

APEEE Bruxelles II – Woluwe & Evere EXTRAORDINARY GENERAL MEETING 2023

Background note to draft statutory changes

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 (hereafter also called "Association"), is an international non-profit association (« *Association Internationale Sans But Lucratif* », hereafter called AISBL) and fell under 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 to comply with the new CSA.

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 is part of the governance model of European Schools.

The APEEE EEB2 was established in the Seventies. Since the creation of APEEE EEB2, there has not been a comprehensive revision of the statutes.

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

3. Process followed for revision of statutes

The APEEE Administrative Board received in May 2022 a legal advice by Maître Parsa on the mandatory legal requirements to comply with the CSA⁵. Maître Parsa also submitted a proposal for each article where a revision was needed⁶.

The Administrative Board created in February 2023 a Working Group Statutes Update⁷ (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 2023⁸. 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 2023⁹ 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.

⁵ See Annex 1 Avis relatif aux Statuts de l’APEEE Woluwe (Bruxelles II)

⁶ See Annex 2 APEEE Bxl II -Statuts FR modification approuvé par A.G.O 3-2-2022 Relu SP

⁷ Page 4 : <https://woluweparents.org/wp-content/uploads/2023/04/Board-Meeting-Report-16-02-APPROVED.pdf>

⁸ In line with art. 2 of the APEEE Rules of Procedure which state “All parents may play an active part in the work of the Association, particularly in the activities of working parties set up by the Administrative Board of the Association laid down in Article 15.” (see p. 10 <https://we2parents.wpengine.com/wp-content/uploads/2023/03/APEEE-Bxl-II-Statuts-EN-modification-approuve-par-A.G.-3-2-2022-1.pdf>)

⁹ Page 2 : <https://woluweparents.org/wp-content/uploads/2023/05/Draft-Board-Report-27-04-APPROVED.pdf>

The draft revised statutes were submitted to the APEEE Administrative Board on October 24th for a vote.

Following its approval, the draft revised statutes are now submitted for a vote at an Extraordinary General Meeting on December 7th, 2023. In order to be legally compliant, the agenda of the Extraordinary General Meeting and the draft revised statutes need to be communicated to the class representatives by November 7th 2023 latest.

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 purpose 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.

4. Scope of changes

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, which apply 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. Therefore, 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 of the Association.

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. They are listed in the table¹⁰ created by Maître Parsa, mentioning if the statutes are conform, non-conform or need to be completed. Based on this table, the Working Group worked on a revision regrouped around the following elements:

- Administrative Board as a collegial body
- Modification of the purpose and activities
- New mandatory clauses
- Move of articles from the rules of procedure to the statutes
- Creation of internal rules
- Administrative and other minor changes

a) Administrative Board as a collegial body (art 13.1.A)

¹⁰ See section 2.2.2 in Annex 1 Avis relatif aux Statuts de l'APEEE Woluwe (Bruxelles II)

According to the new CSA, the statutes need to mention the way the Administrative Board exercises its powers¹¹. Therefore, Maître Parsa proposes to mention in art. 13.1.A of the statutes that the Administrative Board functions as a collegial body.

The law foresees three options for the Administrative Board to exercise its powers: individually, jointly and collegially. 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 by the chairperson, but by the group of members of the Administrative Board by a majority vote. According to current the statutes, the Administrative Board of APEEE EEB2 is functioning as a collegial body¹². Therefore, the proposal by Maître Parsa renders explicit, as required by law, the already existing way in which the Administrative Board of APEEE EEB2 exercises its powers.

b) Modification purpose and activities (art 3)

According to the new CSA, the statutes need to define the objects and the activities of the Association¹³. In the current statutes:

- art. 3 defines a “purpose”, but no “activities”.
- this “purpose” in art. 3 includes “activities”¹⁴
- Art. 1 defines also a “purpose”¹⁵, however with no relation to art. 3

Therefore, the Board proposes 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 “purpose”
- once the “purpose” was established, the list with “activities” was cleaned up and harmonised

¹¹ CSA Article 10 :2, §2, 7°, b) : ‘le mode de nomination, de révocation et de cessation de fonctions des administrateurs, leur nombre minimum, la durée de leur mandat, l’étendue de leurs pouvoirs et les modalités de leur exercice;’

¹² See for instance art. 15 of the statutes which states that decisions are taken by majority vote.

¹³ 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”.

¹⁴ See statutes art. 3(3) “to organise extra-curricular activities and any other activities”

¹⁵ See statutes art. 3 “à but pédagogique”.

- a final verification was done to ensure that the “purpose ” covers all “activities”, and vice-versa.

For recurrent “activities” not covered by the current “purpose”, the Working Group created two new “purposes”:

- Support for parents and children who do not have sufficient means to participate in all school activities (new “purpose” number 4¹⁶).
- Reinforcing the school community by supporting cultural, sport, education, recreational activities (new “purpose” number 7¹⁷).

Currently APEEE has a social fund¹⁸, but not a statutory basis for the social fund. By including these “purposes”, a statutory basis is provided to support these “purposes” through the social fund or any other means.

The list of “activities” proposed in article 3 are detailed. Although detailed, such list is non-limited¹⁹.

In addition to this, the list of “activities” is completed with a paragraph containing with standard clauses which are used in the statutes of non-profit associations:

- *in case of economic activities they are ancillary, meaning they are instrumental to the pursuit of the purposes of the Association*
- *the Association cannot allocate economic advantage to the members, Administrative Board members, or any other person.*

The aim of these clauses is to clarify the non-profit nature of the Association.

c) New mandatory clauses (art 14 and art 17)

The new CSA required that the statutes define how the persons who represent the Association towards third parties are appointed²⁰. Moreover, the statutes should also define how the persons responsible for the daily management of the Association are appointed, their powers, and the way those powers are exercised²¹.

