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Strasbourg, 12 -08- 2011

Draft recommendation of the European Ombudsman in his inquiry into  
complaint 814/2010/JF against the European Commission

Dear Ms Mormile,

Please find enclosed, for your information, a copy of my draft  
recommendation that I have sent to the Commission in relation to your  
complaint.

My draft recommendation is as follows:

**The Commission should respond properly to the complainant's and  
the Staff Committee's request for the organisation of an independent external  
audit of the European Schools by replying clearly to that request and  
providing adequate reasons in support of the position adopted in that reply.  
When doing so, the Commission should take into particular consideration the  
conclusions of the Repeat Rates WG report, which was due in October 2010  
and appears to have been concluded and published.**

I have asked the Commission to send its reply by 30 November 2011.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure: Draft recommendation sent to the Commission



# Draft recommendation

## of the European Ombudsman in his inquiry into complaint 814/2010/JF against the European Commission

Made in accordance with Article 3(6) of the Statute of the European Ombudsman<sup>1</sup>

### The background to the complaint

1. The European Schools (ES) are official educational establishments controlled jointly by the governments of the EU Member States. The ES provide a multilingual and multicultural education for nursery, primary and secondary level pupils. There are currently 14 ES (four of which are in Brussels) in seven countries, with a total of approximately 22 500 pupils. The ES are governed by a Board of Governors (BG), composed of the Ministers of Education of each EU Member State, who are normally represented by senior civil servants from the Ministries of Education or Foreign Affairs, together with a representative from the European Commission and the European Patent Office. A representative selected by the ES Staff Committee (from among the teaching staff) and a representative selected by the parents' associations are also members of the BG. The mandate of the BG covers educational, administrative and financial matters. When it is not in session, its powers are exercised by its officially appointed Secretary-General (SG). The Commission has the same number of votes in the BG as any other voting member, namely, one<sup>2</sup>.

2. In 2004, the Commission issued its Communication to the Council and the European Parliament concerning a consultation on options for developing the ES system (the 'Communication of 2004')<sup>3</sup>. A number of subsequent initiatives were undertaken with a view to improving the teaching quality in the ES. In November 2008, the ES Joint Teaching Committee (JTC)<sup>4</sup> discussed issues relating to the improvement of the repeat and dropout rates in the ES in Brussels. Later, between 21 and 23 April 2009, the BG met in Stockholm and approved a reform of the ES system (the 'Reform of 2009')<sup>5</sup>.

<sup>1</sup> Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

<sup>2</sup> Sources: Convention defining the Statute of the European Schools, OJ 1994 L 212, pp. 3-14 (the 'Convention') and the website of the European Schools ([www.eursc.eu](http://www.eursc.eu)).

<sup>3</sup> COM(2004) 519 final.

<sup>4</sup> According to the website of the European Schools, the Joint Teaching Committee comprises "[i]nspectors and directors, together with representatives of teachers, parents and pupils and a representative of the European Commission and the European Patent Office" and has the task of examining "proposals concerning the organisation and curricula of the schools. Detailed preparation is done by numerous sub-committees."

<sup>5</sup> Document with reference 2009-D-353-en-4, available on the European Schools website.



**3.** On 17 June 2009, the Association of Independent Officials of the European Commission - TAO-AFI (the 'complainant') wrote to the then Commissioner for Administrative Affairs, Audit and Anti-Fraud (the 'Commissioner'), concerning matters relating to secondary level repeat and dropout rates in the French-speaking section of the ES. The complainant urged the Commission to (i) guarantee that all pupils have an equal chance to succeed irrespective of the linguistic section they are in; (ii) provide statistics as regards repeat and dropout rates at secondary level for the 2008/2009 academic year in all the ES in Brussels (at that time there were three); (iii) organise an external, independent audit into the reasons for the large repeat rate, the alleged discriminatory treatment of French-speaking pupils, and the costs and measures necessary to reduce the failure rates; (iv) call upon the ES to organise or reinforce learning support in the sections where failure rates are particularly high; and (v) improve communication between the ES and parents through the establishment of a systematic exchange of information with teachers.

