



**The Complaints Board
of the European Schools**

Ref.: 2023-03-D-20-en-1

Original version: FR

2022 ACTIVITY REPORT OF THE CHAIR OF THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS

Meeting on 12,13 and 14 April 2023 in Dublin (Ireland) - Hybrid



The Complaints Board of the European Schools

2022 ACTIVITY REPORT

Events of note for the Complaints Board in 2022 were:

- a return to normal, after two years of disruption caused by the COVID-19 pandemic;
- changes to its composition and approval of the electronic litigation procedure;
- a substantial increase in the number of appeals;
- recurring issues, as well as new perspectives;

I - A return to normal, after two years of disruption caused by the COVID-19 pandemic

The Complaints Board's activity ceased to be hampered by the COVID-19 pandemic, with hearings able to take place under normal conditions.

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

1.

Mr Eduardo MENENDEZ-REXACH was unanimously re-elected as Chair of the Complaints Board (until 30.06.2025).

The Board is still organised 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 the end of 2022, Mr Andreas KALOGEROPOULOS announced his intention to leave the Complaints Board for strictly personal reasons.

The Board is therefore losing one of its oldest members, who is also Chair of the second section, and a distinguished lawyer. His colleagues thanked him warmly for his dedicated work since 2007.

His resignation came into effect on 23 January 2023, and the procedure for appointing a new member was quickly launched so that the April 2023 Board of Governors could fill the vacant post in accordance with Article 1(2) of the Statute of the Complaints Board.

3.

The members of the Complaints Board asked Ms Brigitte PHEMOLANT to chair the second section, which she agreed.

4.

No changes were made to the Registry.

5.

In 2021, the Complaints Board amended its Rules of Procedure to adapt its way of working to new communication technologies (the demise of fax machines and less frequent use of post, with email being used instead).

While contentious appeals can still be validly delivered in person to the registry, which will issue a receipt, or sent by registered post, they can now also be validly sent *‘by any technical means of communication made available by the Complaints Board and to its email address, the date shown on the transmission document being taken as proof’* (Article 14 of the Rules of Procedure) – therefore by email, with it no longer being necessary to use registered post to confirm that the appeal has been sent.

It is also specified that *‘Signed documents that are to be sent electronically shall be generated by electronic signature or by scanning of the signed original paper version’* and that *‘Successive communications and notifications of the procedural documents, including the decision of the Complaints Board, may be sent using the same technical means and, where appropriate, to the email address of the different addressees’*.

In 2022, the Complaints Board introduced and approved the electronic *litigation* procedure, with no problems encountered.

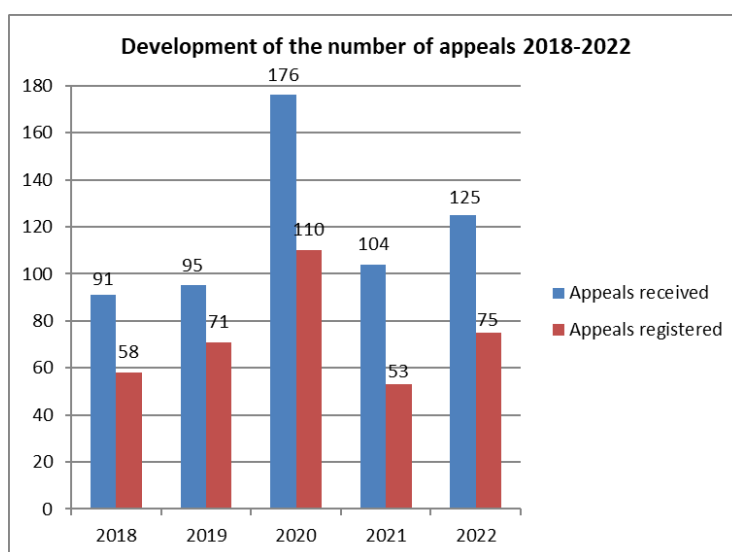
III – The judicial activity of the Complaints Board in 2022

1) The number of appeals lodged and the categories of these appeals¹

1.

In 2022, there was a substantial increase in the number of appeals: 75 appeals – including 7 in summary proceedings – were lodged and brought before the Complaints Board.

The graph below shows how the number of appeals changed over the period from 2018 to 2022.



2.

In the table above, the ‘*appeals received*’ include appeals that were registered as well as those that were dealt with administratively, without being formally registered, in a discussion between the Registrar and the applicant given the manifestly inadmissible and/or unfounded character of the appeal (civil or criminal liability, harassment, management, teaching skills of teachers, questions relating to the management of nurseries or school transport, etc.).

