

Decision of the European Ombudsman closing his inquiry into complaint 814/2010/JF against the European Commission

Decision

Case 814/2010/JF - Opened on 12/05/2010 - Recommendation on 12/08/2011 - Decision on 02/04/2012 - Institution concerned European Commission (Critical remark) |

The high repeat rates in the European Schools (the 'ES') in Brussels, in particular in the French-speaking section and in the science classes, have been long discussed by parents' associations, the European Commission, and the governing bodies of the ES. The complainant, an independent association of Commission officials, asked the Commission to organise an independent external audit of the ES, in particular on issues relating to school failure and governance. Since it was not satisfied with the Commission's replies, the complainant turned to the European Ombudsman.

In reply to the Ombudsman's inquiry, the Commission first referred to the reform of the ES launched in 2009 which, among other things, provided for a number of control mechanisms of the quality of the ES' pedagogical work. The Ombudsman found that such control mechanisms were internal rather than external and that, consequently, they did not adequately address the complainant's claim that an external independent audit should be organised. He therefore made a draft recommendation asking the Commission properly to address that claim.

The Commission then informed the Ombudsman that it suggested that the ES participate in a study conducted by the Organisation for Economic Cooperation and Development (the 'OECD') on the knowledge acquired by pupils near the end of their compulsory education. This, according to the Commission, would allow for solutions to be found to the problem of the high failure rates in the ES.

The Ombudsman disagreed with the Commission's position outlined above. He pointed out that the Commission's proposal appeared to follow a suggestion made by the European Parliament that the ES seek inspiration from the best education systems in the world, as identified in the OECD's above-mentioned study. He then took the view that participating in that study would not adequately satisfy the complainant's claim for an external independent audit of the ES. He finally made a finding of maladministration and closed the case with a critical remark to the Commission.



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 [1] .

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') [2] . 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) [3] 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') [4] .

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 [5] (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 on promotion to the next year of study 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 a 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 the Repeat Rates WG to start its activities as soon as possible.

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. " [6]

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.

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

15. After careful consideration of the opinion and the observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complaint. He therefore made a draft recommendation to the Commission, in accordance with Article 3(6) of his Statute. A copy of the draft recommendation was sent to the complainant for information.

16. On 4 November 2011, the Ombudsman received the Commission's reply, which he forwarded to the complainant with an invitation to submit its observations on it.

17. On 21 December 2011, the Ombudsman received the complainant's observations.

The Ombudsman's analysis and conclusions



Preliminary remarks

18. 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 [7], 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 much broader term than "*independent audit*".

A. Allegation of failure to respond adequately and related claim

Arguments presented to the Ombudsman

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.



26. 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.

27. 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.

28. 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

29. At the outset, the Ombudsman noted 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 considered that this did not adequately address the complainant's and the Staff Committee's request.

30. First, he noted 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*" [8] .

31. The Boards of Inspectors are composed of inspectors from Member States, appointed by the BG following proposals made by the Member States [9] . Among 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 [10]), 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 [11] .

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

33. 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 appeared to be a rather internal mechanism of assessment.

34. 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 did not adequately address that claim. This constituted an instance of maladministration and the Ombudsman made the draft recommendation cited below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

35. While acknowledging the Commission's limited voting power in the BG, the Ombudsman emphasised that the ES did 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 [12] . Some, however, took place some time ago [13] , while others [14] did not appear sufficient to satisfy the complainant's and the Staff Committee's repeated claims for an audit [15] .

36. Relatedly, the Ombudsman pointed 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 [16] . 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 " **(emphasis added)** ". These measures will be implemented by the schools in 2010-2011 school year

37. The Ombudsman understood 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 [17] . Whilst he again emphasised that the Repeat Rates WG was an apparently internal mechanism of assessment, the Ombudsman found it reasonable to conclude that the above report could have provided some of the analyses and solutions sought by the complainant and the Staff Committee through an external audit [18]



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

" 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 arguments presented to the Ombudsman after his draft recommendation

39. In its reply, the Commission complemented its opinion by explaining, among other things, that the Repeat Rates WG's report provided for a number of specific measures intended to tackle the problem of the repeat rates, which were to be implemented in the short and medium term. The JTC followed up those measures at a meeting held in the beginning of October 2011.

