Article 14 and article 17

Background note to draft statutory changes

Annual General Meeting, January 11th 2024

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 EEB2[2], 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 associations[3]. 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.

1.2 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.

The administrative board created in February 2023 a Working Group Statutes Update[4] (herafter called "Working Group") to prepare the revision of the Statutes to be submitted to the general meeting.

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.

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

The Administrative Board defined the mandate to the Working Group to keep the changes to what is legally required. The Administrative Board adopted in March 2023[5] 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 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 Administrative Board, the draft revised Statutes were submitted for a vote at an Extraordinary General Meeting on December 7th, 2023[6].

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

1.3 Extraordinary General Meeting of December 7th, 2023

At the Extraordinary General Meeting of December 7th, 2023 of December 7th, 2023 all changes proposed by the board were accepted, apart from the modifications of art. 14 and art.

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[5] Page 2 : https://woluweparents.org/wp-content/uploads/2023/05/Draft-Board-Report-27-04-APPROVED.pdf
[6] For all background information regarding the Extraordinary General Meeting on December 7th, 2023 see: https://woluweparents.org/extraordinary-general-meeting-the-7th-december-2023-%f0%9f%93%a7/

17. As a consequence, APEEE EEB2 is not compliant with the law. According to legal advice received by Maître Parsa[7]:

> *"failing to comply with the requirements of the CSA with regards to statutes-related obligations, will have as a consequence that the joint and personal liability of the member of board the association will be engaged for any damages endured by the organization or third parties as a result of the non-compliance."*

Therefore, Maître Parsa recommended, that, in case the general meeting would not approve the proposed modifications of the Statutes, to organise another general meeting before the deadline of December 31st, 2023. Since the extraordinary general meeting took place on December 7th, 2023, the organisation of another general meeting before the end of the year was not feasible. Instead, the Administrative Board decided to include the modifications of article 14 and article 17 in the agenda of the Annual General Meeting taking place on January 11th, 2024.

Based on discussion within the board and feedback provided by the parents, the board decided[8] to submit to the Annual General Meeting the versions of art. 14 and art. 17 which had been prepared by the Working Group.

1.4 Art. 14 and Art. 17: common points and approach

1.4.1 Common points

The CSA requires that the Statutes define how the persons who represent the association towards third parties are appointed[9]. Moreover, the Statutes should also define how the person responsible for the daily management of the association is appointed, and the way those powers are executed[10]. Currently, these required statutory provisions are absent from the Statutes.

These required new articles cover the appointment of the members of the Bureau (art. 14) and the APEEE Director (art. 17). Both have in common that their appointments are done through a vote by the Administrative Board and that it concerns a vote on a person. The latter is important: by submitting a vote, the Administrative Board expresses the trust in the person.

1.4.2 Approach

In drafting the new articles required by law, the Administrative Board applied the following principles:

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[7] APEEE-CSA-2023-11-29-statutes-advises-APEEE-Website.pdf (woluweparents.org)
[8] https://woluweparents.org/wp-content/uploads/2023/12/FINAL-Board-Meeting-Report-11-12-2023-APPROVED.pdf
[9] 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. »
[10] 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. »

- the Administrative Board would decide on the appointments as a collegial body;
- the counting of the votes should be unambiguous:
- while respecting the two principles above, the newly drafted articles should be aligned as much as possible with the current practices;
- the coherence in relation to the other articles in the Statutes;

An example of aligning with the current practices is that the board currently votes on persons through a secret ballot. This practice was reflected in the revised Statutes.

An example of coherence in relation to the other articles in the Statutes, is the relation with art. 15, which defines the decision taking process in the Administrative Board. Article 15 of the Statutes state that:

> *"The quorum within the Administrative Board shall exist if at least half of its members plus one are present."*

Article 15 also states that:

> *"The Committee's decisions shall be by simple majority."*

The step 1 mandate provided by the board did not allow the Working Group to question the principles established in the Statutes. One of these principles is the quorum required for taking board decisions. Therefore, when modifying art. 14 and art. 17, the Working Group was required to work within what is outlined in art. 15.

Art. 15 states that decision shall be made by simple majority, but does not define how passive[11] and active[12] abstentions are taken into account to calculate the majority. The current interpretation made by the Administrative Board[13] is that passive or active abstentions should not be calculated in the vote. Therefore, if only one person votes yes, while all other board members abstain, the resolution is adapted. Following the discussion held about art. 15, the Administrative Board is of the opinion that when articles of the Statutes are modified within the scope of Step 1, and if those modifications include a voting mechanism, the treatment of abstentions should be explicitly defined.

