

Appeal 23/03

InterParents

THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Plenary Session

Decision of 22 September 2023

In the case filed with the registrar of the Complaints Board under number **23/03**, concerning an appeal lodged on 9 March 2023 by Mr Rüdiger SAILER, acting in the name and on behalf of the Association of Parents' Associations of the European Schools (**InterParents**) and the aforementioned associations (hereinafter "**the applicants**"), in view of obtaining the annulment, reversal or repeal of the decision of the Board of Governors of the European Schools of 6-8 December 2022 and the decision of the Secretary-General of the European Schools dated 22 February 2023 on the rejection of the administrative appeal lodged by the applicants on 23 January 2023,

the Complaints Board of the European Schools, sitting in plenary session, consisting of

- Eduardo Menéndez Rexach, Chairman of the Complaints Board
- Mario Eylert, member
- Paul Rietjens, member
- Pietro Manzini, member and rapporteur
- Aindrias Ó Caoimh, member
- Brigitte Phémolant, member and President of the 2nd section,
- Mark Ronayne, member

assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas van de Werve d'Immerseel, legal assistant,

having regard to the written submissions made by Mr SAILER on behalf of the applicants and, Ms Muriel GILLET on behalf of the European Schools,

having heard, at a public hearing on 19 July 2023, Mr MANZINI's report, the oral submissions of Mr SAILER, Ms OLIVEIRA and Mr Moles, President of InterParents, for the applicants, and of Mr SNOECK and Mr Beckmann, Secretary-General, for the European Schools,

delivered, on 22 September 2023, the decision the reasons for which are set out below.

Facts of the Case and Arguments of the Parties

1.

The applicants lodged an appeal on the basis of Article 27 (2) of the Convention defining the Statute of the European Schools (hereinafter, "the Convention") and Article 14 of the Rules of Procedure of the Complaints Board against:

- a) the decision of the Board of Governors of the European Schools of 6-8 December 2022, approved by written procedure no. 2022/64 on 10 January 2023, which came into force retroactively on 1 January 2023, and was published for notification purposes on 18 January 2023 (hereinafter the "BoG Decision");
- b) the decision of the Secretary-General of the European Schools dated 22 February 2023, rejecting the administrative appeal lodged by the applicants against the BoG Decision of 6-8 December 2022.

The BoG Decision concerns amendments to Articles 5, 14, 15, 35 and 38 of the General Rules of the European Schools (hereinafter, the "GRES" or the "General Rules"), and is in response to an internal audit.

In the "*Annual Internal Audit Report 2022*", it is noted under recommendation no. 4 that: "*An unclear division of the security and safety roles, responsibilities and tasks of the different actors involved may lead to ineffective and inefficient security arrangements in*

the ES. There is a risk of overlap between the security and safety roles, and a risk of lack of coordination and supervision on the Security Officers' tasks".

Likewise, the "*Global Annual Activity Report 2022*" found that, as regards security, the Administrative Boards needed to work on the "*Development of the generic risk register for safety and security risks for activities carried out by Parents Associations in schools*" and that the "*Roles and responsibilities of the Parents' Association on security*" were considered "*critical*".

These comments were made in specific reference to school transport, the canteen and extra-curricular activities.

2.

The amendments contested by the applicants are those concerning the following Articles of the GRES (the amendments made are highlighted):

- Article 5

The amendments made to this article simply involve adding the words "*within the existing legal framework*".

- Article 14

This Article initially provided that:

"The Director may authorise persons from outside the school to visit the school, to participate in school events and to sit in on and observe classes with the agreement of the teachers concerned."

The updated Article 14 now stipulates that:

"The Director may authorise persons from outside the school to visit the school, to participate in school events and to sit in on and observe classes with the agreement of the teachers concerned.

The Director may authorise external organisations to provide childcare activities, education for recreational purposes or day care on the school's premises.

Without prejudice to commitments of the school which were already in force before 1 January 2023, these activities shall be organised under the responsibility of the external organisations. The external organisations are required to comply in terms of safety and security with the applicable national legislation as well as school specific arrangements put in place."

