision 14/41 of 29 August 2014, the Complaints Board reiterated the fundamental principle whereby **a decision's legality is assessed on the date on which it is taken**; hence, any particular circumstances (in the case in point, medical conditions from which might suffer a child whose enrolment with priority in one of the Brussels European Schools is applied for)

invoked *after* the contested decision, without the competent authority at least having been informed of the possibility of such a situation at the time when it takes its decision, cannot affect its legality.

It is interesting to view this decision in relation with decision 14/22, commented upon above, whereby the Complaints Board considered that *in case of doubt*, pursuant to the principle of good administration, it is incumbent upon the administration, even if it has been briefly informed of a medical problem, to request further details about the nature of the illness and its disabling effects.

III – Outlook for the years to come

1.

The more adequate staffing level of the Complaints Board's registry and the fall in the number of appeals noted in 2013 and in 2014 enabled the Board to work in better conditions than in past years. Such a finding is all the more satisfying as the difficult mission justifying its legitimacy involves its having to review and scrutinise on its own firstly, the legality of the acts of the different players in the European School system and secondly, whether respect of the right to an effective remedy is ensured.

Most of the measures envisaged to improve legal protection in the European School system – which will be reported on below – seek specifically to enhance the fundamental role of the Complaints Board as the system's judicial body, at the service of both teachers, pupils and their parents on the one hand and of the European Schools themselves on the other.

2.

It should be emphasised, moreover, that the Complaints Board's activity cannot be reduced to figures or statistics on the number of appeals lodged.

Other aspects of its activity need 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 Complaints Board also provides a **mediation forum** through informal requests dealt with outside the registration of appeals. The registry, in consultation with the Board's Chairman, is responding to a growing number of inquiries. The effectiveness of the system introduced for the administrative handling of appeals which have virtually no chance of success was, moreover, pointed to above.

- c) **The revision of translations:** translations still very often have to be reworked for the sake of clarity, coherence 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 School system. That question, already raised in the 2013 report, was still an issue in 2014.
- d) The Complaints Board played an extremely active part in the **working group** charged with submitting to the Board of Governors proposals as to how to strengthen legal protection within the European School system (see point 4 below).

3.

Whilst the changes decided in 2013 and introduced in 2014, 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 delicate**. 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 School system, which is *sui generis*.

It should be remembered 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, can obviously only continue to subscribe to such a suggestion

4.

It is with that in mind that the Chairman of the Complaints Board chaired, throughout the year 2014, 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 Complaints Board's registry, for its part, provided the working group with full administrative support (organisation of meetings, drafting of acts, revision of translations, etc.).

Thanks to the work done throughout the year 2014, the group is in a position to submit to the Board of Governors, for its April 2015 meeting, **concrete proposals** as to how to strengthen legal protection in the European School system. Some of them, if adopted, could enter into force quickly, in so far as they involve amendments to texts falling within the competence of the Board of Governors alone, whilst others would require a procedure for revision of the Convention defining the Statute of the European Schools to be initiated.

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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 2014, in still challenging conditions, at the service of all litigants, namely on the one hand, teachers, pupils and parents and on the other, the European Schools themselves.

Brussels, 23th of February 2015

Henri CHAVRIER,
Chairman