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Suivi par A. Javelle, tel: 84417

### Note aux membres du Conseil Supérieur

#### **Objet : Interprétation des articles 12-4a) et 25-1) de la Convention et application par le Royaume Uni de ces articles.**

Cette question a été soulevée, à la demande de la Commission, lors du Conseil supérieur des 20, 21 et 22 octobre 2008. Il y avait été indiqué que, parallèlement à l'organisation d'une rencontre envisagée avec la délégation britannique qui a eu lieu entre-temps, les délégations qui le souhaitaient étaient invitées faire part de leur point de vue sur l'interprétation des articles en question. Aucune remarque n'a été reçue à cet égard.

L'objet de cette note est de faire le point de la situation.

#### **Les faits:**

Comme indiqué lors du dernier Conseil supérieur, la Commission a été alertée par des plaintes individuelles, ainsi que par des questions et courriers parlementaires successifs et plaintes au Médiateur, sur la possibilité que certains Etats membres ne respectent pas les dispositions des articles 12-4a) et 25-1) de la Convention portant statut des Ecoles européennes (EE).

#### **Les textes :**

Ces articles prévoient que

"...le conseil supérieur... règle, avec les gouvernements, les questions relatives à l'affectation ou au détachement des professeurs, des instituteurs et des conseillers de l'éducation de l'école. Ceux-ci conservent les droits à l'avancement et à la retraite garantis par leur statut national." art 12-4 a)

et

"Le budget des écoles est alimenté par:

1) les contributions des États membres à travers le maintien des rémunérations payées aux professeurs détachés ou affectés..." (art 25-1)

Pour la Commission, la combinaison de ces articles signifie clairement que le même traitement doit être assuré aux enseignants détachés pendant leur période de détachement auprès des EE et à ceux restant sur le territoire national, tant en ce qui concerne la rémunération, l'avancement, que les droits à promotion et à retraite.

## **Exposé de la situation**

Il semble que le Royaume Uni n'applique pas de manière correcte les articles de la Convention précités, en n'assurant pas aux enseignants Anglais et Gallois détachés dans les EE l'avancement annuel ou biennal (selon leur classement au moment de la mise à disposition) qui est appliqué à leurs homologues restés au Royaume Uni. De plus les enseignants anglais et gallois détachés par le Royaume Uni n'ont pas la possibilité, lorsqu'ils en remplissent les conditions, de candidater pendant leur affectation dans une école européenne aux évaluations prévues dans le document intitulé "School teachers' pay and conditions document" pour bénéficier, en cas de succès, des grilles de rémunérations plus élevées prévues par exemple pour les "post-threshold teachers" ou les "excellent teachers".

La Commission avait communiqué cette position aux autorités britanniques en indiquant qu'elle y voit une possible infraction à la fois à l'article 10 CE, relative aux obligations de bonne coopération des Etats Membres et à l'article 39 CE, sur la libre circulation des travailleurs.

Les autorités britanniques ont maintenu qu'elles respectent les règles posées par la Convention en assurant aux enseignants Anglais et Gallois détachés dans les écoles européennes le maintien du salaire dont ils bénéficiaient au moment de leur mise à disposition.

Lors de la réunion du Conseil Supérieur d'octobre 2008, la représentante du Royaume Uni a confirmé avoir elle aussi été saisie de plaintes d'enseignants détachés dans ces conditions auprès des Ecoles européennes et s'est déclarée prête à une échange de vues sur ce point avec la Commission.

Une réunion s'est donc tenue par visioconférence le 20 novembre 2008, qui a permis de confirmer un certain nombre de points essentiels dans ce dossier :

- le salaire des enseignants britanniques d'Angleterre et du Pays de Galles sont maintenus pendant toute leur période de détachement au niveau atteint avant leur détachement,
- les dispositions qui auraient pu être prises afin de permettre aux enseignants détachés de bénéficier de possibilités d'avancement identiques ou à tout le moins similaires à celles offertes aux enseignants britanniques sur le territoire national n'ont pas été recherchées par les autorités britanniques.

## **Conclusions**

La Commission apprécie l'effort de transparence fait par les autorités britanniques.

Les informations communiquées confirment malheureusement qu'un litige persiste sur l'interprétation et l'application par le Royaume Uni des articles 12.4 et 25.1 de la Convention portant statut des Ecoles européennes en liaison avec les articles 10 et 39 du Traité.

Ce litige n'ayant pu être résolu au sein du Conseil Supérieur, la Commission envisage de saisir la Cour de Justice d'un recours à l'encontre du Royaume Uni sur base de l'article 26 de la Convention portant statut des écoles européennes.



