

## Решение по случай OI/3/2003/JMA - Интеграция на хора с увреждания от Европейската комисия

Решение

**Случай** OI/3/2003/JMA - **Открит на** 19/11/2003 - **Решение от** 04/07/2007

Хората с увреждания са изправени пред широк кръг от препятствия, които не им позволяват да имат равни възможности, независимост и пълна икономическа и социална интеграция. Въпреки че Европейският съюз е отговорил на това предизвикателство с приемането на редица правни и политически инициативи за премахване на тези пречки, омбудсманът счита, че сериозността на ситуацията, пред която са изправени хората с увреждания, изисква поетите ангажименти да бъдат изпълнени чрез ефективни действия. Поради централната роля на Комисията в институционалната рамка на Съюза и нейните специфични ангажименти към хората с увреждания, омбудсманът счита за полезно да се преразгледат действията, предприети от институцията в тази област и да се направи оценка дали тези действия са в съответствие с правните задължения и заявените ангажименти. Поради това омбудсманът решава да започне разследване по собствена инициатива по въпроса за интеграцията на хора с увреждания от Комисията, за да се гарантира, че тези граждани не са били подложени на дискриминация в отношенията си с институцията. Той е поискал от Комисията да докладва относно (i) предприетите или предвидените действия с оглед да се гарантира, че хората с увреждания не са били подложени на дискриминация в своите отношения с институцията, както и (ii) за сроковете за приемане на тези мерки.

Разследването на омбудсмана е извършено чрез открит и прозрачен диалог, в който са били поканени да участват лица с увреждания, представителни групи, други омбудсмани на национално и на регионално равнище, както и граждани.

На базата на своята проверка омбудсманът счита, че Комисията е положила искрени усилия да интегрира хората с увреждания, въпреки че някои аспекти от политиката ѝ не са удовлетворили очакванията на обществото. Омбудсманът отбелязва, че е постигнат напредък в редица области, включително в следните:

(1) гарантиране, че с назначаването на лица с увреждания от всички институции на ЕС се зачитат фундаменталните принципи, залегнали в новия правилник за служителите, като недискриминация поради инвалидност (член 1д, параграф 1), или



необходимостта от осигуряване на приемливи условия за служители с увреждания, така че те да могат да изпълняват възложените им задачи (член 1д, параграф 4);

(2) хора с увреждания, участващи в конкурси за работа в институции на ЕС, сега могат да се възползват от редица мерки за улесняване на тяхното участие, още повече, че Комисията е предприела проучване на разнообразните средства, чрез които може да се насърчава наемането на хора с увреждания в институцията;

(3) приемането на нови изисквания относно достъпността на помещенията на Комисията, съответстващи изцяло на стандартите на ЕС и на законодателството на Белгия, и по-специално насочени към потребностите на хората с увреждания;

(4) улесняване на достъпа до информация за хора с увреждания, по-конкретно по отношение на информацията, налична на уебсайта на Комисията; институцията е положила похвални усилия в тази насока;

(5) Комисията е положила усилия да пригоди услугите си към затрудненията, с които се сблъскват хората с увреждания, така че те да бъдат съответно преодолявани, когато е необходимо. В тази насока Кодексът за добра практика на Комисията трябва да стане много полезно пособие за повишаване на отзивчивостта на нейните служители, но въпреки това са необходими усилия за пълното прилагане на стандартите за поведение и тяхното периодично актуализиране.

Омбудсманът е отчел факта, че, както обществеността е подчертала в процеса на консултиране, все още са необходими действия в други области, включително в следните:

(1) финансовата помощ от страна на Комисията за служители с увреждания или с членове на семейството, които са с увреждания, все още се възприема като недостатъчна; обществеността счита също, че следва да се увеличат отпусканите от бюджета средства за разходи, свързани с увреждания;

(2) приетите мерки за насърчаване на наемането на лица с увреждания изглежда са лишени от прозрачност и е поискана по-надеждна оценка на положението;

(3) изглежда също, че съществува неудовлетвореност от недостатъчната достъпност на информация на Комисията за някои хора с увреждания;

(4) положението на ученици с увреждания в училищата към институциите на ЕС изглежда незадоволително и училищната политика за интегриране на тази категория деца не съдейства ефективно за тяхната интеграция;

(5) прилагането на Кодекса за добра практика на Комисията разкрива редица пропуски, по-конкретно по отношение на недостатъчните действия за повишаване на отзивчивостта на служителите чрез обучения или семинари.



Омбудсманът отчита факта, че Комисията е поела редица ангажименти в отговор на горните безпокойства на обществеността. Омбудсманът отбелязва, че Комисията се е ангажирала да:

- (1) осигури пълно възстановяване на разходите, свързани с инвалидност при условие, че бъдат отпуснати достатъчно средства от бюджетния орган и бъде постигнато междуинституционално споразумение;
- (2) обмисли публикуването на повече общи доклади относно наемането на лица с увреждания, в които да бъдат включени съществуващи и бъдещи статистически данни;
- (3) приеме нови стандарти относно достъпността на своите помещения за хора с увреждания и да увеличи броя на местата за паркиране за хора с увреждания във или близо до своите сгради;
- (4) организира в бъдеще специални действия за повишаване на отзивчивостта чрез обучения и конференции или семинари за персонала.

