



**The Complaints Board  
of the European Schools**

**Ref.: 2022-03-D-24-en-1**  
Original version: FR

# **2021 ACTIVITY REPORT OF THE CHAIR OF THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

---

**BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS**

Meeting of 6, 7 and 8 April 2022

---



## **The Complaints Board of the European Schools**

### **2021 ACTIVITY REPORT**

Events of note for the Complaints Board in 2021 were:

- the continuing COVID-19 pandemic and its consequences(I);
- the appointment of a new member (II-2);
- Amendments to the Rules of procedure (II-4);
- the number of appeals returning to more normal levels (III-1).

#### **I – The COVID-19 pandemic and its consequences for the Complaints Board**

1.

The Complaints Board's activity continued to be affected by the COVID-19 pandemic.

The measures implemented in March 2020 were retained: remote working and giving priority to written procedures and to processing matters without a hearing, with the rapporteur asking questions in writing where necessary.

These health restrictions have even prevented the Board from applying the general rule enshrined in its Rules of Procedure (Article 19) to examine cases of which it is seized in a public hearing, which is in accordance with the principles governing procedure in European legal culture.

Exceptionally this year, 2021, the Board has only been able to hold one hearing, in October; in the other cases, the parties were informed of the restrictions on organising a hearing, which would have had the consequence of delaying the appeal decision.

The Board would like to normalise this activity as soon as the health situation permits.

2.

The Board of Governors' decisions concerning how remote learning and tests for the 2021 Baccalaureate would take place led to significantly fewer questions and appeals than in 2020.

Nevertheless, numerous parents were still worried and contacted the Complaints Board, without necessarily formally lodging an appeal. There were many questions from concerned parents who were uneasy and worried about the consequences of the pandemic on their children's education. The Board listened to their concerns and redirected them towards the appropriate authorities, even when a contentious appeal could not be formally lodged.

It should be noted at this point that the Complaints Board deals with clearly inadmissible or unfounded appeals, or those over which it has no jurisdiction (civil or criminal liability, bullying, management, teachers' teaching abilities, issues relating to the management of school childcare or transport) in an administrative capacity (i.e. without them being formally registered).

Just as much of this 'behind-the-scenes' work, which does not appear in the statistics, took place in 2021 as in 2020 (point III(1)(1)).

## **II – The composition, organisation and functioning of the Complaints Board**

1.

Mr Eduardo Menéndez-Rexach continues to chair the Complaints Board.

The Board is still split into two sections, with members being allocated to each section on a rotating basis in order to avoid the two panels being entirely separated.

2.

At its April 2021 meeting, the Board of Governors approved the appointment of Ms Brigitte Phémolant to the Complaints Board with immediate effect for the remainder of the term of office, i.e. until 21 April 2024, with the term being automatically renewable for 5 years.

Ms Phémolant is also a State Councillor and President of the Administrative Court of Appeal of Bordeaux.

3.

At its April 2021 meeting, the Board of Governors also renewed the term of office of Mr Aindrias Ó Caoimh for a new five-year period beginning on 1 May 2021.

4.

In response to the various consequences observed by the Board during the course of the COVID-19 pandemic during 2020, the Complaints Board made sure to amend Articles 14, 28 and 30 of its Rules of Procedure. At the meetings of 13, 14 and 15 April 2021, the Board of Governors accepted the proposals of the Complaints Board for addressing new communication technologies, notably the disappearance of fax machines and less frequent use of postal mail in favour of electronic mail, but also clarified that protection of the personal data of the applicants and natural persons involved in the procedure is guaranteed in the context of publication of the decisions of the Complaints Board on its website.

Finally, it also appeared necessary to organise the management of appeals of similar nature and subject matter, and the intersection between them in the event that they are interrelated.

5.

No changes were made to the Registry.

### **III – The judicial activities of the Complaints Board in 2021**

#### **1) The number of appeals lodged and the categories of these appeals<sup>1</sup>**

1.

