



**The Complaints Board of the
European Schools**

Ref : 2018-02-D-42-en-2

Original version : FR



**ANNUAL REPORT FOR THE YEAR 2017 OF THE CHAIRMAN OF THE
COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

**Approved by the Board of Governors of the European Schools at its meeting of 17, 18 and
19 April 2018, in Tallinn (Estonia)**



The Complaints Board of the European Schools

ANNUAL REPORT FOR THE YEAR 2017

For the Complaints Board, the year 2017 was marked by:

- changes at the level of its composition and of its Registry (I)
- a confirmed reduction in the number of appeals (II.1)
- a stable percentage in terms of the number of annulments (II.2)

I - Composition, organisation and operation of the Complaints Board

1.

For strictly personal reasons, and as announced, Mr **Henri CHAVRIER** resigned from the post which he had held for more than 13 years as a member and Chairman of the Complaints Board.

This resignation, as both Chairman and a member of the Complaints Board, took effect on 31 October 2017.

It was not without some emotion that he thanked his colleagues and the staff of the Registry for their lengthy collaboration, marked by professionalism and friendship. They in turn commended the exceptional work done by Mr CHAVRIER and thanked him most sincerely.

His commitment and his professionalism as an emeritus judge were also commended, in his presence, at the non-enlarged meeting of the Board of Governors of 5 December 2017.

2.

In place of Mr Henri CHAVRIER, Mr **Eduardo MENENDEZ-REXACH** was elected, in plenary session and unanimously, as Chairman of the Complaints Board (Article 6 of the Statute).

His term of office as Chairman took effect on 1 November 2017 and will end on 30 June 2019 (provided that his term of office as a member, expiring on 21 April 2019, is tacitly renewed; if not, a new Chairman will have to be elected with effect from 21 April 2019).

All the members of the Complaints Board and of the Registry wished him every success in discharging his new responsibilities and assured him of their full support.

3.

The Complaints Board is organised in two sections (Article 12 of the Statute of the Complaints Board), the first now chaired by the Chairman of the Complaints Board, Mr **Eduardo MENENDEZ-REXACH**, and the second by Mr **Andreas KALOGEROPOULOS**.

The seven members of the Complaints Board are assigned to one or other section in rotation, so as to prevent any compartmentalisation between the two formations.

4.

In addition, Mr CHAVRIER's resignation created a vacancy (Article 4 of the Statute).

Pursuant to Article 27.3 of the Convention defining the Statute of the European Schools and to Article 1 of the Statute of the Complaints Board, the Board of Governors of the European Schools, acting by a two-thirds majority, was charged with appointing a new member of the Complaints Board from the list compiled for that purpose by the Court of Justice of the European Union.

Thus, at its non-enlarged meeting of 5 December 2017, the Board of Governors appointed Mr **Michel AUBERT** as new member of the Complaints Board, to serve for the remainder of the term of office, i.e. until 21 April 2019, on which date it may be tacitly renewed for a period of five years.

A former Legal Secretary at the Court of Justice of the European Union and former president of different administrative courts in France, Mr Michel AUBERT was ready and willing to make his expertise available to the Complaints Board as soon as he was appointed.

5.

There was also a change in the Registry.

In January 2017, the assignment of the administrative assistant taken on in January 2014 ended. In April 2017, the Registry received temporary administrative support (guaranteed until June 2018 only) on a part-time basis from a person assigned to the Accounts Unit of the Office of the Secretary-General.

The members of the Complaints Board are, however, very keen to find a lasting solution (through the recruitment of an assistant for an indefinite period and 100% attached to the Complaints Board, as the Registry's permanent and continuous operation cannot rest on the shoulders of a single person), matching the needs of a Board whose activity is difficult to predict.