¹⁶ « de contribuer à résoudre tout autre problème qui se pose aux parents pour l'éducation de leurs enfants et de soutenir financièrement des enfants dont les parents ont des moyens financiers insuffisants enfin qu'ils puissent participer à des activités scolaires; »

¹⁷ « de renforcer la communauté scolaire en soutenant des manifestations culturelles, des activités sportives, récréatives ou éducatives »

¹⁸ <https://we2parents.wpengine.com/wp-content/uploads/2023/03/Revised-rules-for-Social-Fund-16-12-2021-1.pdf>

¹⁹ The proposed statutes state « entre autres » : « Dans la poursuite de ses buts, l'Association menera, **entre autres**, les activités suivantes »

²⁰ CSA article 2 :10, §2, 7°, c) : « le mode de désignation des personnes qui ont le pouvoir de représenter l' AISBL vis-à-vis des tiers. »

²¹ 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' AISBL, l'étendue de leurs pouvoirs et la manière d'exercer leurs pouvoirs, en agissant soit séparément, soit conjointement, soit en collège. »

Currently, these required statutory provisions are absent from the APEEE EEB2 statutes. These required new articles cover the appointment of the members of the Bureau and the Director of APEEE. Both have in common that the appointments are done through a vote by the Administrative Board. In drafting the new articles, the following principles were applied:

- the Administrative Board would take the decision as a collegial body (see above)
- the counting of the votes would be unambiguous
- to align the new articles with the current practice, while respecting the two principles above

Since this concerns new articles, they will be treated separately below:

The Bureau (art. 14)

The Bureau is an APEEE EEB2 body with no decision-making powers. As such, its only role is to ensure that the list of members, and therefore the electoral list of the General Assembly, is correct²². 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 normally takes after the annual General Assembly, during the first Administrative Board meeting. 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 re-elected, 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 high quorum are requested for the election: namely, two-third majority of the members of

²² 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. Experience shows that in almost all cases the candidates are already elected at the first or second round. Therefore the proposal reflects the majorities by which de facto the members of the Bureau have so far being elected.

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 Assembly;
- the mandate of the members of the Bureau expires at the next General Assembly;
- between the General Assembly 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.

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 to define how the delegation of day-to-day management is given and terminated and the power of this delegation.** This delegation was 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 (this would be in the Board's internal rules, when adopted)
- when employing staff or entering service contracts, the Director shall act consistently with internal procedures defined by the Board (this would be in the Board's internal rules, when adopted)
- 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; this clause reflects current practice as it refers to the current back-up system (which can be included in Board's internal rules if adopted)

d) Move of articles from the rules of procedure to the statutes (artt. 4, 6, 9, 13, 17, 20)

APEEE EEB2 has currently rules of procedure. These rules of procedure are approved by the General Assembly and require a 60% majority to be modified²³. To put into perspective, a change of 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 therefore a heavy procedure since it involves the General Assembly. 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 procedures contain a number of 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 Groups²⁴ turned out not to mandatorily included in the statutes.

e) Creation of internal rules (art. 12)

As mentioned above, all but three articles were to be 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 established by the new CSA:

- is voted by the Administrative Board

²³ 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.”

²⁴ Rules of Procedure, art. 15

- 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 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 are voted by the General Assembly, it is not within the current mandate of the Working Group to make changes to what the General Meeting has agreed upon in the past. When the Working Groups 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.

f) Administrative and other minor changes (art 1, 2, 9, 17, 20, 22)

In addition to all the substantial changes mentioned above, **new CSA required a number of changes that are 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 (art. 1; section 6 and art 22 par 6)
- Reformulation of the geographic location of the registered office (art. 2)
- To specify in case of dissolution of the Association, that charitable purpose to which the assets shall be donated shall be similar to that of APEEE EEB2 (art. 22).

In addition to these changes required by law, a number of small proposal are made which are necessary but not required by law.

- Change of name APEEE EEB2 (art. 1)

Following the creation of the Evere site, the statutes were modified in 2021²⁵ and 2021²⁶. However, due to an oversight “Evere” was not reflected in the denomination of the **Association**. The Board considers that this name change is imperative in order to be inclusive towards the

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

²⁶ Minimum representation of Evere or Woluwe parents at the Board (statutes art. 13.1.C and 13.1.E)

parents of both sites. Therefore it is proposed 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
 - In short APEEE Evere-Woluwe
- 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 establish the results in elections of Administrative Board members.

And lastly, there are some changes due to some small inconsistencies that appeared from moving articles from the rules of procedure to the statutes.

- 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”. Currently both “responsible principal” and “coordinateur” are mentioned. The Board chose to align with the current practice and only use the term “coordinateur”. The Board is also of the opinion that “responsible principal” might be interpreted that powers have been delegation to the Working Group coordinator, which contravenes the principle of collegiality in the Administrative Board.

- Replacement of chairperson at meetings (art. 20)

The newly inserted art. 20§2 originating from the rules of procedure 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, it 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 meetings such as CEES (secondary cycle) (Enlarged Secondary Education Committee / Comité Elargie d’Education Secondaire) and CEPM (Enlarged Primary Education Committee / Comité Elargie d’Education Primaire) (manternelle and primary cycle) pass through an appointment by the Board, the existing art. 20§2 was complemented that the chairperson and vice-chairperson can have themselves be represented by a person nominated by the Administrative Board.