Alain SCRIBAN

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Joint International Unit

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11 July 2007

Dear Mr Chéne

Thank you for your letter of 11 May 2007 about the working conditions of British teachers assigned to the European Schools and, in particular, the level of national salary they receive from the UK Government.

The main point of your letter concerns the eligibility of British teachers to apply for the threshold assessment and pay increase while they serve in the European Schools. You may not be aware that threshold status and pay is a recruitment and retention measure for classroom teachers in England and Wales and we therefore take the view that it is not applicable to British teachers in the European Schools. Its introduction was intended to reward good classroom based teaching in schools in England and Wales only. The award of threshold pay is not automatic and is subject to a satisfactory assessment of performance under a system that is more rigorous than the process of assessing teacher performance used in the European Schools system. This means that we cannot be sure that we would be applying threshold pay fairly if we were to introduce it into the European Schools system.

The UK Government assigns teachers to the European Schools from a wide variety of backgrounds - from maintained and independent schools in the UK, as well as from overseas-based schools. We fix a teacher's national salary with reference to three different pay agreements. For the majority of our 240 teachers, including those recruited from positions overseas, national salary levels are fixed by reference to the document that establishes pay and conditions for teachers employed in England and Wales. For the remainder we use the respective pay document applicable to teachers appointed from schools in Scotland or, if appropriate, the further education sector. While teachers receive a salary based on what an experienced classroom teacher would earn in the UK, many of them are paid on the basis of the salary they received in the position they held immediately before their appointment to the European Schools. Many of the teachers were not only classroom teachers but often held posts that had leadership or middle management responsibilities. For example, some 17 European Schools teachers continue to receive a national salary based on their previous post in the UK as a headteacher or deputy headteacher. Similarly, there are currently 94 teachers who are paid on the basis of the management responsibilities they held in their post prior to appointment.

I cannot agree that the Community Budget would end up bearing an undue burden unless the current situation changes. We are not withholding these payments: in our view the teachers are simply not entitled to threshold increases because they are not employed in the maintained school sector in England or Wales. Further, you say that UK is in breach of EU Treaty Article 10 by transferring a financial burden from the Member State to the EU. This is not the case. European Schools teachers are the only teachers employed directly by UK Government. The additional financial burden on the UK therefore arises only by virtue of the fact that they are working for European Schools.

As to promotion, the generally accepted method for teachers in the UK to gain promotion is by applying for, and being appointed to, more senior posts. While promotion opportunities might be limited in the European Schools system because of a lack of a formal middle management system, such a right for British teachers to apply for posts on promotion in their national system has never been denied them.

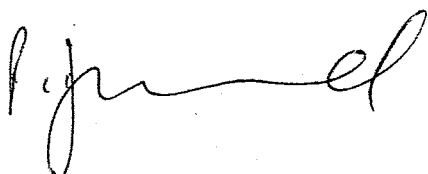
I cannot accept that the UK is in breach of Article 12(4) of the Convention. Our teachers in the European Schools retain their rights to a retirement pension under both the British state pension scheme and their occupational teachers' pension scheme. Indeed teachers assigned to the European Schools are treated more favourably than their British counterparts here in the UK insofar as their contributions to both schemes are fully refunded by the European Schools.

○ You also assert that the UK is not meeting its commitments under Article 25 of the Convention. In our view this Article does not intend that European Schools teachers should be treated the same as teachers in England and Wales. Its intention, "the continuing payment of remuneration", is that they should continue to be paid at the same rate as they were before they joined the system. In fact, they are paid more – but insofar as UK funding is concerned they are not paid any less.

You suggest that UK may be in breach of Article 39 of the EU Treaty – the free movement of workers. I do not agree. European Schools teachers have chosen to apply to do a different job from any post they might hold in England or Wales, with necessarily different terms and conditions of employment. The allowances available to teachers wishing to work in the European Schools system are very attractive compared with the financial package in the maintained sector in England and Wales.

○ While the intergovernmental agreement that established the European Schools has allowed the system to flourish, it all too easily leads to disputes between the parties responsible for funding it. The UK has long held the view that the system is in need of reform in its structure and governance. If the European Schools system was set up and financed in the same way as other EU institutions and agencies with legislation under Treaty Article 308, disputes of this nature between the Commission and Member States would not arise. Given its right of proposal, the Commission might want to consider whether a more harmonious situation could be reached through a proposal for reform.