II – Judicial activity of the Complaints Board in 2017

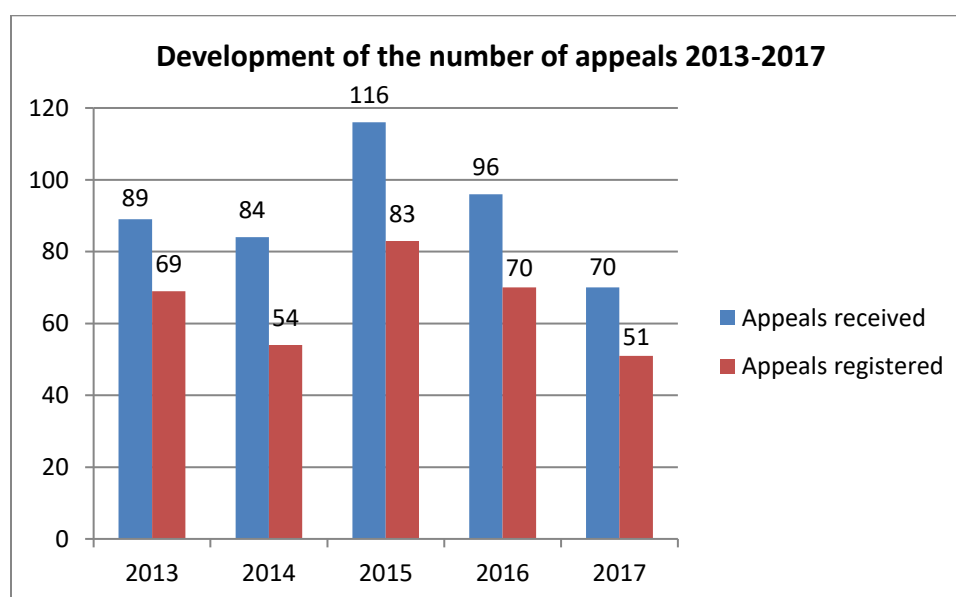
1) Number and categories of appeals registered

1.

The year 2017 was, once again, marked by a **reduction in the number of appeals** lodged with the Board: 51 appeals (including 4 in summary proceedings) were registered and submitted to the Complaints Board for consideration.

Administrative handling of a number of appeals with no chance of success enables them not to be formally registered; they do not therefore even appear in these statistics.

The graph below illustrates the pattern of development of the number of appeals over the period 2013-2017 (the difference between appeals 'registered' and appeals 'received' being those which were dealt with without being formally registered, following an exchange between the Registry and the applicant, given their manifestly inadmissible and/or unfounded nature):



2.

The reduction in the number of appeals is probably attributable to the following:

- The number of administrative appeals itself fell (for more details see the Annual Report of the Secretary-General to the Board of Governors of the European Schools for the year 2017).
- A significant reduction in the number of direct appeals lodged against decisions of the Central Enrolment Authority, which is itself probably attributable to different factors: reduction in the number of applicants for enrolment in the European Schools? ‘Brexit’ effect? fewer births in 2013? fewer officials taken on by the European institutions? new officials or contract staff preferring to educate their children in the Belgian school system?
- The Complaints Board’s case law, which is relatively settled and accessible via the database, on which the organs of the European Schools can draw (the bodies of the European Schools learn lessons from the decisions delivered by the Complaints Board) and which applicants can scrutinise before lodging an appeal in order to evaluate their chances of success. Updating of this database is essential and contributes to maintaining the number of appeals within reason and to dealing with them with an appropriate and effective tool.
- A relatively low annulment rate.
- A financial obstacle: the issue of the legal and other costs of proceedings has already been mentioned in previous reports. It should be reiterated here that the contentious procedure (litigation) is free of charge, the only caveat being that the Complaints Board can decide to order the unsuccessful party – or otherwise – to pay the legal and other costs, the amount being what it deems most appropriate in the particular circumstances of the specific case; in so far as the amounts claimed by the European Schools as legal and other costs are comparatively large (between €800 and €1000 or more in certain cases), the Complaints Board endeavours to remain vigilant with respect to this question of costs, so that they are not a constraint on the lodging of an appeal or a reason for discontinuance.

3.

As in previous years, appeals lodged direct against decisions of the Central Enrolment Authority for the Brussels European Schools remained the most numerous.

The other contentious appeals were lodged after rejection of a prior administrative appeal to the Secretary-General of the European Schools.

They broke down, in descending order in number, as follows:

- appeals lodged by members of the teaching staff (seconded or locally recruited teachers);
- appeals involving ‘school disputes’:
 - ones concerning application of the specific rules of the European Baccalaureate;
 - ones concerning determination of the language section, whether at the time of enrolment or during schooling, and the conditions in which the language tests provided for by Article 47(e) of the General Rules of the European Schools are administered;
 - ones against Class Council decisions;
- appeals against decisions relating to enrolment or school fees of category III pupils;
- appeals in the disciplinary area.

Amongst the atypical appeals lodged in 2017 the following are to be noted:

- an appeal concerning the category (I or III?) in which the children of a EUROPOL liaison officer should be enrolled;
- an appeal against a refusal to create an option course because an insufficient number of pupils was concerned;
- an appeal against the 2017 Baccalaureate calendar;
- an appeal against the closure of the German section of the European School, Mol.