- Article 15

This Article initially provided that:

"The Director shall be responsible for safety and security on school premises. Should a particular event occur at the school (e.g. death, serious accident, fire, explosion, infectious disease, threats, etc.), the Director must notify the relevant service. Moreover, the Director must closely collaborate with the relevant services within the School community (i.e. canteen, bus, extra-curricular activities) in order to ensure the safety and well-being of the School community's members.

Any processing of personal data pursuant to this article will be carried out in compliance with the data protection obligations resulting from Regulation (EU) 2016/679".

The updated Article 15 now stipulates that:

Without prejudice to Article 14, paragraph 2, the Director shall be responsible for safety and security on school premises. The applicable legislation in this respect is that of the country in which the school is located. Furthermore, the Director can impose safety and security rules which apply to all external organisations conducting an activity on the school's premises.

Should a particular event occur at the school (e.g. death, serious accident, fire, explosion, infectious disease, threats, etc.), the Director must notify the relevant service. Moreover, the Director must closely collaborate with the relevant services within the School community (i.e. canteen, bus, extra-curricular activities) in order to ensure the safety and well-being of the School community's members.

Any processing of personal data pursuant to this article will be carried out in compliance with the data protection obligations resulting from Regulation (EU) 2016/679".

- Article 35

This Article initially provided that:

"a) The house rules of each school shall determine the school's opening hours.

b) The school shall not be responsible for pupils off the school premises. This rule does not, however, concern travel for educational activities organised directly by the School or in relation with the Parents' Association."

The updated Article 35 now stipulates that:

"a) The house rules of each school shall determine the school's opening hours.

b) The school shall not be responsible for pupils off the school premises, except when travelling for the educational activities it organises. Any pupils participating in activities organised by external organisations are under the responsibility of these organisations, and this regardless of the nature of these activities or regardless of the location in which they are organised, be it on the school premises or on the occasion of possible travel."

- Article 38

This Article initially provided that:

"The representatives defined in Article 37 shall cooperate to promote the school's proper functioning and to foster a climate of trust.

They shall do so in particular within the framework of the following:

The Administrative Board (see Chapter X of these Rules).

The Education Councils (see Article 21 of these Rules).

Any special meeting which the Director may deem appropriate to convene.

In addition, in liaison with the other organs, the Parents' Association, as defined in the Convention defining the Statute of the European Schools may play a part in the organisation and management of extra-curricular activities and the canteen. The organisation and management of school transport are the responsibility of pupils' legal representatives, whether acting individually as pupils' parents or through the intermediary of any group or third party."

The updated Article 38 now stipulates that:

"The representatives defined in Article 37 shall cooperate to promote the school's proper functioning and to foster a climate of trust.

They shall do so in particular within the framework of the following:

The Administrative Board (see Chapter X of these Rules).

The Education Councils (see Article 21 of these Rules)

as well as any special meeting which the Director may deem appropriate to convene.

In addition, in liaison with the other organs, the Parents' Association, as defined in the Convention defining the Statute of the European Schools may organise after prior approval of the Director of the school, at its own initiative, expense and responsibility, the extra-curricular activities and the school canteen. When these activities are organised by the Parents' Association, the school assumes no responsibility for the activity itself, unless the Board of Governors has decided so (e.g., the supervision of pupils in the canteen by teachers of the school) or commitments have been in force already before January 2023. The organisation and management of school transport are the responsibility of pupils' legal representatives, whether acting individually as pupils' parents or through the intermediary of any group or third party."

3.

In their application, the applicants put forward two pleas against the Secretary-General's Decision to reject the administrative appeal and, secondarily, eight pleas against the BoG Decision.

In their response, the European Schools

- Contest the jurisdiction of the Complaints Board;
- do not discuss the admissibility of the application, either *ratione temporis* or *ratione materiae*;
- request the rejection of the applicants' pleas as unfounded.

Following the exchange of written pleadings, the parties agree that, essentially, the pleas on which the appeal is based are:

- the lack of jurisdiction of the Board of Governors of the European Schools, the infringement of national law, and the abuse - or even misuse - of power;
- the infringement of the principles of legal certainty and legitimate expectations and manifest error of assessment;
- the infringement of the principles of good administration and proportionality;

4.