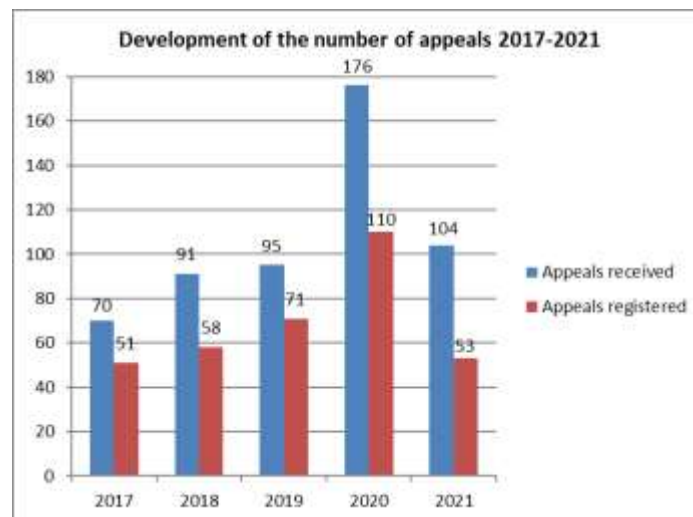
In 2021, the number of appeals returned to a more normal level: 53 appeals – including three in summary proceedings – were lodged and brought before the Complaints Board for review.

The graph below shows how the number of appeals changed over the period from 2017 to 2021.

---

<sup>1</sup> The figures shown may not correspond exactly to those given in the Annual Report of the Secretary-General of the European Schools, on the one hand because of complaints being categorised slightly differently, and on the other hand because of appeal processes being spread across multiple years (when the administrative appeal is processed during year N and the contentious appeal takes place in year N+1).

‘Received’ appeals are those that were processed without being formally lodged, following discussions between the Registry and the applicant, given the fact that these appeals were clearly inadmissible and/or unfounded.



2.

As during the ‘pre-Covid’ years, the largest number of appeals were direct appeals against decisions of the Central Enrolment Authority for the Brussels European Schools (hereinafter the CEA).

The opening of the **Evere site** (Brussels II) in September 2021 led to some concern among parents, but ultimately very few appeals were lodged (these were either rejected or removed from the register after being withdrawn).

As regards decisions of the CEA, the disputes still tend to concern the **language section** allocated at the time of enrolment (Article 47(e) of the General Rules of the European Schools) and applications for **priority criteria** to be taken into account with a view to obtaining a place at the first-choice school (in particular, health problems).

There are still a relatively large number of appeals involving **force majeure** being invoked in cases where the enrolment deadlines for the Brussels schools were not met. Failure to meet these deadlines results in the late enrolment application being automatically rejected and considered inadmissible (Articles 2.8 to 2.11 of the 2021-2022 Enrolment Policy). In such cases, the CEA does not award any place, in any school, even though the applicants have the right to access the European Schools as employees of the institutions (category I). In certain cases, the parents have alternative options (Belgian schools, Deutsche Schüle, British School, or staying in the pupil's current school), but in other cases, they have no alternative. The right to education and the principle of proportionality are therefore at stake.

It should be noted that, even though the enrolment policies for the last few years have excluded both **geographic arguments** (travel between home / the allocated school / the parents' workplace) and arguments relating to **difficulties in organising travel and family life**, and in spite of the established precedents of the Complaints Board, which maintain that these are not priority criteria, appeals were still lodged on the grounds of (very) long journeys between the child's home and the allocated school and the consequences of this: excessive fatigue (especially for the youngest children), lost time (time that cannot be devoted to studies, extracurricular activities or sleep) and ecological and environmental considerations (pollution, wasted energy, difficulty of using eco-friendly means of transport such as walking and cycling).

3.

The other contentious appeals submitted to the Complaints Board in 2021, which were lodged after a preliminary administrative appeal was rejected by the Secretary-General, were (in descending order of the number of appeals):

- appeals against decisions of the Class Council (repeating a year);
- appeals against decisions of the 2021 Baccalaureate examinations board;
- appeals from teaching staff (seconded or locally recruited teachers);
- appeals against refusals to change the language (L1 or L2);
- an appeal against a decision concerning the language section outside Brussels;
- an appeal concerning educational support (early promotion);
- an internal referral (Article 40 of the Rules of Procedure).

