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(First Section)

having heard, at the public hearing of 20 June 2025, the rapporteur's report and the oral observations of the parties,

having regard to the notification of the operative part dated 9 September 2025,
pursuant to Article 26.2 of the Rules of Procedure,

has issued the full decision, the grounds and terms of which are set out below

Facts giving rise to the dispute

1.

On 15 January 2025, the applicants submitted joint applications for the enrolment of their daughters, [REDACTED], in the Greek language section (hereinafter referred to as the EL language section) at the European School, Brussels III (hereinafter EEB3), in S2 and P5 respectively. They did not invoke any particular circumstances within the meaning of Article 8.5 of the Enrolment Policy 2025–2026 (hereinafter EP), nor did they request the application of any priority criteria.

2.

On 8 April 2025, the Central Enrolment Authority (hereinafter CEA) offered them a place at EEB3 in S2 for [REDACTED], and a place at the European School, Brussels I – Berkendael site (hereinafter EEB1-BRK) for [REDACTED], as the threshold of 30 pupils had been reached in P5 EL at EEB3.

This is the decision that is the subject of the present appeal.

Forms of order sought by the parties

3.

The applicants request that the CEA's decision of 8 April 2025 be annulled and the European Schools (hereinafter referred to as the ES) ordered to pay costs, which they quantify at €1,000; they further request that, should their appeal be dismissed, each party bear its own costs.

4.

The defendant requests that the Complaints Board declare the applicants' appeal admissible but unfounded, and that the applicants be ordered to pay the costs of the proceedings amounting to €750.

Grounds and arguments of the parties

5.

The applicants challenge the decision on the grounds that it is contrary to the principle of the protection of siblings and the principle of proportionality, due to an imbalance between the interests of the children and the family on one side and those connected to the organisation and management of the ES on the other.

6.

The grounds for appeal are as follows:

- 1) Article 5.3 of the EP provides the possibility of separating siblings if there are no places available for each member of the sibling group, but this rule

must be interpreted in light of the principle of the grouping of siblings, whereby every effort must be made to ensure that separation is a last resort. For enrolments in the Greek language section, grouping is almost impossible where the application concerns one child in the secondary cycle and another in the primary cycle, as is the case of the applicants here. The first child can only be enrolled at EEB3 – since it is the only school offering education at this cycle – and the prospects of enrolling the second child there are virtually non-existent, not least since the only criterion considered by the CEA is the number of pupils in the primary class requested. The CEA has wide discretionary authority; in this case, had the Authority decided to split the P5 class at EEB3, places would have been available for their younger daughter.

- 2) The applicants further state that they have only recently arrived in Brussels and are facing numerous challenges; the separation of the sisters entails significant practical issues due to differing work and school schedules, particularly as this involves two different schools rather than two sites of the same school: there are no organisational agreements in place for transport, school meals, the parents' association or extracurricular activities.

7.

In their reply, the ES do not contest the admissibility of the appeal, but allege that the main objectives of the EP for the 2025–2026 school year are, on the one hand, to implement the gradual migration of the nursery and primary cycles of certain language sections to the two dedicated sites of EEB1 and EEB2, with a view to rationalising the distribution of lower-cycle classes, and, on the other hand, to prepare, in the longer term, for the establishment of the

pupil body of the European School Brussels V. All these measures have been approved by the Board of Governors in order to address the significant overpopulation affecting all the Brussels European Schools, including EEB3 which is currently 26% above its capacity. This overpopulation at EEB3, in particular within the secondary cycle, also has repercussions on the availability of classrooms in the nursery and primary cycles of the school.

They further state that EEB3 is the only school offering an EL section in the secondary cycle. Consequently, the CEA assigned the elder daughter of the applicants to EEB3, which was the only possible option for her. In order to satisfy the request for joint processing of the enrolments, it would have been necessary to assign a place in the same school for their younger daughter. However, this was not feasible, as there is only one P5 class in the EL section at EEB3, and the threshold of 30 pupils had already been reached.

After careful consideration and having weighed the individual interests of potentially affected families against the general safety and well-being of pupils enrolled at EEB3, the Board of Governors approved the Guidelines for Enrolments for the 2025–2026 school year, including the possibility of separating siblings enrolled in the EL section between EEB3 and the satellite EL classes hosted at the EEB1 Berkendael site.