From the written pleadings, it would appear that **the parties' positions** can be resumed as follows:

5.

ON THE LACK OF JURISDICTION OF THE COMPLAINTS BOARD

First, the European Schools contest the jurisdiction of the Complaints Board, insofar as the appeal seeks the annulment of a general decision which, they allege, does not adversely affect the applicants.

Referring, in particular, to decision 10/02 of this Board, dated 22 July 2010, they point out that it has not been established that the applicants possess the capacity and interest to act against individual decisions, in the context of which actions they could then invoke a plea in law attacking the contested decision.

According to the Schools, the contested BoG Decision cannot be regarded as constituting an adversely affecting act within the meaning of Article 27.2 of the Convention, insofar as it does not directly affect a right or a prerogative recognised to the applicants under the Convention. In this respect, they note that the amendments made to Article 35 of the GRES, and consequently to Articles 5, 14, 15 and 38 of the aforementioned Regulations, merely seek to clarify a pre-existing legal position, without making any changes to the rights and duties of the parents' associations. The former Article 38 of the GRES already entrusted the organisation of the canteen, school transport and extracurricular activities to the parents' associations. The amendments accepted by the Board of Governors simply put an end to the ambiguity that existed around the allocation of responsibilities, and therefore liabilities, between the Schools and the organs in charge of putting these services in place.

The Schools are of the opinion that the BoG Decision does not infringe upon the rights and prerogatives of the applicants, stating in this regard that:

- several parents' associations state that no changes have been made to their organisation;
- the clarifications made to the GRES provided an opportunity for a number of them to grasp the necessity of taking out new insurance policies or amending their existing policies to ensure they had adequate cover, while emphasising the limited financial burden that this places on them;
- certain associations mention the emergence of discussions concerning specific local issues;
- the upcoming signature of bilateral agreements to remedy specific situations that, up until now, may have been uncertain, is also mentioned by some parents' associations;
- finally, none of the associations claims to have had to fundamentally review their organisation or withdraw services that they had previously been providing as a result of these amendments.

With regards to the lack of jurisdiction, the applicants claim, in their rejoinder, that the amendments made to the GRES constitute measures having adverse affects within the meaning of the established case-law of the Court of Justice of the European Union.

In particular, they argue that, in view of this established case-law, it is clear that the BoG Decision to amend Articles 5, 14, 15, 35 and 38 of the GRES adversely affects them for the following reasons:

- the applicants are directly and individually concerned by the BoG Decision as they are explicitly mentioned in Article 38 and they consider their situation to be modified due to their apparent exclusion from the new notion of "*external organisations*";
- the BoG Decision was issued by the competent authority and expresses the administration's definitive position with regard to the applicants' situation;
- the BoG Decision immediately and adversely affects the legal and financial positions of the applicants; the applicants state that "*the adverse legal and financial consequences of the contested amendments on the applicants' situation are certain, even though the extent of these consequences cannot yet be assessed*", as a result, for example, of the significant ambiguity created notably with regard to insurance contracts. The applicants explain that they have had to request additional insurance quotes/subscriptions, including against the risk of accidents during activities at the school, whereas, in the past, it fell to the Schools to obtain such insurance coverage (see Article 33 of the GRES). The fact

that the Schools have not amended their own insurance policies demonstrates a lack of clarity regarding the application of the amendments, and the risk of being doubly insured against the same risks. This lack of clarity creates legal uncertainty that adversely affects the legitimate interests of the applicants.

The applicants further claim that the amendments brought about by the BoG Decision have now incited further discussion (for example: Who needs to provide cover in the event of the absence of supervision for travel between the school bus and the school? or What will happen to the existing bilateral agreements?). The fact that a number of parents' associations have not reported any changes is not proof that the BoG Decision does not affect them. On the contrary, it is proof that it has generated a great deal of confusion around "who is responsible for what" and "*opportunistic inaction, linked to this appeal*".

6.

ON THE PLEAS IN SUPPORT OF THE APPEAL

7.

