



**The Complaints Board
of the European Schools**

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**2024 ACTIVITY REPORT OF THE CHAIR OF THE
COMPLAINTS BOARD OF THE EUROPEAN
SCHOOLS**

BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS

Meeting of the 9, 10 and 11 April 2025 in Nicosia (Cyprus) - Hybrid



2024 ACTIVITY REPORT

Events of note for the Complaints Board in 2024 were:

- the appointment of Mr Haris TAGARAS, replacing Mr Mario EYLERT (point I, 2 and 3);
- a significant increase in the number of appeals (point II);
- an increase in the number of referrals (point III);
- the emergence of issues linked to the integration of special educational needs pupils (point IV);
- the Complaints Board's participation in the "Legal Protection" working group" (point V);

I – Changes to the composition of the Complaints Board

1.

Mr Eduardo MENENDEZ-REXACH still chairs the Complaints Board and Ms Brigitte PHEMOLANT chairs the second section.

The Board remains 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.

It is with great sadness that the members of the Complaints Board learned about the unexpected passing, in early summer 2024, of one of its oldest members, Mr Mario EYLERT.

Mr EYLERT joined the Board in 2007 and for 17 years he was one of its pillars, always keen to contribute his legal expertise, particularly in cases regarding labour law, which he gained over his long career at the German Federal Labour Court (*Bundesarbeitsgericht*).

A minute of silence was held during the administrative meeting of 18 July 2024 where a tribute was paid to him, bringing to memory not only his qualities as a legal practitioner, but also his sense of humour and his great humanity.

3.

The death of Mr EYLERT in June 2024 left a post vacant throughout our busiest period.

It was indeed only in December 2024 that the Board of Governors was able to appoint a new judge, **Mr Haris TAGARAS**, proposed by the Court of Justice of the European Union.

Mr TAGARAS will bring with him to the Complaints Board all the academic expertise he has acquired and shared, notably at the Universities of Thessaloniki and Athens, his experience as a lawyer with the Thessaloniki and Luxembourg Bars and, last but not least, the experience he has acquired at various European Institutions – as a Judge at the European Union Civil Service Tribunal (2005 – 2011) and, since 2014, as Vice-President of the Administrative Tribunal of the European Stability Mechanism (ESM).

4.

Please note that no changes were made to the Registry.

II – The judicial activity of the Complaints Board in 2024

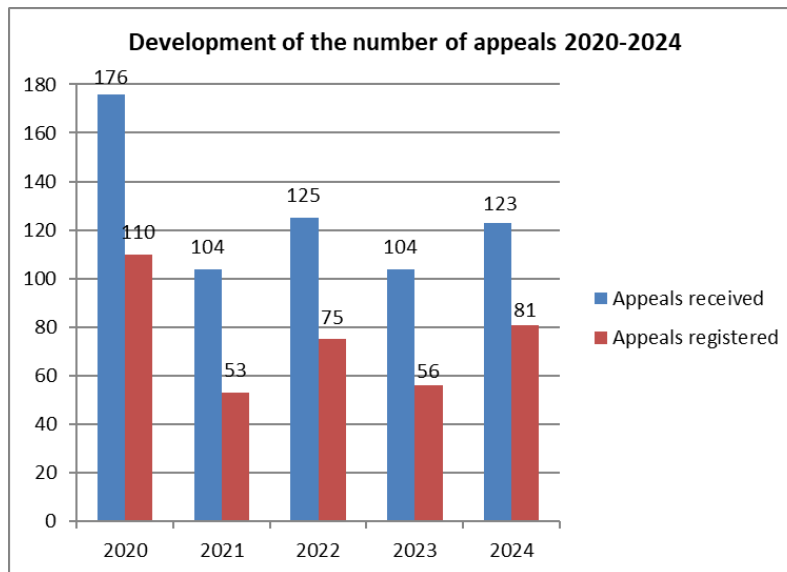
1) The number of appeals lodged and the categories of these appeals¹

1.

In 2024, there was a significant increase in the number of appeals: 81 appeals – including eight in summary proceedings – were lodged and brought before the Complaints Board for review.