40. The Commission explained further that it had asked the SG to consider the possibility of extending to all ES a programme run by the Organisation for Economic Co-operation and Development (the 'OECD'), which provides for an independent assessment of the essential knowledge and know-how acquired at the end of compulsory studies (the Programme for International Student Assessment or the 'PISA study'). It pointed out that 250 students from the ES in Luxembourg participated in the last three sessions of the PISA study.

41. According to the Commission, extending the above-mentioned assessment to all ES would help provide objective replies, provided by an external body, to certain questions raised within the ES, namely, those relating to the repeat and success rates in the European Baccalaureate and its value vis-à-vis national educational systems.

42. By means of the above measure, the Commission considered to have replied to the complainant's claim for an external audit and to the Ombudsman's draft recommendation.

43. In its observations, the complainant, in sum, took the view that the Commission did not reply to its claim or the Ombudsman's draft recommendation.

44. First, the complainant referred to a report of the European Parliament's Committee on Culture and Education, drawn up by Jean-Marie Cavada MEP on 1 August 2011, concerning the system of the ES (the 'Cavada Report') [19]. The Cavada Report suggested that the ES participate in the PISA study. In the complainant's view, however, the ES' participation in the PISA study is not a suitable alternative to an external independent audit of the teaching quality in the ES.



45. According to the complainant, the PISA study provides for a general thematic analysis focused on a population of pupils who are in the same level. It does not assess schools or educational systems. It is just an indicator of performance, similar to that provided by the statistical analysis included in the schools' reports. In the complainant's view, the approach proposed by the Commission will only provide for a partial assessment, namely, of the competences of pupils who have succeeded in the European Baccalaureate. However, what the Commission should do is to proceed with an independent audit, giving effect to its obligation to ensure that public funds are spent correctly, in particular in light of the serious problems it has identified and recognised. The last reports available attest to the fact that the teaching quality in the ES in Brussels I, II, and III has worsened. They support the conclusion in the Cavada Report that the ES' system urgently needs to be substantially changed.

46. The complainant emphasised that, despite contributing around EUR 175 million to the ES' budget, which totals about EUR 275 million per year, the Commission has never conducted an audit into the ES' performance. This was acknowledged by the Commission's own internal auditor [20] .

47. The complainant pointed out that even the European Court of Auditors has stated that it lacks resources to conduct audits into the education offered by the ES [21] .

48. According to the complainant, the results available for the 2010/2011 school year show that the 19 measures proposed by the Repeat Rates WG did not solve the problem of repeat or dropout rates in the French-speaking section or the science classes in the ES in Brussels I, II, and III. The Repeat Rates WG focused on the progress registered in the primary level and in the 'students without a language' sections ('SWALS'). The complainant, however, focuses mainly on the problems encountered at the secondary level, in particular in the French-speaking section. The problems at the primary level are less pressing and SWALS are normally placed in English-speaking sections, where integration is easier.

49. According to the complainant, not only did the Repeat Rates WG and the JTC fail properly to address the above-mentioned problems; they have actually put forward proposals which are "*extremely dangerous*", namely, (i) a system of cycles during which no students would repeat the year; and (ii) an alternative diploma/course of study. In the complainant's view, the first of the above options can only be introduced if the ES have enough resources to provide an adequate follow-up of pupils at all levels of secondary education, coupled with learning support when needed. In the current budgetary framework, applying such a measure does not appear to be realistic. The second of the above measures has general advantages as it may allow lower achievers to obtain a diploma as an alternative to the baccalaureate. However, without solving the current problems relating to the enormous differences between the linguistic sections and to the teaching of scientific subjects, such a system implies that students who are capable, namely, the majority of students in the French-speaking section, will be automatically excluded from a university curriculum.

50. The complainant thus maintained its claim that the Commission should conduct an



independent external audit of the teaching system in the ES as a whole, with a view to responding adequately to problems relating to (i) teaching quality at each level; (ii) the high levels of repeaters and drop-outs in the ES' system; (iii) the manner in which different subjects, in particular the sciences, are taught; (iv) the integration of students with learning difficulties or with disabilities; and (v) governance. In the complainant's view, the inspectors cannot adequately solve the above-mentioned problems and their role should actually be one of the main subjects of an independent performance assessment.