4.

It should be noted that the activities of the Complaints Board cannot be reduced to figures or statistics concerning the number of appeals that were lodged and processed.

The following aspects of its activities are also worth mentioning.

- a) The **complexity of the pleas in law** invoked by the applicants in support of their appeals, especially when they are supported by a lawyer, leads to a significant workload: the arguments are more meticulous and complex and require the members of the Board to carry out in-depth analysis and legal research, in particular researching the case-law of the Court of Justice of the European Union, to ensure that their decisions account for the general legal principles enshrined within the law of the European Union.
- b) The Board also publishes and summarises its case-law to ensure consistency; if the case-law is relatively consistent and accessible via the **database**, it can be used by the bodies of the European Schools as guidance (the bodies of the European Schools also draw on the lessons of certain decisions issued by the Complaints Board when amending their own regulatory frameworks) and by applicants to gauge their chances of success before lodging an appeal. It is essential to keep this database up to date as it helps to keep the

number of appeals at a reasonable level and provides an effective, specialised tool for processing them.

- c) **Reviewing translations** represents a large workload for the Registry and the relevant members of the Complaints Board, which is not reflected in the figures and statistics. In fact, the translators made available to the Complaints Board are not lawyer-linguists and, with some exceptions, they are not familiar with legal language and/or the specific terminology of the rules that apply within the European Schools system. This issue, which has often been raised in previous activity reports, still applies but is expected to change for the better when the new translation provider takes over in January 2022.
- d) The Complaints Board amended Articles 14, 28 and 30 of its Rules of Procedure.

## 2) Decisions issued by the Complaints Board in 2021

1.

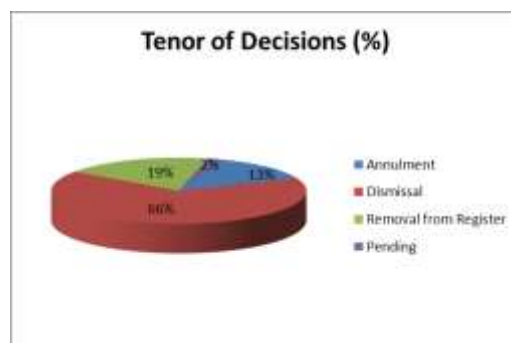
In accordance with the provisions of the Rules of Procedure, the different appeals may be processed, depending on the case, by: a decision issued after an adversarial written procedure followed by a hearing; a decision issued after an adversarial written procedure not followed by a hearing; a non-adversarial decision or reasoned order; an order issued in summary proceedings; or an order removing the case from the register.

In 2021, during which public health restrictions in response to the COVID-19 pandemic were still in place, the Complaints Board was only able to hold one hearing, in October.

All matters (except for one) were processed *without a hearing*, as permitted under Article 19 of the Rules of Procedure, with the rapporteur submitting questions in writing where necessary (Article 18).

2.

The graph below shows the proportion of appeals that were **upheld** (annulment of the disputed decision), **rejected** (following an investigation or reasoned decision) **or removed from the register**.



The figures show **a considerably higher percentage of annulments** for 2021: 13%, compared with 6% in 2020 and 8% in 2019, with one still pending.

This percentage should also consider appeals removed from the register due to there being no need to rule on them or due to them being withdrawn once the parties had reached an agreement, either implicitly or explicitly. Such cases are in effect invisible annulments that are not shown in the figures, but they reflect an outcome that is equally as positive for the applicant as an annulment.

Lastly, it should be noted that a single applicant made use of the internal referral mechanism that was introduced in May 2016.

The Complaints Board endeavours to grant each litigant a considerate hearing; even if their appeal is rejected, certain applicants state that they are satisfied with having at least been able to state their case, be heard and receive an answer to their questions.