С оглед на поетите от Комисията ангажименти, омбудсманът счита, че към момента изглежда не са необходими по-нататъшни действия по гореспоменатите теми.

Въпреки това Омбудсманът смята, че положението на учениците с увреждания в училищата към институциите на ЕС буди загриженост, тъй като сегашното състояние на нещата е все още незадоволително. За да наблюдава отблизо развитието на ситуацията в близкото бъдеще, омбудсманът счита за необходимо към края на 2007 г. Комисията да докладва относно постигнатия напредък за интеграцията на деца с увреждания. Този доклад ще даде възможност на омбудсмана да прецени необходимостта от по-нататъшни действия от негова страна по този въпрос.

Омбудсманът се надява, че резултатите от неговата инициатива ще помогнат на Комисията да преоцени някои свои действия в тази област, с оглед при необходимост да ги коригира и по този начин да служи по-добре на европейските граждани.

Strasbourg, 4 July 2007

Mr President,

According to Article 195 of the Treaty Establishing the European Community, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of Community institutions and bodies.

On 19 November 2003, I informed you of my decision to open an inquiry into the subject of



the integration of persons with disabilities, in particular as regards the measures adopted by the Commission to ensure that persons with disabilities were not discriminated against in their relations with the institution. I asked you to submit an opinion by 29 February 2004.

On 3 March 2004, the Commission sent me its opinion, which was thereafter posted on the Ombudsman's website. On 16 March 2004, I sent a copy of the Commission's opinion to all the national ombudsmen in the European Union.

On 28 April 2004, I posted on my website an open letter in which I invited the public to send comments on the Commission's opinion. Between May and September 2004, I received a substantial number of contributions from the public, non-governmental organisations and national ombudsmen.

On the basis of these contributions, I requested additional information from the Commission on 28 October 2005. On 13 March 2006, the Commission sent its second opinion, which was also posted on the Ombudsman's website. The Commission sent additional information on 23 January 2007.

I am writing now to let you know the results of the inquiry.

#### THE REASONS FOR THE INQUIRY

In his letter to the European Commission opening the inquiry, the Ombudsman acknowledged that people with disabilities constitute a significant proportion of the population of the Community. As both European institutions and Member States have publicly stated, this group of people face a wide range of obstacles that prevents them from achieving equal opportunities, independence and full economic and social integration (1). The Community has thus been urged to strengthen its contribution to promoting equal opportunities for people with disabilities, with a view to their integration into society.

The Ombudsman outlined the most important internal and external initiatives taken by the institutions of the Union to deal with this issue.

#### General actions

On 10 May 2000, the Commission adopted a communication entitled "Towards a barrier-free Europe for people with disabilities" ("the Communication"), in which it commits itself to developing and supporting a comprehensive and integrated strategy to deal with social, architectural and design barriers that unnecessarily restrict access for people with disabilities (2). The European Parliament unanimously adopted a similar resolution (3).

On 3 December 2001, the Council of the European Union agreed to designate 2003 as the European Year of People with Disabilities (4). It acknowledged that discrimination against people with disabilities still prevails, often as a result of lack of information and attitude problems. By declaring 2003 as the year of people with disabilities, the Council sought to



increase society's understanding of the rights, needs and potential of disabled persons, as well as to encourage synergies among all partners in order to promote a flow of information and an exchange of good practice.

The special situation of this group of people and the need for supportive measures have been mentioned in the Charter of Fundamental Rights of the European Union, Article 26 of which states that:

*" The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. "*

Individual actions by different EU institutions and bodies

Mindful of the potential problems encountered by disabled individuals to become EU officials or to develop their careers as such, the EU institutions adopted in 1998 a "Code of Good Practice for the employment of people with disabilities" ("the EU Code of Good Practice"), which provides a statement of their policy in this area, as well as guidelines for their services regarding related actions (5) . The Code envisaged several actions to be undertaken in the following areas:

- Recruitment : All reasonable measures should be adopted in order to ensure that people with disabilities would be able to participate in competitions on equal terms with other candidates.
- Careers : Care is to be taken during the career of an official with disabilities to ensure the avoidance of job requirements that are not job-related and which might exclude people with disabilities.
- Working environment : All reasonable steps should be considered to minimise problems related to access to buildings, as well as to office accommodation and equipment.
- Information and awareness : The EU Code of Good Practice is to be distributed to all staff. Members of Selection Boards are to receive training courses involving disability awareness.
- Monitoring : Each institution is to appoint an official or body to be responsible for the implementation of the EU Code of Good Practice.

In the Communication, the Commission restated the commitments set out in the EU Code of Good Practice and defined additional measures aimed at fostering the development of best practice by its services. The actions outlined were as follows:

- Employment : The Commission will take the necessary measures to facilitate access for people with disabilities to work in the European Public Service (organisation of competitions; career development; administrative assistance; equipped offices and buildings; identification of posts). It will encourage staff to attend awareness training.
- Accessibility of the Commission's premises : The Commission will seek to ensure that offices and facilities are accessible for its disabled employees and to citizens who visit its services.
- Information and communication : The Commission will amend its guidelines on access to Commission documents to ensure that publications and information are accessible for



people with disabilities in alternative formats. Similarly, the Office for Official Publications of the European Communities will ensure that citizens with disabilities have more access to its information.