Parents were often concerned about the conditions of their child's schooling, without necessarily formally lodging an appeal. There were also many concerns and questions; in such cases,

¹ The figures shown here 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 proceedings being spread across two years (when the administrative appeal is processed during year N and the contentious appeal in year N+1).

parents were listened and redirected to the competent authority even though a contentious appeal could not be formally registered.

3.

For the European Schools in Brussels, the proximity of the school to the child's home remains a key concern among parents.

Even though, for the last few years, the enrolment policies have excluded both geographic arguments (distances 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 case-law of the Complaints Board, which maintains that these are not priority criteria, numerous appeals were still lodged on the grounds of (overly) long journeys between the child's home and the allocated school and the direct and indirect 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 (Green Deal, pollution, wasted energy, difficulty of using eco-friendly means of transport, for example, travelling on foot or by bike) and, more recently, the increased risk of road accidents and placing children in danger.

4.

The largest number of appeals were direct appeals against decisions of the Central Enrolment Authority (hereinafter the CEA) for the Brussels European Schools. This was again the case in 2022.

Several issues arose, specifically in Brussels because there are several European Schools there (these issues are almost non-existent in Luxembourg, and were not encountered in cities where there is only one European School):

a)

As indicated above, parents applying to enrol (or transfer) their child in the European Schools in Brussels very often claim a lack of consideration of elements which they consider to be **priority criteria** with the aim of gaining access to their first-choice school, whether this be due to the difficulty of organising travel and family life or to health problems (travel sickness, excessive fatigue or more serious illness).

b)

One frequent issue during 2022 was that of appeals placing two fundamental principles of the European Schools system in opposition, namely the (re)grouping of siblings and the schooling of pupils in their mother tongue / dominant language (Article 47(e) of the GRES).

The decision on which language section the pupil will be enrolled in can have a considerable impact not only on their schooling (their Language I frames their entire school career, the choice

of their Languages II and III, their cultural references and the ability of their parents to monitor their education) but also on the practicalities of their education.

This is particularly true when two siblings whose mother tongue / dominant language is not the same (due to different school backgrounds or different linguistic abilities) are not taught in the same school because the language section of one child (often the younger one) does not exist in the school where the other is already being taught. Besides the difficulty of having two (or more) siblings taught in different *languages*, some parents face the difficulty of having their children taught, additionally, in different *schools*.

Several appeals that were lodged in 2022 posed the difficult question of which of the principles should take precedence: the schooling the pupil in their mother tongue / dominant language as provided for in Article 47(e) of the GRES (the pedagogical interest of the child) or the unity of the siblings (the interest of the family).

The Complaints Board generally ruled in favour of the pedagogical interest of the child. Such was the case in **decisions 22-20 and 22-05 of 25 July 2022** and **22-09 of 31 August 2022**.

This principle, which is provided for in Article 47(e) of the GRES, is the founding basis common to all European Schools, whereas the principle of the (re)grouping of siblings, which is not provided for in the General Rules, only exists as a priority criteria in the Policies on Enrolment in the Brussels European Schools (and is therefore only applicable to enrolments in these Schools) and was asserted, through various decisions of the Complaints Board, in this particular context.

c)

There is still a relatively large number of disputes 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 2.15 to 2.18 of the 2022-2023 Enrolment Policy).

d)

Lastly, several teachers complained about not being able to obtain **a place for their child in the school where they teach**, which makes the situation hard to manage when the children are very young and the seconded teacher parent is isolated, far from his/her country of origin where he / she would have been able to count on family and friends to look after the child(ren).

5.

Aside from direct appeals against decisions of the CEA, the other contentious appeals submitted to the Complaints Board in 2022, which were lodged after a preliminary administrative appeal was rejected by the Secretary-General, were (in descending order of the number of appeals):

- appeals from teaching staff (seconded or locally recruited teachers);
- appeals against the decisions of Class Councils (repeating a year);
- disciplinary appeals (+ summary proceedings);
- appeals concerning pedagogical issues (pedagogical support and ‘ONL Irish’);
- an appeal against a decision of the 2022 Baccalaureate examinations board (+ summary proceedings);

6.

It should also 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 assisted 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 and fundamental rights enshrined within the law of the European Union.
- b) The Board also publishes and summarises its case-law to ensure coherence; case law that is relatively consistent and accessible via the **database** allows the organs of the European Schools as guidance (the bodies of the European Schools also draw on the lessons of certain decisions delivered 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. 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 despite the new translation service that was introduced in January 2022.