THE FIRST PLEA

- **the lack of jurisdiction of the Board of Governors of the European Schools, the infringement of national law and the abuse - or even misuse - of power**

The applicants argue that:

- the amendments made to the specific Articles of the GRES constitute an abuse - or even a misuse - of power by the Board of Governors, as they do not have the jurisdiction to enact legislation regarding issues of responsibility that are subject to the national law of the country in which the School is located;
- according to them, the division of responsibilities, and therefore liabilities, between the Schools and the parents' associations should be established via bilateral agreements, drawn up in respect of the national laws of each State concerned, without placing the burden of responsibility on the parents' associations in a general, regulatory, unilateral way as well as in such an unclear manner ;

- by entrusting the organisational capacity for certain activities, and therefore also the responsibility for said activities, to external organisations, and by absolving themselves of liability (of *all* liability) in terms of safety and security (concerning buildings, for example) as is imposed on them by the national legislation of the States in question, by transferring said liability to the "external organisations, the European Schools are in breach of the legislation of the States in which they are located ";
- the Board of Governors does not have the authority to impose such obligations on the parents' associations insofar as they are third parties to the Convention. (The BoG does not have the authority to determine obligations imposed on external service providers who are third parties to the Convention, and whose activities do not fall within the scope of the Schools' mission).

The European Schools point out that:

- the Convention defining the Statute of the European Schools (hereinafter, "the Convention") is a norm of conventional public international law, binding on everyone, and the notion of "*third parties*" is irrelevant here; Article 10 of this Convention grants the Board of Governors the power to oversee its application and, to this end, grants it "*the necessary decision-making powers in educational, budgetary and administrative matters, and for the negotiation of the Agreements referred to in Articles 28 to 30. It may set up committees with responsibility for preparing its decisions. The Board of Governors shall lay down the General Rules of the Schools. (...).*". These GRES apply to all persons and situations concerned, and without doubt to the relationships between the Schools, the pupils and the parents' associations. The applicants' claim that they are "*third parties*", to whom the Board of Governors' regulatory authority does not apply, is therefore unfounded;
- pursuant to the Convention, the Schools are entitled, by means of their organs, to determine their own organisation. This organisational capacity notably includes the power, on condition of compliance with applicable national laws, to "*sub-contract*" the organisation of certain activities that do not fall directly within the scope of the Schools' mission to educate;
- the amendments adopted by the Board of Governors merely seek to clarify the allocation of the organisational roles - and responsibilities - of some specific services that do not strictly speaking fall within the scope of the Schools' mission to educate, namely extra-curricular activities, the canteen and school transport; in addition to the

allocation of these roles, the amendments confer a clear and coherent liability regime as regards the competences assumed by the various stakeholders; the Schools remain liable for any activities which they organise, relating to the buildings and furniture owned by them, the staff they employ, etc.;

- the BoG Decision is not in breach of any national law, as the liability regime put in place applies within the framework of and without prejudice to national law; moreover, each amended provision of the GRES systematically refers to the application of the existing national legal framework;
- the GRES in no way imposes an obligation on the parents' associations with regards to the organisation of such activities; the amendments implemented by the BoG Decision only serve to clearly establish that, if an association decides to offer a service, it assumes full responsibility for said service;
- finally, the Schools add that the Board of Governors' use of its regulatory authority in no way prevents the Schools and parents' associations from concluding their own bilateral agreements concerning the liability regime; what's more, the conclusion of such agreements, adapted to the specific needs of each School, is highly desirable in view of complementing the general regime already in place.

