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**QUESTION FROM INTERPARENTS CONCERNING THE  
GOVERNANCE OF THE EUROPEAN SCHOOL SYSTEM**

**Board of Governors of the European Schools**

Meeting in Brussels on 12, 13 and 14 April 2011

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## INTERPARENTS

**ALICANTE BERGEN BRUSSELS I, II, III & IV CULHAM FRANKFURT  
KARLSRUHE LUXEMBOURG I & II MOL MUNICH VARESE**

*– THE ASSOCIATION OF THE PARENTS' ASSOCIATIONS OF THE EUROPEAN SCHOOLS –*

Strasbourg, 2 March 2011

Ms Renée Christmann  
Secretary-General of the European Schools  
Rue Joseph II 30  
JII 30 – 02/24  
B-1049 Brussels, Belgium

Dear Mme Christmann,

Interparents is conscious that the next meeting of the Board of Governors in April 2011 is extremely important. Decisions will be taken, which will have long-term consequences on the European schooling system as we know it today and as it has functioned for over 50 years. Decisions such as: the re-organisation of classes/groups; definition of SEN and SWALS pupils; the Reform of the Baccalaureate.

Interparents believes that many of these decisions go to the very core of European schooling - for pupils to be "Educated side by side", the need to safeguard the "primacy of the pupil's mother tongue (LI)", and the understanding that "special needs pupils with learning disabilities generally have physical or mental disabilities, or have behaviour issues."

Aside from these considerations, and the budgetary cuts driving them, is the question regarding the European Commission's actions to recover costs of mother-tongue teaching for Category III pupils, regardless of the decisions by the Board of Governors or of its impact on the continued education of those affected or its discriminatory nature. Nor have they seen fit to inform the Board of Governors of said actions.

This undermines the European Schools' system of governance, of which parents form part of, and we ask for clarification concerning the responsibilities of the Members of the Board of Governors of the European Schools, as well as measures which can provide the necessary legal certainty allowing the good functioning of the European Schools system and consequently, the well-being of families of the European institutions' staff and of all the children of the European Schools.

Therefore, I would like to request that this agenda item be added to our next Board of Governors meeting in April 2011:

Clarification concerning the responsibilities of the Members of the Board of Governors of the European Schools as well as measures designed to guarantee legal certainty for the good functioning of the European Schools system.

With a letter dated 29 April 2010, the European Commission formally began procedures for the reimbursement, by individual European Schools, for mother-tongue courses for SWALS allegedly offered in contravention of applicable rules. This happened regardless of the discharge granted for the year 2008 and the fact that the budgets have all been approved by the Administrative Boards of the schools, of which the Commission is a member. Such actions challenge the authority of the Board of Governors as the ultimate decision-making body in the European Schools system. We therefore see a need for the Board of Governors to clarify the responsibility of its Members as well as the measures required to provide the legal certainty necessary for the good functioning of the system.

I refer to our correspondence with the Commission on this matter, to which you have been in copy (see attached), where it shows that the Commission and Interparents differ in the understanding of Article 10 of the Convention defining the Statute of the European Schools:

"The Board of Governors shall supervise the implementation of this Convention; for this purpose, it shall have 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.

The Board of Governors shall each year draw up, on the basis of a draft prepared by the Secretary-General, a report on the operation of the Schools and shall forward it to the European Parliament and to the Council."

Furthermore, Interparents support the Joint Teaching Committee's conclusion following its February 2011 meeting, with regard to "*Revision of the Decisions of the Board of Governors concerning the organisation of studies and courses in the European schools*" [201 I-D-33] as formulated by Mr. Kivinen:

"The Board of Governors is asked to clarify the decision of 1998

*If one of the language sections of the European Schools corresponding to a category I or II pupils mother tongue is not open in the School, this pupil has a right to tuition in the language which is his/her mother tongue (LI). The application of this provision is based on the assumption that the School has at its disposal a duly qualified teacher, or can recruit one.*

*The above provisions only apply to category III pupils if the course in question has already been created.*

*The Board of Governors is asked to define the rules for the situation when the Category I or II pupil, for whom the course was originally created, leaves the group."*


Finally, we believe the interests of the Danish pupils in primary cycle at the European school Culham are seriously affected by the cancelation of the Danish seconded post from one year to the next, a decision which goes against in particular the principle of pedagogical continuity. Moreover, the manner in which the situation was dealt with constitutes yet another example of how the governance of the system is challenged. Article 26 of the Convention foresees that in case of a disagreement such as occurred regarding the maintenance of the post and the drawing of a distinction between pupils according to the category (referred to in Article 1 of the Convention) to which they belong, a Member State or the Commission could or should then lodge an action with the Court of Justice of the European Union based on Article 26 of the Convention:

"The Court of Justice of the European Communities shall have sole jurisdiction in disputes between Contracting Parties relating to the interpretation and application of this Convention which have not been resolved by the Board of Governors."

