



29.5.2015

NOTICE TO MEMBERS

Subject: Petition No 1657/2013 by Paul Ryan (Irish) on need for European Schools' system reform

1. Summary of petition

The petitioner is calling for: 1) an independent audit of the EURSC, in particular in relation to the Maths and Chemistry examinations in Baccalaureate 2012, 2) Implementation without further delay of the European Parliament resolution of September 2011 securing “profound change” in the legal status of the European Schools, and 3) Pending 2 above, an immediate interim agreement by EURSC that it will submit itself to the laws of the European Union without restriction. The EURSC was set up by an intergovernmental treaty signed by the EU Member states and it is claimed that it operates totally outside the laws of the European Union but has its own “internal” sui generis legal system. Citizens have no ability to enforce their rights under European Law against this European institution. The impact on certain pupils is claimed to have been profound and it is claimed that they have had their university plans destroyed. There is no right of redress for these European citizens against EURSC. The problem is simply denied and EURSC is unaccountable under European Law. There is an internal appeal system within the EURSC but it is biased. The European Schools rarely lose a case appealed to this body. This legal limbo and lack of governance is recognised by the European Parliament, the European Commission, the European Council in May 2013, the ECJ and the European Ombudsman. The crux of the matter is that this poster child of the European Union, EURSC is a fiction in so far as being a European institution and it operates on laws of its own.

2. Admissibility

Declared admissible on 4 June 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 August 2014

The petition

The petitioner raises various issues concerning the European School's system (ESS), in particular with regard to its legal system and the results of the Maths and Chemistry Baccalaureate exams in 2012.

Since October 2012, the petitioner has contacted the Commission on numerous occasions and at all levels (about 40 exchanges) about the matters he raises in his petition. The Commission considers that it has given an appropriate answer to all his questions.

In an e-mail of 21 May 2014 the petitioner issued a call to act under Art 265 of the Treaty on the Functioning of the European Union (TFEU), alleging that, contrary to its obligations, the Commission had failed providing adequate rights of redress against the decisions of the ESS and its complaints board. The Commission replied in an e-mail of 30 June 2014.

The Commission's comments

The rules governing the ESS are set in the Convention defining the Statute of the European Schools ("the Convention") which is a treaty under public international law and which is signed by all Member States and the then European Communities.¹ That international treaty created a self-contained system of governance and of legal remedies which is unrelated to the system created by the EU Treaties.

In ground 39 of its judgment in Case C-196/09, *Miles and others* [2011] ECR I-5105, ECLI:EU:C:2011:388, the Court of Justice stated that:

"... the European Schools ... constitute, as the first and second recitals of the European Schools' Convention state, a 'sui generis' system, which achieves, by means of an international agreement, a form of cooperation between the Member States and between those States and the European Union, for the education together of children of the staff of the European Communities in order to ensure the proper functioning of the European institutions."

The EU as a party to the Convention is represented by the Commission. As in other areas of international cooperation, the Union has a wide margin of appreciation on how to define and represent the interest of the Union within the framework of the ESS.

The decision-making body in the ESS is the Board of Governors (BoG) which also implements the Convention by means of detailed implementing rules. In this forum the Commission, representing the Union, has one vote. As a result, the Commission cannot be held solely responsible for all decisions taken with regard to the management of the ESS as indeed they are taken by a vote involving all 28 Member States as well.

The petitioner puts forward several requests:

Call for an independent audit of the EURSC

¹ Official journal L 212,17/08/1994 P. 0003-0014.

The Commission does not share the view of the Ombudsman who considers in his decision of April 2012 that the Commission failed to respond properly to the request for an independent external audit of the European Schools (ES) and that this constituted an instance of maladministration.

The Commission considers that adequate measures have already been taken, and are being taken, to ensure adequate scrutiny of the ESS:

- In relation to educational matters, the ES take part in PISA studies organized by the OECD; the schools' performance is monitored by national inspectors from the Member States, who are part of the national educational systems and who draw up the European Schools' curriculum and who also have detailed knowledge and experience of the national curricula); finally, the European Baccalaureate is assessed by the University of Cambridge;

- As to financial matters, audits are carried out annually by the Court of Auditors and the Commission's Internal Audit Service

and in particular in relation to the mathematics and chemistry examinations in the 2012 Baccalaureate "to restore credibility to the European Baccalaureate"