In their rejoinder, the applicants further claim that:

- the Convention is an international agreement concluded between the Member States of the European Communities and the European Communities, governed by public international law, and notably by the 1969 Vienna Convention on the Law of Treaties;
- it follows from public international law that neither the parents' associations, nor InterParents can be considered "parties to the Convention" in the absence of legal capacity under public international law; the parents' associations and InterParents are domestic law organisations which, by their nature, are only able to conclude agreements governed by private law;
- the fact that the Convention grants certain rights, or even the possibility of their existence, to the parents' associations, does not alter this principle; under no circumstances would the Convention be able to impose any obligations on them;
- the provisions of the Convention may only be opposed by natural or legal persons governed by private law: i) by way of a national law giving effect to the provisions of the Convention, or ii) by way of an explicit or implicit agreement concluded between

the organs of the European Schools and such persons, and solely within the framework set out by such an agreement;

- thus, the organs instituted by the Convention may only adopt rules having an effect on individuals if and insofar as the Convention explicitly confers on them such powers, and following ratification by all Contracting Parties of the Convention;
- Article 10 of the Convention limits the jurisdiction of the Board of Governors to "*the necessary decision-making powers in educational, budgetary and administrative matters, and for the negotiation of the Agreements referred to in Articles 28 to 30.*"; Article 29 of the Convention provides for the authority to negotiate agreements with organisations governed by public or private law; given the absence in the Convention of specific provisions or an explicit agreement by the applicants, the Board of Governors has acted *ultra vires* by issuing for the parents' associations, which are third parties to the Convention, rules concerning the sharing of responsibility.

8.

THE SECOND PLEA

- **infringement of the principles of legal certainty and legitimate expectations and manifest error of assessment**

The applicants claim that the amended versions of the GRES Articles are drafted in vague and contradictory terms, lacking clarity and foreseeability. In this respect, they mention numerous varying interpretations and discussions concerning questions of liability that have been brought to light since the new GRES provisions came into force, giving rise to the current inaction of the parents' associations while they await the outcome of this appeal.

In particular, this plea concerns the use of the terms "*existing legal framework*" (which is unspecified) and "*external organisations*": According to the applicants, the BoG Decision potentially excludes them from the new regulations as they no longer appear in the new provisions (except in Article 38), and are therefore now precluded from participating in the organisation of extra-curricular activities (canteen, school transport supervision) - which is in breach of their legitimate expectations.

The Schools respond that the Board of Governors was unable to adequately address the allocation of responsibilities of the various stakeholders in a detailed or precise manner when amending the GRES due to the specific needs of each individual School. The contested decision aims to establish a general framework for the allocation of responsibilities (and associated liabilities), without precluding the possibility of the Schools concluding agreements with the external organisations to whom they entrust the management of their extra-curricular activities with the aim of complementing the liability regime depending on their own individual situations. The term "*existing legal framework*" in Article 5 refers to the national laws intended to apply and to which the amended provisions must systematically refer. Furthermore, the notion of "*external organisations*" naturally includes parents' associations, by virtue of Article 38 of the GRES, which has been maintained (if that were not the case, the applicants would have no legal interest in bringing proceedings).

In conclusion, the Schools assert that, far from jeopardising legal certainty, the amendments made to the General Rules actually reinforce it by clarifying the applicable rules on the allocation of roles and responsibilities as regards the organisation of extra-curricular activities, the canteen and school transport. Moreover, as the parties concerned by these amendments - they themselves acknowledge that the BoG's Decision is aimed at them - the applicants cannot claim that their legitimate expectations are being undermined through the removal of their role.

In their rejoinder, making reference to established EU case-law on legal certainty, the applicants state that the possibility of concluding bilateral agreements does not resolve the issue: such bilateral agreements already exist, however their application is problematic due to their purported incompatibility with the contentious amendments (the BoG justifies the contentious amendments by the absence of agreements compatible with the recommendations of the European Commission's internal audit service (hereinafter abbreviated to "I.A.S.")).

According to the applicants, there is no indication in Article 5 that any reference is made to an existing *national* framework (and therefore to the norms of the country in which the School is located).

Nor does the notion of "*external organisations*" meet the level of precision required to guarantee foreseeability and legal certainty. The argument that parents' associations' are included by Article 38 substantiates the fact that the notion is unclear. The parents' associations are a particular organ, with representative authority within the European Schools system, and therefore cannot be considered an "*external organisation*". The specific reference to "*external organisations*" everywhere except Article 38 could therefore be interpreted as indicating that the other provisions are not applicable to the parents' associations.

9.

