



Schola Europaea

Office of the Secretary-General

General Secretariat

Ref.: 2018-02-D-37-en-2

Original: EN

Second Report of the BREXIT Working Group

BOARD OF GOVERNORS

Meeting on 17, 18 and 19 April 2018

I. Background

On 29 March 2017, the Government of the United Kingdom notified the European Council of the intention of the United Kingdom to withdraw from the Union.

This notification will have direct and indirect impact on the European Schools.

By invoking Article 50 of the Treaty of the European Union (TEU), a two-year negotiation period has started.

In order to follow-up this negotiation process and to analyze the possible scenarios for the intergovernmental system of the European Schools the Board of Governors decided in April 2017 to set up a Working Group to deal with all potential consequences of the 'BREXIT' and a potential denunciation of the Convention Defining the Status of the European Schools.

The Working Group is expected to analyze the legal situation and the potential consequences in the financial, the administrative and in the pedagogical areas. The Working Group should provide a risk assessment and define measures to mitigate identified risks. Finally, the Working Group shall prepare concrete proposals for the Board of Governors in order to ensure the ongoing provision of high quality teaching in all existing language sections in the European Schools.

The Working Group is composed of

- the Secretary-General of the European Schools,
- the Deputy Secretary-General of the European Schools (chairman),
- a representative of the EU Commission,
- three representatives of the Board of Governors (troika),
- a representative of the Directors,
- a representative of the Board of Inspectors,
- a representative of the seconded teaching staff,
- a representative of the locally recruited teaching staff,
- a representative of Interparents.

Pupils' representatives will be invited when pedagogical aspects will be discussed.

Since April 2017 the Working Group met four times in order to have first discussions and to prepare this first report. In three meetings representatives of the UK delegation and the Director of the Europa School UK, Culham participated as guests at least for part of the meetings.

Based on the discussions of the first three meetings a 'First Report of the BREXIT Working Group' was presented in the meeting of the Board of Governors in December 2017.

The first report

- provided an analysis of the legal questions linked to the 'BREXIT',
- addressed the main areas affected by the BREXIT and the risks linked to the BREXIT,
- provided an overview concerning the Article 50 TEU negotiations as far as the European Schools are concerned,
- provided an indicative calendar linked to the BREXIT process and
- identified areas for a potential agreement between the Board of Governors and the UK Government.

The Board of Governors took note of the report including an indicative calendar and a risk register.

Moreover, the Board of Governors mandated at that time the Secretary-General of the European Schools to explore the possibilities and the legal framework for a potential agreement with the UK Government addressing the potential format of cooperation after the BREXIT and respectively after a potential denunciation of the Convention of the European Schools would take effect.

II. Content of the 'Second Report of the BREXIT Working Group'

The content of the 'Second Report of the BREXIT Working Group' was discussed in a meeting of the BREXIT Working Group on 22 February 2018. This second report provides an update concerning the ongoing Article 50 TEU negotiations which have entered the second phase and addresses questions linked to the possibilities and the legal framework for a potential agreement with the UK Government as requested by the Board of Governors in December 2017.

1. State of play of the Article 50 BREXIT negotiations

On 22 May 2017, the Council, based on the Commission's recommendations, authorised the opening of the Article 50 TEU negotiations with the UK and nominated the Commission as Union negotiator. It is envisaged that the negotiations will last approximately 18 months from June 2017 until October/November 2018 (see also the indicative calendar in Annex I of this report).

According to the 'Terms of Reference for the Article 50 TEU negotiations' three initial negotiation groups have been established:

- Citizens' rights;
- Financial Settlement;
- Other Separation issues.

Concerning the issue of 'Financial Settlement' the EU COM Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article

50 TEU tabled on 12 June 2017 the position paper “Essential Principles on Financial Settlement”.

The position paper is meant to provide the main principles of the EU position with respect to financial settlements. Under Chapter ‘VII. Other bodies’, as far as the European Schools are concerned, it states that *“until the end of the academic year 2020-2021, the United Kingdom should continue to contribute to the funding of the teachers it seconded to the European Schools in line with the cost sharing agreement related to the secondment of British teachers”*.

Therefore, the financial aspects of the transition period are addressed under the financial provisions of the withdrawal agreement. They foresee a contribution of the UK until the end of the 2020/21 school year.

On 15 December 2017 the European Council agreed to move to the second phase related to transition and the framework for the future relationship and adopted Council Guidelines in this respect.

On 7 February 2018 the European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50, published the position paper “Transitional arrangements in the withdrawal agreement”.

This position paper tries to translate into legal terms the principles laid down in the European Council Guidelines of 29 April and 15 December 2017 and in the supplementary negotiating directives annexed to the Council Decision of 29 January 2018.

Under the Chapter ‘Transition Period’ within the draft ‘withdrawal agreement’ the EU position paper foresees a **draft** Article X+6 ‘European Schools’ with the following draft wording:

“The United Kingdom shall be bound by the Convention defining the Statute of the European Schools until the end of the school year that is ongoing at the end of the transition period.”

