

Background note to draft statutory changes

Extraordinary General Meeting, December 7th 2023

1. Introduction

1.1. Legal basis: 2019 Companies and Associations Code

Belgium enacted a new Companies and Associations Code ("*Code des sociétés et des associations*"¹; hereafter called CSA) in February 2019 which applies as of 1st May 2019. The new law is based on three main principles: simplification, flexibility and compliance with European evolutions.

APEEE EEB2², is an international non-profit association (« *Association Internationale Sans But Lucratif* », hereafter called AISBL). Up to enacting of the new CSA, APEEE EEB2 fell under the Belgian Law of 27 June 1921 governing non-profit associations³. Organisations, including APEEE EEB2, have to review, and adapt where needed, their articles of association to the new CSA. For associations existing prior to May 1, 2019, a transitional period will apply from January 1, 2020 until January 1, 2024. Therefore APEEE EEB2 has until 1 January 2024 to update the statutes.

1.2 Statutes APEEE EEB2

The European School, Brussels II was created in 1974. The Convention defining the Statute of the European Schools⁴ states in art. 23:

For the purpose of maintaining relations between the pupils' parents and the School authorities, the Board of Governors shall recognize for each School the Association which is representative of the pupils' parents.

The existence of a parent association in each European School is therefore linked to the Convention of the European Schools, and part of the governance model of European Schools.

The APEEE EEB2 was established in the seventies. Since the creation of APEEE EEB2, there has been no comprehensive revision of the statutes.

1.3 Process followed for the revision of the statutes

The APEEE Administrative board (hereafter called the administrative board) received in May 2022 a legal advice by Maître Parsa on the mandatory legal requirements to comply with the CSA. Maître Parsa also submitted a proposal for each article where a revision was needed.

¹ Full text :

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2019032309&table_name=loi

² Officially called « Association des Parents d'Elèves de l'Ecole Européenne de Bruxelles II -Woluwe » (see art. 1 statutes).

³ Full text: <https://www.nbb.be/doc/ba/jur/npi/loi19210627%20juil2009.pdf>

⁴ https://www.eursc.eu/BasicTexts/SW1_21994A0817-en.pdf

The administrative board created in February 2023 a Working Group Statutes Update⁵ (hereafter called “Working Group”) to prepare the decisions to be taken by the Administrative Board.

In view of the complexity of the task, and to ensure that the Working Group would reflect the diversity of the parent community, a call for volunteers was sent to the parent community in March 2023. Following the call, the Working Group was expanded, resulting into 11 parents and reflecting a variety of views and backgrounds.

The APEEE Administrative Board defined the mandate to the Working Group to keep the changes to what is legally required. The administrative board adopted in March 2023⁶ a two-step approach:

- *Step 1: The revision of the statutes to be legally compliant with the requirements set out by the Belgian Code of Companies and Associations of 2019 and keep the changes to the minimum.*
- *Step 2: Once Step 1 is completed, the WG will start with a modernisation of the statutes. Step 2 will also consolidate the changes made during Step 1.*

If between the completion of step 1, during board meetings, discrepancies or divergent opinions appear regarding the interpretation or application of the statutes, the board will put the matter forward to the Working Group Statutes Update which will submit to the Board a proposal for the interpretation of the Statutes.

Upon completion of Step 1, the WG Statutes Update will submit the relevant draft revised statutes to the Board. The Board shall then vote on such draft for submission to the General Assembly.

Upon the completion of Step 2, the WG Statutes Update will submit to the Board the draft revised statutes as resulting Step 2 for the final vote. If Step 2 is not fully accomplished by the submission deadline for the Extraordinary General meeting, the vote will be taken only on the articles for which a revision is already proposed.

The statutory changes required by law, were more complex than anticipated. Therefore, the Working Group was not able to move to Step 2.

The Working Group submitted draft revised statutes to the APEEE administrative board on October 24th for a vote. The administrative board accepted all changes, except those for art. 14 and art. 17. For these articles an alternative proposal was accepted submitted by two board members. Following its approval by the board, the draft revised statutes are now submitted for a vote at an extraordinary general meeting on December 7th, 2023.

To change the statutes 2/3 of the members need to be present or represented at the meeting. All changes require a 2/3 majority. The exception being the object of the association which requires a 4/5 majority.

The statutes are available in English and French. The legally valid version is the French version. The English version is only for information purposes.