**4.** On 18 August 2009, the Commissioner's Cabinet replied to the complainant, indicating that the Commission was also concerned about the failure rates in the ES. It pointed out that, in January 2009, the BG had asked the SG to prepare an analysis of the causes of failure and their consequences, both from a pedagogical and a financial point of view. The SG's report revealed high failure rates in the 4th and 5th year at secondary school level. Also, according to a Working Group on sciences<sup>6</sup> (the 'Sciences WG'), the above rates concerned the scientific subjects in particular. The way sciences were being taught in the ES therefore needed urgent attention. The Sciences WG proposed an assessment of the students' competencies in the sciences at the end of their first three years of secondary level studies. It was also important to assess the impact of the system governing the rules for promotion to the above years provided for in the General Rules of the ES. The Commissioner's Cabinet further noted that the French-speaking section's failure rates were high in the Brussels ES, but not in other ES. The Commission shared the concerns expressed by staff and parents and followed the matter closely. It highlighted that the high failure rates have significant impact on the pupils and overall costs. They also contribute to the ES' overpopulation. The Commissioner's Cabinet thus agreed that it was important to find the causes of the failures and to take action as soon as possible. In the context of the BG, the Commission therefore asked the SG to schedule a meeting with all stakeholders for the beginning of the following academic year. The SG was in the process of analysing the failure data and would report on the situation. The Commission would keep the complainant informed about the developments.

**5.** Later, on 2 October 2009, the Local Staff Committee for Brussels (the 'Staff Committee') also wrote to the Commissioner about the above matters. It argued that no data on dropout rates were available.

**6.** On 30 October 2009, the Commissioner's Cabinet replied to the Staff Committee that, earlier that month, the SG had presented her analysis of the failure rates to the JTC. A working group (the 'Repeat Rates WG') would be created to analyse the problems in detail and to propose actions with a view to improving the ES' teaching quality. The Commission welcomed this initiative and urged that the Repeat Rates WG should start its activities as soon as possible.

<sup>6</sup> The Ombudsman understands that the term sciences refers to the following subjects: mathematics, physics, chemistry, and biology.



7. On 4 and 30 November 2009, the Staff Committee replied, commenting extensively on the SG's analysis. It also referred to the Ombudsman's decision dated 19 July 2004 on his own-initiative inquiry OI/5/2003/IJH, in which he made the following further remark to the Commission:

*"The Board of Governors' annual report and the proposed annual report from the Commission could together provide a useful opportunity for external review of progress in raising the quality of administration of the European Schools and enhancing their transparency and efficiency. This could help to improve and maintain levels of trust among the many constituencies whose interests the European Schools should serve (children, parents, the institutions and citizens generally). The Ombudsman is ready to assist in the external review process, if that could be helpful."*<sup>7</sup>

The Staff Committee urged the Commission to issue a call for expressions of interest for an independent external audit of the ES, and suggested a number of measures the Repeat Rates WG should, in its view, take up first.

8. On 7 January 2010, the Commissioner's Cabinet replied that it would forward the Staff Committee's comments to the Repeat Rates WG, which, at that time, still had to be established by the SG. The Commissioner's Cabinet agreed that urgent measures were necessary and expressed support for the Sciences WG's proposal to assess students' ability in the scientific subjects at the end of three years of secondary school. It finally referred to a study drafted by the European Parliament on the ES alumnae's subsequent careers and the Cambridge University external assessment of the European Baccalaureate. It took the view that both documents provided a number of useful facts.

9. On 29 March 2010, the complainant, who was informed of the exchanges of correspondence between the Commission and the Staff Committee, turned to the Ombudsman.

## **The subject matter of the inquiry**

10. The complainant alleged that the Commission failed to respond adequately to repeated requests which it and the Staff Committee had made for an independent external audit of the ES.

11. The complainant claimed that the Commission should organise an independent external audit of the ES.

## **The inquiry**

12. On 12 May 2010, the Ombudsman forwarded the complaint to the President of the Commission for an opinion. After receiving further information from the complainant, the Ombudsman sent that information to the Commission for its consideration.