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 multiple years (when the administrative appeal is processed during year N and the contentious appeal in year N+1).

The graph below shows how the number of appeals changed over the period 2020 to 2024.



NB: ‘*Appeals received*’ include appeals that were lodged as well as appeals dealt with administratively, without being formally lodged, in a discussion between the Registrar and the applicant, given the manifestly inadmissible and/or unfounded character of the appeal.

2.

The largest number of appeals were direct appeals against decisions of the Central Enrolment Authority for the Brussels European Schools (hereinafter the CEA).

As a reminder, 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).

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 even though, in the established case law, the Board maintains that these are not priority criteria, appeals are still lodged each year 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 and well-being (especially for the youngest children), lost time (time that cannot be devoted to studies, extracurricular activities or sleep), ecological and environmental considerations (pollution, wasted energy, difficulty of using eco-friendly means of transport, for example, travelling on foot or by bicycle).

Health problems (travel sickness, excessive fatigue or more severe illness) are also reasons invoked by parents to obtain a place at the school nearest to their home, but less so than in the past.

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.

3.

Aside from direct appeals against decisions of the CEA, the other contentious appeals submitted to the Complaints Board in 2024, which were lodged, in principle, after a preliminary administrative appeal was rejected by the Secretary-General, were:

- appeals against the decisions of Class Councils (non-promotion);
- appeals from teaching staff (seconded or locally recruited teachers);
- appeals related to the 2024 Baccalaureate;
- appeals against decisions of a pedagogical nature (change of Language 2, determination of dominant language at the time of enrolment (Article 47e of the GRES), participation in school trips);
- referral requests (Articles 40a and 40b of the Rules of Procedure);
- a disciplinary appeal (pupil).

4.

Finally, it should be emphasised that the activity of the Complaints Board cannot be reduced to figures or statistics, which only reflect the number of appeals lodged and processed for which a flat-rate fee is provided under Article 16.2 of the Statute of the Board.

As in previous years, this report offers an occasion to shed light on a great deal of underlying work not covered by this function fee and which is indispensable to the smooth running of the Board and the quality of the decisions rendered:

- a) responding to emails addressed to the registry by **potential future applicants looking for information**:
 - parents who are dissatisfied or concerned with the conditions under which their children are being schooled,

- parents who are unsure how to react to a disciplinary sanction, an academic failure or a difficult dialogue with the School,
- and members of teaching staff with complaints or concerns.

It is therefore appropriate to inform these parties of the procedure to be followed (need for a prior administrative appeal), to draw their attention to the deadlines for appeals and the limits of the Board's jurisdiction, to explain to them how the contentious procedure works or how to look up the relevant case law, to warn them of the risk of exposing themselves to possible procedural costs, etc., even if no contentious appeal is ultimately submitted or lodged (and therefore not included in the statistics discussed in this report).

- b) The **complexity of the pleas** invoked by the applicants in support of their appeals – whether supported by a lawyer (who will make lengthy legal submissions) or not (in which case, pleas will often be hard to follow or poorly structured) – demands a significant amount of analysis and case law research work.

Complex issues of admissibility and jurisdiction regularly warrant attentive examination, particularly with regard to the case law of the Court of Justice of the European Union and the general principles and fundamental rights enshrined within the European Union.

- c) In these same interests of quality and consistency of its decisions, the Board also ensures that it publishes its case law, accessible via the **database**, thereby enabling bodies of the European Schools to draw from it (the authorities of the European Schools also draw lessons from certain decisions issued by the Complaints Board to amend the regulatory frameworks) and permitting applicants to familiarise themselves with it before submitting an appeal, in order to assess their chances of success.

Updating this database is essential and contributes to maintaining the number of appeals at a reasonable proportion and processing them with an appropriate and effective tool. But this update also creates a lot of work for the registry.

- d) Finally, **revision of translations**: the poor quality of the translations provided by the translation service provided to the Complaints Board by the Office of the Secretary-General – a recurring issue often raised in reports of previous activity – obliges the Registry and judges (particularly English-speaking) to re-read and correct the translations, which makes for a significant workload.