1.4 Scope of changes

⁵ Page 4 : <https://woluweparents.org/wp-content/uploads/2023/04/Board-Meeting-Report-16-02-APPROVED.pdf>

⁶ Page 2 : <https://woluweparents.org/wp-content/uploads/2023/05/Draft-Board-Report-27-04-APPROVED.pdf>

APEEE EEB2 is an AISBL. Book 10 of the new CSA covers AISBL's. In addition to this, Book 2 of the new CSA contains the general provisions applicable to all types of companies and associations.

One of the intentions of the Belgian legislator was to make Belgium an attractive location to set up an AISBL. As a consequence, the requirements for an AISBL are a minimal and an AISBL has a large liberty to decide how it wants to organise itself. Therefore, no article in book 10 resulted in a change in the statutes.

Book 2 which contains the common provisions states in art. 2:5§3 the mandatory requirements for the statutes of an AISBL. Those mandatory requirements are listed in art. 2:10. Maître Parsa created a table⁷ listing those mandatory requirement, mentioning if the statutes are conform, non-conform or need to be completed. Based on this table, the Working Group worked on a revision of the statutes. The revision could be regrouped according to the type of change:

- Mandatory clauses which do not exist in the current statutes and had to be newly drafted (Colour code: grey)
- Articles moved from rules of procedure to the statutes (colour code: bright green)
- Administrative and other minor changes (Colour code: turquoise)

These changes will be explained in detail below. Each change will receive a colour code. For a quick overview of the changes, consult the comparative table of the statute changes with colour coding which can be found in the supporting documents for the extraordinary general meeting.

2. Changes to the statutes

Below you will find a summary of the changes to the statutes. This summary does not replicate the changes to the statutes, rather it explains and provides background information.

2.1 Modification object and Statutes (Colour code: grey)

According to the new CSA, the statutes need to define the objects and the activities of the association⁸. In the current statutes:

- art. 3 defines a purpose, but no activities.
- the purpose in art. 3 includes activities⁹
- Art. 1 contains also a purpose¹⁰, however with no relation to art. 3

⁷ See section 2.2.2 in Annex 1 Avis relatif aux Statuts de l'APEEE Woluwe (Bruxelles II)

⁸ CSA article 2 :10, §2,3°: « la description précise du but désintéressé qu'elle poursuit et des activités qui constituent son objet. » In the current English translation of the statutes « but » is translated as “object”. And equally valid translation could be “goal” or “purpose”.

⁹ See statutes art. 3(3) “to organise extra-curricular activities and any other activities”

Therefore, the Board decided to rework the purpose along the following principles:

- only article 3 should define the purpose and the activities
- there should be a clear separation between purpose and activities
- the purpose should be comprehensive to ensure that none of the recurrent activities in APEEE fall outside its scope

The following methodology was applied:

- a list was made of the recurrent APEEE activities
- it was verified if the current purpose matches the activities
- if required, the purpose was adjusted, separating also the activities from the object
- once the purpose was established, the list with activities was cleaned up and harmonised
- a final verification was done to ensure that the purpose covers all activities, and vice-versa.

Currently APEEE has a social fund¹¹, but no a statutory basis for the social fund. By modifying the purpose as proposed, a statutory basis is provided for the social fund or any other means.

The list of activities proposed in article 3 is detailed but still a non-limited one¹².

In addition to this, the list of activities is completed with a closing paragraph with standard phrases, which are commonly used in the statutes of non-profit associations:

- *in case of economic activities, these economic activities are ancillary, i.e. instrumental to fulfil the purpose of the association, but not a purpose in itself*
- *the association cannot allocate economic advantage to the members or administrative board members or any other person.*

The purpose of such last paragraph is to clarify the non-profit nature of the association.

2.2 Appointments and dismissals by the board (Colour code: grey)

The new CSA required that the statutes define how the persons who represent the association towards third parties are appointed¹³. Moreover, the statutes should also define how the

¹⁰ See statutes art. 3 “à but pédagogique”.

¹¹ <https://we2parents.wpengine.com/wp-content/uploads/2023/03/Revised-rules-for-Social-Fund-16-12-2021-1.pdf>

¹² The proposed statutes state « entre autres » : « Dans la poursuite de ses buts, l'association menera, **entre autres**, les activités suivantes »

¹³ CSA article 2 :10, §2, 7°, c) : « le mode de désignation des personnes qui ont le pouvoir de représenter l'ASBL vis-à-vis des tiers. »

person responsible for the daily management of the association is appointed, and the way those powers are exercised¹⁴.