Pursuant to Article 6.17.g) of the Enrolment Policy, which provides that “*all applications for enrolment in the nursery and primary cycles of the EL section will be referred to EEB1 – BRK site (satellite classes) and EEB3,*” the younger daughter of the applicants was assigned to EEB1-BRK. The ES point out that she will, in principle, join her sister at EEB3 in one year, upon entering the secondary cycle in September 2026, provided that she successfully completes her current cycle and that the provisions of the Enrolment Policy remain

unchanged.

With regard to the particular circumstances of the applicants, the ES observe that, at the time of submitting their enrolment applications, they did not request the consideration of any particular circumstances that could justify the application of a priority criterion under Article 8.5 of the Enrolment Policy. In any event, the organisational difficulties arising from the professional activities and residence of the applicants cannot be considered as grounds for granting a priority.

8.

In their reply, the applicants maintain their initial claims in response to the arguments put forward by the ES and insist, in substance, on the following:

They contest the ES' argument based on a purported objective of avoiding splitting of primary classes at EEB3 in order to accommodate all secondary cycle pupils – an objective not mentioned in the EP and one that offers no flexibility to Greek-speaking families to take their circumstances into account.

They argue that references by the ES to decisions of the Complaints Board concerning restrictions on the principle of the grouping of siblings are not applicable to EL section pupils, as those decisions concern cases of “*one school, two sites*”, whereas in their case, the siblings are separated between two different *schools*.

They also reject the ES' arguments regarding the exclusion of considerations related to parents' working hours and places of employment or to the distance between the schools and the family home.

At the hearing, both parties reiterated their respective arguments. The applicants stressed that the issue of overpopulation in Brussels European Schools must be resolved by the Schools themselves, not by the families, and that the interpretation of the rules must prioritise the best interests of the child.

Assessment of the Complaints Board

On admissibility,

9.

The admissibility of the appeal is not contested by the ES as the applicants limit their claim to the annulment of the contested decision on the grounds of a breach of the principle of the grouping of siblings.

Article 27 of the Convention defining the Statute of the ES recognises the jurisdiction of the Complaints Board and makes a distinction, in accordance with the traditional classification of contentious proceedings, between actions for the annulment of a contested act and actions for of a financial character where the Complaints Board has unlimited jurisdiction.

The present appeal falls into the first category, in which the Complaints Board's powers are limited to reviewing the legality of the contested act, as requested by the applicants.

On the merits,

10.

The principle of the (re)grouping of siblings has applied to the Brussels European Schools since the creation of the CEA in 2006. As the Complaints Board noted in its decision 07/06 of 1 August 2007, “... *the creation of a Central Enrolment Authority for the Brussels European Schools was decided by the Board of Governors at its meetings of 23, 24 and 25 October 2006, which assigned it the following functions: 1) draw up and publish each year a clear enrolment policy in order to achieve the objectives pursued with the utmost fairness and transparency; 2) draw up the list of pupils to be enrolled in each of the Brussels European Schools, on the recommendation of their directors; 3) ensure a balanced overall distribution of the population, both between the schools and between the language sections, and to ensure the optimal use of school resources to meet pupils' needs and ensure educational continuity ; 4) ensure that all Category I pupils who apply for enrolment are given a place in a Brussels School; 5) guarantee that siblings are enrolled in the same School; and 6) continuously monitor changes in the school population in the various language sections of the Schools (document 2.006-D-165-en-7)...*”.

Originally, this principle was formulated (rather than as a right of pupils or families) “...*as a fundamental commitment on the part of the Schools, which have a duty to guarantee this possibility; we can therefore deduce from both the documents mentioned above and the ‘Explanatory addendum to the enrolment policy in the Brussels European Schools for the 2007/08 school year’ (2007-D-162-en-5), which mentions it among the general principles and repeats it in other places in the text; this principle is in the families' interest, as well as that of the Central Enrolment Authority, to satisfy the applications for*

admission of Category I pupils to the school of their choice, provided that the latter is compatible with the achievement of the objectives assigned to the said Authority by the Board of Governors, which must treat individual cases in a spirit of fairness and justice (Addendum, Part V)” (cited in decision 07/06).

The EPs of subsequent years also refer to this principle, and it has become, for the Complaints Board, a fundamental principle of the EP (decisions 11/14 of 1 August 2011 and 15/23 of 24 August 2015), the disregard or incorrect application of which may affect the subjective rights of the persons concerned and render the individual act unlawful, without, however, constituting a fundamental right for the individuals concerned. On several occasions, the Complaints Board has annulled individual acts on the grounds of the illegality of the relevant provision in the EP of the year in question or, after finding that the provision was not contrary to the legal conditions, has annulled the contested decision on the grounds of incorrect application of that provision.