In the EU position paper it is proposed that the transition period is supposed to end on 31 December 2020 (end of the Multiannual Financial Framework – MFF). This would imply that according to the draft Article X+6 the UK would be bound by the Convention of the European Schools **until 31 August 2021**.

Later on, the European Commission published, on 28 February 2018, its draft ‘withdrawal agreement’ between the EU and the UK.

Article 120 of the draft ‘withdrawal agreement’ foresees on European Schools the following:

“1. The United Kingdom shall be bound by the Convention defining the Statute of the European Schools¹⁰⁷, as well as by the Regulations on Accredited European Schools adopted by the Board of Governors of the European Schools, until the end of the school year that is ongoing at the end of the transition period*.

¹⁰⁷

2. The United Kingdom shall, with respect to pupils who before 31 August 2021 acquired a European baccalaureate and to pupils who are enrolled in a cycle of secondary studies in a European School before 31 August 2021 and acquire a

European baccalaureate after that date, ensure that they enjoy the rights provided for in Article 5(2) of the Convention defining the Statute of the European Schools.”

107 OJ L 212, 17.8.1994, p. 3.

*** Explanatory note: i.e. until 31 August 2021.**

The European Council adopted on 23 March 2018 Guidelines which ‘welcome the agreement reached by negotiators on parts of the legal text of the withdrawal agreement’. The draft Article 120 of the withdrawal agreement is part of the draft legal text, on which the negotiators reached an agreement in principle.

2. Legal questions linked to the BREXIT

In this chapter the main legal questions linked to the BREXIT and the possibilities of a potential agreement with the UK government will be addressed again.

a) ‘Denunciation’ versus ‘BREXIT’

The ‘First Report of the BREXIT Working Group’ already addressed the question whether the UK would leave the Convention automatically in case of BREXIT or whether only a denunciation in accordance with Article 31 of the Convention of the European Schools would terminate the UK membership to the Convention of the European Schools.

According to Article 31.1 of the Convention “*any Contracting Party may denounce this Convention by written notification to the Luxembourg Government; the latter shall inform the other Contracting Parties upon receipt of the notification. Denunciation shall be notified by 1 September of any year in order to take effect on 1 September the following year.*”

The UK Government did not notify the denunciation by 1 September 2017.

aa) Analysis of the Legal Service of the EU Commission

The EU COM informed by letter of 29 January 2018 the Secretary-General of the European Schools about the main legal findings of the Legal Service of the EU COM. These findings were discussed in a bilateral meeting on 6 February 2018.

The Legal Service of the EU COM takes the view that with the BREXIT the UK will no longer be a contracting party of the Convention of the European Schools. Being an EU Member State is a precondition to sign the Convention. By losing the status of an EU Member State the UK would cease ‘ipso facto’ to be a contracting party of the Convention of the European Schools.

Nevertheless, based on Article 31.1 of the Convention of the European Schools in connection with Article 70 (1) (b) of the Vienna Convention the UK would be bound by the Convention of the European School until the **end of the 2019/20 school year**.

A further cooperation beyond this date could only be achieved within the withdrawal agreement referred to in the previous chapter of this document.

bb) Analysis of the lawyers of the European Schools

The Office of the Secretary-General of the European Schools has consulted the permanent lawyers of the OSG in Brussels. The consultation of an additional expert in international law is ongoing.

It has been highlighted by one of the legal experts that although the European treaties preceding the current Treaty of the European Union (TEU) already allowed a Member State to withdraw from the European Communities, the Convention of the European Schools did not cover this (known) case and limited the 'leaving scenario' to the denunciation in accordance with Article 31 of the Convention of the European Schools. This would indicate that the contracting parties of the Convention of the European Schools did not want to create a scenario where a Member State signing the Convention of the European Schools would leave or would be expelled automatically. This position would be warranted by the wording of Article 62 of the Vienna Convention which restricts the applicability of the Convention's *clausula rebus sic stantibus* rule to very strict conditions which would not be given in the case of BREXIT.

cc) Analysis of the UK delegation

The UK delegation did not provide an in-depth legal analysis yet. Nevertheless, the UK delegation underlined in several meetings that according to the initial analysis of their legal experts the UK would be bound by the Convention as long as no denunciation in accordance with Article 31 of the Convention of the European Schools has taken place. The UK delegation is considering this further in the light of the Commission's legal analysis and consultation of lawyers is ongoing.

dd) Summary

Summarising the different legal views, it can be stated that all interpretations lead at least to the conclusion that the UK government will be bound by the Convention of the European Schools until the end of the 2019/20 school year.

A cooperation beyond the 2019/20 school year will – according to the Legal Service of EU COM - depend on the content of the withdrawal agreement. The EU proposal for the draft withdrawal agreement foresees a cooperation under the Convention of the European Schools until the end of the 2020/21 school year.