2) Decisions delivered by the Complaints Board in 2022

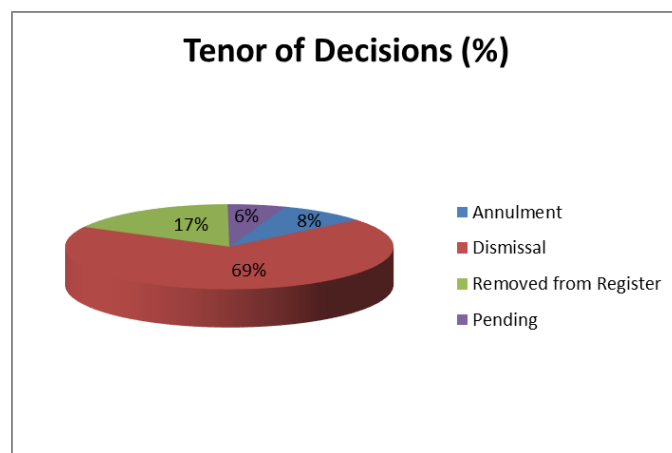
1.

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

During 2022, the Complaints Board held three days of hearings to process a dozen cases. All other cases 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), **dismissed** (by decision or reasoned order) **or removed from the register**.



The figures for 2022 show **a stable percentage of annulments**: 8% in 2022 (compared with 13% in 2021, 6% in 2020 and 8% in 2019) with four decisions still pending.

It could be associated to this figure appeals that were 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 could indeed be considered as annulments that are not shown in the figures, because they reflect an outcome that is equally as positive for the applicant as an annulment.

It should also be pointed out that no applicants made use of the internal referral mechanism that was introduced in May 2016, which shows that the decisions of the Complaints Board are generally well accepted, even where the appeal is dismissed. 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 and a clear and complete motivation of the dismissal.

3.

It is worth highlighting some of the most interesting decisions delivered during 2022.

3.1 Decisions leading to an annulment:

- **Concerning the differential adjustment of seconded staff**

. In decisions **21-49 and 22-01 of 17 May 2022**, the Complaints Board settled the question of whether or not the limitation provided for in Article 73 of the Regulations for Members of the Seconded Staff applies to requests for repayment in the context of the mechanism for calculating (in two stages) the differential adjustment provided for by Article 49 of the same Regulations.

Breaking with its previous case-law, the Complaints Board ruled that *‘the particular (tax) situation of members of the seconded staff of the European Schools is likely to make the final calculation of the differential adjustment relatively complex, but a limitation period of five years should be deemed sufficiently long for the European Schools to establish the final calculation of the differential adjustment provided for by Article 49 of the Regulations, without affecting the general principle of good administration,’* specifying that the five-year limitation period could not begin before the tax notice drawn up by the national tax authorities was sent to the administration of the School.

- **Concerning the Central Enrolment Authority of the Brussels European Schools (CEA)**

. In **decision 22-27 of 4 August 2022**, the Complaints Board also upheld the appeal against the dismissal of a transfer request aiming to have siblings taught on the same *site* of the European School Brussels I.

It ruled that Article 9.7(b) of the 2022-2023 Enrolment Policy, which provides for the possibility of bringing siblings together to attend the same school but not necessarily on the same site, without specifying the conditions or circumstances in which such a decision may be made and without providing for the possibility of considering alternative solutions that are less restrictive on the interests of families, contradicts the spirit and logic of the principle of bringing siblings together, and prevents it from compensating, as it is supposed to, for the absence of consideration, subject to exceptions, of the geographic location criterion.

. In **decision 22-35 of 14 October 2022**, the Complaints Board upheld appeals seeking the annulment of a CEA decision that had rejected a case of force majeure invoked by parents to justify their enrolment application having been submitted after the first enrolment phase.

The Board deemed it necessary to uphold the argument of force majeure since the medical certificates provided sufficient proof that the psychological suffering, and the need to change school, only became apparent to the child's parents after the end of the first enrolment phase.

It should be noted that this was the only case of an annulment out of all of the appeals against a CEA decision dismissing force majeure.

- **Concerning the determination of the language section and comparative language tests (Article 47(e) of the GRES)**

Numerous disputes were brought before the Complaints Board concerning the determination of the language section at the time of enrolment following comparative language tests (Article 47(e) of the GRES). Some of these were well-founded.