I regret having to take such a legalistic approach but in our view, these are fundamental issues for the good functioning of our schools. I look forward to your confirmation that the item can be added to the April Board of Governors' meeting, whilst also taking note of our further remarks in this letter.

Trusting that you will duly receive this letter.

Yours sincerely,



Ana Gorey  
President  
Interparents

cc. Mrs Eva Obzerova, President of the Board of Governors of the European Schools  
Members of the Board of Governors of the European Schools  
Mr Maroš Šefčovič, Vice-President, Inter-Institutional Relations and Administration  
Mr Jacob, Deputy Director-General, Human Resources and Security

Correspondence



Letter to President Barroso 2010-10-20.i



Ares(2010)842596.p  
df



Letter to Daniel Jacob 2011-01-26.pd



Ares(2011)144624.p  
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**QUESTION FROM INTERPARENTS CONCERNING THE GOVERNANCE OF THE EUROPEAN SCHOOLS SYSTEM - APRIL 2011 MEETING OF THE BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS**

In the course of the year 2010, the Commission disputed the legality of main language (L1) courses provided in certain schools for (category III) SWALS (Students Without A Language Section) and gave notice to several schools to refund the sums relating thereto.

The decisions concerning the courses in questions were taken on the basis of proposals formulated by the Administrative Boards of the schools concerned. The Commission is represented on the Administrative Boards, which are chaired by the Secretary-General of the Board of Governors.

In accordance with Article 11.3 of the Financial Regulation (hereafter "FR"), the Administrative Board of each school approves an **estimate of revenue and expenditure**, which it forwards to the Secretary-General. A **draft budget** is then approved by the Board of Governors, which forwards it to the Commission (Article 13 of the FR).

On the basis of contributions from organisations, including the Commission, **the budget is adopted by the Board of Governors** (Article 14.3 of the FR).

Different methods of control of implementation of the budget (financial controller, internal audit, forwarding of revenue and expenditure accounts to the Commission and of all the accounts to the Court of Auditors) are foreseen in the FR.

Article 95 of the FR provides that the Board of Governors gives a **discharge** to the Administrative Boards in respect of implementation of the budget and, finally, Article 104.2 of the FR imposes a review of the FR every three years.



Any system of governance must seek to guarantee, by appropriate management or administration methods, adherence to the principle of legal certainty.

Article 13 of the Convention defining the Statute of the ES seeks to achieve this objective by stipulating that the Board of Governors shall adopt the budget of the schools for each financial year and approve the annual revenue and expenditure account.

The Commission is manifestly infringing the principle of legal certainty by calling into question expenditure which has already been included in an estimate of revenue and expenditure, examined and discussed by the Administrative Boards and the General Secretariat, endorsed by the Board of Governors and submitted to the auditor, the financial controller and the Court of Auditors for control purposes.

The Commission justifies the calling into question of this expenditure by referring to its mandatory obligations, with respect to use of the Community budget, pursuant to the Financial Regulation applicable to the general budget of the European Union.

The question arising is to ascertain how fulfilment of the Commission's obligations with respect to implementation of the Community budget can be compatible with the principle of legal certainty with respect to expenditure associated with the budget of the ES.

The Commission contends that the disputed courses were given in contravention of a set of rules laid down by the Board of Governors whereby the presence of at least one category I pupil is allegedly a mandatory precondition for the creation of this type of course.

Either the infringement of the said set of rules must be considered manifest, or this infringement results from interpretation of the rules applicable.

### **1. The infringement of the said set of rules must be considered manifest**

In the first case, the request for reimbursement sent by the Commission to the directors of the schools, as authorising officers, raises an issue of 'governance' of the ES.

The reason is that the methods of management or administration of the ES are organised in such a way that at all stages of entry in the budget right up to the discharge given to the Administrative Boards, the Commission (but also the Court of Auditors, an auditor or the financial controller) is involved in the decision-making process.