More recently, the Complaints Board has also clarified the scope of the principle and its implications for the Schools' decisions and has emphasised the importance of the principle of proportionality. In decision 23/11 of 31 August 2023, it stated that “...over the last decade, amendments have been made to the provisions of the EP on several occasions, thereby subjecting the principle of the grouping of siblings to a number of conditions or even limiting its application as a priority criterion. As stated in the relevant guidelines, which are adopted annually by the Board of Governors, these changes were deemed necessary in each case due to the growing overpopulation of the Brussels European Schools.

On this subject, the Complaints Board has nevertheless emphasised in the past that “while the authority concerned is free to modify the scope of a principle that it has itself introduced into the rules of law within its jurisdiction,

or even to abandon it, such a measure must not appear disproportionate in view of the balance sought between, on the one hand, the interests of pupils and their families and, on the other hand, the organisation and management of the European Schools” (see Complaints Board decision No 15/23 of 24 August 2015, point 16).”

(...)

Therefore, it is necessary to take into account the specific circumstances that arise in each case in order to adopt the most appropriate solution, which requires a balanced assessment of the conflicting interests of the family on the one hand and school management on the other. In this case, it will therefore be necessary to weigh up the advantages of Article 8.2.3 of the current EP against the significant disadvantages it entails for the applicants,” because, as the Complaints Board added, *“The principle of proportionality, which is widely accepted both in the Community legal system and in those of the Member States, must serve as a reference, particularly when it comes to decisions taken within the modified scope of application of a principle as fundamental as that of the grouping of siblings.”* And it concluded that *“The Board therefore accepts, in light of the criteria it has established in its case law, that the derogation from the principle of the grouping of siblings, as formulated in particular in Article 8.2.3 of the current EP, is sufficiently precise and conditional and does not go beyond what is necessary to achieve the objective of general interest. The rule on which the CEA decision of 5 May 2023 is based must therefore not be considered as tainted by illegality.”*

Decisions 24/36, 24/08 and 24/33 of 26 August 2024 all point in the same direction.

11.

It follows from those decisions that:

- grouping of siblings is a fundamental principle of the EP of the Brussels European Schools.
- the CEA must ensure its effective application in the annual Policies, while taking into account other objectives, in particular that of the balanced distribution of the school population *“between the schools and the language sections, and to guarantee optimum use of school resources to meet pupils’ needs and ensure educational continuity.”*
- adjustments may be made to this principle as regards its scope and application to take account of the situation of the Brussels European Schools, which changes every year, but these changes must in all cases respect the fundamental nature of this principle; they must be sufficiently justified and the persons concerned must be informed in advance.
- in particular, any restrictions on this principle and the conditions for its exercise must be proportionate and must not alter the balance between the interests of pupils and their families and those of the organisation and management of the ES.
- individual cases must be treated fairly and justly.

12.

In the present case, the Guidelines for the 2025-2026 school year were adopted by the Board of Governors on 3, 4 and 5 December 2024 (ref. 2024-12-D-13-fr-1) and implemented in the EP for the same year (ref. 2024-12-D-14-fr-2).

The applicants applied for the joint enrolment of their two children and did not invoke any particular priority circumstance that could have led to the application of the rules set out in point 8.5 of the EP. The reasons set out in their application were rather of a nature to justify joint enrolment based exclusively on the principle of the grouping of siblings, and not to justify the application of any other priority criterion under point 8 of the EP other than the grouping of siblings.

They do not dispute the facts presented by the ES, nor the problems of overpopulation in those schools in Brussels, nor the difficulties arising from the multiplicity of language sections and the lack of adequate infrastructure able to accommodate, under suitable conditions, an increasing number of pupils year after year who may enrol in the ES in accordance with the Convention defining the Statute of the European Schools and to enable the fulfilment of its mission, which is “... *to educate together children of the staff of the European Communities*” (Article 1 of the Convention).

Their application is based on the impossibility of complying with the principle of the grouping of siblings in their case, due to the fact that there is only one EL language section for the secondary cycle, at EEB3, where their elder daughter must necessarily be enrolled, and that the application for enrolment in the primary cycle for their younger daughter is subject to the availability of places in the required year group, in this instance in P5, which had already reached the threshold of 30 pupils, beyond which the class would have had to be split to admit one further pupil.