According to the legal experts consulted by the OSG the future cooperation beyond the 2019/20 school year depends on the question of if and when the UK will denounce the Convention of the European Schools.

Finally, the members of the BREXIT Working Group concluded in their meeting of 22 February 2018 that for the sake of legal certainty in this question the legal analysis of the EU Commission should guide the future work of the group.

b) Legal framework for potential negotiations with the UK

In December 2017 the Board of Governors has mandated the Secretary-General of the European Schools to explore the possibilities and the legal framework for a potential agreement with the UK Government addressing the potential format of cooperation after the BREXIT and respectively after a potential denunciation of the Convention of the European Schools would take effect.

Also with respect to this question the Legal Service of the EU COM and the legal experts consulted by the OSG have provided a legal analysis.

aa) Analysis of the Legal Service of the EU Commission

According to the Legal Service EU COM the Convention of the European Schools does not provide any legal basis for transitional agreements or future cooperation agreements between the Board of Governors and the UK. In particular, neither Article 28 nor Article 29 of the Convention of the European Schools would provide such a legal basis. Moreover, the European Schools would not have been delegated any treaty making power. In this respect the Legal Service of EU COM took the position that under EU and International Law, only the Union and the Member States have powers to negotiate. Moreover, the Union has its own procedures under the Treaty to that effect that cannot be derogated outside the Treaty provisions.

Nevertheless, the future cooperation with the UK should become part of the Article 50 TEU 'withdrawal agreement' (see for the details the chapter illustrating the state of play of the Article 50 TEU negotiations).

bb) Analysis of the lawyers of the European Schools

The lawyers consulted by the OSG agree that the wording of Articles 28 through 30 of the Convention of the European Schools authorizing the Board of Governors to conclude agreements with organisations and states do not precisely confer to the Board of Governors the competence to negotiate an agreement with the UK on the settlement of BREXIT related questions and issues of future cooperation.

Nevertheless, the Board of Governors arguably holds, under the Convention and as a general principle of international law, the 'implied power' to negotiate a special agreement with the UK. The UK withdrawal from the EU creates, as the 'First Report of the BREXIT Working Group' has illustrated, the need to organize and regulate a number of questions. The doctrine of the 'implied powers' of International Organisations is accepted in principle in international law. It may rest on powers expressly granted and extends, in short, to powers which are necessary to the exercise to those granted. Implied powers thereby also fulfil the effects of the 'effet utile-rule'. The European Court of Justice relied on this rule in an early case.

cc) Analysis of UK legal experts

Also with respect to this legal question the UK delegation did not provide an in-depth legal analysis yet. Nevertheless, the UK delegation underlined in several meetings that according to the analysis of their legal experts a future cooperation agreement

could potentially be based on Article 29 of the Convention of the European Schools. However, any future cooperation is a matter for the future Article 5 TEU negotiations.

dd) Summary

If the Board of Governors follows the interpretation of the Legal Service of the EU COM only a 'withdrawal agreement' signed as a result of the Article 50 TEU negotiations could ensure a cooperation after the end of the 2019/20 school year. In case of a 'uncontrolled' BREXIT without a withdrawal agreement the cooperation would definitely end on 31 August 2020.

According to other legal experts the Board of Governors might have the legal power to negotiate a potential cooperation agreement with the UK for the period when the UK is no longer bound by the Convention of the European Schools.

This could be the case after the denunciation of the Convention or the end of the transition period foreseen in the draft withdrawal agreement. According to these legal experts such an agreement could either be based on Article 29 of the Convention of the European Schools or on the 'implied powers' of the European Schools inherent to an international organisation.

The members of the BREXIT Working Group concluded in their meeting of 22 February 2018 that the European Schools should focus - at least for the moment - on the potential content of the envisaged withdrawal agreement.

c) Accreditation process of the Europa School UK, Culham

The accreditation process of the 'Europa School UK, Culham' started in April 2013 with the approval of the general interest file presented by the UK Authorities.

At its meeting of 2-4 December 2014, the Board of Governors approved the Europa School's accreditation request as regards the nursery and primary cycles and mandated the Secretary-General to sign an Accreditation Agreement covering these cycles for three years.

In April 2017, the Board of Governors expressed a favorable opinion on the report on the audit of the Nursery and Primary cycle at Europa School and decided to mandate the Secretary-General to renew the Accreditation Agreement currently in force for a further two years, in line with the length of the BREXIT negotiations.

The dossiers of conformity for the accreditation of Europa School UK for S1-S5 (2015-02-D-8-en-2) and for the European Baccalaureate (2015-02-D-9-en-2) were approved at the Board of Governors in April, 2015.

The consequent audit was arranged early after the opening of the relevant sections of the Europa School UK, concluding on 29th September 2017 with a positive recommendation for final approval by the Board of Governors.

The Board of Governors decided in December 2017 to mandate the Secretary-General to continue the accreditation process up to S 5 and to sign an agreement for the European Baccalaureate cycle for two years until the end of the 2018/19 school year.