In addition to its being a member of the Board of Governors, which adopts the budget, it has thus been involved in infringement of the regulations in question, as it is represented on the Administrative Board of each school and is therefore in possession of all relevant information for purposes of assessing the legality of the expenditure in question.

It follows from this **active involvement of the Commission in adoption of the measures criticised:**

- firstly, that it can hardly invoke the manifest nature of the infringement of the regulations,
- secondly, that it cannot omit to take into account its involvement in the alleged illegality and hence its responsibility with respect to the latter,
- and thirdly, it cannot call into question decisions which have become definitive outside the aforementioned methods of control of implementation of the budget of the ES (report of the financial controller, of the Court of Auditors, etc.).

### **2. The infringement results from interpretation of the rules applicable**

Assuming that the infringement of the rules results from interpretation of the rules applicable, the Commission cannot take the initiative of giving notice to refund the sums in question to the directors of the schools concerned without failing to meet its **obligations arising out of the Convention** defining the Statute of the ES and without failing to adhere to the **principle of legal certainty** and to the general principle of **good faith** in complying with conventions.

Article 26 of the Convention provides as follows:

*“The Court of Justice of the European Communities shall have sole jurisdiction in disputes between Contracting Parties relating to the interpretation and application of this Convention which have not been resolved by the Board of Governors.”*

As this provision indicates, an attempt must be made by the Board of Governors to resolve any question relating to the interpretation and application of the Convention and, failing that, the matter must be referred to the Court of Justice.

The calling into question of decisions relating to L1 courses for SWALS in particular pertains to interpretation of provisions of the Convention and of the texts adopted pursuant to the latter, in the budgetary and pedagogical organisation areas (see in particular Article 4 of the Convention).

The incident relating to the expenditure committed for these L1 courses, in respect of which the Commission seems to have decided not to pursue the recovery procedure, poses a serious problem in so far as it impinges upon the necessary legal certainty within the European Schools.

Moreover, if the interpretation which the Commission seems to favour were to prove correct, the reference regulatory texts might then pose problems in terms of respect for the principle of equal treatment amongst the different categories of pupils admitted to the school.

The Commission's behaviour is at variance with the obligations arising out of the Convention, not only as regards adoption of the budget and the discharge given to the Administrative Boards but also in the event of a difference of interpretation or of application of the rules.

In acting as it did, the Commission behaved as if it did not form part of the organs of the ES. It also failed to abide by the spirit of the Convention by seeking to impose its viewpoint and to force the directors, if necessary, to initiate proceedings in the European Union Court of Justice to have the decision to issue payment orders declared void.

Interparents requests the Board of Governors to take suitable measures designed to ensure governance of the ES guaranteeing legal certainty, preventing the Commission from acting as it did and from doing so in the future, in the interest of all the stakeholders in the ES, including the pupils.

Assuming that the Commission considers that the FR does not provide adequate control of the budget, Interparents notes that it did not request adaptation of this Regulation as part of the review of the said Regulation referred to in Article 104.2 of the FR and invites it to do so with the aim of guaranteeing **the necessary legal certainty**.

## INTERPARENTS

**ALICANTE BERGEN BRUSSELS I, II, III & IV CULHAM FRANKFURT  
KARLSRUHE LUXEMBOURG MOL MÜNCHEN VARESE**

*- THE ASSOCIATION OF THE PARENTS' ASSOCIATIONS OF THE EUROPEAN SCHOOLS -*

Strasbourg, 20 October 2010

José Manuel Barroso  
President of the European Commission  
1049 Bruxelles, Belgique

Dear President Barroso,

During the meeting of the Board of Governors of the European Schools of 14-16 April 2010, the draft budget for the European Schools for 2011 was discussed. It was agreed that the Secretary-General of the European Schools would present to the Board of Governors, during its meeting in December 2010, concrete proposals for a number of items, namely the salaries of seconded personnel, the "Special Educational Needs" program, and the creation of courses, including mother-tongue courses for Students Without Language Section (SWALS). At this meeting, the Board of Governors also approved by a large majority (against the Commission's negative vote) the discharge on the implementation of the 2008 budget.

With a letter dated 29 April 2010, the European Commission formally began procedures for the reimbursement, by individual European Schools, for mother-tongue courses for SWALS allegedly being offered in contravention of applicable rules. The Commission also expressed its intention of recovering costs incurred by the schools in 2008 and 2009 of amounts totalling 465,289.68 Euros. Even though the budgets have not yet been discharged on all these years, they have been approved at Administrative Board level at which the Commission attended and scrutinised all budgets.