3.

It is worth highlighting some of the most interesting decisions issued during 2021.

### **3.1 Decisions leading to an annulment:**

- **Central Enrolment Authority (CEA): force majeure**

Through **decisions 21-32 of 31 August 2021 and 21-34 of 2 September 2021**, the Complaints Board upheld appeals seeking the annulment of CEA decisions that had rejected cases of force majeure invoked by parents to justify their enrolment application having been submitted after the first enrolment phase.

The Complaints Board deemed that the arguments on the grounds of force majeure should be upheld because the two pupils in question, who were being taught at the European Schools, had to leave the system *after* the first phase (in March 2021), one for medical (psychological) reasons relating to the COVID-19 lockdown, and the other due to dropping out as a result of the remote learning that had been introduced during the pandemic.

In both cases, the Complaints Board deemed the parents' decision to remove their child from the European Schools system to be justified by the facts; it considered that *'[...] it would be a case of unreasonable bureaucracy to not take into account the fact that the pupil's wishes were strongly influenced by exceptional independent circumstances [...] such as the crisis at home, the lockdown and the online teaching imposed by the COVID-19 pandemic'* (point 14 of decision 21-32).

It was also important to allow these two pupils to return to the European Schools system without dropping down a year: having left the system in S5, the best interest of these



teenagers was to return to the Schools system to complete years S6 and S7 in order to be allowed to sit the Baccalaureate examinations.

- **Central Enrolment Authority (CEA): upheld summary proceedings and temporary readmission**

Through **interim order 21-50 R of 12 January 2022**, the Chair of the Complaints Board, ruling on an interim basis, upheld the request to suspend the enforcement of a CEA decision that denied the pupil the right to continue their education, during the second semester, in the European School that they had attended before leaving to travel abroad during the first semester:

*‘In this instance, the particular circumstances of the case were that the pupil had been educated at the Brussels II European School since 2021, that there was an exchange programme normally available to secondary 5 pupils, such as the son of the applicants, and that this programme had been cancelled in 2021-2022 because of the pandemic, although some pupils from other European Schools were still able to travel abroad and subsequently return to their own school for the second semester; these circumstances all raise **serious doubts as to the legality of the disputed decision**.*

*At this stage, pursuant to Article 35.2 of the Rules, the interests involved should be considered: on the one hand, those of the School, which aims to run its education system smoothly and comply with the rules on this matter; on the other hand, the interests of the child in continuing their education in the school that they had attended for 10 years, with the risk of having no valid alternative for pursuing similar studies in Brussels. It therefore appears that the enforcement of the disputed decision is likely to cause irreparable harm or harm that would be difficult to remedy. Consequently, when **weighing up the interests of the parties**, the interests of the minor were deemed to take precedence over those of the School or third parties, with the interests of the latter two not being seriously affected by the pupil returning to his school’.*

This pupil then rejoined his school, initially on a temporary basis following the interim order, before the CEA permanently admitted him, rendering the substantive appeal inapplicable – hence it was removed from the register.

- **Determining the language section and language tests (Article 47(e) of the GRES)**

Through **decision 21-28 of 24 August 2021**, the Complaints Board upheld an appeal for annulment in which the applicants disputed the results of the language tests that were performed pursuant to Article 47(e) of the General Rules of the European Schools with a view to admitting their child into the nursery cycle.

After reviewing the principles (point 10), the Complaints Board found that there had been a procedural irregularity: *‘Consequently, it proceeded on the basis that, in contravention of point (b) of the rules on organising language tests, the presence of one of the parents was not*

*permitted during the first 10 minutes of the French language test, unlike during the Bulgarian language test. Given the very young age of the child, the difference between the two tests distorted the results of the French test and thus the test results in the two languages could not be objectively compared’ (point 17).*

Through **decision 21-39 of 18 October 2021**, the Complaints Board likewise upheld an appeal for annulment in which the applicants disputed the results of the language tests performed with a view to admitting their child into the nursery cycle.