THE THIRD PLEA

- **infringement of the principles of good administration and proportionality**

Here, the applicants argue that their opinion and the reservations they voiced were not taken into account during the decision-making process that led to the contested amendment of the Articles of the General Rules.

The Schools note that, while the BoG Decision was unilateral in nature, it is also the result of an extensive dialogue between the various organs concerned, among which were the parents' associations. The allocation of roles and responsibilities for extra-curricular activities has been the subject of discussions with the parents' associations for over ten years. The contentious decision was made in the context of stalled negotiations, in the interests of fulfilling the recommendations deemed critical by the I.A.S. Furthermore, the amendment of the provisions of the General Rules does not preclude the possibility of resuming negotiations between the Schools and the parents' associations to conclude bilateral agreements.

In their rejoinder, the applicants assert that the Schools fail to prove the existence of any such dialogue. Thus, beside the fact that the parents' associations were never officially requested to contribute to the GRES amendment process, the unfavourable opinion voiced by InterParents did not give rise to any discussion of the arguments invoked, nor was any explanation given as to why their objections were not taken into account.

Moreover, the applicants believe that, regardless of the existence or not of negotiations, the choice of legal instrument (a BoG Decision of a regulatory nature) in the guise of advancing bilateral negotiations with the parents' associations goes against the fundamental principles of contract law, in particular freedom of contract, consensualism, good faith and proportionality.

Assessment of the Complaints Board

Regarding the jurisdiction of the Complaints Board,

10.

Under the terms of Article 27.2 of the Convention defining the Statute of the European Schools, the Complaints Board *"shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of this Convention to all persons covered by it with the exception of administrative and ancillary staff, and regarding the legality of any act based on the Convention or rules made under it, adversely affecting such persons on the part of the board of Governors of the Administrative Board of a school in the exercise of their powers as specified by this Convention. When such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction."*

In Decision 10/02 on 22 July 2010, the Complaints Board specified that:

"24. [...] [the contentious decision] directly affects a prerogative recognised by the Convention as applying to a category of people, the parents' representatives, where it has not been established that they have the capacity and interest to bring proceedings against individual decisions that throw into doubt, by way of a plea, the new procedure laid down by the aforementioned decision. This means that the Complaints Board's lack of jurisdiction to directly rule on the legality of such a decision could adversely affect the rights of the interested parties to adequate and effective jurisdictional protection as set out in Point 21 of this Decision [...]."

26. In view of all these considerations, the Complaints Board believes that, where a decision of the Board of Governors, even if it is of a general or regulatory application, directly affects a right or prerogative that the Convention defining the Statute of the European Schools recognises as belonging to a person or to a clearly identified category of people that distinguishes them from all other people concerned, without it being certain that said person or category of people are able to file an appeal against an individual decision taken on the basis of such a decision, it must be regarded as constituting an act adversely affecting this person or this category within the meaning of Article 27 Paragraph 2 of the Convention. The Board then has the authority, in principle, to rule on an appeal filed against such an act."

It follows from this case-law that an appeal can be lodged against a general or regulatory decision on two conditions:

First, the decision must have a direct impact on a right or on a prerogative accorded by the Convention to a person or to a clearly identified category of people, distinguishable from all other people concerned.

Secondly, it must not be certain that an appeal could be filed against an individual decision taken on the basis of such a general or regulatory decision.

In this case, the two conditions are met.

With regards to the first condition, the contentious BoG Decision, regulatory in character, is likely to directly affect the legal position of the parents' associations, i.e. the legal persons to whom Article 23 of the Convention confers the task of strengthening the relationships between the pupils' parents and the School administration. In this respect, the Schools themselves, in their defence, admit that the contentious Decision serves to "*complement*" the regulatory framework in order to better define the allocation of risks and responsibilities between the parents' associations and the Schools.

As regards the second condition, the fact that the contentious BoG Decision does not call for implementing measures and that it is directly applicable is sufficient. Consequently, no

individual decisions, taken based on this BoG Decision, will be liable to be the subject of an appeal.

In view of these considerations, it is reasonable to conclude that ruling on this appeal does fall within the jurisdiction of the Complaints Board.

Regarding the merits,

11.