Without entering into the complex issue of how this decision affects the schools' pedagogical program or their ability to fulfil the legitimate expectations of pupils and their families, the fact that the European Commission is unilaterally imposing these retroactive budget cuts should be seen as a serious threat to the governance system of the European Schools, since it contravenes both the decision of the Board of Governors granting discharge to the 2008 budget, and its decision to examine the proposals of the Secretary-General for a number of budget items in December 2010.

In acting as it has, the Commission is not only by-passing the Secretary-General and the Board of Governors of the European Schools, but also undermining the autonomy of the school Directors – one of the pillars of the reform of the system – and potentially exposing them to costly and damaging litigation.



Interparents considers that, quite apart from the question of cuts to the European Schools' budget, which it opposes, the issue at stake is the authority of the Board of Governors as the ultimate decision-making body in the European Schools system, and indeed the governance of the system itself. We appeal to you, President Barroso, and the representatives of the Member States in the Board of Governors, to take immediate and decisive action to correct this unacceptable situation.

Enclosed you will find an example of one of the letters sent by the responsible Director in the Commission's Directorate-General for Human Resources and Security, Mr Marco-Umberto Moricca, to the Directors of the European Schools in question and a letter that the Secretary-General of the European Schools, Mrs Renée Christmann, sent to the Commission.

We remain at your disposal to discuss any issues in this regard, and thank you in advance for your attention and support.

Yours sincerely,



Ana Gorey  
President  
Interparents

cc: Maroš Šefčovič, Vice-president, Inter-Institutional Relations and Administration  
Marco-Umberto Moricca, Head of European Commission Delegation to Board of Governors

Dana Čuláková, Chair of the Board of Governors + Board of Governors' members  
Renée Christmann, Secretary-General of the European Schools

Jerzy Buzek, President of the European Parliament  
Chairs, Political Groups of the European Parliament  
Alain Lamassoure, Chair of the Budgets Committee of the European Parliament  
Doris Pack, Chair of the Education and Culture Committee of the European Parliament

#### Relevant Documents:

An example of the letter sent by Mr. Moricca to the schools



2010\_09\_30\_08\_49  
\_12.pdf (987 K...

Mme. Christmann's reply to Mr. Moricca



2010-L-569-Moricca  
.pdf (75 KB)...



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
HUMAN RESOURCES AND SECURITY  
The Deputy Director-General

★ DG HR

Brussels,  
hr.ddg.c.2(2010)902061

INTERPARENTS  
The Association of the Parents' Associations of  
the European Schools  
Ms Ana Gorey, President  
[ana.gorey@coe.int](mailto:ana.gorey@coe.int)

Dear Ms Gorey,

President Barroso asked me to answer your letter of 20 October regarding the Commission position in the Board of Governors of the European Schools of 14-15 April 2010.

Let me first underline that the positions taken by my colleagues on the Board of Governors, do, of course, entirely reflect the political orientations of the Commission.

In your letter, you raise the question of the governance within the European Schools System (ESS) and the respective roles and responsibilities of the Board of Governors and of the European Commission.

The Commission has a double role within the ESS, as a member of the Board of Governors and also as a provider of a subsidy representing about 60% of the budget of the ESS.

In this latter respect, the Institution is obliged to comply with the rules provided for in the financial regulation applicable to the general budget of the European Communities. It is in this capacity that the Authorising officer by sub-delegation issued the pre-information letters you quote in your letter.

These letters were justified by the fact that the organisation of some language L1 courses for children without linguistic section was not in line with the rules defined by the Board of Governors.

I will be happy to discuss these issues with you and give you any clarification you might need at your best convenience. Please contact my secretariat (Ms Sinead MC LOUGHLIN, telephone +32 2 29 91259) to arrange a meeting.

Yours sincerely,

<Daniel JACOB

## INTERPARENTS

ALICANTE BERGEN BRUSSELS I, II, III & IV CULHAM FRANKFURT  
KARLSRUHE LUXEMBOURG MOL MÜNCHEN VARESE

*- THE ASSOCIATION OF THE PARENTS' ASSOCIATIONS OF THE EUROPEAN SCHOOLS -*

Strasbourg, 26 January 2011

Mr. Daniel Jacob  
Deputy Director-General  
European Commission  
Directorate-General  
Human Resources and Security

Dear Mr. Jacob,

Thank you for taking the time to meet Karin van Vrede and myself on the 2<sup>nd</sup> December 2010 in response to our letter to President Barroso, 20 October 2010, in which Interparents raised the question regarding the legality of the European Commission's actions to recover costs contrary to the Board of Governors' April 2010 decisions.