Art. 14 and art. 17 concern a vote on a person, and are therefore an expression of trust. The Administrative Board is of the opinion that this expression of trust should be explicit. Therefore, when voting on a person, over half of the board members voting yes or no should vote in favour of the decision. This essentially means treating those actively or passively abstaining as not in favour of the decision.

1.5 The Bureau (art. 14)

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[11] A passive abstention occurs when a person is present in the meeting and decides not to vote.
[12] An active abstention occurs when a person votes "abstain".
[13] Draft-Board-Report-27-04-APPROVED.pdf (woluweparents.org)

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 correct[14]. 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.

Within the Bureau, individual positions have important representational roles vis-a-vis third parties. For instance, the Chairperson represents and speaks for the Association in various bodies. Moreover, of those positions, the Chairperson, the vice-chairperson and the Secretary have a statutory defined role. In particular, the Chairperson has the key role to preside over the Administrative Board meetings.

The election of the Bureau takes place after the Annual General Meeting, during the first meeting of the Administrative Board. This meeting is traditionally presided by the outgoing chairperson, irrespective if this chairperson has been elected to the new Administrative Board or not. The election of a member of Bureau generally takes place through secret ballot. Characteristic for the election of the members of the Bureau, is that there might be several candidates for one position. When there are several candidates, it can occur that the votes are split, and therefore the person who is elected has received a ballot in his/her favour by less than half of the Administrative Board. The outgoing chairperson presiding the election of the new chairperson, during the first Administrative Board meeting is an element that contributes to the lack of clarity of the mandate of outgoing Bureau members. At times outgoing Administrative Board members, even when not re-elected, have exercised their representational role, while at the same time there is a new Administrative Board in place. This practice created an uncertain situation in terms of legal liability.

Based on the above, the Board proposes an article with as key elements the following:

- members of the Bureau are elected by the Administrative Board after the Annual General Meeting;
- elections take place by secret ballot;
- empty votes are not counted;
- for an election to be valid, more than half of the board members have to indicate a candidate on a ballot;
- the candidate is only elected, when receiving more than half of the ballots;
- the mandate of the member of the Bureau ends at the next general meeting;

[14] 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."*

- between the General Meeting and the election of the next chairperson, the most senior administrative board member by age shall act as the interim chairperson.

The election of the Bureau is a key process in setting up the Administrative Board. Since the Administrative Board is a collegial body, decisions should be taken by majority vote. Therefore, the electoral process has been drafted in such a manner that, to be elected, the Bureau members have to receive more than half of the ballots. The process is similar to that of presidential elections in many countries. The purpose is that the election process should favour a person who can achieve the broadest support.

Since the Administrative Board is a collegial body, the mandate to represent the Administrative Board can only be given by Administrative Board. Therefore, the proposed articles state that the mandate of the members of the Bureau ends at the Annual General Meeting. Only the new Administrative Board can give the mandate for a person to represent the Administrative Board. In this way there is a clear separation in terms of legal liability between the outgoing and the incoming Administrative Board. The chairperson at interim is the most senior person in age. By using a criterion not linked to the previous position of the administrative board member (e.g. being former chairperson), the revised Statutes make it clear that the chairperson at interim has no representational role. Instead, the main role of the chairperson at interim is to chair the first meeting until the election of the new chairperson[15]. Once the new chairperson is elected, that chairperson is responsible for chairing the meeting.

1.6 The Director (art. 17)

The current Statutes of APEEE EEB2 state that the Administrative Board may delegate day-to-day management[16]. The new CSA obliges that the Statutes define how this delegation is given and terminated and the scope of power of 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.