13. On 28 July 2010, the Ombudsman received the Commission's opinion, which he forwarded to the complainant for its observations.

<sup>7</sup> The decision is available on the European Ombudsman's website ([www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)).



14. On 15 November 2010, the Ombudsman received the complainant's observations.

## The Ombudsman's analysis and conclusions

### Preliminary remarks

15. The Ombudsman emphasises that the subject-matter of his inquiry is an alleged failure to respond adequately to a request for an independent external audit of the ES. Although the complainant and the Staff Committee made references in the complaint and in their respective correspondence with the Commission to the further remark made in the Ombudsman's decision in his own-initiative inquiry OI/5/2003/IJH<sup>8</sup>, the present inquiry and the Ombudsman's own-initiative inquiry do not overlap. In 2004, the Ombudsman merely suggested that an external review could be useful and the present case more specifically concerns the question whether an independent external audit is needed. The external review referred to in the Ombudsman's further remark is clearly a term much broader than that of an "*independent audit*".

### A. Allegation of failure to respond adequately and the related claim

#### Arguments presented to the Ombudsman

16. In support of its complaint, the complainant argued, among other things, that the SG's analysis was incomplete and misleading. In addition, the Repeat Rates WG, which was not yet established at the time of the complaint, would only deal with the sciences and not with the overall teaching in the French-speaking section of the Brussels ES. The Commission failed to honour the commitments provided for in its Communication of 2004 and to ensure full accountability of each ES and its Director as regards good administration and transparency. The Commission also failed to improve the appeals and disciplinary procedures, as well as the communication between the ES and parents, and to establish an external quality evaluation of programmes and/or methods of teaching. In the complainant's view, the Commission was unable to tackle major systemic, structural deficiencies in the ES system, even after they had been brought to its attention. It argued that the Commission is responsible for the sound management of the EU funds granted to the ES and should therefore ensure that detailed cost-benefit analysis and quality assessments are carried out regularly. In light of all the above, an independent external audit of the ES was therefore necessary.

17. In its opinion, the Commission emphasised that the Communication of 2004 provided a clear account of the situation in the ES and, notably, the problems identified by the different stakeholders. The Commission noted that it had made some proposals in the Communication of 2004 that could be implemented by the BG.

<sup>8</sup> On 15 September 2004, the Commission answered to the Ombudsman's further remark that it "[g]reatly appreciate[d] the Ombudsman's offer of assistance in any external review process and believe[d] that his involvement would be most helpful..."



**18.** The Commission further took the view that the reform launched in 2009 constituted a great step towards better governance and transparency. It allowed for a more efficient use of human, material and financial resources. It also provided for decentralised decision-making, allowing the BG to focus on policy and strategy. Mechanisms of internal pedagogical, administrative and financial control were put in place to ensure accountability. In addition, the ES now assesses the execution of its budget and of the actions that it undertakes. Furthermore, the boards of inspectors now carry out external monitoring and quality control regarding the pedagogical work. All these measures were scheduled to be in force by 1 September 2010 at the latest. The reform thus introduced an assessment of the system and the issues of school failure and repeat rates are now handled by a number of committees.

**19.** The Commission further argued that the appeals and disciplinary procedures had been improved through the introduction of guidelines in the ES by the SG. As a result, in 2009, there was a decrease in appeals. The Commission noted that it regularly meets and exchanges information with parents during board meetings and participates in different parents' associations. Since mid-2009, the Commission had been in regular contact with the complainant and the Staff Committee, replied to all their questions and made sure that all their suggestions were duly taken into consideration during the debates.