In your letter, 22 November 2010, and during the meeting, you referred to the double role of the Commission:

*"The Commission has a double role within the ESS, as a member of the Board of Governors and also as a provider of a subsidy representing about 60% of the budget of the ESS.*

*In this latter respect, the Institution is obliged to comply with the rules provided for in the financial regulation applicable to the general budget of the European Communities. It is in this capacity that the Authorising officer by sub-delegation issued the pre-information letters you quote in your letter."*

We are grateful for your explanations during our meeting.

Interparents has however always understood the European Schools are governed under the rules stemming from a specific intergovernmental Convention. The third recital in the preamble to that Convention reads indeed '... the European School system is *"sui generis"*; ... It constitutes a form of cooperation between the Member States and the European Communities ...'.».

Accordingly, for our members, the signatories of that Convention cannot refuse, based on national laws, complying with rules, obligations or commitments adopted at the European Schools level.

This issue about the European Schools system of governance calls for clarification concerning the responsibilities of the Members of the Board of Governors of the European Schools as well as the necessary level of legal certainty allowing the good functioning of the European Schools' system and consequently, the well-being of families of the European institutions staff and all the children of the European Schools.

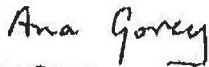
This clarification is all the more necessary in the light of recent developments, of which we are only partially informed. I understand from Mr Moricca's letter to the President of the Culham European School Parents' Association, 17 January 2011, to which I was in copy, that:

*"Regarding the question of the recovery by the Commission of expenses related to L1 classes created only for Category 3 pupils, I confirm that these classes were not organised according to the applicable rules. Nevertheless, taking into account the efforts made by the school to settle the situation and the measures described before, the recovery procedure will not be pursued further."*

Interparents would highly appreciate your point of view on these concerns, particularly with regard to the reasons why organisation of L1 classes in the circumstances referred to in Mr Moricca's letter is not compliance with decisions adopted by the Board of Governors or other bodies of the European Schools for the purpose of applying point (e) of Article 47 of the General Rules.

I look forward to hearing from you.

Yours sincerely,



Ana Gorey  
President  
Interparents

cc. Maroš Šefčovič, Vice-President of the European Commission  
Renee Christmann, Secretary General, European schools



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
HUMAN RESOURCES AND SECURITY  
The Deputy Director General

DG HR

Brussels,  
hr.ddg.c.2(2011)116178

INTERPARENTS  
The Association of the Parents' Associations of  
the European Schools  
Ms Ana Gorey, President  
[ana.gorey@coe.int](mailto:ana.gorey@coe.int)

Dear Ms Gorey,

Thank you for your letter of 26<sup>th</sup> January.

Your letter covers two points. The first one comes back to the governance issue we discussed previously and the second point concerns a very specific point, i.e. the reasons which led the Commission to conclude that certain expenses related to L1 classes created only for category 3 pupils in Culham were unjustified as these classes were not organised according to the rules.

On the issue of governance, I would like to refer you to my letter of 22 November and to the content of our in depth discussion on 2 December.

On both occasions I explained in detail to you (and to Ms van Vrede on 2 December) the legal reasons, linked to the budgetary responsibilities of the Commission, which not only allow but oblige us to ensure that the budget of the European Schools is properly spent, in full conformity with the rules.

There is no contradiction between these rules and the Governance system of the European Schools and furthermore, there is no need for clarification. The Board of Governors (BoG), composed of the Member States, the Patent Office (and the Commission) is fully aware of the responsibilities of the Commission in the budgetary sphere.

Regarding the second point raised in your letter, I can only confirm what Mr. Moricca wrote in his letter of 17 January, i.e. that the classes in question were not organised in conformity with the applicable rules. To be more specific, the Commission had applied rules dating from 1982 whereas these had been abrogated by new rules adopted by the BoG in 1998.

The Commission's position, as expressed by Mr. Morioca was therefore clearly in line with the rules adopted by the BoG.

I hope this clarifies the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'DJ', written over a horizontal line.

Daniel JACOB

Copies:

**Mrs M-H. Pradines, Member of Cabinet ŠEFČOVIČ**  
**Mrs R. Christmann, Secretary-General of the European Schools**