The BREXIT and the potential denunciation of the Convention raise the question whether this accreditation might be maintained in the future, given the fact that UK would no longer be a part of the EU territory.

Also this question was analyzed by the Legal Service of the EU COM and the lawyers of the Office of the Secretary-General and discussed in depth during the meeting of the Working group on 22 February 2018.

In this context it needs to be recalled that – as already mentioned - also the draft withdrawal agreement, published by the EU COM on 28 February 2018, addresses the accreditation process. Article 120 of the draft withdrawal agreement states:

*"The United Kingdom shall be bound by the Convention defining the Statute of the European Schools, **as well as by the Regulations on Accredited European Schools adopted by the Board of Governors of the European Schools**, until the end of the school year that is ongoing at the end of the transition period."*

aa) Analysis of the Legal Service of the EU Commission

The Legal Service of the EU COM takes the view that in case that the Article 50 TEU negotiations would not result in an agreement with the UK and the Union or efforts to include the topic of the Europa School UK in such an agreement would not succeed, that the accreditation could only be maintained until the date of the BREXIT (30 March 2019).

A possibility to negotiate the accreditation process outside the withdrawal agreement is denied.

In the meeting of the Working Group on 22 February 2018 the Legal Service of the EU COM explained that unlike the European Schools system, as established by the Convention of the European Schools for an indefinite period, with a possibility for any contracting party to denounce that Convention, accreditation for accredited European Schools shall be granted by the Board of Governors for a period of three years, which is renewable (Article 14 of the Regulations on Accredited European Schools; doc. 2013-01-D-64-en-4). The accreditation shall automatically be terminated, without notice or compensation, at the end of the three-year period (Article 19 of the Regulations). The Regulations does not contain a denunciation clause such as the one set out in Article 31.1 of the Convention of the European Schools. Therefore, the clause of the Convention of the European Schools stating that denunciation shall be notified by 1 September of any year in order to take effect on 1 September the following year, would not apply in the case of accredited European Schools which are governed by the Regulations.

bb) Analysis of the lawyers of the European Schools

According to the legal experts consulted by the OSG the systematic interpretation of the Convention of the European Schools and the Regulations on European Accredited Schools may allow the conclusion that also accredited schools can only be established and maintained on the territory of an EU Member State. Legally, it may be sustained that accrediting schools located outside the European Union's territory, whereas the very existence of the European Schools is linked to the construction of the Union and to the education of the children of its agents, would be out of the scope of competence of the Board of Governors, so that the said accreditations would not be valid. Moreover, such accreditations would raise

numerous legal problems and there is an assumption that some of them could not be solved within the legal framework set by the Convention of 1994.

Nevertheless, a smooth transitory period, respecting the expectations of the pupils concerned, might be subject either to the withdrawal agreement or – in case this attempt fails - to a bilateral agreement between the Board of Governors and the UK Government.

In any case and in contradiction with the analysis provided by the Legal Service of the EU Commission, the Board of Governors would be bound by its decision of December 2017 to maintain the accreditation process until the end of the 2018/19 school year. The Board of Governors had taken this decision despite the envisaged BREXIT and has created legitimate expectations. Moreover, it derives from the Regulations on Accredited European Schools and in particular its Article 21 that an accreditation process should cover complete school years and should not be terminated before the end of a school year.

cc) Summary

The accreditation process of the Europa School UK, Culham will be influenced by the BREXIT.

According to the EU COM a smooth transition might be subject to the withdrawal agreement. The UK delegation agrees that this should be included in the withdrawal agreement discussions.

According to other legal experts a smooth transition period might also be subject to a bilateral agreement between the Board of Governors and the UK. Such an agreement, linked to the accreditation process of the Europa School UK, Culham, would probably need a two-third-majority in the Board of Governors.

The members of the BREXIT Working Group concluded in their meeting of 22 February 2018 that the European Schools should undertake efforts that the envisaged withdrawal agreement also addresses the accreditation process of the Europa School UK, Culham.

Subject to a decision of the Board of Governors a prolongation of the accreditation should be possible at least until the end of the envisaged transition period.

The members of the Working Group acknowledged that in case of an ‘uncontrolled’ BREXIT there is a legal uncertainty whether the accreditation process could last at least until 31 August 2019.

Linked to this legal uncertainty the members of the Working Group underlined that it is up to the UK national authorities to provide the necessary safeguards for the pupils currently enrolled in the Europa School UK, Culham that these pupils receive a baccalaureate which is recognized in the UK and the EU Member States.