4.

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

Other aspects of its activity need to be highlighted here:

- a) The Complaints Board regularly analyses the case law of the Court of Justice of the European Union in order to take account in its own decisions of the general principles of law recognised within the Union. It also ensures that its case law is published and summarised in order to ensure its coherence.

- b) The Complaints Board deals administratively (without formal registration) with appeals that are manifestly inadmissible or unfounded, which do not, therefore, appear in the statistics and which are settled without the Schools even being informed. The Board deals in this way in particular with complaints over which it does not have jurisdiction: civil liability, bullying, recruitment of teachers, questions concerning the management of daycare and after-school centres or school transport, content of textbooks, etc.
- c) The revision of translations: this represents a substantial workload – which cannot be seen from the figures and statistics – 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 have a command of legal language and/or of the terms specific to the regulations applicable in the European School system. This question, already raised in previous annual reports, is still an issue.

2) Decisions delivered by the Complaints Board in 2017

1.

In accordance with the provisions of the Rules of Procedure of the Complaints Board, the different appeals were investigated and ruled on, depending on the cases, 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 or orders without the submissions of the parties, by interim orders or by orders to remove cases from the register.

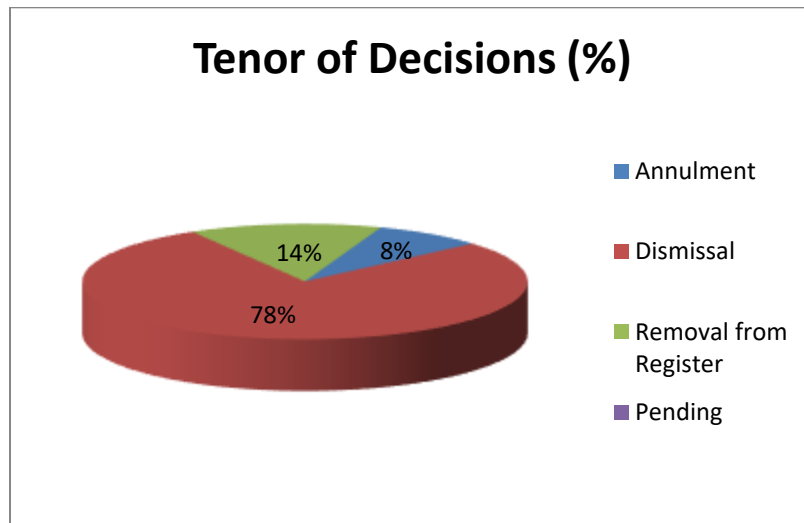
In 2017, the Complaints Board held **four hearing sessions** (over five days), during which it considered half of the cases in which there were full written and oral proceedings. The other half were considered *without a hearing*, as allowed by Article 19 of the Rules of Procedure, in so far as decisions of principle in similar cases could be used as a benchmark.

Use was also made of the possibility of having some appeals heard and ruled on by a **single judge**.

Finally, it should be noted that one applicant made use, for the first time, of the internal referral mechanism introduced in May 2016 (new Articles 40a and 40b of the Rules of Procedure).

2.

The graph below illustrates the proportions in which appeals were **allowed** (annulment of the decision adversely affecting the applicant(s)), **dismissed or removed from the register** following a withdrawal or a negotiated solution which had made the appeal devoid of purpose:



The figures for 2017 show a **stable annulment percentage** (8% in 2017, compared with 9% in 2016).

In addition, there were some removals from the register because there was no need to adjudicate, or because of withdrawal, in so far as the parties had reached an agreement, implicitly or explicitly. Those removals from the register are annulments that are not visible in the figures but are the reflection of an equally favourable outcome for the applicant.

3.

Amongst the most **interesting decisions** delivered by the Complaints Board during the year 2017, some deserve to be mentioned.

➤ **Amongst the decisions resulting in annulment:**

. In its decision **17-05 of 7 July 2017**, delivered on an appeal in the disciplinary area, the Complaints Board pointed out that one of the general principles of law recognised within the European Union is the principle of the proportionality of penalties, whereby the level of disciplinary measures must be proportionate to the offence. Finding that the most serious of the allegations of misconduct of which the pupil was supposedly guilty had not been proved to the requisite legal standard, the Complaints Board considered that expulsion from the school – i.e. the severest disciplinary measure provided for by the General Rules – was not proportionate to the misconduct actually established. The Complaints Board also pointed out that the purpose of disciplinary measures is “*to educate and train*”; “*now a disproportionate disciplinary measure is lacking in that respect.*”

. Through its decision **17-14 of 3 August 2017**, the Complaints Board annulled a decision on determination of the language section in so far as the results of the language tests demonstrated an excellent level of comprehension and expression in the three languages of which the pupil had a command and in so far as the parties were in agreement in considering that the child would be capable of being educated without difficulty in the European School in *each of those languages*.

