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## **FOLLOW-UP ON THE PROPOSALS OF THE 'LEGAL PROTECTION' WORKING GROUP'**

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**BOARD OF GOVERNORS**

Meeting on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> December 2015

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1.

At its meeting of 16-18 April 2013, the Board of Governors of the European Schools, responding to a request from the European Commission that an item about the Complaints Board's operation be tabled on the agenda for discussion, mandated an ad hoc working group to submit to it as soon as possible a proposal as to how to strengthen legal protection in the European School system.

This working group, set up on 15 October 2013, subsequently met three times in Brussels.

Having concluded its reflections, the working group was able to present two types of measures which were conceivable – even cumulatively – to improve the “adequate legal protection” provided for in the fourth recital of the Convention defining the Statute of the European Schools (hereinafter referred to as the ‘ES Convention’) :

- those requiring amendments to the ES Convention's implementing texts – including the Statute and Rules of Procedure of the Complaints Board, the General Rules of the European Schools, the Regulations for Members of the Seconded Staff and the Service Regulations for Locally Recruited Teachers – which fall within the competence of the Board of Governors and which can therefore, if necessary, be adopted immediately;
- those requiring amendments to the ES Convention itself, which means using the cumbersome amendment and ratification procedure laid down by Articles 31.4 and 33 of the said Convention in order to amend Article 27 thereof ;

2.

All those proposals were presented to the Budgetary Committee at its meeting of 10 and 11 March 2015 (document 2015-02-D-41-en).

3.

The proposals for amendment of the Statute and Rules of Procedure of the Complaints Board were accepted as they stood by the Budgetary Committee and were therefore presented to the Board of Governors at its meeting in Prague on 15-16-17 April 2015 (document 2015-02-D-41-en-2).

The Board of Governors adopted them unanimously and they will enter into force on 1 January 2016.

4.

The proposals implying amendments to the ES Convention itself, and in particular Article 27 thereof, were rejected by the Board of Governors at its meeting in Prague on 15-16-17 April 2015.

5.

In the Budgetary Committee's opinion, the proposals for amendment of the General Rules of the European Schools and of the Regulations for Members of the Seconded Staff should be submitted beforehand to the Joint Board of Inspectors and to the Joint Teaching Committee for their opinions before being submitted to the Budgetary Committee and the Board of Governors, which was done :

- Opinion of the Joint Board of Inspectors

*The JBI expressed a favourable opinion on the document 'Follow-up on the proposals of the 'Legal Protection' Working Group', which would be amended to take account of the comments made during the meeting. It was sent forward to the BC for its opinion and subsequently to the BoG for approval.*

- Opinion of the Joint Teaching Committee

*The JTC expressed a favourable opinion on the document, which would be sent forward to the Budgetary Committee for its opinion and subsequently to the Board of Governors for approval. The comments made during the meeting would be communicated to the Chair of the Working Group.*

- Opinion of the Budgetary Committee

*The Budgetary Committee took note of the proposals and recommended that the Board of Governors should endorse them. Interparents was not in favour of the proposals for amendment of Article 66 of the General Rules.*

The said proposals are now submitted to the Budgetary Committee for its opinion.

## **I.A – Proposals for amendments to be made to the General Rules of the European Schools**

Article 27 of the ES Convention provides that the control of legality exercised by the Complaints Board must relate to “any act based on the Convention or rules made under it, adversely affecting such persons”.

The amendments proposed by the working group relate primarily to the disciplinary procedure, to the possibility of contesting the acts of the Board of Governors and of the Administrative Boards of the schools, against which the General Rules do not lay down any specific appeals procedure, and to calculation of the time periods for appeals. They are all designed to enhance litigants’ rights and hence legal protection.

1)

As regards the disciplinary procedure, it is proposed :

- a) that the time period for lodging of administrative appeals should be lengthened from seven days to two weeks and that this time period should start to run not on the day after the sending of the registered letter containing notification of the decision but on receipt of this letter or the document resulting from dispatch by another means of communication.
- b) that the appeals procedures should no longer be restricted to exclusions of more than ten days, but should be widened to cover all exclusion measures, whether temporary exclusion or actual expulsion.

It is proposed that Article 44 be amended as follows:

### *8. Notification of the decision*

(...)

The Director’s decision shall be confirmed by written notification. The decision shall come into effect **on receipt by the addressee of the registered letter or of the written document resulting from sending by any other means of communication** and the time limit during which an administrative appeal to the Secretary-General may be lodged by the pupil or his/her legal representatives in conformity with Article 44.9, which is **two weeks**, shall start to run from **that date**. The original appeal file shall be sent to the General Secretariat by registered letter, the postmark being taken as proof, and a copy deposited with the Director

of the school in question, who shall be responsible for forwarding all documents relevant to the handling of the case to the Secretary-General.