The influence of the different ‘exit scenarios’ are illustrated in the table below:

Exit scenario for the accreditation process of the Europa School UK, Culham

Scenario	Legal views	Consequences for pupils currently enrolled	comments
Scenario 1: 'uncontrolled BREXIT'	EU COM: End of accreditation on 30 March 2019	No EU BAC for those pupils currently in S 6 or lower	
	Other legal experts: End of accreditation on 31 August 2019	No EU BAC for those pupils currently in S 5 or lower	Based on the decision of the BoG of December 2017 Legal uncertainty remains – UK national authorities will have to provide safeguards for pupils
Scenario 2: BREXIT with withdrawal agreement until end of 2020/21 school year	End of accreditation on 31 August 2021 if BoG decides on prolongation of the accreditation	No EU BAC for those pupils currently in S 3 or lower	

d) Recognition of the European Baccalaureate

According to Article 5 of the Convention of the European Schools, the contracting parties of the Convention are obliged to recognize the BAC.

This obligation will no longer persist when the UK government is no longer bound by the Convention of the European Schools.

Most members of the Members of the Working Group agreed that the recognition of the European Baccalaureate might not be at risk in practical terms. Nevertheless, it was also agreed that a legal analysis on the BAC recognition at the date of the UK exit needs to be conducted.

In this context, the 'Convention on the Recognition of Qualifications concerning Higher Education in the European Region', signed by the Member States of the Council of Europe on 11 April 1997, had been analyzed in cooperation with experts from DG EAC of the European Commission.

According to this analysis the Convention of the Council of Europe cannot 'replace' Article 5 of the Convention defining the Statute of the European Schools.

So the question remained, whether and for how long the future recognition of the European Baccalaureate could be ensured via a potential withdrawal agreement or by other means.

aa) Analysis of the Legal Service of the EU Commission

According to the Legal Service of the EU COM the future recognition of the BAC should be addressed in the withdrawal agreement.

The fact that the UK would be bound by the Convention of the European Schools until a specific date (end of 2020/21 school year) would imply that UK is also bound by Article 5 of the Convention.

Moreover, in the withdrawal agreement a recognition of the BAC beyond that date could be addressed.

Consequently, Article 120 of the proposed draft withdrawal agreement reads as follows:

"The United Kingdom shall, with respect to pupils who before 31 August 2021 acquired a European baccalaureate and to pupils who are enrolled in a cycle of secondary studies in a European School before 31 August 2021 and acquire a European baccalaureate after that date, ensure that they enjoy the rights provided for in Article 5(2) of the Convention defining the Statute of the European Schools."

The possibility of a separate bilateral agreement between the Board of Governors and the UK is denied by the EU Commission.

bb) Analysis of the lawyers of the European Schools

According to the legal experts consulted by the OSG the future recognition of the BAC can be subject to the withdrawal agreement or a to a bilateral agreement between the Board of Governors and the UK.

Moreover, the UK government could decide to recognize the European Baccalaureate in a unilateral declaration.

cc) Summary

The members of the BREXIT Working Group concluded in their meeting of 22 February 2018 that if the UK will be bound by the Convention of the European Schools this will also include the obligation to recognize the European Baccalaureate until the end of the transition period.

If possible, a recognition beyond the transition period should also be addressed in the withdrawal agreement.

3. Financing and staffing of the European Schools

a) Financing of the European School System

The system of the European Schools is mainly financed by the Member States via the secondment of staff and by the EU Commission contributing to the budget of the European Schools.

In the 2016/17 school year in total 1,401 staff members were seconded by the Member States. The number of staff seconded by the UK government amounted to 108 (= 7.7 %)¹.

The contribution of the EU budget to the European Schools system budget 2018 will be decided by the EU Budgetary Authority by the end of November 2017 and will probably amount to 191.304.344 € (= 60,8 % of the total budget). In 2014, the share of the UK contributions to the EU budget amounted to 10.7 %. The UK contribution to the European School system related to the teachers' secondment represents 1.47% of the European Schools' total amount of revenues in 2016.

These figures make clear that the BREXIT and the potential denunciation of the Convention would have a "triple effect".

Firstly, the member states contribution via secondments will be affected.

Secondly, the decrease of secondments will increase the number of locally recruited teachers financed by the EU Commission contribution under heading 5 of the EU budget.

¹ Figures from the document 2016-10-D-2-en-2 "Facts and figures on the beginning of the 2016-2017 school year in the European Schools"

Thirdly, the EU Budget will be influenced by the BREXIT.

The members of the Working Group recognized the 'triple effect' described above. Some members made a link to the 'cost sharing' mechanism that in their view needs to be reviewed. The majority of the members considered however that the necessity to review the cost-sharing mechanism is independent from the BREXIT, but the latter can exacerbate the difficulties. However, the Estonian presidency has announced its intention to start the process of reviewing the cost sharing mechanism.

b) Staffing

The European Schools employ in all staff categories (Seconded Staff, Locally Recruited Teachers, Administrative and Ancillary Staff) staff members with UK nationality. These colleagues are an integral part of the European Schools.

aa) Seconded Staff Members

The number of seconded staff members seconded by the UK government has decreased over the last years from 247 in the 2010/11 school year to 78 in the 2017/18 school year.