**20.** The Commission went on to explain that the Repeat Rates WG focused on the profiles of the repeating pupils and of those dropping out of the system during their studies; the schools' expectations and the levels of competences attained by pupils, and the contents and possible need for harmonisation of the different scientific programmes. The Commission stressed that there should also be an analysis of pedagogical measures, notably those relating to learning support and languages. The Repeat Rates WG would elaborate precise guidelines on measures to be taken. It would also ensure, together with the ES Directors and Inspectors, that these were applied by means of appropriate pedagogical initiatives. The Repeat Rates WG included the Deputy SG (President); the inspectors responsible for mathematics, physics, chemistry, and biology; an inspector responsible for teaching one of the languages "2 and 3"; one representative of the Directors; one representative of the Deputy Directors; one teacher representative; one parent representative; one Commission representative; and one cycle coordinator. Up to the date of the Commission's opinion, the Repeat Rates WG had held three meetings and was expected to submit its conclusions to the JTC in October 2010. With its opinion, the Commission enclosed minutes of the meeting of the Repeat Rates WG that was held on 23 February 2010.

**21.** The Commission considered it important to understand the disparities between the ES and their different sections, as well as the different options for pupils within those sections. It also emphasised the importance of communicating with parents regarding the difficulties pupils may face in their classes depending on the language section and the school in which they are studying. Finally, it highlighted the minimum knowledge required of pupils at the end of their third year of secondary school and the need for a better training of teachers – especially newcomers – in the scientific subjects of the ES.

**22.** The Commission concluded that it had taken action in the vast majority of cases. However, it also acknowledged that there is still a lot to be done. The Commission stressed that it is determined to find solutions to the questions of school failure and that it is committed to respect transparency, cooperate with



parents, and to continue to intervene actively in the Repeat Rates WG. It outlined that it is ready to defend the interests of pupils and the institutions' staff when implementing the conclusions and recommendations to issue from the Repeat Rates WG.

**23.** In its observations, the complainant maintained its complaint. It reiterated that, in light of the considerable financing granted to the ES, the ES teaching system should be evaluated against the principles of sound financial management. The ES overall teaching system had never been assessed. Relatedly, the Communication of 2004 did not appear to have been preceded by any independent study.

**24.** The complainant further argued that the reform of 2009 did not sufficiently address its concerns. The Directors have no powers to recruit or dismiss teachers. Furthermore, according to the complainant, the Directors refuse to provide parents with information regarding statistics and appeals which they request. This is a matter of teaching quality, mismanagement of public funds, and lack of transparency. The decrease in the number of appeals is due to parents getting desperate and deciding to take their children out of the ES, as a result of the fact that they lose all hope in seeing any improvements.

**25.** Finally, the complainant emphasised that, as far back as 2000, the BG had already adopted an internal assessment table for the ES, which appears never to have been used. It further noted that the external monitoring and control of the quality of pedagogical work introduced by the reform of 2009 was internal rather than external. It emphasised that the assessment made by the University of Cambridge concerned only the European Baccalaureate. For all these reasons, the complainant maintained its claim for an independent external audit of the ES.

### **The Ombudsman's assessment leading to a draft recommendation**

**26.** At the outset, the Ombudsman notes with disappointment that the Commission did not take a clear position on the complainant's claim that an independent external audit of the ES was necessary. Instead, it made some references to the mechanisms of review introduced by the reform of 2009. For the reasons set out below, the Ombudsman considers that this does not adequately address the complainant's and the Staff Committee's request.

**27.** First, he notes that the reform of 2009, which provided for mechanisms for analysing the financial parts of the ES' annual reports and the quality of administrative and financial management, introduced an "*external monitoring and control of the quality of pedagogical work*", to be performed by "*Boards of Inspectors*"<sup>9</sup>.