#### *9. Administrative appeals*

An appeal against a temporary exclusion **as provided for in Article 42(b)6**, or an expulsion, **as provided for in Article 42(b)7**, may be lodged with the Secretary-General, in accordance with the procedures laid down in paragraph 8.

(...)

2)

In the case of acts of the Board of Governors and of the Administrative Boards of the schools against which no specific appeals procedures are laid down by the General Rules, even though they are expressly mentioned in Article 27 of the ES Convention, it is proposed that they be made subject to the possibility of an administrative appeal within a period of two months. The decision taken on such an appeal within five months could itself be contested before the Complaints Board within a period of two months.

It is proposed that Article 66 be amended as follows:

#### *Administrative appeals*

(...)

**2a. An administrative appeal may be lodged against explicit or implicit administrative decisions, taken by the Board of Governors or by the Administrative Board of a school, by pupils (or their legal representatives), provided that the decision is prejudicial to them. This appeal, which must be brought before the Secretary-General within a period of two months following publication or notification of the contested decision, shall be restricted to procedural irregularities and other points of law. A decision on the appeal must be taken within five months of its receipt.**

(...)

Due notification shall be deemed to have been given **on receipt of the decision by the addressee.**

3)

As regards calculation of the time periods for appeals, it is proposed that the starting point of the period for appeals contested before the Complaints Board should be not that of the sending of the decision but that of its receipt by the addressee.

It is proposed that Article 67 be amended as follows:

*Contentious appeals*

1. Explicit or implicit administrative decisions taken on the appeals referred to in the previous article may be the subject of a contentious appeal by **the pupils concerned (or their legal representatives)** before the Complaints Board provided for in Article 27 of the Convention defining the Statute of the European Schools.

(...)

4. On pain of being declared inadmissible, all contentious appeals **against the decisions referred to in Article 66.1 and 66.2** must be lodged within two weeks of notification or publication of the disputed decision or by the end of the period laid down in paragraph 3 **of this article**.

**On pain of being declared inadmissible, contentious appeals against the decisions referred to in Article 66.2a must be lodged within two months, starting to run subject to the same conditions.**

(...)

**I.B – Proposals for amendments to be made to the Regulations for Members of the Seconded Staff**

In order to harmonise the time periods for appeals, it is proposed that Article 78 be amended as follows:

( ...) 2. Any member of staff may submit to the Director or the Secretary-General, in their spheres of competence, a request that they take a decision in respect of him within **four** months of submission of the request. If at the end of the aforementioned period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which an administrative appeal within the meaning of Article 79 may be lodged.

And Article 79 as follows:

(...)

3. Such appeals must be lodged within **three months**. The period shall start to run:

- on the date of publication of the act, if it is a measure of a general nature,
- on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person,
- **on the date of expiry of the period prescribed for reply where the appeal concerns an implied decision rejecting a request within the meaning of Article 78.2.**

(...)

5. If at the end **of the period indicated in the preceding paragraph**, no reply to the administrative appeal has been received, this shall be deemed to constitute an implied decision rejecting it, against which a contentious appeal within the meaning of Article 80 may be lodged (...).

## **6. Proposals**

The Board of Governors is asked to approve :

- the amendments to be made to the General Rules of the European Schools as proposed in point I.A.
- the amendments to be made to the Regulations for Members of the Seconded Staff as proposed in point I.B.

All these amendments would be designed to enter into force with effect from **1 January 2016**.

## **Annex 1 - Estimate of the costs generated by the proposed amendments**

### **I.A – *Proposals for amendments to be made to the General Rules of the European Schools***

- As regards disciplinary proceedings
  - the change to the time period for lodging appeals is not expected to have a financial impact.
  - widening of the possibility of appeal to cover all exclusion measures is expected to result in only 2 or 3 additional appeals per year. The financial impact is therefore totally marginal.
- As regards appeals against acts of the Board of Governors or of the Administrative Board of a school: this is expected to result in only 2 or 3 additional appeals per year, such appeals being restricted to procedural irregularities and to legal issues. The financial impact is therefore totally marginal.
- The change to the starting point of the period for appeals is not expected to have a financial impact.

### **I.B – *Proposals for amendments to be made to the Regulations for Members of the Seconded Staff***

All that is proposed is a change to the time periods, a measure which is not expected to have a financial impact.