1.6.1 Director's nomination and termination

The position of the Director is subject to the contractual obligations and relevant Belgian labour law. Therefore, the nomination of the Director is a long-term decision with large financial consequences in terms of salary, social contributions and other benefits. Similarly,

[15] Proposed art. 17§3 *:"Whilst the Chairperson is not yet elected, the Member of the Board most senior by age shall act as Chairperson interim,* ***he or she shall call and chair the meetings of the Administrative Board but shall not assume any other powers vested upon the Chairperson****.[…]"*

[16] For ASBL's the CSA Section 9 :10 defines day-to-day management as follows : « La gestion journalière comprend aussi bien les actes et les décisions qui n'excèdent pas les besoins de la vie quotidienne de l'association que les actes et les décisions qui, soit en raison de l'intérêt mineur qu'ils représentent, soit en raison de leur caractère urgent, ne justifient pas l'intervention de l'organe d'administration. » This definition has been included in the proposed art. 17.

the dismissal of the Director can result in high financial commitments in terms of severance payment. No Board will make a decision to nominate or dismiss a Director lightly

Therefore, a revised article 17 codifies the existing delegation of day-to-day management to a Director by the following nomination and termination process:

- the decision takes place by secret ballot;
- empty votes are not counted;
- the Director is appointed or dismissed by a decision of the Administrative Board (more than half gives a yes/no vote, of which more than half votes yes);
- in order to avoid any potential conflict of interest, the Director cannot be a member of the Administrative Board;
- in case the Director is absent for more than three months, the Administrative Board has to delegate the power of the Director to a Director ad interim in order to ensure continuity of operations. For a period of less than three months, the Administrative Board may also delegate the power to a Director ad Interim.

1.6.2 Mandate Director

The mandate given to the Director is a key element of the statutes. The comply with legal requirement, the delegation of day-to-day management to the Director and consequent procedures and accountability, need to be properly defined. The day-to-day management can be defined in two places:

- either the Statutes
- or the *Règlement d'Ordre Intérieur*

The definition of day-to-day management changes with the size of the operations and is therefore dynamic. Statutes on the other hand can only be changed by the general meeting and are therefore more static. Therefore, the Board is of the opinion that the Statutes are not the appropriate document define the activities falling under day-to-day management. In particular within the current context where the level of operations continue to grow due to growth of the number of pupils in the Evere site. Therefore, the Board proposes to establish a statutory obligation to define the scope of day-to-day management in the *Règlement d'Orde Intérieur*. In particular, the details that need to be defined in the *Règlement d'Orde Intérieur*:

- the list of tasks which constitute the day-to-day management;
- the decision related to hiring and firing of staff, as well as procurement.

According to article 12[17] of the revised Statutes adopted on December 6th, 2023, the *Règlement d'Ordre Intérieur* can not contradict nor modify the Statutes. Rather, it is meant to

[17] Article 12: *"The Administrative Board may adopt internal rules. The internal rules shall not contain provisions that:*
1° are in conflict with mandatory law provisions;

implement and comply with the Statutes. Even though the *Règlement d'Ordre Intérieur* is subject to the Statutes, it is a binding set of rules. The *Règlement d'Ordre Intérieur* is subordinate to the Statutes, but once approved the *Règlement d'Ordre Intérieur* must be respected. The *Règlement d'Ordre Intérieur* has also the same level of transparency towards the parents as the Statutes and any changes of the *Règlement d'Ordre Intérieur*, must be communicated to the members of the Association.

Although the Administrative Board delegates the day-to-day management to the Director, it is still bears the overall responsibility and is legally liable for the Association. Therefore, aligned with provisions for ASBL's in the CSA[18], the proposed art. 17 explicitly states that the Administrative Board is responsible for supervising the day-to day management. Supervision is a two-way process. When there is an obligation to supervise, there is an obligation to report back to the entity that is supervising. Therefore, the proposed art. 17 introduces obligation of the Director to report. Working Group coordinators have currently an obligation to report every trimester[19]. Mirroring this obligation, the Director responsible for the day-to-day management of the APEEE services, should report at least every three months to the Administrative Board.

2° relate to matters for which the Belgian law applicable to international no-profit associations requires a statutory provision;
3° are in conflict with the provision of these Statutes.
The internal rules and any amendments thereto shall be communicated to the members and published on the Association's website. The statutes shall refer to the latest approved version of the internal rules."

[18] CSA Section 9 :10, second sentence : *« L'organe d'administration qui a désigné l'organe de gestion journalière est chargé de la surveillance de celui-ci. »*

[19] See previous art. 15 Rules of Procedure (moved to art. 17 following extraordinary general meeting of December 7th, 2023): *"Ce responsable principal (coordinateur), ainsi que les représentants de l'Association au sein des organes des Écoles Européennes font un rapport, soit oral, soit écrit, au Conseil d'Administration de l'Association chaque fois qu'une question importante est soulevée**, et au moins une fois par trimestre académique. »***