**28.** The Boards of Inspectors are composed of inspectors from Member States, appointed by the BG following proposals made by the Member States<sup>10</sup>. Among

<sup>9</sup> Page 21 of the Reform of 2009 contains the following: "*[e]xternal monitoring and control of the quality of pedagogical work are carried out by the Boards of Inspectors; Control of the quality of administrative and financial management is the responsibility of the Financial Controller, the Internal Audit Service (IAS) and the Court of Auditors, according to their respective areas of competence. The Budgetary Committee analyses the financial part of the schools' annual activity reports.*"

<sup>10</sup> According to Article 2 of the Rules of Procedure for the Boards of Inspectors, approved by the BG at its meeting of 2, 3 and 4 December 2009, 2009-D-225-en-5, and available on the European Schools' website: "*[t]he Board of Inspectors (Secondary) shall be composed of one inspector per member country appointed for this teaching level by the Board of Governors on a proposal from the Member State...*"



other things, the Boards of Inspectors define the general pedagogical objectives as part of the autonomy of the ES and evaluate their implementation. They put in place analysis instruments and evaluation criteria which make it possible to ensure the quality of the education provided. To that end, they are responsible for the individual assessment of teachers (who are assigned or seconded by the Member States<sup>11</sup>), the inspection of sections and team inspections of the teaching of the different subjects and of thematic topics of whole-school dimensions, as well as for providing in-service training for teachers. They are further associated with the in-service training for management staff organised by the SG. Finally, they report to the BG each year concerning the above elements<sup>12</sup>.

**29.** In light of the foregoing characteristics of the board of inspectors' appointment and tasks, the Ombudsman considers reasonable the complainant's position that the monitoring and control of the quality of pedagogical work at the ES is internal rather than external.

**30.** Second, the Repeat Rates WG, which, according to the Commission, (a) includes an inspector who examines the teaching of languages "2 and 3", as well as a parent representative, and (b) analyses, among other things, the profiles of the pupils repeating and dropping out of the ES, also appears to be a rather internal mechanism of assessment.

**31.** Consequently, in addition to not having clearly replied to the claim put forward by the complainant and the Staff Committee, the Commission's explanations as regards the existing mechanisms of review do not adequately address that claim. This is an instance of maladministration and a corresponding draft recommendation will be made below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

**32.** While acknowledging the Commission's limited voting power in the BG, the Ombudsman emphasises that the ES do appear to have been subject to external assessments/evaluation exercises in the past. The assessments of the European Parliament and of the University of Cambridge have provided useful grounds for review<sup>13</sup>. Some, however, took place some time ago<sup>14</sup>, while others<sup>15</sup> do not

<sup>11</sup> According to Article 3(2) of the Convention.

<sup>12</sup> According to Article 1 of the Rules of Procedure for the Boards of Inspectors, approved by the BG at its meeting of 2, 3 and 4 December 2009, 2009-D-225-en-5 and available on the European Schools' website.

<sup>13</sup> Page 2 of the Communication of 2004 reads as follows: "[t]he undoubted success of the Schools does not, however, obviate the need for evaluation and review. The perceptive Bösch report on the future of the Schools, adopted by the EP in December 2002, and subsequent working document, provided a useful and timely assessment of the strengths and shortcomings of the ES system. Together with recent reports from the Board of Governors and the Court of Auditors, they put a compelling case for a qualitative review of the effectiveness and efficiency of the system. These drivers for change, combined with the new impetus provided by the last wave of enlargement, imply a reassessment of the Schools - in limited terms - those of the effectiveness of their complex governance and organisational structures and of the value for money of the current configuration of service provision. It falls to the Commission, as prime user of the Schools through the children of its staff, to take a proactive role and to seek through wide consultation to establish an approach to change, based as far as possible on consensus." Relatedly, the Reform of 2009 provides, on page 6, that: "[a]t its January 2009 meeting, the Board of Governors mandated the Secretary-General to prepare, in liaison with the 'Baccalaureate' Working Group, proposals for reform of the European Baccalaureate. The decision on reform will need to be taken in April 2010 and the adaptations to the regulatory texts will need to be approved in July 2010, with a view to application from September 2010 to students who will be entering for the European Baccalaureate in the June/July 2012 session. A summary of the recommendations contained in the different reports on the European Baccalaureate, and more particularly those of the external evaluation report produced by the University of





appear sufficient to satisfy the complainant's and the Staff Committee's repeated claims for an audit<sup>16</sup>.