The question to be determined is therefore whether, in this case, the decision not to apply the principle of the grouping of siblings owing to the lack of available places, since the threshold had been reached, is or is not

proportionate having regard, on the one hand, to the interest of Brussels European Schools in implementing the provisions of the EP aimed at achieving the objective of distributing pupils among the various schools and sites in the context of ever-increasing overpopulation in Brussels European Schools and, on the other hand, and more concretely, to the provisions of the EP that particularly affect language sections of which there is only one, as is the case for the EL language section which only exists for the secondary cycle at EEB3.

13.

The applicants invoke Article 5.3 of the EP, which states:

Where the joint handling of applications is requested in accordance with the arrangements referred to in Articles 2.45 to 2.47., the children will be enrolled at the same school/site although not necessarily the first preference one, and provided that at one of the six schools/sites, a place available, or a place to be filled, can be awarded to each of the children belonging to the group of siblings. If not, the application will be dealt with like one for a single pupil."

They do not dispute that the threshold of 30 pupils had been reached in the P5 class, but they consider that the principle of the grouping of siblings required the class to be split in order to allow the admission of their younger daughter in the same school as her sister, disregarding the condition of the existence of an "*available place to be filled*" required by Article 5.3. According to them, the principle of the grouping of siblings must take precedence over this latter provision.

The Schools, however, explain that the splitting of the P5 class was not possible for the following reasons: 1) EEB3 is 26% above its capacity; 2) the creation of an additional primary class at EEB3 owing to a single pupil would very likely lead to the creation of five new primary cycle classes by the end of

the 2026/27 school year; 3) as the EL language section exists only in this one school for the secondary cycle, it is necessary to maintain a single nursery class and a single class per level of the EL primary cycle in order to subsequently accommodate all those pupils in the secondary cycle.

Under these circumstances, it must be noted that the contested decision is proportionate and in accordance with the rules of the EP, adopted in conformity with the Guidelines established by the Board of Governors, within which this point was discussed (see Board of Governors meeting of 3, 4 and 5 December 2024, Ref.: 2024-12-D-8-fr-2).

The Board of Governors' efforts to address overpopulation in the Brussels European Schools and the shortage of available buildings are taking place in an increasingly complicated context. For years, the Brussels European Schools have been facing a lack of infrastructure and an increase in the number of pupils, which is occurring asymmetrically between cycles and increasingly numerous language sections. This situation has led to widespread overpopulation throughout the ES system, and it is important to reconcile these current constraints with their foreseeable consequences in the future until the opening of the European School, Brussels V, scheduled for 2030, which should allow for a better distribution of the school population.

It should also be emphasised that changes leading to restrictions or new conditions reflected in the annual EP must be carefully justified so that parents are aware of the reasons for such changes, even if they disagree with them.

The applicants argue that they have recently settled in Brussels and do not have sufficiently thorough knowledge of the ES' system to propose an alternative to splitting the year group.

They are indeed justified in considering that finding a solution to problems arising from overpopulation is the responsibility of the ES and not that of the families.

However, this does not mean that the ES have unlimited power, as their discretionary power is strongly limited by these material constraints as well as by the respect for principles that the ES must observe, such as pedagogical organisation, set out in Article 4 of the Convention. The claim concerning the extent of the ES' power to decide on the splitting or not of a year group must be assessed in light of the various binding constraints and principles.

In the present case, as the ES explain, splitting the P5 class at EEB3 would have entailed difficult-to-manage consequences and repercussions for the entire pupil population. Demographic pressure being particularly acute in this school, it is imperative to reduce or at least not increase the number of classes in the nursery and primary cycles in order to free up space for pupils in the secondary cycle, which is the only language section for the EL section. For the 2025–2026 academic year, EEB3 has only one class per year in the nursery and primary cycles, but it will have 20 classes in the secondary cycle.

As provided for in the Guidelines, when the fifth Brussels European School opens in September 2030, pupils enrolled in the EL satellite classes of EEB1-BRK are expected to be transferred there. The structure of the classes must also comply with the method set out in the Guidelines, point 3.

This block transfer requires the implementation of the necessary measures in the annual EPs that will be adopted until the new school opens, the necessary measures to prepare for it, including any restrictions that might be necessary

on certain principles, such as the grouping of siblings, and adaptations to existing circumstances, with the aim of fully integrating the EL language section into a single school - which does not exclude the adoption of other transitional measures to mitigate the consequences of these restrictions.

The decision to not split the primary classes therefore appears proportionate to the existing circumstances.

14.