Turning first to the 2012 Mathematics examinations, it is correct that due to the discrepancy between the examination questions and the curricula and the newness of the technical tool used, the initial average Baccalaureate mark in this subject was lower than that seen in most previous years. A formal investigation was carried out during which reports were made by the Chairman of the 2012 European Baccalaureate and an expert from the University of London; as a result, it was decided that all candidates' marks would be revised upwards. These special circumstances did not exist for the chemistry examinations. Nevertheless, following complaints by several parents, an investigation was carried out, also under the responsibility the Chairman of the 2012 European Baccalaureate; he concluded that the degree of difficulty of the 2012 chemistry examinations was comparable to those of previous years. The petitioner's daughter was one of the candidates who sat the chemistry examination. Further complaints to the Complaints Board of the European Schools were unsuccessful, meaning that the legal remedies provided for by the Convention have now been exhausted.

Immediate implementation of the European Parliament's resolution of September 2011 in favour of "profound change" in the legal status of the European Schools, and in the meantime, an immediate interim agreement by EURSC that it will unconditionally comply with the laws of the European Union.

The petitioner claims that the view of the European Parliament, as expressed in the report of Jean-Marie Cavada adopted in September 2011¹ and its accompanying recommendations, has thus far been ignored. This is not correct. A follow-up document was presented by the Secretary General of the ES to the BoG in April 2012. In February 2014, he gave an update on the follow-up to the Cavada report to the European Parliament's Committee on Culture and Education.

¹ <http://www.europarl.europa.eu/si/des/getDoc.do?type=TA&reference=P7-TA-2011-0402&language=EN>.

Moreover, there have already been several recent developments intended to improve the system of legal protection within the ESS. The Convention provides that complaints about the ESS can be addressed to the Complaints Board. Due to a request from the European Commission, in April 2013, the BoG mandated a working group, bringing together high-level lawyers, to deliberate on the issue of strengthening the legal system and in particular on how an appeals system could be set up.

The Commission is represented in the working group and does its utmost to contribute to the analysis and possible suggestions for improvement of the existing situation with a view to obtain consensus among the members of the working group and of the Board of Governors. All the different aspects of the proposals improving the appeals system of the European schools are of a complex nature and need to be deliberated on in great detail. Several exchanges have taken place with the petitioner concerning the state of play of the working group, who is thus well aware that the matters raised by the European Parliament have not been ignored.

With effect of 1 January 2014 a new registrar of the Complaints Board was appointed, who has no hierarchical link with the Office of the Secretary General. The Complaints Board works in a transparent way and the President of the Complaints Board regularly reports to the BoG on the cases being dealt with and the outcome. The last report was presented during the meeting of the BoG in April 2014.

The petitioner also mentions a "crisis" concerning the ESS that had been addressed at the European Council meeting May 2013. This issue was related to cost-sharing between Member States and the high number of unfilled seconded teaching posts in the ESS. The BoG subsequently reached agreement on the principles of cost-sharing in November 2013 and recently also reached agreement on the practical financial implementation of the cost-sharing issue in June 2014.

Conclusion

The Commission considers that necessary measures have been taken and are being taken to deal with the matters raised in the petition which relate to the general operation of the ESS. So far as the specific request in relation to the 2012 mathematics and chemistry examinations is concerned, these matters were both investigated, and as a result, the candidates' marks in mathematics were revised upwards, while no anomaly was found in relation to the chemistry examinations.

The Secretary General continues to ensure follow-up of the European Parliament Resolution and furthermore, as detailed above, an analysis of the appeals systems of the ES is underway. The Commission supports this initiative and is playing an active role in the working group.

The European Commission considers that adequate measures have been taken or are ongoing within the BoG and subject to the rules of the Convention of the European Schools.

In conclusion, the Commission considers that the petitioner's allegations are unjustified. All necessary steps have been taken, in the context of the system of inter-governmental

governance to ensure an appropriate follow-up of the European Parliament Resolution and to address the issue of improving the appeals system of the ESS.

4. Commission reply (REV), received on 29 May 2015

Concerning the audit request "in relation to the mathematics and chemistry examinations in the 2012 Baccalaureate to restore credibility to the European Baccalaureate"

Due to the structure of the European Schools (ES) system the Commission is only one among many stakeholders and therefore cannot take decisions of this nature on its own and relies on information received by the Secretary-General of the ES who is responsible for the overall management of the system. At the time of the 2012 Chemistry Baccalaureate issues, an investigation was carried out under the responsibility the Chairman of the 2012 European Baccalaureate. The Commission was very much in favour of such an investigation.