The Ombudsman's assessment after his draft recommendation

51. The Ombudsman interprets the Commission's reply to mean that, in sum, it is of the view that it has already addressed the complainant's claim. In its opinion, it refers to the numerous actions it has already undertaken and, in its reply to the Ombudsman's draft recommendation, to its recent proposal to extend the PISA study to all ES. This means that, ultimately, the Commission is not ready to carry out the audit demanded by the complainant and the Staff Committee because the above actions are, in its view, sufficient.

52. In his draft recommendation, the Ombudsman invited the Commission to respond "*properly*" to the complainant's and the Staff Committee's request that it organise an independent external audit of the ES. The question arises, therefore, whether the Commission's above-mentioned overall reply satisfies the Ombudsman's draft recommendation. The Ombudsman considers that it does not.

53. First, the Cavada Report, which the complainant enclosed with its observations on the Commission's reply to the Ombudsman's draft recommendation, provides a number of grounds supporting the Ombudsman's conclusion.

54. The Cavada Report calls for reflection on the possibility of the ES establishing a diploma different to that of the European Baccalaureate [22] . It underlines that, with the exception of SWALS (who benefit from learning support), sciences are taught to pupils in their respective mother tongues [23] , and goes on to encourage the BG closely to follow the world's best education systems, as these emerge from the PISA study [24] . It acknowledges parents' concerns relating to possible cuts to the ES' budget [25] and recalls the need for transparency as regards the EU financial contribution to the system [26] . It underlines that ES' programmes should be externally evaluated and calls for the current reform of the Baccalaureate to be rapidly implemented [27] . It demands high teaching standards and recognises the role of inspectors as control mechanisms for the quality of teachers [28] . It promotes a system of assistance to pupils with disabilities [29] and acknowledges the very high repeat rates in the ES, namely, in the French-speaking section, calling upon the BG to determine the pedagogical and financial causes and consequences of the failure [30] . Finally, it encourages the BG to propose appropriate alternatives to pupils who give up on studying for the European Baccalaureate [31] .

55. The Commission invited the BG to extend participation in the PISA study to all ES and thus



followed the suggestion made in the Cavada Report that the BG look into the best education systems in the world, as they emerge from the PISA study [32] .

56. The Ombudsman notes, however, that the PISA study aims to evaluate education systems worldwide by testing the skills and knowledge of 15-year-old students in participating countries/economies. The PISA study assesses how far students near the end of compulsory education have acquired some of the knowledge and skills that are essential for full participation in society. In all cycles, the domains of reading, mathematical and scientific literacy are covered not merely in terms of mastery of the school curriculum, but in terms of important knowledge and skills needed in adult life. The main findings of the PISA study concern rankings of student performance by country/economy and information on student background, students' approaches to learning and the organisation of schools. Since the year 2000, over 70 countries and economies have participated in the PISA study [33] .

57. As the Commission has pointed out, extending the PISA study to all ES would not only allow the ES to be compared with the national education systems, but it would also allow a comparison to be made within the ES' system itself. In addition, the fact that the PISA study is conducted by the OECD would afford it an element, albeit only an element, of externality vis-à-vis the ES.

58. However, the Ombudsman is not convinced by the Commission's view that this external analysis would allow for a number of questions, namely, those relating to the failure rates in the ES, to be answered [34] . The Ombudsman does not see how a study which focuses on the knowledge acquired by pupils near the end of their compulsory education may be sufficient to satisfy the complainant's, and the Staff Committee's, repeated claims for an audit focusing on the reasons for repeat and dropout rates, which is particularly high in the French-speaking section and in disciplines relating to the sciences, in the ES in Brussels, and/or on issues relating to integrating students with disabilities and/or governance in the ES.

59. Second, the Cavada Report calls for an external assessment of the school curriculum in the ES, which appears to be unrelated to the PISA study and should rather be conducted in addition to it [35] .