Following the exchange of written pleadings, the parties have agreed that, essentially, the pleas in support of the appeal can be grouped into three pleas.

12.

In their **first plea**, the applicants argue, essentially, that the amendments made to Articles 5, 14, 15, 35 and 38 of the GRES were made *ultra vires* and could constitute an abuse - or even a misuse - of power, since the Board of Governors does not have the legal power to enact legislation on questions of responsibility, which are subject to the national law of the country in which the School is located. Furthermore, the applicants argue that the Board of Directors does not have the power to impose obligations on them, since they are third parties to the Convention defining the Statute of the European Schools.

With regards to this first plea, it should be noted that the majority of amendments made to the GRES as a result of the BoG Decision are essentially limited to specifying that the extra-curricular activities authorised by the Schools on their premises, or outside, must take place under the responsibility of the organisations organising them. This is the case for Articles 14, 15, 35 and 38. As regards Article 5, the amendments simply specify that the school's Director participates in the organisation of extra-curricular activities, "*within the existing legal framework*".

It is furthermore important to remember that, pursuant to Article 10 of the Convention defining the Statute of the European Schools, the Board of Governors has "*the necessary decision-making powers in educational, budgetary and administrative matters, and for the*

negotiation of the Agreements referred to in Articles 28 to 30. It may set up committees with responsibility for preparing its decisions (paragraph 1). The Board of Governors shall lay down the General Rules of the Schools (paragraph 2)".

The administrative power conferred on an entity also encompasses its organisational capacity with regard to activities that take place on sites occupied by said entity, or external to these sites where these activities must be authorised by the entity itself. Consequently, the contentious GRES amendments unquestionably fall within the organisational capacity entrusted to the Board of Governors in Article 10, paragraph 1, of the Convention.

This is all the more the case where the amendments in question, by simply defining the allocation of responsibilities, fall within the traditional scope of administrative power.

With regards to the argument that the adoption of rules applicable to parents' associations does not fall within the remit of the Board of Governors as the former are third parties to the Convention, it should be noted that this argument relies on an erroneous confusing of national and international law.

The fact that the parents' associations are not party to the Convention does not mean they are third parties under international law, to whom the rules enacted by the Board of Governors would not apply. In actual fact, under international law, only States and international organisations that are not parties to a Convention would be considered "third parties" to it. Only these entities have an international legal personality with rights and obligations that are governed by international law. Parents' associations, on the other hand, are organisations under domestic law, provided for by the Convention and to which the decisions made by the Board of Governors apply, as long as these decisions are made in compliance with the latter's derived powers, which is the case in this instance.

In view of the above, the first plea of the appeal is unfounded and must be rejected.

13.

The **second plea** is based on the infringement of the principles of legal certainty and legitimate expectations and manifest error of assessment.

In this second plea, the applicants complain that the amended versions of the GRES Articles are described in vague and contradictory terms, lacking clarity and foreseeability. This plea particularly concerns the use of the terms "*existing legal framework*" in Article 5 and "*external organisations*" used in the amended versions of Articles 14, 15 and 35.

Thus, it is essentially the principle of legal certainty that has been breached according to the applicants' argument.

First and foremost, it is important to remember that the principle of legal certainty is one of the general principles of European Union law that the Complaints Board recognises and guarantees. According to EU case-law, the principle of legal certainty "*requires that rules of law be clear, precise and predictable in their effects, so that interested parties can ascertain their position in situations and legal relationships governed by EU law*".

However, EU case-law also notes that "*the scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it covers and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. In addition, the principle of legal certainty does not preclude EU law from conferring discretion on the competent authority or using undetermined legal concepts which must be interpreted and applied to the case concerned by that authority, without prejudice to review by the EU courts. Moreover, the requirements of the principle of legal certainty cannot be regarded as requiring a rule that uses an undefined legal concept to refer to the various specific hypotheses in which it applies, given that all those hypotheses could not be determined in advance by the legislature*". (Judgement of 27 November 2018, *Mouvement pour une Europe des nations et des libertés/Parliament* (T-829/16) (see points 68-71).