Currently, these required statutory provisions are absent from the statutes. These required new articles cover the appointment of the members of the Bureau and the APEEE Director. Both have in common that their appointments are done through a vote by the Administrative Board. Since this concerns new articles, they will be treated separately below:

2.2.1 The Bureau (art. 14)

The Bureau is a body in APEEE EEB2 with no decision-making powers. As such, its only role is to ensure that the list of full members, and therefore the electoral list of the general meeting, is correct¹⁵. However, the main importance of the Bureau are the members and the role they have in the association. The Bureau is composed of the following members:

- one Chairperson, who shall be Chairperson of the Association;
- one Vice-Chairperson especially responsible for educational matters;
- one Vice-Chairperson especially responsible for administrative matters;
- one Secretary;
- one Assistant Secretary especially responsible for information;
- one Treasurer;
- one Member.

Of those roles, the Chairperson, the vice-chairpersons and the Secretary have a statutory defined role. The Chairperson and the vice-chairpersons have a representational role in the various bodies which are part of the European School governance system.

The election of the Bureau takes place after the annual general meeting, during the first meeting of the administrative board. In the time between the election of the new members of the Administrative Board and the appointment of the members of the Bureau, the Board might be asked to attend official meeting, such as the School Administrative Board or Interparents meetings as well as to sign documents related to the management of its services. In the lack of specific provisions, at times outgoing Administrative Board members, even when not reelected, have exercised their representational role, until the election of the new Bureau. In the draft new art. 14, the Board proposes that only if re-elected can the Bureau members continue exercise their duties in the interim period, if need be, thus ensuring normal business continuity.

The election of a member of the Bureau takes place through secret ballot. The election of the Bureau is a key process in setting up the Administrative Board, therefore the Board proposes that a high quorum is requested for the election: namely, two-third majority of the members of

¹⁴ CSA article 2 :10, §2, 7°, d) : « le cas échéant, le mode de nomination et de cessation de fonction des personnes déléguées à la gestion journalière de l'ASBL, l'étendue de leurs pouvoirs et la manière d'exercer leurs pouvoirs, en agissant soit séparément, soit conjointement, soit en collège. »

¹⁵ Current Rules of Procedure Art. 12 *"All Class Representatives elected are listed each year by the Bureau of the Association and are thereby confirmed as full members of the Association."*

the Administrative Board in the first round, then half plus one of the members, and finally the candidate with more votes.

Based on the requirements of the new CSA, the draft new art. 14 also specifies how the Bureau members cease from their functions and how they are dismissed (§8). Key elements for these proposals are the following:

- members of the Bureau are elected by the Administrative Board in its first meeting after the general meeting;
- the mandate of the members of the Bureau expires at the next general meeting;
- between the general meeting and the election of the new Bureau, previous members of the Bureau can act only if they are still members of the Administrative Board. If none of them is re-elected, then the Administrative Board member with the most seniority in the Board shall act as the interim chairperson; In case there are more than one member with the same seniority, the member of the Administrative Board most senior by age shall act as Chairperson interim.
- elections take place by secret ballot
- majorities are clearly fixed both for election and dismissal.

2.2.2 The director (art. 17)

The current statutes of APEEE EEB2 state that the administrative board may delegate day-to-day management. The new CSA obliges that the statutes define how this delegation is given and terminated and the range of powers received by this delegation. This delegation is currently not defined in the APEEE EEB2 statutes.

APEEE EEB2 has since several decades a Director responsible for the management. This Director acts individually and is not part of a collegial management body. Therefore, a revised article 17 codifies the existing delegation of day-to-day management to a director with the following key elements:

- the director is appointed and dismissed by decision of the Administrative Board (if at least two thirds of the Board members are attending the meeting and if more than half of the Board members vote in favour), which must be consistent with applicable laws and contractual arrangements
- the director acts individually
- the director cannot be a member of the Administrative Board
- the director is responsible for day-to-day management, where relevant tasks to be entrusted to the Director are set by the Board
- when employing staff or entering service contracts, the Director shall act consistently with procedures defined by the Board
- the Director's reporting obligation and supervision by the Board are stated in the statutes
- in case the director is absent, the daily management will be carried on in accordance with the internal procedures established by the Board in cooperation with the Director so to ensure business continuity.