The Commission must also point out that it is not involved in the individual cases dealt with by the Complaints Board. The Complaints Board is an independent institution with its own legal status. The 6 members of the Complaints Board who are recognized as being competent in law, are selected based on a list drawn up by the Court of Justice of the European Union. The majority of the current members are judges with significant judicial experience in their own Member States. The Commission considers there is no doubt about their integrity.

On the new point raised by Mr Ryan at the meeting of the petitions committee in relation to the 2014 chemistry examinations

Concerning the 2014 chemistry examinations, the Secretary-General of the ES recognized that the overall marks were at the lower end of the average results for the past 10 years and that the distribution of marks was unusual. The Commission notes that the Chairman of the Examination Board, in agreement with the Secretary-General, promptly decided to review the results. In addition, 14 pupils accepted the offer to take a new examination in September. The Secretary-General has not heard of any case where students have faced difficulties in obtaining a university place as a result of the special circumstances of the 2014 chemistry examinations.

Although the necessary immediate actions had already been taken in relation to the 2014 Chemistry Baccalaureate, the Commission considered that the matter needed to be looked into further and therefore asked the Secretary-General of the ES to start discussions on the need for an in-depth analysis of the reasons behind the results and the discrepancies.

In his report on the 2014 European Baccalaureate session, presented at the meeting of the Board of Governors of 2-4 December 2014, the Chairman of the European Baccalaureate issued recommendations for the improvement of the Chemistry examinations (e.g. clear instructions about the content and cognitive aspects for the exams and detailed guidelines for the correction of written exam papers). The Commission considers that the Chairman's recommendations should be given serious consideration, with a view to avoiding a recurrence of this sort of difficulty.

The Commission agrees that there is scope for practical improvements and indeed made

this point in the above-mentioned meeting of the Board of Governors in its formal statement.

Concerning the "profound change" in the legal status of the European Schools

The ES system, being an international organisation, has unique features and is by definition only to a certain extent comparable to national systems. It is a 'sui generis' and self-contained system with rules of its own which are distinct and differ from those which govern national educational systems.

To ensure adequate legal protection, the European schools' founding treaty and its implementation rules lay down detailed rules about how the legality of certain acts of the schools may be challenged before the Complaints Board.

Whilst it is true that directly-applicable provisions of EU Treaties and EU Directives do not apply as such to the European Schools, the Complaints Board has consistently held in its decisions that the ES must comply with the general principles of EU law, such as the right to equal treatment and non-discrimination, the protection of legitimate expectations, and the right to effective judicial protection.

The system of legal protection of the European Schools confers exclusive jurisdiction on the Complaints Board for a number of issues. For other issues, and whenever the founding Treaty of the system or its implementing rules do not expressly provide for legal remedies, it is considered that national law applies, on a residual basis and that interested parties may therefore bring such claims before the national courts in the host country of the School concerned. This particularly applies to issues of alleged civil and criminal liability of the Schools.

It must however be conceded that at present, the system of legal protection of the European Schools does not provide for any appeal against decisions of the Complaints Board. Although such an appeal is not required by the European Convention on Human Rights, the Board of Governors, at the initiative of the Commission, set up a working group in April 2013, bringing together lawyers considered to have special expertise, to examine how the ES legal system might be reinforced, and in particular how an appeals system could be created.. The last meeting of the working group took place on 12 November 2014, at which a note was adopted, containing various proposals to be presented to the Board of Governors in April 2015 for decision.

Conclusion

The Commission has acted on the issues raised by the petitioner to the fullest extent allowed within the constraints of the ES system.

In relation to the new element concerning the 2014 chemistry examinations, the Commission has asked the Secretary General of the ES to start discussions on the need for an in-depth analysis of the reasons behind the results and the discrepancies.

The Commission will continue to follow the discussions which are underway about creating an appeals system for the ES. The Commission strongly supports this initiative and has been playing an active role in the working group which has now finalized its work, which to be presented to the Board of Governors for decision in April 2015. However, the Commission

must point out that the power to take decisions on any potential change is in the hands of the Board of Governors of the ES.

In conclusion, the Commission considers that the petitioner's concerns have been addressed by the Commission, for all aspects that are within its power. All necessary steps have been taken, in the context of the system of inter-governmental governance to ensure an appropriate follow-up of the European Parliament Resolution and to address the issue of improving the appeals system of the ES.