Yours sincerely,



Peter Drummond  
Deputy Director  
Joint International Unit

Dear Mrs Charles, dear Mr Hoy,

Thanks for the fruitful meeting by video conference last Thursday 20 November 2008.

A. We understood from your explanations during the meeting the following :

- 1. In the UK there are separate school teachers' pay and conditions Documents, and consequently separate pay scales apply according to the region where teachers actually teach (England and Wales, Scotland, North-Ireland), but neither of them distinguish between teachers whether they teach in nursery, primary or secondary.**

This is correct. All teachers, irrespective of whether they teach at Nursery, Primary or Secondary level, receive the same remuneration, something which is not the practice in the European Schools where remuneration paid through the salary supplement is different for each of the three different types of teacher.

- 2. The DFES continues indeed to pay all the teachers from UK seconded to the ES<sup>1</sup> at the annual salary rate foreseen for each of them according to the scale point reached at the time they were recruited by the Ministry before secondment. This applies for their whole secondment period (usually 9 years). When DFES recruits teachers coming from elsewhere, these are usually placed at a level corresponding to their experience on the main pay scale of the English and Welsh document.**

This is the correct position. I should just like to add that, because of their experience, teachers seconded to the European Schools from overseas are nearly always paid at the top or maximum of the Main pay scale (point M6).

- 3. The annual incremental increases applied to their counterparts staying in the region they come from are also applied to the teachers seconded to the ES.**

Where necessary, teachers will receive incremental increases that take them to the top or maximum of the main pay scale (point M6). Teachers seconded to the European Schools receive annually-negotiated pay increases like their counterparts remaining in the UK.

- 4. Given their experience, most of the English and Welsh teachers seconded to the ES are presently at point M6, the top of the main pay scale (*this will probably appear in the grid asked for, which is still to be sent*). Some of them have been recruited by DFES with a higher grading than the main pay scale because they already deserved his higher grading before secondment and they continue to be paid at this level.**

All teachers are paid at least to point M6. However, there are some teachers who are paid on the Threshold/Upper pay scale. They would be paid according to this pay scale if they had reached that status or had been receiving the money before their appointment with the Department and secondment to the European Schools.

- 5. The gradings of "post-threshold teachers", "excellent teachers" and "advanced skills teachers" have been created in 2000 as a means of retaining teachers in England and Wales, who, at this time, were numerous to leave for other posts. This has nothing to do with a change in the Scottish teachers' salary scale. The latter is very different from the pay**

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<sup>1</sup> i.e. at present the 209 English and Welsh teachers, as well as the 16 Scottish teachers and the teachers from North Ireland if they happen to apply

scale for English and Welsh teachers (i.e. the pay progression occurs without the various assessments foreseen in the document for English and Welsh teachers).

Yes, the teacher 'gradings' were created from 2000 as a way of improving recruitment and retention in England and Wales. The Scottish teachers' salary scales are quite different from those used in England and Wales. As far as I know the introduction of the threshold/upper pay had no bearing on the pay negotiations for Scottish teachers.

- 6. The various higher gradings are awarded to the teachers in England and Wales reaching core performance standards according to a rigorous performance review made by the Headmaster of the school over 2 years.**

Yes, that is correct. Headteachers in England and Wales are responsible for assessment and must ensure that teachers meet the core performance standards of the England and Wales national system. They must also ensure evidence provided by the teacher is relevant and meets post threshold standards.

- 7. The assessment against post-threshold can be asked by a qualified teacher placed on point M6 of the main pay scale and meeting the core standards according to his Headmaster. The post threshold teacher standards are set up in a 27 pages document.**

Yes, that is correct.

- 8. In order to access the "advanced skills teachers" spine, different very rigorous performance criteria have to be met, such as being able to share their skills with other teachers, and the teachers recognised as "excellent teachers" occupy a post specially designated by the school, and spend 80% of their working time influencing the whole of their school.**

Yes. In addition Advanced Skills Teachers are required to spend 20% of their time working in other schools. Furthermore, Excellent Teaching posts require teachers to assist with the induction of newly qualified teachers, undertake classroom assessments to assist and support the performance management process in England and Wales schools.

- 9. In all these assessments the Head teachers play a crucial role and DFES considers that the Heads of the ES coming from different systems are neither familiar with the requirements of UK documents nor trained to make such assessments, which need regular monitoring of the applicants work.**

That is correct. Every Member State has a different method of training its teachers and head teachers and different ways of monitoring their performance. They also have different expectations of teachers in terms of their contribution to the life of the school. Most of these assessments would require very regular monitoring of a teacher over a minimum of a two year period before awarding the additional status. – perhaps four or five times during the course of an academic year. We also require ongoing monitoring at this level for every year of the teacher's employment. We therefore believe it to be impractical to ask Directors to perform these assessments.