2) **Decisions delivered by the Complaints Board in 2024**

1.

In accordance with the provisions of the Rules of Procedure, the various appeals may be dealt with, on a case-by-case basis,

- by decision delivered after a contradictory written procedure followed by a hearing,
- by decision delivered after a contradictory written procedure not followed by a hearing,
- by a reasoned order (not contradictory),
- by an interim order, or,
- by an order removing the case from the register.

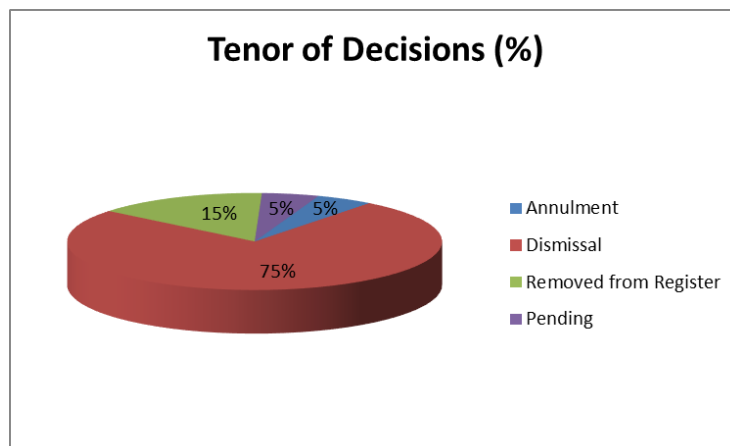
The Board members are convinced of the need for a hearing – followed by deliberation – for complex or delicate matters, with the oral procedure effectively supplementing the written examination phase.

Moreover, the Board strives to be a place where each litigant can be heard attentively.

As such, the Complaints Board has held five days of hearings to address the most complex and delicate cases. Other matters were able to be handled without hearings, as permitted under Article 19 of the Rules of Procedure, using written questions submitted by the judge rapporteur where appropriate (Article 18 of the same Rules).

2.

The pie chart below shows the proportions of appeals **upheld** (annulment of the decision adversely affecting the plaintiff), **rejected** (following examination or by reasoned decision) **or removed from the register**.



The figures for 2024 show an **annulment rate of 5%** (about average compared to previous years), subject to the three decisions still pending.

To this percentage may be added removals from the register due to there being no need to rule on them as the parties had reached an agreement, either implicitly or explicitly. Such cases can effectively be considered annulments that are not shown in the figures, as they reflect an outcome that is just as positive for the applicant as an annulment.

3.

It is worth highlighting some of the most interesting decisions issued during 2024.

3.1 Decisions leading to an annulment

. In its **decision 24-35 of 25 July 2024**, issued after a public hearing, the Complaints Board annulled a decision of the Central Enrolment Authority of the Brussels Schools, arising from an error of law in the application of the Policy on Enrolment.

The applicants had requested the transfer of their son due to conflictual relations between him and another pupil. They were qualifying this relationship as bullying, in light of the persistence and nature of the behaviours in question.

The Board deemed that they were clearly invoking circumstances described under a specific provision of the Policy (difficult or conflictual relations jeopardising the child's physical or mental well-being) whereas the CEA examined the facts based on a provision reserved for applications for enrolment or transfer on medical grounds, which were not applicable to the alleged circumstances.

. In its **decision 24-57 of 18 November 2024**, issued after a public hearing, the Complaints Board annulled a decision of the Chairman of the Examining Board for the European Baccalaureate on the grounds of procedural irregularity.

The Chairman determined that moderation should be applied to two questions from the written 5p Mathematics examination of the 2024 Baccalaureate.

The applicant pupil, who was awarded his Baccalaureate with an average of below 5/10 in Mathematics (he needed a further 0,06/10) claimed that the moderation did not take into account the surprising and disorienting effect the difficulties encountered for these two questions had on the examination *as a whole*.