. As such, in **decision 22-30 of 24 August 2022**, the Complaints Board upheld an appeal for annulment in which the applicants disputed the comparability of the language tests performed with a view to admitting their child into the secondary cycle.

The Board pointed out that the notion of ‘*comparative language tests*’ means that the methods used, even though they need not be identical, must ensure that language skills are tested ‘*objectively, according to measurable, comparable standards*’. In this case, ‘*it is clear that, owing to their content, structure and evaluation method, the texts used for the reading and comprehension tests, in French and Italian respectively, are of different levels of difficulty and are not comparable*’.

. In **decision 22-49 of 28 October 2022**, 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.

Having referred to the principles and the consistent case-law on this matter, the Board deemed there to be a procedural error, given that the mother was present for different amounts of time for each of the three tests, ‘*which inevitably distorted the results, both because a four-year-old girl may feel more at ease in the presence of her mother, and therefore perform better, or on the contrary because she may be distracted by the presence of her mother, and therefore achieve worse results*’.

- **Concerning a disciplinary procedure**

. Having upheld the appeal in summary proceedings, the Complaints Board, in **decision 22-37 of 3 January 2023**, annulled the expulsion decision due to several procedural errors and a breach of the fundamental principles.

Recalling that respect for the right of defence constitutes a fundamental principle of European Union law, the Board considered that the fact that the pupil was summoned to a Discipline Council hearing for offence A, and was punished for offence B for which the pupil was not summoned, was a serious breach of the right of defence and of the provisions of Article 44 of the GRES: *‘This breach of the disciplinary rules of procedure constitutes a substantial error, and not a mere irregularity without a negative effect on the right of defence as the Schools claim: indeed, the body to which the GRES grants the power to take the most serious disciplinary action (an expulsion) must abide by the rules established in these Rules, which reflect the essential principles for this type of procedure; a breach of these rules can only result in the annulment of the disciplinary decision [...]’*.

The Board also deemed the extenuating circumstances to have not been taken into account, thereby breaching the principle of proportionality and Article 40 of the GRES. The Board also noted that the disciplinary action had been taken despite certain facts not having been established (a mere suspicion is clearly not sufficient) and that the expulsion was disproportionate given the facts that had been presented to the Discipline Council and duly established.

It should be pointed out here that, during the **summary proceedings**, the Chair of the Board had taken into account the interests of both parties by ordering the suspension of the disciplinary measure in the interest of the pupil (and therefore the temporary continuation of the pupil’s schooling within the European Schools, pending the final decision, to allow the pupil *‘to finish his education in one of the Brussels European Schools without falling significantly behind at the start of the school year’*), while stipulating that the pupil could be taught at another European School in Brussels so as to preserve the disciplinary power of the School that took the expulsion decision.

3.2 Decisions dismissing applicants' claims

1.

Among the decisions dismissing claims from applicants (the most common ones), the following have already been mentioned:

- decisions whereby the Complaints Board dismissed all ‘CEA force majeure’ appeals (other than the one 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 confirmed that splitting enrolments into two phases and imposing strict deadlines for the submission of applications are essential measures for the smooth running of the Brussels European Schools and for optimising the available places; they are necessary, reasonable and proportionate to their purpose;

- decisions whereby the Board dismissed appeals that disputed the determination of the language section (Article 47(e) of the GRES) in the absence of any procedural error or manifest error of judgement concerning the comparative tests;
- decisions whereby the Complaints Board prioritised the *pedagogical* interest of the child (schooling in the child's strongest language) over the *family* interest (keeping siblings together) (see above, point III(1)(4)(b)).

2.

The following dismissal decisions may also be highlighted:

. In **decision 22-03 of 1 December 2022**, the Complaints Board declared inadmissible the appeal lodged by a European School against a locally recruited teacher with a view to obtaining the repayment of remuneration that had been unduly paid and the payment of compensation in lieu of notice following the termination of his contract.

This appeal, which was unusual because it was, for the first time, lodged by an administrative authority of the European Schools system, was processed by the Board sitting in plenary session.

The Complaints Board dismissed this appeal as inadmissible due, primarily, to its lack of jurisdiction *rationae materiae* (the object of the appeal was to have the Board *enforce* a decision by the School against the locally recruited teacher; the dispute between the School and the teacher was indeed closed by the decision to dismiss the administrative appeal, which became a final decision) and the absence of an act adversely affecting the *teacher*, in accordance with Article 51 of the Service Regulations for the Locally Recruited Teachers.