The Complaints Board therefore considered that *“in such a situation, which is undoubtedly exceptional, even though the decision of the school’s Director to enrol the child in the Slovak language section cannot be regarded as being vitiated by a manifest error of assessment, any more, moreover, than would have been a decision on enrolment in one or other of the other two language sections in question, it follows from the aforementioned provisions of Article 47(e) of the General Rules that the parents’ request, whatever the reasons therefor, ought to have been taken into account.”*

“It should be remembered that whilst parents are not free to choose the language section, its determination being the responsibility of the school’s Director, the provisions expressly lay down that in the event of dispute, the parents’ request will be taken into consideration and comparative tests will be organised.

In the rare cases where the results of these tests lead to the conclusion that the child could be educated without difficulty in each of the languages compared, the solution whereby the parents’ request is accepted appears most appropriate to respect both the letter and the spirit of the aforementioned text.”

. Through its decision **17-23 of 2 August 2017**, the Complaints Board also annulled the decision on determination of the language section, on the ground that *“language tests must be conducted in such a way as to be able to lead to an objective comparison of the results. It is true that the different schools have autonomy with regard to the practicalities of organising such language tests and that the GRES do not prohibit the teachers concerned from shaping tests to form an opinion of the language skills of the children who have to take the said tests. However, the concept of “comparative language tests”, to which Article 47(e) of the said GRES refers, seeks to ensure that the methods used, even though they need not be identical, guarantee that language skills are tested objectively, according to measurable and comparable standards, so that results are truly comparative (see decision of the Complaints Board 16-22, point 11). In the case in point, the fact is that the conditions in which the tests were conducted were different and those conditions cannot be regarded as having no impact, on account of the child’s age.”*

➤ **Amongst the decisions rejecting the applicants’ claims, mention can be made of the following:**

. In its decision **17-02 of 28 July 2017**, the Complaints Board considered a complex question, namely to determine the category (I or III?) in which the children of a EUROPOL liaison officer

should be enrolled. Following analysis of the many arguments exchanged, the Complaints Board concluded that as the applicant did not belong to the staff of EUROPOL, he could not claim entitlement to category I for his children in so far as the Board of Governors had *“intended to classify in category I the children of staff of the Institutions of the European Union and of European organisations and also of certain assimilated staff, fulfilling the dual condition of direct employment for a minimum period of one year, with the caveat that in the case of national officials attached to the Permanent Representations of the Member States, those of them who are recruited locally are expressly excluded (...).*

Europol liaison bureaux, no more than those established at other European Union Institutions or agencies, cannot in any way be equated with the Representations of the Member States to the European Union.”

. Through its decision **17-03 of 17 July 2017**, the Complaints Board dismissed an appeal against a decision on the expatriation allowance provided for in Article 56 of the Regulations for Members of the Seconded Staff, drawing attention in that connection to its case law and to that of the Civil Service Tribunal. Analysis of the facts of the case led to the conclusion that *“... the factual circumstances demonstrate a wish for continuity of her residence in Brussels, where [the applicant] first moved for personal reasons and where she was subsequently able to work, on the basis of the successive contracts offered by the European School, Brussels II, to which she was finally seconded as a member of the teaching staff.”*

. Through its decision **17-04 of 12 July 2017**, the Complaints Board dismissed as inadmissible *rationae temporis* an appeal lodged by a locally recruited teacher who had claimed reimbursement of the deductions made by the European School, Brussels I from her monthly remuneration from the date of her appointment (November 1990) up to December 2004.

. Through its decision **17-06 of 7 April 2017**, the Complaints Board dismissed as inadmissible and unfounded the appeal lodged against a refusal to create an option course because an insufficient number of pupils was concerned;

“...in accordance with Article 27.2 of the Convention defining the Statute of the European Schools, the Complaints Board’s jurisdiction can be exercised only in the conditions and subject to the detailed rules laid down by the General Rules of the European Schools. Now the disputed decision is not one of those against which an administrative appeal, within the meaning of Article 66 of the General Rules, and a contentious appeal, within the meaning of Article 67 of the General Rules, may be lodged.