Having acknowledged the pupil's interest in appealing, the Complaints Board found that the moderation did not take into account the time lost in unsuccessfully trying to find the answers to the badly-phrased questions and the stress caused by the impossibility of finding the correct answers: "*Under these conditions, the moderation applied did not achieve the desired objective*

of reflecting the pupils' actual ability and is affected by a procedural irregularity within the meaning of Article 12.2 of the A.I.R.E.B."

The Board took care to specify the scope of its decision, i.e. the annulment of the moderation (not of the grade). Despite this, the parties did not agree on the consequences of the annulment of the moderation, obliging the pupil to lodge an application for interpretation.

The Board was then called upon to clarify that the implementation of the annulment decision did not require the pupil to resit the exam, but meant that "(...) *without superseding the pedagogical discretionary authority of the Chairman of the European Baccalaureate, that the latter re-assess the applicant's examination paper by applying a moderation method that takes into account the impact that the difficulties in answering questions A3 and A4 had on the answers to the other questions to be answered*".

. In its **decision 24-61 of 7 March 2025**, issued after a public hearing and rejection of the referral, the Complaints Board annulled a decision refusing a change of Language 2, for failure to comply with the procedure.

Noting that, while the Class Council now only has a consultative role to play in the matter by means of informing the decision made by the School's Director, it is nevertheless essential that a change in Language 2 is put before the Class Council and is subject to "*deliberation*". Said Council must issue a "*judgement*" on this request, i.e. an opinion that is in no way binding, but which takes a pedagogical stance in such a way as to inform the decision of the School's Director.

"Even though, in the latest version of the Language Policy, the text no longer provides that the Class Council decides on a change of L2, it is still essential that they "deliberate" and issue a "judgement", i.e. give their opinion, and remain subject to the conditions of composition and voting set out in Article 18 of the GRES.

(...)

All members of the Class Council must therefore vote on a request to change Language 2, not just those teachers involved in the teaching of these languages. This is all the more necessary given that the Language Policy states that decisions on requests to change Language 2 require that careful consideration be given to the role of L2 as a medium for teaching other subjects that will be taught in this language".

In this case, the Complaints Board therefore annulled the decision to refuse a change of Language 2 on the grounds of a lack of pedagogical assessment from *all* teachers with voting rights in the Class Council and on the grounds of a lack of formalisation of the "*judgement*" issued on this request by the Class Council.

The Board was nevertheless careful to point out that it cannot serve as a replacement for the administrative authority or issue injunctions against it, and that it now fell to the School Director to reconsider the request to change Language 2 while taking into account the grounds that led to the ordered annulment.

3.2 Decisions dismissing applicants' claims

1.

Among the decisions rejecting applicants' claims (the most frequent outcome), the classic and recurring case was that concerning enrolment applications:

- decisions whereby the Board rejected **force majeure**, pointing out that the right to enrol at the Brussels 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;
- decisions whereby the Board dismissed appeals concerning **determination of the language section**, in the absence of any procedural error or manifest error of judgement concerning the comparative tests;
- decisions whereby the Board dismissed arguments linked to the **location of the home** in relation to the school and to family and/or professional constraints.

2.

The following dismissal decisions may also be highlighted:

- **Concerning the Brussels Schools: is the principle of the grouping of siblings effectively applied, in the sense that sibling groups are schooled at the *same school*, but at *two different sites*?**

As a reminder, two of the four Brussels European Schools are split over two different sites, located separately from one another.

It must therefore be considered whether the principle of the grouping of siblings (which states that all brothers and sisters are schooled together should their parents request it) is correctly applied in the case where the sibling group is schooled at the *same school*, but at *two different sites*.

Five appeals were put before the Complaints Board on this matter; taking into account two rescissions, **three decisions were finally issued on 26 August 2024**, following a public hearing (decisions **24-08, 24-33 and 24-36**, all three of which were published).

The Board rejected the appeals, finding that, while the principle of the (re)grouping of siblings is recognised as a fundamental commitment of the Schools, certain constraints regarding this principle are necessary, notably as a result of the overpopulation of the Brussels European

Schools. Provided that they are reasoned and proportional to the desired objective, and that they reflect an equitable balance between the interests of the pupils and their families, on the one hand, and that of the organisation and management of the Brussels Schools, on the other, they must be deemed admissible.