- 10. The UK inspectors spend most of their time on contracts renewals and consider they could not make the necessary checks to assess the possible UK applicants. They are an independent body and DFES cannot instruct them to do such assessment.**

It is correct that UK inspectors spend a large proportion of their time observing teachers for the contract renewal process – in the 2008/2009 academic year some 54 UK teachers in the European Schools are going through this process. We do not consider that, amongst all their other duties, they have the resource and or/time to undertake the necessary observations/checks.

- 11. The Commission having asked to look at possible changes of procedures in order to offer the same pay progression to the UK teachers seconded to the ES as to their counterparts in UK, namely by setting up a specific set of implementing rules, which could be applied by the Heads of the ES and the UK Inspectors together, DFES declared itself ready to examine this possibility.**

Please see the answer to question 9 in respect of what we would require of ES Directors

- 12. One way of doing so might be to explore the way the Ministry of Defence managed to get the English and Welsh teachers working in service schools abroad assessed against the post-threshold, AST and Excellent teacher's criteria.**

Service schools through the Ministry of Defence are able to assess the teachers they employ for the threshold pay and assessment because they operate in a similar fashion as state schools in the UK and their headteachers have been trained in the UK system. Put another way, the performance management system that exists in these schools, along with the curriculum, qualifications and core standards that underpin the threshold process, is the same as that used in schools in England and Wales.

B The Commission is still awaiting

- 1. The references of the site allowing us to consult the pay and conditions' document of Scottish teachers and the comparable document applicable to teachers of North Ireland**

Please see information provided in response sent to the European Commission dated 27 November 2008.

- 2. The statistic of the present distribution of all 209 English and Welsh teachers currently seconded to the ES, with their date of arrival in the ES, on a grid with all existing scale points (M, U, AST and E), and the situation of the 16 non Scottish ones according to their salary scale.**

Please see information provided in response sent to the European Commission dated 27 November 2008

- 3. An answer to the question "May this distribution be considered as the usual one or not? Is it isn't, would it be possible to have the same table for the previous years going back to the creation of the post-threshold pay?"**

Please see information provided in response sent to the European Commission dated 27 November 2008.

C. The Commission would also like you to answer the following additional questions:

- 1. What is the success rate of the eligible teachers of England or Wales applying to the threshold assessment?**

We are currently researching information and hope to provide some figures shortly.

- 2. Assuming that the DFES seconds good qualified teachers to the ES, do you agree that there is no reason why they would not have the same average success rate than their colleagues who continue to teach in England or Wales if they could apply to the assessment against post threshold, AST or excellent teachers' standards?**

We too would like to think that we provide the European Schools with good, qualified and experienced teachers. We could agree that teachers would have the same average success rate as their colleagues in England and Wales only if the system in which the European Schools operates was not so significantly different. As explained previously, the main reason for introducing threshold pay in England and Wales from 2000 was for recruitment and retention. Such recruitment and retention issues do not exist in the European Schools.

- 3. Is it right that DFES inserts a clause in the contract of English and Welsh teachers applying for a post in the ES which commits them not to apply for assessment against the threshold standards?**

I thought it helpful if I provided the wording of the clause used in our contract of employment with teachers that covers pay. It reads as follows:

‘Your national is £xxxxx and will be paid to you monthly in arrears by the Department. The School Teachers’ Pay and Conditions Document does not apply to teachers at the European Schools, but national salaries are fixed in line with the Document’s pay scales and annual nationally-negotiated pay increases applicable under the Document will be paid. No other increases in national salary will be paid. During your employment you are ineligible to apply to be paid on any additional scale or spine or for any additional allowance or status referred to in the Document. The national salary is subject to UK income tax and social security deductions at the appropriate rates. The European salary and allowances are paid by the European Schools and are not the responsibility of the Secretary of State.’

**As a general comment, the Commission would like to stress once more that, in its view, there is, according to the Convention, and namely its articles 25-1 and 12-4a, a legal obligation for the Member States to ensure the pay progression of the teachers seconded in the same conditions than to those who continue to work in their home country. This should be done namely in view of their promotion and retirement after secondment.**

On your general comment and final point, I should like to refer to the letter sent by Peter Drummond to Mr Claude Chéne dated 11 July 2007.

**5 December 2008**