2.3 Articles moved from rules of procedure to the statutes (colour code: bright green)

APEEE EEB2 has currently Rules of Procedure. These Rules of Procedure are approved by the general meeting and require a 60% majority to be modified¹⁶. To put into perspective, a modification of the statutes requires a 66% majority. Therefore, the difference between modifying the rules of procedure and the statutes is only 6%. Modification of the rules of procedure entails a heavy procedure since it involves the general meeting. The result is that the rules of procedure have been rarely modified. Instead, procedures have been established outside the statutory framework.

Moreover, it is notable that current rules of procedure contain several provisions which by law should be in the statutes:

- rights and obligations of the members (article 2 :10, §2, 5° du CSA)
- the conditions and formalities to become a member (article 2 :10, §2, 4° du CSA)
- the nomination of members of the administrative board (article 2 :10, §2, 6° du CSA)

Therefore, the Board proposes to move all provisions, which by law should be in the statutes, from the current rules of procedure to the statutes. After having completed this exercise, merely three paragraphs related to the functioning of Working Groups¹⁷, did not have a legal requirement to be included in the statutes.

2.4 Creation of internal rules (art. 12) (Colour code: grey)

As mentioned above, all apart but three articles were moved from the Rules of Procedure to the Statutes. From a practical point of view, it is not logical to have rules of procedure consisting of three articles only. In addition to this, art. 2:59 of the new CSA states that the administrative board can establish a “*Règlement d’ordre intérieur*” if the statutes authorise so.

Therefore, the draft revised statutes propose to modify article 12 and replace the existing Rules of Procedure with a “*Règlement d’ordre intérieur*”. This new “*Règlement d’ordre intérieur*” would be governed according to the principles establish by the new CSA:

- is voted by the administrative board
- should not be contrary to the law, the mandatory requirement of the new CSA and the statutes
- should be communicated to the members by email
- should be available on the internet site of the association.

The creation of internal rules at the level of the administrative board, will enable the administrative board to formalise a number of informal and non-documented procedures. By

¹⁶ See Art. 12: “*The General Meeting may adopt internal rules of procedure. A three-fifths majority of the full members present or represented shall be required for the purpose of approving or amending the rules of procedure.*”

¹⁷ Rules of Procedure, art. 15

documenting those procedures, and communicating them to the parent community, there will also be more transparency towards the parents.

Regarding the three articles of the Rules of Procedure, which by law do not require to be moved to the statutes, a proposal is made to include them in the new revised statutes. Since all articles of the rules of procedure has been approved by the general meeting, and the current change of statutes are limited to these required by law, the administrative board does not wish to make changes to what the General Meeting has agreed upon in the past. When the administrative board starts with the second step, and modernisation of the statutes, it can be reflected if the “*Règlement d’ordre intérieur*” is a more suitable place for these articles.

2.5 Administrative and other minor changes (Colour code: turquoise)

2.5.1 Minor changes required by law

In addition to all the substantial changes mentioned above, the new CSA required a number of changes that rather technical in nature and do not alter the current governance model of APEEE EEB2. These changes have therefore been regrouped as administrative changes. They are the following:

- Remove reference to the law of 1921 (art. 1, art. 22 and section 6)
- Reformulation of the geographic location (art. 2)
- To mention that the board exercises its powers as a collegial body (art. 13.1.A)
- To make the equivalence between the administrative board and “*organe administrative*” which is the terminology applied in the law (art. 13.1.A)
- To specify in case of dissolution of the association, the charitable purpose to whom the assets shall be donated shall be similar in object to APEEE EEB2 (art. 22).

The changes in art. 13.1.A require some more background information. According to the new CSA, the statutes need to mention the way the administrative board exercises its powers. The law foresees three options for the administrative board to exercise its powers: individually, jointly and collegially. According to current the statutes, and current practice, the administrative board of APEEE EEB2 is functioning as a collegial body. Therefore, Maître Parsa proposes to mention in art. 13.1.A of the statutes that the administrative board functions as a collegial body. When an administrative board is collegial, it means that every member is equal in the adoption of the decisions. It also means that the decisions are not taken arbitrarily the chairperson, but the group of members of the administrative board by a majority vote. Therefore, the proposal by Maître Parsa renders explicit, as required by law, the existing manner in which the administrative board of APEEE EEB2 exercises its powers.