School year	Total number²	remarks
2010/11	247	
2011/12	233	
2012/13	217	
2013/14	177	
2014/15	143	
2015/16	119	
2016/17	108	
2017/18	78	Out of them 15 are in their 9 th year
2018/19	60	Out of them are 23 in their 9 th year and 12 teachers are over the UK state pension age (although many teachers chose to work beyond this age)
2019/20	37	Estimation, Out of them 9 would be in their 9 th year

² Figures from the documents "Facts and figures on the beginning of the 20xx-20xx school year in the European Schools" related to the relevant school years.

2020/21	28	Estimation, Out of them 6 would be in the 9 th year
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The majority of the seconded UK teachers in the system are currently in their last 3 years of secondment.

The UK government provided seconded teachers prolonged as of the 2016/17 school year with a prolongation for another four years, but with the following caveat: “... *this contract will continue for a maximum of four years unless otherwise renewed, or until such time as the United Kingdom is no longer a party of the Convention Defining the Statute of the European Schools*”.

Although the European Schools have already experienced a significant loss of UK colleagues, the effect of losing the remaining colleagues with UK nationality should not be underestimated.

bb) Locally Recruited Teachers

The number of locally recruited teachers in general and the number of locally recruited teachers with UK nationality has increased significantly in the last year. Currently, 196 locally recruited teachers with UK nationality³ are employed in the European Schools.

Their rights and duties are ruled out in the Service Regulations for Locally Recruited Teachers in the European Schools that entered into force on 1 September 2016.

Neither the BREXIT nor the potential denunciation of the Convention would have direct implications on their existing contractual relations to the European Schools.

Nevertheless, they will lose their EU citizenship and - depending on the outcome of the negotiations on the BREXIT - their freedom of movement will be impacted in future. This will influence the decision of locally recruited teachers to stay or to leave the system.

Moreover, it will also influence the attractiveness of the European Schools as potential employer.

cc) Administrative and Ancillary Staff (AAS)

With the closing of the European School Culham on 31 August 2017, the number of members of the AAS with UK nationality has dropped to 14⁴.

³ Figures at 6 November 2017 (Business Objects) – 2017/18 school year.

⁴ Figures at 6 November 2017 (Business Objects) – 2017/18 school year.

Like the contract for the Locally Recruited Teachers, neither the BREXIT nor the potential denunciation of the Convention will have direct implications on their contractual relations to the European Schools.

Nevertheless, the attractiveness of the European Schools as an employer may be affected by a BREXIT, although the impact on the system will be minor due to the low number of AAS members with UK nationality.

dd) Concrete proposals

(1) Financing

The financial provisions of the withdrawal agreement foresee that the UK will have to contribute to the European Schools until the end of the 2020/21 school year.

This negotiation guideline will be respected by the 13 European Schools when establishing the Budget for 2019.

Whether the UK will contribute via secondments or via financial contributions within the cost sharing agreement should be addressed in the context of the discussions of the draft 2019 budget.

Moreover, the Board of Governors should start discussions on a potential revision of the cost-sharing model.

(2) Staffing

In any case, the number of Locally Recruited Teachers who will have to replace seconded colleagues from UK will further increase.

The Locally Recruited Teachers Working Group currently discusses proposals which should improve the contractual 'package' offered to Locally Recruited Teachers. Items under discussion are the terms of contract, a settlement allowance and – on request of the parents' representatives – a particular expatriation allowance.

In this context Article 31.2 second sentence of the Convention of the European Schools needs to be recalled which states: "*The Board of Governors shall decide which organizational measures, including staff measures, are to be taken as a result on denunciation by any Contracting Parties*".

c) School population

According to the latest report of the Secretary-General out of 26.691 pupils 1.314 students have a UK nationality (= 4.9%).

Most of them are category I pupils. Their parents are civil servants, contract agents or temporary agents working for the EU institutions and therefore entitled to enroll their children in the European Schools as category I pupils.

Having been appointed before the BREXIT, they are lawfully appointed according to the rules applicable at the time and therefore, their appointment or contract is valid and should continue its natural term.

Nevertheless, their employer could decide to use some clauses of the Staff Regulations such as the 'early retirement' (Article 42 c), 'compulsory resignation' (Article 49), which makes an explicit reference to the loss of the citizenship mentioned in Article 28(a) as a condition for appointment, or the 'retirement in the interests of the service' (Article 50), as well as the provisions related to temporary and contractual staff in the Conditions of Employment of Other Services (Article 47 (c) (ii) and 119).

For the moment, it is difficult to envisage the policy approach of the institutions in this matter.

Anyhow, even in case of an end of the contractual relationship with the EU institutions the former staff members concerned could decide to keep their children enrolled as category III pupils in the European Schools.

The Working Group analyzed, whether a potential withdraw of UK pupils could have consequences for the EN sections in the remaining 13 schools.

