

Legal fact sheet n° 2: The European Baccalaureate

The European Baccalaureate - legal framework and case-law

The Covid-19 pandemic has disrupted not only teaching in European schools but especially the procedures for obtaining the European Baccalaureate (BE), the examinations having been canceled and replaced by the marks of the pre-Bac exams and continuous monitoring. On this occasion, the establishment of a moderation system prompted a record number of appeals before the [Complaint Board of the European Schools](#) (CBES). It is therefore useful to come back to the legal framework of the BE and the corresponding case law.

Before we delve further into the subject below, it should be noted that appeals against decisions relating to the European Baccalaureate are only possible for procedural irregularity, a concept interpreted extremely strictly by the CBES. The fact that the questions were too difficult or not seen in class, for example, does not constitute a procedural irregularity. Under these conditions, only a minority of the contentious appeals before the CBES are successful.

The BE is governed by Article 5 of the 1994 [Convention defining the Statute of European Schools](#), which stipulates that the diploma is recognized in all State Parties to the Convention. The general principles of the European Baccalaureate are set by the [Regulations for the European Baccalaureate](#) (REB), while detailed provisions for the conduct of the examinations are contained in the [Arrangements for Implementing the Regulations for the European Baccalaureate](#) (AIREB). The consequences of absences during the S7 year are governed by articles 30.g and 30.h of the [General Rules of the European Schools](#) (GR). The baccalaureate exams are common to all European schools and are organised by a jury, with a president.

The results of the baccalaureate may be the subject of an administrative appeal in accordance with article 66.2 GR:

“The European Baccalaureate examination may be the subject of an administrative appeal under the conditions laid down in Article 12 of the Arrangements for Implementing the Regulations for the European Baccalaureate, referred to in Article 5.2 of the Convention defining the Statute of the European Schools”.

Under article 67 GR, decisions to reject an administrative appeal may be the subject of a contentious appeal before the Complaint Board (CBES), a judicial body made up of judges from the States Parties to the Convention, which has a [Statute](#) as well as [Rules of Procedure](#) (RP). In accordance with article 12 RP, natural persons bringing a legal action against Baccalaureate results may choose to be represented by a lawyer or to represent themselves before the CBES.



Article 12 AIREB governs the appeal procedure against Baccaureate results. The administrative appeal must be made to the Central Office of the Secretary General of the European Schools within ten (10) calendar days of the communication of results to the candidates as referred to in Article 7.3 AIREB. The Secretary-General will forward the appeal to the President of the Baccaureate jury. The Chairman of the Baccaureate jury rules on the admissibility and substance of the appeal, which can only relate to procedural irregularities, and more specifically irregularities with respect to the procedures established by the RBE and the RARBE. A decision on the administrative appeal must be rendered and communicated to the complainant within 15 days of its filing (article 12.4 paragraph 2 AIREB).

An implicit or explicit decision to reject the administrative appeal may, in accordance with article 67.4 GR, be contested before the CBES within two weeks either of the notification of the rejection in the event of an explicit rejection, or - in the event of implicit rejection - of the expiration of the 15 day period of article 12.4 paragraph 2 AIREB.

According to article 12.4 paragraph 1 AIREB, *"should it be deemed admissible and well founded, the Chairman of the Examining Board will assess on a case by case basis the need for the candidate to retake the examination"*. It follows from the wording of this provision that the need for the candidate to retake the examination is not a general rule but must be assessed on a case-by-case basis, for example if a procedural irregularity specifically affected that candidate. In the event of a general procedural irregularity, all candidates who are in the same situation as the candidate authorised to retake an exam may also benefit from that opportunity (article 12.5 AIREB).

The CBES must reach a decision within six months of receiving the appeal (article 67.6 GR). In view of these deadlines, and of the case-law with numerous examples of Baccaureate-related decisions issued months after the notification of its results, it is recommended that candidates and/or parents submit, at the same time as their request for annulment, a request for suspension of enforcement or other interim measures (articles 34 and 35 RP). In addition to a speedy resolution to the request for suspension of execution, which could occur before the start of the academic year (see for example decisions [10/65R](#) and [14/37R](#), taken during the month of August), this procedure allows the CBES to order *"any interim measure required to be taken"* (article 35.2 RP). This is in contrast to an action for annulment, where the CBES only has the power to annul the contested decision and may not issue injunctions against the European schools.

A search of the CBES database indicates 32 decisions relating to the Baccaureate (the APEEE is aware of one additional unpublished decision), 6 of which were to the benefit of the applicants, for a success rate of 19 %. In the absence of detailed public data, it is not possible to indicate the success rate of administrative appeals.