- **Concerning teaching staff**

. In its **decision 24-03 of 11 June 2024 and following a public hearing**, the Complaints Board rejected an annulment appeal lodged by a locally recruited teacher against the decision not to renew their fixed-term contract.

The Director's decision was, in this case, motivated by a poor pedagogical assessment, however the locally recruited teacher claimed that the primary reason for the non-renewal of his contract was actually due to health issues (successive sick leaves), which rendered the decision illegal under Belgian and European law on the grounds of discrimination.

The Complaints Board pointed out the broad discretionary power of the Director on this matter, pointing out that a locally recruited teacher on a fixed-term contract does not, in principle, have the right to have his contract renewed.

Basing itself on the case law applicable to European public service, the Board deemed that its review should be limited to the question of whether or not the Director used his power in a clearly erroneous manner.

. In its **decision 24-41 of 11 November 2024 and following a public hearing**, the Complaints Board rejected an annulment appeal lodged by a seconded teacher against a decision to terminate their secondment on disciplinary grounds.

First, the Board acknowledged the teacher was acting in his best interests, even though he was not asking to be returned to his role, on the grounds of a possible attack on his professional reputation and its effect on his career prospects.

Following which arose the question of the right to a defence, in particular that of the right to be heard, given that the interested party was on long-term sick leave during the disciplinary procedure. The Board found that, in this case, the sick leave did not justify a systematic postponement *sine die* of the hearing, due to the nature of the medical circumstances invoked and the accommodations proposed and refused by the interested party (written observations, online hearing, representation by a lawyer). This decision is compliant with the case law of the Court of Justice of the European Union, based on a balance to be found between the right to be heard and the interests of both parties in not dragging out a disciplinary procedure.

Finally, the Board reiterated that, given the presumption of innocence, the burden of proof of the alleged facts falls to the School Management and not to the person against whom the disciplinary procedure is being carried out.

- **Concerning the appeals from 2023 for which decisions were still pending at the time of presenting the 2023 report**

Various appeals were mentioned in the 2023 report for which a decision was still pending at the time of presenting this report to the Board of Governors in Parma.

These decisions have now been reached and are worth highlighting here.

- a) Firstly, these included appeals brought collectively by the parents contesting allocations of classes to teachers whose quality, appointment and/or teaching skills they dispute.

The Complaints Board first examined the admissibility *ratione personae* of these collective appeals, lodged by a parent (non-lawyer) on behalf of a group of parents. This admissibility was only accepted in so far as the parent signing the appeal had proof of authorisation to act on behalf of the other parents.

In the first appeal, the parents were disputing the legality of the decision taken by the School not to allocate the class to a seconded teacher, and to instead employ a locally recruited teacher; they invoked a breach of teaching continuity and the principle of proportionality, and openly criticised the School Management for not having requested the secondment of a new teacher.

. In its **decision 23-45 of 19 April 2024**, the Board rejected the appeal on the grounds of a lack of an act causing an adverse effect: "(...) *while teaching continuity is generally viewed as being a positive element in education, a change of teacher is a normal and inevitable event throughout a pupil's schooling. A change of teacher is not, in itself, sufficient to cause prejudice to the pupils of the class in question.*"

In the second appeal, the parents were challenging the decision to entrust their children's Language 2 class to an irregularly seconded non-native English teacher; they invoked: an arbitrary decision of the Management taken in breach of the secondment rules and of the decisions of the Board of Governors and without the agreement of the latter; an excess of power; a breach of teaching continuity and of the principle of proportionality; and an attack on parents' legitimate expectations.

. In its **decision 23-49 of 4 April 2024**, the Board declared itself incompetent to rule and rejected the appeal: in doing so, it confirmed that the decision to allocate a teacher to a class must be considered a matter of internal organisational within the School which does not confer any rights or prerogatives to the pupils or their parents. It is a decision taken by the Director that falls under his responsibility for coordinating studies, as provided for in Article 3 of the General Rules of the European Schools.