For the same reason that the appeal was not lodged by a person or category of person disputing an act adversely affecting them, but that it concerned an appeal the object of which was to enforce the decision of the applicant itself, the Board also dismissed the alternative plea in law of the right to an effective remedy.

. With **decision 22-04 of 11 October 2022**, the Board reaffirmed its jurisdiction to hear disputes concerning exclusions of *fewer than 10 days*, notwithstanding the limitation imposed by Article 44(9) of the GRES ('*an appeal against a temporary exclusion of more than ten working days...*'). The Complaints Board deemed, in its decision 15/38 (point 12) that '*all disciplinary measures that involve a pupil being excluded from school – even temporarily – and that, consequently, profoundly affect the fundamental link between the school and the pupil and their right to education as recognised by Article 14 of the Charter of Fundamental Rights of the European*

Union may be subject to judicial review by application of the principles applicable in a State governed by the rule of law (see Article 47 of the Charter)’.

The Board therefore considers, on the basis of the right to an effective remedy, that it may review the legality of temporary exclusions of fewer than 10 days.

With this decision, the Board also affirmed that the School was perfectly entitled to regulate the methods of the freedom of expression, which is not in fact absolute, by requiring prior authorisation before posters may be put up, more specifically of a political nature.

. In **decision 22-42 of 9 December 2022**, the Complaints Board dismissed the contentious appeal due to the inadmissibility *rationae temporis* of the preliminary administrative appeal, recalling that the Arrangements for Implementing the Regulations for the European Baccalaureate (the AIREB) indisputably provide that the time-limit during which an administrative appeal may be lodged shall start running from the date of communication of the results as per Article 7.3 of these Regulations, without differentiating between *provisional* results and *final* results as the applicant claimed.

IV – Recurring issues and new perspectives

1.

Some **questions of admissibility** remain open, for example when applicants do not comply with the administrative appeal procedures required by the texts (an administrative appeal lodged electronically when registered post is required, for example) or when it is necessary to determine the start date of the appeal’s deadline in the case of an administrative appeal against a decision adversely affecting one of the parties that is sent simultaneously by registered post and by email.

These delicate questions always deserve to be examined in depth since the inadmissibility of the administrative appeal may lead to that of the contentious appeal.

2.

Regarding discipline, despite consistent and long-standing case-law according to which the Complaints Board considers that it may review the legality of temporary exclusions of fewer than 10 days, Article 44(9) of the GRES continues to provide that only exclusions of more than 10 days may be appealed.

3.

Lastly, concerning enrolments in the Brussels European Schools, we can in all likelihood expect an increase in appeals against decisions of the Central Enrolment Authority owing to the ever-increasing number of pupils in these Schools, justifying the creation of a 5th school in Brussels.

There will certainly continue to be numerous disputes relating to the determination of the language section and to the conditions in which the language tests take place, to the refusal to grant a place to parents who submitted their application during the 2nd phase without being able to prove the existence of force majeure, and to difficulties relating to the distance between the home (and/or the parents' place of work) and the allocated School and the direct or indirect negative consequences that arise from this.

New disputes will continue to arise, depending on the arrangements of the future Enrolment policies that will govern the opening of the 5th School.

When writing the Enrolment policies each year, it is important to consider the Board's decisions on the topics that feature in these policies, as this will help to reduce the number of appeals that are lodged, in the same way that changing the existing rules or introducing new rules can affect the number of appeals in ways that are hard to predict.

The Complaints Board will be attentive, as always, to finding the right balance between the interests of pupils and their families, and the interests of the Schools, which are having to deal with growing numbers of pupils and numerous organisational constraints. When doing so, the Board will continue to ensure compliance with fundamental rights, procedural guarantees and common general principles, in line with the case-law of the Court of Justice of the European Union.

* *

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 European Schools *sui generis* 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 would like to thank the other bodies of the European Schools, particularly the Board of Governors and the Secretary-General, whose support and cooperation are vital for the Board to be able to carry out its work under the conditions laid down in the Convention defining the Statute of the European Schools. The amendment of the Rules of Procedure in April 2021 and of the Statute of the Board in December 2022 are excellent examples of this fruitful collaboration.

Finally, the Chair of the Complaints Board wishes to publicly thank his colleagues and the Registry staff for their unfailing diligence, as always. Their hard work has enabled the Board to fulfil its role in compliance with the principle of the continuity of public service and to fulfil the rights of people who access our services within a reasonable time frame.

Brussels, March 2023

Eduardo MENENDEZ-REXACH
Chair of the Complaints Board