Moreover, it is clear from the provisions of point B of Chapter XIX of the Digest of Decisions of the Board of Governors (2014-02-D-14-en-3) that in years 6 and 7, there has to be a minimum of 5 pupils for options to be created. Whilst it is true that there are certain exceptions to the rules governing minimum “group / class / option” sizes, which require there in general to be a minimum of 7 pupils, there is no mention whatsoever of this requirement in the case of options in years 6 and 7, for

which the minimum number is specifically 5 pupils. Moreover, even assuming that such exceptions might nevertheless be allowed in the latter case, they would certainly not constitute a right for pupils or parents but a mere possibility, coming under the discretionary powers of the competent authorities and requiring the approval, expressly mentioned in the second paragraph of the aforementioned Chapter XIX, of the school's Administrative Board.

As the disputed decision therefore fully complies with the provisions applicable, its legality cannot, in any event, be usefully discussed."

. Through its decision **17-07 of 31 May 2017**, the Complaints Board dismissed the appeal lodged by the *Conseil Supérieur des Elèves des Ecoles européennes* (European Schools' Pupils' Committee) (CoSup) seeking the suspension, modification or withdrawal of the decision of the Board of Governors, taken by written procedure 2017/18, whereby it adopted the Memorandum on organisation of the European Baccalaureate examinations for the 2017 session, in so far as it sets the written examinations calendar,

. Through its decision **17-08 of 28 July 2017**, the Complaints Board dismissed the appeal seeking annulment of the decision of 7 February 2017, adopted by written procedure, whereby the Board of Governors of the European Schools approved the phasing-out of the Mol School's German language section.

. Through its decision **17-33 of 16 November 2017**, the Complaints Board dismissed the appeal lodged by a pupil, seeking upward adjustment of her mark for Biology in the Baccalaureate, as being inadmissible in the absence of an innate and current interest in bringing an action, in so far as *"the applicants fail to demonstrate that with an overall mark of 79.82 out of 100 and a final mark for Biology of 7.86 out of 10, their daughter would run the risk of being refused admission to the University of her choice on account of those marks."*

In delivering that decision, the Complaints Board also drew attention to settled and consistent case law whereby the assessments made by an examining board when appraising candidates' abilities may be subject to review by a court only when it is proven that there has been a breach of a relevant rule. *"Hence, the Complaints Board is unable to appraise the appropriateness of the mark awarded to the applicants' daughter for the purposes of its re-assessment, since the applicants have failed to demonstrate a breach of the rules, whose application the examining board is supposed to ensure, which had an impact on that mark."*

* *

By way of conclusion, attention should be drawn here to the fundamental role of the Complaints Board, the sole tribunal specific to the *sui generis* European School system – and henceforth to Accredited European Schools as far as the European Baccalaureate is concerned – whose difficult mission, justifying its legitimacy, involves reviewing on its own the legality of acts of the different organs of the European School system and ensuring respect for the right to effective legal redress.

It ensures, with rigour and independence, effective respect for the rights of litigants (teachers, pupils and parents, but also the decision-making organs of European Schools) in the system, taking care to ensure that in all circumstances they are afforded “adequate legal protection”, as intended by the Convention defining the Statute of the European Schools.

In that connection, the members of the Complaints Board are committed to respecting it as the judicial organ of the European School system: respect for its members, for the staff of its Registry and for its decisions.

Even though they are able to put things in perspective, they can be concerned about sometimes strong reactions on the part of parties dissatisfied with the decision delivered or even of third parties who take a position on a decision without being fully cognisant with the ins and outs of the case, not having participated in the *inter partes* proceedings.

It is therefore worth drawing attention to the fact that by scrupulously discharging the mission assigned to it by the Convention defining the Statute of the European Schools, i.e. to provide adequate legal protection by ruling completely independently on the legality of the acts which it is expected to review, the Complaints Board contributes actively to the smooth operation of the *sui generis* European School system.

That means that the Complaints Board relies on the necessary assistance of the authorities of the European Schools in general and of the Secretary-General in particular, so that it can continue to discharge its mission under appropriate conditions.

In concluding this report, the Chairmen of the Complaints Board wish to thank publicly their colleagues and the members of staff of the Registry for the diligence which, as is the case each year, they showed during the year 2017. Their ready availability at all times enables the Board to carry out its mission, with due regard for the principle of continuity of public service.

Brussels, 7th March 2018

Henri CHAVRIER
Outgoing Chairman

Eduardo MENENDEZ-REXACH
Chairman of the Complaints Board