With regards to the reference to the "*existing legal framework*" used in the amended Article 5 of the GRES, it is important to note that it is a commonly used legislative

technique in EU Member States, the purpose of which is to take into account the relevant regulatory changes on an automatic and general basis. In light of the aforementioned EU case-law, the Complaints Board believes that, far from infringing upon the principle of legal certainty, the use of this legislative technique reinforces it. Indeed, compared with the old version of Article 5, the reference to "*existing legal framework*" specifies that the extra-curricular activities must be carried out in compliance with the applicable legislation, which comprises both national and international regulations. In any case, according to the established case-law cited above, clarification of the legal framework may be sought by taking qualified legal advice.

Likewise, in Articles 14, 15 and 35, the reference to "*external organisations*" does not infringe upon the principal of legal certainty. Although it may be an undetermined legal notion, given the context, reference is clearly made to the parents' associations.

Moreover, the applicants cannot argue that the Board of Governors makes specific and exclusive reference to their role in the General Rules. This claim does not have any legal basis. Article 23 of the Convention stipulates that parents' associations maintain relations between the pupils' parents and the school authorities, but not that they alone shall have the possibility of organising the extra-curricular activities set out in the General Rules, as amended by the Board of Governors.

In view of the above, the second plea is unfounded and must be rejected.

14.

The **third plea** concerns the infringement of the principles of good administration and proportionality.

According to the applicants, the Board of Governors did not take their opinion into account during the decision-making process that led to the contested amendment of Articles 5, 14, 15, 35 and 38 of the General Rules.

As regards this plea, the Complaints Board points out that, pursuant to Article 10 of the Convention, the Board of Governors is alone competent to adopt the General Rules. It

therefore also has the authority to amend them, without involving any other persons or entities.

Furthermore, the applicants themselves acknowledge the unilateral character of the Board of Governors' regulatory authority. This comment alone should suffice to rule out the plea of illegality of the contentious BoG Decision raised in this manner.

In any case, the Complaints Board also notes that the Schools have pointed out, without being contradicted by the applicants, that the parents' associations were in talks with the Board of Governors for a long time on the subject of the amendments enacted by the contentious decision. It is not disputed that InterParents was present at the Joint Teaching Committee of 13 and 14 October 2022, the Budgetary Committee of 8 and 9 November 2022, and the enlarged extraordinary meeting of the Board of Governors of 6-8 December 2022. On these occasions, InterParents expressed an unfavourable opinion on the proposed amendments to the General Rules.

It can therefore be concluded that the Board of Governors felt it would be appropriate to involve the parents' associations, even though such involvement was not necessary from a legal point of view. This approach by the Board of Governors is certainly not contrary to the principles of good administration and proportionality, and is in fact, in keeping with them. The fact that the InterParents association's unfavourable opinion was disregarded when making the decision in no way invalidates this conclusion.

This third and final plea is therefore also unfounded and must be rejected.

15.

It follows from all of the above that this appeal, as a whole, must be rejected as unfounded.

On the legal and other costs,

16.

Article 27 of the Rules of Procedure states: "*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 in fact quite similar to those in force before most national or international courts, that the unsuccessful party must, in principle, bear the legal and other costs of the case. However, these provisions allow the Complaints Board to assess the conditions under which they should be applied on a case-by-case basis.

17.

In application of these provisions and in view of the conclusions of the parties, and under the specific circumstances of this case, notably characterised by the fact that this appeal is based on entirely new legal and factual grounds, there is good reason to decide that each party shall bear their own legal and other costs.

**ON THESE GROUNDS, the Complaints Board of the European Schools, sitting in
plenary session**

D E C I D E S

Article 1: The appeal of the Association of Parents' Associations of the European Schools (InterParents) and the aforementioned associations, registered under no. **23/03**, is rejected.

Article 2: Each party shall bear their own legal and other costs.

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

E. Menéndez Rexach

M. Eylert

P. Rietjens

P. Manzini

A.Ó Caoimh

B.Phémolant

M. Ronayne

Brussels, 22 September 2023

Original version: FR

On behalf of the Registry,

Nathalie Peigneur