After once again reviewing the principles (point 11), the Complaints Board found that there had been a procedural irregularity in that, given the very young age of the child (4 years old), there should have been a necessary, sufficient break between the two tests in order to make them comparable, as required under Article 47(e) of the General Rules of the European Schools (point 14).

- **Baccalaureate**

Through **decision 21-41 of 25 February 2022**, the Complaints Board upheld an appeal lodged by a pupil who disputed the grade awarded by the second marker on the grounds that the marker's appointment did not comply with the provisions of Article 5.4 of the Arrangements for Implementing the Regulations for the European Baccalaureate.

- **‘Skipping a year’ (early promotion)**

Through **decision 21-44 of 30 November 2021**, the Complaints Board upheld the appeal for annulment against a decision rejecting early promotion.

In support of their appeal, the applicants submitted five pleas in law, including a breach of the right of defence and the right of access to the administrative documents, owing to the Class Council minutes being sent out late.

Recalling that the right of defence constitutes a fundamental principle of European Union law, the Board deemed in this instance that ‘[...] *since the minutes were sent out so late, despite the parents having requested them as soon as they were made aware of the decision of the Deputy Director rejecting the request to skip a school year, in good time to allow them to dispute this opinion during their preliminary review with the Secretary-General, the parents were unable to fully benefit from their right of defence during the pre-litigation stage of their suit*’.

### **3.2 Decisions rejecting applicants' claims**

Among the decisions rejecting the most common claims from applicants, the following cases are worth noting.

The Complaints Board rejected all ‘CEA force majeure’ appeals other than the two described above, pointing out that the right to enrol at the European Schools does not exempt the interested parties from complying with the strict deadlines set for submitting enrolment applications, which are particularly important in Brussels given that there are several European Schools, covering numerous language sections and a very large number of pupils. The Board considers that splitting enrolments into two phases and imposing strict deadlines for the submission of applications are essential measures for smoothly managing the Brussels European Schools and optimising the available places; they are necessary, reasonable and proportionate to their purpose.

The Board also rejected appeals disputing the language section that did not challenge the validity of the tests. For example, **decision 21-19 of 8 July 2021**, where the applicants' arguments concerned opportunities (bilingual family, contact with the mother's family, older sisters taught in another language, choice of L2, educational support), and **decision 21-22 of 23 August 2021**, where a procedural irregularity or a manifest error of assessment could not be found.

Through **decision 21-04 of 28 June 2021**, the Complaints Board rejected the request to change the first language in S6 on the grounds that the pupil was struggling with their second language and was suffering psychological problems relating to these difficulties at school. The Complaints Board considered the very significant consequences for the pupil should they change language (changing school and repeating S6, in particular). The Board also pointed out that only the Class Council may initiate a change of language.

#### **IV – Outlook?**

In 2022, the Complaints Board will celebrate its **35th anniversary!**

At the time of writing, the COVID-19 pandemic is sadly still not under control and we will very probably have to continue to work around it in 2022 (especially with regard to holding hearings) – and, at the time of writing, potentially within a difficult international geopolitical context as well.

\*                      \*

In conclusion, it is important to note the fundamental role of the Complaints Board of the European Schools as the sole in-house authority of the unique European Schools system tasked with providing appropriate legal oversight by ruling independently on the legality of the cases it is asked to review.

As an in-house body ruling independently on the disputes referred to it, it also contributes to the smooth running of the European Schools.

The Chair of the Complaints Board should be able to count on the vital support of the authorities of the European Schools, in particular its Secretary-General, in order to be able to correctly carry out its mandate. This was once again the case in 2021, for which the Board is very grateful.

Finally, the Chair of the Complaints Board wishes to publicly thank his colleagues and the Registry staff for their unfailing diligence, especially during another year that has been rocked by the pandemic and that resulted in difficult working conditions. Their incredible flexibility allowed the Board to fulfil its mandate and ensure the continuity of public services.

Brussels, March 2022

**Eduardo Menéndez Rexach**  
Chair of the Complaints Board