According to the consistent case law of the Court of Justice of the European Union (hereinafter CJEU), the principle of proportionality requires that measures imposed by administrative authorities be suitable for achieving the intended objective and do not exceed the limits of what is necessary for that purpose (see Judgment of 18 September 1986, Case 116/82, Commission v Germany). More recently, in its judgment of 4 May 2016, Philip Morris et al., C-547/14, the CJEU stated that "*According to settled case-law, that principle requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.*"

In this case, the decision to refuse to split a class – which would have allowed the applicants' enrolment request to be accepted on the basis of the principle of the grouping of siblings – does not appear disproportionate to achieving the objective pursued by EP 2025-2026, set out in the Guidelines adopted by the Board of Governors, for the reasons set out above, and to avoid negative

consequences for the organisation of the EEB3 and the Brussels European Schools system in general. It is not disputed that the general policy of distributing the school population among the Brussels European Schools in order to address overpopulation, which is more prevalent in certain schools, is determined by the specific situation regarding the distribution of nursery and primary cycle pupils in the EL language section between the satellite classes of EEB1-BRK and EEB3.

Alternative solutions to splitting the class, which might have been less inconvenient for the family and might have avoided the separate schooling of siblings, could not be envisaged due to the strict rules of the EP; as *“If not [possible to make joint enrolments], the application will be dealt with like one for a single pupil” (Article 5.3 in fine)*, the applicants’ younger daughter could only be separated from her sister, as Article 6.17.g) of the EP then applied, which stipulates that *“All applications for enrolment in the nursery and primary cycles of the EL section will be referred to EEB1-BRK (satellite classes) and EEB3.”*

Furthermore, splitting primary cycle classes at EEB3 is contrary to the objective established for EEB3 (to consolidate secondary cycle classes and avoid increasing primary cycle classes), which is why, once the threshold of 30 pupils is reached, no further places are available, justifying the refusal of joint enrolment in the same school.

As stated, the power granted in the Guidelines to the CEA (point 3 “Method,” page 9) to define the structure of classes and adjust them during the enrolment campaign is not absolute discretionary power, as it is limited by the objectives and the method established to achieve them. Article 3.2 of the EP clearly states that in exercising this power, the CEA must *“... guarantee a balanced*

distribution of the total pupil population, across both the different sites and the language sections, and optimum use of resources.” However, no breach of these principles was alleged in the appeal, nor were any alternative measures proposed other than splitting the class. This does not rule out the possibility that the ES, in collaboration with parents, may find ways to alleviate the admittedly difficult situation described by the families.

15.

The allegation of discrimination between pupils of the EL language section was first raised at the hearing; it is therefore inadmissible pursuant to Article 18.2 of the Rules of Procedure, which prohibits the introduction of new grounds during proceedings; in any event, this allegation was not substantiated by any specific evidence allowing for the proposed comparison.

16.

One last issue, also raised at the hearing but this time by the ES and to which the applicants responded with a new plea, concerns the allocation of an existing place in P5 to a pupil other than their daughter; this plea is admissible as it is based on a new factual element revealed by the ES during the procedure.

It is, however, unfounded. No evidence was provided by the applicants of any irregularity in this allocation, and the ES explained that the place was allocated, pursuant to Article 10.4 of the EP, to the enrolment application bearing the number 252 in the random ranking, whereas the applicants' application bore the number 1024.

17.

It follows from all of the above that the appeal is unfounded and must be dismissed.

Regarding costs and expenses,

18.

Under Article 27 of the Rules of Procedure: *“The unsuccessful party shall be ordered to pay the legal and other costs of the case if they have been applied for by the other party. However, if the particular circumstances of the case so warrant, the Complaints Board may order the latter party to pay the legal and other costs, or may order that they be shared between the parties (...) If costs are not claimed, the parties shall bear their own costs .”*

It follows from these provisions, which are entirely comparable to those in force in most national and international courts, that the unsuccessful party must, in principle, bear the costs of the proceedings. However, these provisions allow the Complaints Board to assess the conditions under which they should be applied on a case-by-case basis.

Pursuant to these provisions, and in view of the complexity and novelty of the issues raised in this appeal, it is appropriate to declare that each party shall bear its own costs, as requested in the alternative by the applicants.

ON THESE GROUNDS, the Complaints Board of the European Schools

DECIDES

Article 1: The appeal lodged by Mr [REDACTED] and Ms [REDACTED], registered under number **25/20**, is dismissed.

Article 2: Each party shall bear its own costs.

Article 3: This decision shall be notified in accordance with Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

M. Ronayne

Haris Tagaras

Brussels, 9 September 2025

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For the Registrar's Office

Nathalie Peigneur