As the applicant did not provide proof of authorisation to act on behalf of all of the parents in the class, he alone had to pay the legal costs; deeply dissatisfied, he then lodged an application for interpretation and a referral request, both of which were rejected.

b) Next were the collective appeals lodged by locally recruited teachers, submitted by the *outgoing* representative of the locally recruited teachers of Varese, with the first appeal challenging their statutory framework regarding the '*standards of European social law*', and the second appeal opposing the appointment of two seconded teachers whose posts, they claim, had not been approved by the Board of Governors.

. In its **decisions 23-25 and 24-37 of 4 April 2024**, the Board rejected these two appeals on numerous grounds of inadmissibility, without needing to consider the merits.

Here, once more, the applicant, dissatisfied with the decisions of the Board, submitted referral requests, all of which were rejected.

III – An increased number of referrals

As a reminder, in 2016, an internal referral system, to 3 or to 5 judges (Articles 40a to 40b of the Rules of Procedure), was introduced to strengthen judicial protection and to mitigate the lack of a second level of jurisdiction.

While this referral system was rarely used during the first few years after its introduction, we have noticed a growing trend, since 2023, to call upon this referral procedure.

The decisions of the Complaints Board are now, themselves, also challenged by the losing party, via these internal referral requests, or under the pretext of interpretation (Articles 36 and 37 of the Rules of Procedure) or revision (Articles 39 and 40 of the Rules of Procedure).

Luckily, this trend remains limited and, globally, the decisions of the Complaints Board are readily accepted, even in the case of rejected appeals, once the parties have had the opportunity to put forward their arguments as part of a contradictory and open debate.

IV - The emergence of issues linked to the integration of special educational needs pupils

In 2024, the Complaints Board was asked to rule on appeals concerning the question of limitations on the integration of pupils with special educational needs. This is a rather new topic of dispute.

One of these appeals was regarding the participation of a special educational needs pupil in activities taking place outside the school, on which the School Director wished to place restrictive conditions. This appeal raised delicate but interesting questions with regards to the competence of the Board and the right to an effective appeal (does the decision profoundly impact the fundamental link between the school and the pupil and his right to an education?), as well as that of finding a balance between the right to an inclusive education and its limits, while taking into account the School's obligation to ensure the well-being of all its pupils.

Other appeals raised questions on the academic future of pupils with special educational needs when they did not meet the normal criteria for promotion to the year above:

- are the special arrangements put in place appropriate and sufficient to allow the pupil to meet the conditions to be promoted to the year above?
- is progression without promotion an appropriate and satisfactory solution that is understood by the parents? what consequences does it have on future schooling, within or outside of the European Schools system?
- if the specific requirements place too much of a burden on the School, can they exclude the pupil? how would this impact their education?

These disputes are new and need to be handled very delicately as they challenge academic choices that do not fall within the remit of the Complaints Board to judge, but which the parents bring before them.

V – the Complaints Board's participation in the "Legal Protection" working group

Mr Eduardo MENENDEZ-REXACH and Mr Pietro MANZINI, as well as two members of the Registry, have actively participated in meetings of the "*Legal Protection*" working group, whose initial findings will be presented at this meeting of the Board of Governors.

Through this participation, the Complaints Board demonstrates its contribution not only as a jurisdictional body, but also as a chosen intermediary, to the smooth running of the European Schools system.

* * *

In conclusion, it is important to note the fundamental role of the Complaints Board as the sole in-house authority of the 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 Complaints Board will be attentive, as always, to finding the right balance between the interests of pupils and their families, or of the teaching staff (seconded staff and locally recruited teachers), and the interests of the Schools, which are having to deal with growing numbers of pupils and numerous organisational constraints. In 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.

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.

Finally, the Chair of the Complaints Board wishes to thank his colleagues and the Registry staff publicly for their unfailing diligence, as always. Their incredible flexibility allowed the Board to fulfil its mandate and ensure the continuity of public services.

Brussels, March 2025

Eduardo MENENDEZ-REXACH
Chair of the Complaints Board