60. Finally, third, it is clear from the evidence submitted by the complainant together with its observations on the Commission's reply that the Commission has performed audits into ES, namely, on issues of governance and internal control, in accordance with a service level agreement its internal audit services have signed with the BG [36] . The Ombudsman is surprised that the Commission has never referred to any such audits in its replies to him. Notwithstanding this fact, it is clear that the Commission has never audited the performance of the ES' system as such [37] . The Ombudsman regrets that the Commission did not seize the opportunity offered by the inquiry which led to the present decision clearly to explain why it has never conducted any such audit and/or why it is, apparently, not ready to do so.

61. In light of the foregoing, the Ombudsman considers that the Commission failed properly to respond to the complainant's and the Staff Committee's claims for an independent external audit



of the ES and, consequently, to his draft recommendation. This constitutes an instance of maladministration.

62. When an institution does not comply with the Ombudsman's draft recommendation, the only further step that is available to the Ombudsman is to invoke Article 3(7) of his Statute and to submit a special report to the European Parliament. In the present case, however, the Ombudsman does not consider that the Commission's failure outlined above justifies his submitting a special report to the European Parliament [38] . Notwithstanding this conclusion and in light of the important matters referred to in the Cavada Report, the Ombudsman shall forward a copy of this decision to the European Parliament's Committees on Culture and Education and on Petitions for information.

B. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following critical remark:

The Commission failed properly to respond to the complainant's and the Staff Committee's request for the organisation of an independent external audit of the European Schools. This constitutes an instance of maladministration.

The complainant, the President of the Commission and the Chairpersons of the European Parliament's Committees on Culture and Education, and on Petitions will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 2 April 2012

[1] 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.eursec.eu [Link]).

[2] COM(2004) 519 final.

[3] 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. "



[4] Document with reference 2009-D-353-en-4, available on the European Schools website.

[5] The Ombudsman understands that the term sciences refers to the following subjects: mathematics, physics, chemistry, and biology.

[6] The decision is available on the European Ombudsman's website (www.ombudsman.europa.eu [Link]).

[7] 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... "

[8] Page 21 of the Reform of 2009 contains the following statements: "[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. "

[9] 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 ... "

[10] According to Article 3(2) of the Convention.

[11] 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.

[12] 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 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. "

[13] See the first part of footnote 12 above.

[14] 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*".

[15] 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*".

[16] Reference 2010-D-569-en-3.

[17] 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.

[18] See the first part of footnote 15 above.

[19] The complainant enclosed a copy of the Cavada Report with its observations.



[20] The complainant enclosed a letter from the Commission's internal auditor with his observations.

[21] The complainant enclosed a letter from the President of the European Court of Auditors containing the Court's observations.

[22] In the original French: " *N. reconnaissant la nécessité d'envisager la création d'un certificat de fin d'études autre que le baccalauréat européen pour les élèves qui s'orientent vers une formation axée sur l'apprentissage d'une profession* ".

[23] In the original French: " *2. rappelle que ce système éducatif spécifique permet aux élèves d'étudier toutes les matières (en particulier les sciences) dans leur langue maternelle auprès de chargés de cours qualifiés ou, en tant que SWALS, de bénéficier de l'aide à l'apprentissage nécessaire et de cours leur permettant d'entretenir leur langue maternelle* ".

[24] In the original French: " *23. encourage le conseil supérieur à développer plus activement les EE en suivant l'exemple des meilleurs systèmes éducatifs au monde tels qu'ils ressortent des enquêtes PISA ...* "

[25] In the original French: " *37 ... prend note ... de la récente pétition des associations des parents d'élèves et professeurs des écoles européennes à Bruxelles qui met en évidence les graves menaces que les coupes proposées font peser sur la qualité de l'enseignement et le bon fonctionnement des écoles, et qui s'oppose des lors à toute réduction budgétaire* ".

[26] In the original French: " *39. souligne qu'il importe, dans une perspective à long terme, de renforcer la transparence de la contribution financière de l'Union européenne ...* "

[27] In the original French: " *42. souligne la nécessité d'une évaluation externe des programmes scolaires de EE, sans que cela n'entraîne de frais supplémentaires pour ces écoles, et l'importance de la mise en œuvre des réformes du baccalauréat actuellement en cours* ".