**33.** Relatedly, the Ombudsman points to the document "*Facts and figures on the beginning of the 2010-2011 school year in the European Schools*", adopted after the BG's meeting of 1-3 December 2010 and available on the ES website<sup>17</sup>. That document provides, among other things, statistics relating to "2010 repeat rates" and "repeaters leaving ES". It also includes the following statements:

*"[a]s usual, the percentage of students repeating a year was highest among secondary years 4 and 5. This phenomenon was discussed and analysed in the document (2010-D-245-en-5): 'Analysis of repeat rates and unsatisfactory marks - Measures to combat school failure'..."*

**As outlined in document 2010-D-245-en-5, the Joint Teaching Committee approved 19 special measures to combat failures in October. These measures will be implemented by the schools in 2010-2011 school year.**" (emphasis added)

**34.** The Ombudsman understands the latter document "2010-D-245-en-5 - *Analysis of repeat rates and unsatisfactory marks - Measures to combat school failure*" to correspond to the Repeat Rates WG report due for October 2010<sup>18</sup>. Whilst he again emphasises that the Repeat Rates WG was an apparently internal mechanism of assessment, the Ombudsman finds it reasonable to conclude that the above report may have provided some of the analyses and solutions sought by the complainant and the Staff Committee through an external audit<sup>19</sup>.

## B. The draft recommendation

On the basis of his inquiries into this complaint, the Ombudsman makes the following draft recommendation to the Commission:

*Cambridge, will be prepared by the Baccalaureate Unit of the General Secretariat for the enlarged 'Baccalaureate' Working Group, which will be expected to present proposals to the Board of Governors with a view to the taking of a definitive decision by the deadlines set in the aforementioned mandate."*

<sup>14</sup> See the first part of footnote 13 above.

<sup>15</sup> According to the European Schools website, the European Parliament's Policy Department B Structural and Cohesion Policies study of October 2008 concerned the "*analysis of the academic and professional careers of the European Schools' graduates*" and the University of Cambridge final report of January 2009 concerned its "*external evaluation of the European Baccalaureate*".

<sup>16</sup> In its letter to the Commissioner dated 17 June 2009, the complainant asked for (in the original French): "*[u]n audit externe et indépendant ayant pour objectif l'analyse comparative approfondie des raisons de l'échec, de la discrimination des élèves de la section francophone des Ecoles européennes, des coûts engendrés ainsi que des moyens à mettre en œuvre pour réduire les taux actuels*". Similarly, in its letter to the Commissioner dated 2 October 2009, the Staff Committee also requested (in the original French) that: "*[u]ne étude indépendante soit lancée sur l'échec et l'abandon scolaire dans les écoles et sur la situation particulière en section francophone*". Also, on 30 November 2009, the Staff Committee urged the Commissioner to launch (in the original French): "*[u]n appel d'offre pour un audit indépendant*". Relatedly, in its complaint to the Ombudsman, the complainant referred to "*[a]n independent audit of the way the schools are organised both in terms of governance and in terms of pedagogic matters, in particular but not exclusively with respect to the French sections (one of the most seriously affected by the repeat and drop-out problems) and to the teaching of science subjects*". According to the complainant, there was an "*[u]rgent need for at least an immediate and first external and totally independent audit of the European Schools*".

<sup>17</sup> Reference 2010-D-569-en-3.

<sup>18</sup> The Commission's opinion dates from July 2010. The complainant's observations, dated November 2010, make no reference to the Repeat Rates WG conclusions due in October 2010. The European Ombudsman searched for the relevant document on the European Schools website, but was unable to locate it.

<sup>19</sup> See the first part of footnote 16 above.



**The Commission should respond properly to the complainant's and the Staff Committee's request for the organisation of an independent external audit of the European Schools by replying clearly to that request and providing adequate reasons in support of the position adopted in that reply. When doing so, the Commission should take into particular consideration the conclusions of the Repeat Rates WG report, which was due in October 2010 and appears to have been concluded and published.**

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 30 November 2011. The detailed opinion could consist of the acceptance of the draft recommendation and a description of how it has been implemented.

P. Nikiforos Diamandouros

Done in Strasbourg on 12-08-2011