2.5.2 Minor changes deemed necessary

In addition to these changes required by law, a number of modifications have been proposed which are necessary but not required by the new CSA;

2.5.2.1 Change of name APEEE EEB2 (art. 1; art. 4)

Following the creation of the Evere site, the statutes were modified in 2021¹⁸ and 2021¹⁹. However, due to an oversight “Evere” was not reflected in the name of the statutes. Therefore the administrative board proposes to change the name of “*The Association of Parents of Pupils at the European School Brussels II – Woluwe*” into

- The Association of Parents of Pupils at the European School Brussels II Evere-Woluwe
- Abbreviated APEEE Evere-Woluwe

The name changes has been approved by the administrative board on June 22nd, 2023²⁰. This was confirmed by a revote during the meeting of the administrative board on September 12th, 2023.

2.5.2.2 Compliance with data protection legislation (new art. 9§9; originally rules of procedure 13)

For the election of administrative board members, it is currently stated:

“The election will be by secret ballot, by giving preferences on an alphabetical list of the candidates in supplemented by the indication of his or her nationality and the linguistic section he or she represents.”

The requirement to provide nationality is considered to be non-compliant with data protection legislation. Therefore, it is suggested to remove “nationality” and replace by “school site”. The latter information is needed to calculate the election results for administrative board members²¹.

2.5.2.3 Change of terminology for responsibility vice-presidents (art. 14)

The statutes describe the responsibility of the vice-presidents as follow:

- *un Vice-Président plus spécialement chargé des problèmes pédagogiques ;*
- *un Vice-Président plus spécialement chargé des problèmes administratifs ;*

« *Problèmes* » has been modified into “*affaires*” since it reflects more accurately the responsibilities of the respective vice-presidents.

2.5.3 Non-substantial changes resulting from moving articles from rules of procedure to the statutes

¹⁸ Increase of board members from 22 to 25 (Statutes art. 13.1.A)

¹⁹ Minimum representation of Evere or Woluwe parents at the board (statutes art. 13.1.C and 13.1.E)

²⁰ Page 4 : <https://woluweparents.org/wp-content/uploads/2023/09/Board-Meeting-Report-22-06-2023-APPROVED.pdf>

²¹ See for instance Art. 13.1.C of the statutes: “The members who are a parent of a child at the Woluwe school **site** and the members who are a parent of a child at the Evere School **site** shall be represented on the Board by a minimum of three mandates each, providing sufficient candidates present themselves.”

Lastly there are changes due to inconsistencies that appeared from moving articles from the rules of procedure to the statutes. These changes are non-substantive. For these changes the colour code **bright green** has been kept.

2.5.3.1 Harmonisation references electronic voting (new art. 9§8 and 9§9; original rules of procedure 14)

Section 14 of the rules of procedure included three different references to electronic voting:

- *Au moment de l'élection, chaque membre effectif présent indiquera son choix sur un bulletin de vote en papier ou électronique sécurisé.*
- *Le dépouillement sera effectué par les scrutateurs, le cas échéant moyennant un outil informatique.*
- *Les votes sur les autres résolutions soumises à l'assemblée générale peuvent aussi avoir lieu par la voie électronique.*

Since the statutes date from a pré-electronic era, it can be assumed that the digital references have been progressively been introduced with the advancement of technology. This individual references have been removed and are now all captured in 9§8:

« §8 *L'élection du Conseil d'Administration et les votes sur les résolutions soumises à l'assemblée générale peuvent avoir lieu par la voie électronique.* »

2.5.3.2 Double description (new art. 17§3; originally rules of procedure 15).

The board member responsible for a Working Group is called a “*Working Group coordinator*”. In the rules of procedure both “*responsable principal*” and “*coordinateur*” are mentioned. The administrative board decided to harmonise terminology and align with the current practice and only use the term “*coordinateur*”..

2.5.3.3 Replacement of chairperson at meetings (art. 20)

The newly inserted art. 20§2, originating from the rules of procedure²², state that the administrative board shall appoint the members of the CEES and CEPM meetings. The existing art. 20§1 states that Chairperson shall represent the Association on the Board of Governors of the European Schools and represent the Association on the Administrative Board of the School. However, the existing art. 20§1 does not specify how the replacements in case of absence of the chairperson or vice-chairperson are appointed. Taking into account that according art. 20§2, representation at lower-level meetings such as CEES and CEPM pass through an appointment by the board, the

²² Rules of Procedure, art. 15.

existing art. 20§2 was complemented so that administrative board nominates the persons representing the chairperson and vice-chairperson.