The figures provided in Annex II of this report demonstrate that in all 13 schools the need for an English section will persist.

d) Quality of Teaching and Learning

Currently, all European Schools have an English section. With the 'Gaignage Criteria' (document 2015-04-D-18-en-1 "*Criteria for the setting up, closure or maintenance of European Schools*") the Board of Governors has established the criteria for opening and closing language sections.

English is taught as Language 1 (L 1), L 2, L 3 and L 4.
Several subjects as History, Geography, Economy, Art, ICT, Ethics, Music and Physical Education are taught in English as L 2.

The members of the Working Group recognized the pedagogical value of keeping as many English native pupils in the system as possible.

It was also stressed that the system will lose two national inspectors. These inspectors play a key role in quality assurance and, with reference to the English language, take a subject-specific responsibility for curriculum development, the European Baccalaureate and the professional development of teachers. The remaining Irish and Maltese inspectors cannot easily compensate this.

Nevertheless, the potential future support of the system by the UK could be subject to a special agreement between the Board of Governors and the UK Government.

III. Conclusions of the Budgetary Committee

The Budgetary Committee supported the report and invites the Board of Governors to adopt the proposed conclusions and recommendations.

IV. Proposal

The members of the BREXIT Working Group invite the members of the Board of Governors to adopt the following conclusions and recommendations:

1. The European Schools welcome that the draft withdrawal agreement addresses the influence of the 'BREXIT' to the system of the European Schools.
2. The European Schools welcome that according to Article 120 of the draft withdrawal agreement the UK would be bound by the Convention of the European Schools until the end of the 2020/21 school year.
3. The European Schools welcome that the draft withdrawal agreement foresees that the *"UK shall, with respect to pupils who before 31 August 2021 acquired a European Baccalaureate and to pupils who are enrolled in a cycle of secondary studies in a European School before 31 August 2021 and acquire a European Baccalaureate after that date, ensure that they enjoy the rights provided for in Article 5(2) of the Convention defining the Statute of the European Schools"*.
4. The European Schools welcome that the accreditation process of the Europa School UK, Culham is addressed in the draft withdrawal agreement and that - subject to the final decision of the Board of Governors - the accreditation of the Europa School UK, Culham might be prolonged until the end of the transition period.
5. The European Schools take the view that in the case of an 'uncontrolled' BREXIT the UK will be bound by the Convention of the European Schools until the end of the 2019/20 school year.

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6. Moreover, the European Schools take the view that in case of an ‘uncontrolled’ BREXIT the accreditation process of the Europa School UK, Culham, should be maintained at least until the end of the 2018/19 school year. Taking in consideration the remaining legal uncertainty, the UK national authorities are encouraged to provide the pupils currently enrolled in the Europa School UK, Culham with the necessary safeguards in case the accreditation would finish by the end of March 2019.

Indicative Calendar⁵

Date	European Schools	EU Article 50 Negotiations
29 March 2017		Notification of the BREXIT by the UK Government
4 – 7 April 2017	Decision of the Board of Governors to set up a working group dealing with the BREXIT	
29 April 2017		EU Council at EU 27 adopted a set of political guidelines which define the framework for the negotiations
3 May 2017		EU COM recommendations including negotiation guidelines
10 May 2017	1 st meeting of the BREXIT Working Group	
22 May 2017		EU Council authorized the opening of the negotiations
12 June 2017		EU COM Position paper “Essential Principles on Financial Settlement” mentioning the ES
19 June 2017		1 st round of Article 50 negotiations ➤ Publication of terms of reference
17 – 20 July 2017		2 nd round of Article 50 negotiations
28 – 31 August 2017		3 rd round of Article 50 negotiations

⁵ The calendar will be updated on a regular basis.

11 September 2017	2 nd meeting of the BREXIT Working Group	
18 - 21 September 2017		4 th round of Article 50 negotiations
9 – 12 October 2017		5 th round of Article 50 negotiations
7 – 8 November 2017	Budgetary Committee	
9 – 10 November 2017		6 th round of Article 50 negotiations
13 November 2017	3 rd Meeting of the BREXIT Working Group	
5 – 7 December 2017	1st Report to be presented to the Board of Governors ➤ Prolongation of the accreditation of ES Europa until the end of 2018/19 school year	
15 December 2017		Article 50 Council Negotiation Guidelines
29 January 2018		Article 50 Council Decision with supplementary negotiation directives
7 February 2018		COM position paper on 'Transitional arrangements in the withdrawal agreement'
21 February 2018		UK position paper concerning the 'Implementation Period'
22 February 2018	4 th Meeting of the BREXIT Working Group	

28 February 2018		Publication of the EU COM Draft Withdrawal Agreement
13 – 14 March 2018	Budgetary Committee	
22 – 23 March 2018		European Council Council Guidelines of 23 March 2018
17 – 19 April 2018	<p>2nd Report to be presented to the Board of Governors</p> <ul style="list-style-type: none"> ➤ Recommendations with respect to the Article 50 'withdrawal agreement' ➤ Proposals to amend the Service Regulations for LRT 	
October 2018		European Council ➤ Approximate end of EU Article 50 negotiations
November 2018	Budgetary Committee	
December 2018	3rd Report to be presented to the Board of Governors	
February 2019		Council and EP decision on the draft agreement with the UK
29 March 2019		BREXIT

April 2019	4th Report to be presented to the Board of Governors	

School population

Elèves dans section anglaise qui n'ont pas dans leur(s) nationalité(s) 'British'.