[28] In the original French: " *43. souhaite que le recrutement des chargés de cours réponde à des critères d'excellence et que la qualité de l'enseignement soit assurée, ainsi que la formation et les remplacements en cas d'absence; demande que le conseil supérieur veille à ce que les compétences de ces enseignants soient contrôlées par des inspecteurs* ".

[29] In the original French: " *47. souligne la nécessité de concevoir un système opérationnel pour aider les élèves souffrant de handicaps pendant leur processus d'intégration dans les EE (au moyen, par exemple, d'un soutien pas des enseignants spécialisés) afin d'assurer la mobilité de leurs parents* ".

[30] In the original French: " *48. constate que le taux officiel d'échec scolaire de 2,7% communiqué par le conseil supérieur ne prend pas en compte la grande disparité des résultats scolaires dans les EE, avec en particulier un taux anormalement élevé d'échec scolaire dans la*



section francophone constaté depuis de nombreuses années, et demande que le conseil supérieur s'interroge sur les causes et les conséquences pédagogiques et financières de ce dysfonctionnement, du taux d'échec en général et des taux actuellement élevés d'enfants redoublant chaque année ".

[31] In the original French: " 49. demande à nouveau au conseil supérieur de s'attacher à proposer des alternatives aux élèves qui quittent prématurément la préparation du baccalauréat européen et d'envisager la création d'un certificat de fin d'études autre que le baccalauréat pour les élèves souhaitant s'orienter vers la filière professionnelle ... "

[32] In the original French: " 23. encourage le conseil supérieur à développer plus activement les EE en suivant l'exemple des meilleurs systèmes éducatifs au monde tels qu'ils ressortent des enquêtes PISA ... "

[33] According to the information available on the PISA study's website www.pisa.oecd.org [Link]

[34] According to the Commission (in the original French): "[é] tendre cette analyse à tous les autres établissements du système des EE élargirait non seulement la comparaison du système des EE aux systèmes nationaux mais permettrait également une comparaison au sein même du système des EE. Ces analyses délivreraient des réponses objectives données par un organisme extérieur à certains questionnements posés au sein des EE, parmi lesquels notamment le taux de redoublement ou encore, par extrapolation, le taux de réussite au baccalauréat européen et à sa valeur face aux systèmes nationaux d'éducation. "

[35] The Cavada Report mentions these matters in two different points (in the original French): " 23. encourage le conseil supérieur à développer plus activement les EE en suivant l'exemple des meilleurs systèmes éducatifs au monde tels qu'ils ressortent des enquêtes PISA ... " and " 42. souligne la nécessité d'une évaluation externe des programmes scolaires de EE, sans que cela n'entraîne de frais supplémentaires pour ces écoles, et l'importance de la mise en œuvre des réformes du baccalauréat actuellement en cours ".

[36] According to an undated letter from the Commission's Internal Audit Service ('IAS') enclosed with the complainant's observations: "[t] he IAS has acted as internal auditor of the system of the European Schools since the signing of a service level agreement (SLA) ... in July 2007... [T] he focus of the IAS audits in the European Schools has been on the governance and on the internal control system. So far, the IAS has carried out audits on human resources management ... and audits on financial management... Additionally, the IAS has provided the [Office of the Secretary-General of the ES] with consulting services on the internal control standards and on the planning and monitoring process. While the IAS has never carried out a pure performance audit in the system of European Schools, effectiveness and efficiency of the underlying processes have been considered alongside compliance, particularly in the 2011 audits on financial management that are currently in the reporting phase. The internal audit programme till 2014 will be based on a detailed risk assessment, which is planned for 2012. It should be noted, however, [that] the audit scope and coverage are also [a] function of the



resourcing constraints set by the SLA between the IAS [and] the Board of Governors. "

[37] See footnote 36 above.

[38] In his Annual Report for 1998, the Ombudsman pointed out that the possibility for him to present a special report to the European Parliament is of inestimable value for his work. The Ombudsman added that special reports should therefore not be presented too frequently, but only in relation to important matters of general interest and where Parliament is able to take action in order to assist the Ombudsman. The Annual Report for 1998 was submitted to, and approved by, the European Parliament.