	M	P	S	Total
Alicante	30	73	123	226
Bergen	30	80	113	223
Bruxelles I	22	116	198	336
Bruxelles II	45	110	160	315
Bruxelles III	34	90	139	263
Bruxelles IV	26	147	251	424
Frankfurt	58	191	183	432
Karlsruhe	23	93	135	251
Luxembourg I	80	168	148	396
Luxembourg II	62	182	185	429
Mol	28	102	163	293
München	19	59	87	165
Varese	41	132	150	323
Total	498	1543	2045	4076

Language 2

	P	S	Total
Alicante	271	360	631
Bergen	106	195	301
Bruxelles I	790	1143	1933
Bruxelles I(Berkendael)	75		75
Bruxelles II	624	1083	1707
Bruxelles III	607	1027	1634
Bruxelles IV	669	848	1517
Frankfurt	333	382	715
Karlsruhe	142	182	324
Luxembourg I	697	880	1577
Luxembourg II	590	768	1358
Mol	108	217	325
München	337	573	910
Varese	364	547	911
Total	5713	8205	13918

Language 3

	S
Alicante	25
Bergen	7
Bruxelles I	429
Bruxelles II	460
Bruxelles III	379
Bruxelles IV	252
Frankfurt	170
Karlsruhe	91
Luxembourg I	403
Luxembourg II	266
Mol	22
München	561
Varese	43
Total	3108

Risk Analysis 'BREXIT'

No	Risk	Description	Action	Comments
1	Uncontrolled 'BREXIT'	<p>The 'BREXIT' and the denunciation of the Convention may not take effect on the same time. Moreover, it is not clear whether UK can stay a contracting party of the Convention after the BREXIT.</p> <p>In particular, the second semester of the 2018/19 school year may be concerned.</p>	<ul style="list-style-type: none"> ➤ Legal clarification by 12/2017 ➤ Consultation of the UK delegation ➤ Analysis of the possibility of an 'agreement' based on the Convention by 04/2018 ➤ 'influence' the Article 50 negotiations ➤ Analysis the situation of other international organizations (Florence) 	<p>LS EU COM denies possibility of a separate agreement, but period until end of 2020/21 school year is addressed in the draft 'withdrawal agreement'</p>
2	Financing of the system	<p>With the 'BREXIT', the financing of the EU will be reviewed. The amount of the future contribution of the EU COM to the budget as of 2019 is unclear.</p> <p>The contribution of the UK delegation via secondments risks going down to zero.</p> <p>In the same time the need for English native, locally recruited teachers, financed by the EU COM, will increase.</p>	<ul style="list-style-type: none"> ➤ Preparation of the 2019 budget ➤ Review of the 'cost sharing mechanism' 	<p>UK is supposed to contribute to the system until the 2020/21 school year according to the draft 'withdrawal agreement'</p>

3	Staffing	<p>The number of teachers second by the UK risks going down to zero.</p> <p>The attractiveness of the European Schools as employer for UK nationals is at risk.</p>	<ul style="list-style-type: none"> ➤ Mandate LRT WG to analyze the attractiveness of the 'package' offered to LRT ➤ Concrete proposals of the LRT WG by 04/2018 	<p>done</p> <p>pending</p>
4	Loss of teaching and learning quality	<p>The loss of English native teachers and pupils might affect the quality of teaching and learning.</p> <p>The system will lose two inspectors who play a key role in quality assurance.</p>	<ul style="list-style-type: none"> ➤ Analysis of the language sections in the 13 schools 	done
5	Recognition of the BAC in the UK	<p>With the denunciation of the Convention, the BAC is no longer automatically recognized in the UK.</p>	<ul style="list-style-type: none"> ➤ Recognition of the BAC could be part of an 'agreement' ➤ Analysis of the 'Convention on the Recognition of Qualifications concerning Higher Education in the European Region'. First step: contact DG EAC by 10/2017 ➤ Define the role of UCAS coordinators 	<p>Recognition is part of the draft 'withdrawal agreement'</p> <p>Outcome: The Convention of the Council of Europe does not help</p>

6	Accreditation process of the Europa School Culham	The accreditation process of the Europa School Culham might be influenced because the school will no longer be located in an EU Member State.	<ul style="list-style-type: none"> ➤ Legal clarification by 12/2017 ➤ Verify whether the cooperation with the Europa School UK, Culham could be subject to a particular agreement 	Accreditation is addressed in the draft 'withdrawal agreement'