- European Schools : The Commission will support the efforts made by the European Schools, with a view to better integrating pupils with disabilities.
- Internal co-ordination : The Commission services will work to develop audit tools and information related to disability issues. They will aim to produce targeted guidance for people with disabilities seeking assistance for information on EU programmes.

These actions had been welcomed by Parliament, which called for the implementation of supplementary initiatives (6) . In particular, Parliament suggested that an inter-institutional group should be created to examine the conditions for people with disabilities to EU institutions regarding access to and actual participation in meetings and appropriate recruitment and employment conditions. Parliament requested that this inter-institutional group should produce regular public reports on the efforts made to implement the EU Code of Good Practice and to monitor the progress achieved in ensuring that disabled people, both employees and visitors, have full access to all EU institutions. The drafting of periodic reports by all EU institutions was also suggested. These reports should provide information such as the number of disabled people employed and the posts occupied by those falling into this category.

#### Implementing measures

The Ombudsman welcomed the Commission's clear commitments towards people who constitute one of the most disadvantaged sectors of our society. In the Ombudsman's view, the seriousness of their situation demands that the proclaimed commitments be put into practice by means of effective actions. Good administration requires prompt and effective action to implement these commitments.

The Ombudsman therefore considered it useful to review the actions undertaken by the Commission in this area, and to assess whether they were consistent with the institution's legal obligations and stated commitments.

The Ombudsman decided to limit the scope of his inquiry to the Commission, in view of this institution's central role within the institutional framework of the EU and its specific commitments towards disabled people, as set out in its Communication. The Ombudsman made it clear that he would subsequently consider whether, in light of the inquiry's outcome, it would be necessary to widen the scope of the inquiry and include other EU institutions.

The Ombudsman requested the Commission to report on: (i) the actions it had taken or intended to take to ensure that persons with disabilities were not discriminated against in their relations with the institution, and (ii) the timetable for their adoption.

#### THE INQUIRY

#### **The Commission's opinion**



The Commission's opinion can be summarised as follows:

The Commission underlined that it has given a high priority to the pursuit of equality of opportunities for disabled people and has made particular efforts to avoid discrimination in its relations with disabled people, be they members of the public or staff. The Commission recognised that more still needs to be done to promote the rights of disabled people to participate fully in all aspects of society. It stated that it will continue to seek positive changes in this area and that it will seek to increase the percentage of disabled persons among its staff.

In particular, the Commission referred to a number of initiatives it had taken in recent years to ensure that the principle of equality of opportunity becomes a reality for its staff with disabilities and for those disabled people who wish to participate in competitions organised by the Commission. These initiatives should include both legislative and non-legislative proposals.

The legislative proposals relate to amending the Staff Regulations, a complex and time-consuming process which, at the time this own-initiative inquiry was launched, was nearing completion. The non-legislative proposals include providing special facilities at recruitment competitions, when requested by people with disabilities; the adoption of a new Code of Good Practice for the Employment of People with Disabilities; and the provision of certain policy documents in Braille.

The Commission's objective was to make it easier for people with disabilities to participate in open competitions. The Commission also sought to allow disabled officials working for the Commission, as well as those who become disabled while in service, to enjoy adapted working arrangements, where necessary, and to follow a career development path of the same standards as all other officials.

The Commission provided the following details:

(1) Employment : The Commission explained that, in recent years, it had taken a number of initiatives to ensure that the principle of equality of opportunity becomes a reality for its staff with disabilities and for those who wish to participate in the recruitment process. In this regard, it referred to the new Staff Regulations which entered into force on 1 May 2004, and to the changes in the recruitment procedures introduced by the European Personnel Selection Office ("EPSO").

As regards the new Staff Regulations, the institution noted that they have incorporated the anti-discrimination provisions enshrined in Article 13 of the EC Treaty, and have included, in Article 1d(1), a clear legal statement that any discrimination based on, *inter alia*, disability is prohibited. These rules have empowered the appointing authority to grant all reasonable requests from disabled staff for "reasonable accommodation", to the extent that such facilities do not impose an undue burden on the institution.



In connection with the recruitment of officials, the Commission explained that EPSO has improved its publicity about employment prospects in the Commission, in order to stimulate interest among potential candidates with disabilities. It added that efforts have also been made to ensure that internal websites are readily accessible and, where people with disabilities are successful in recruitment competitions, positive action will be taken to assist them in finding suitable jobs. It noted that its services had also issued a report on the accessibility of the recruitment process for candidates with visual impairments.

(2) Accessibility of the Commission's premises : The Commission explained that, on the basis of a survey carried out by its services in 2002, its Office for Infrastructure and Logistics ("OIB") had envisaged carrying out improvements designed to facilitate access for disabled people to the Commission's premises. In addition, a new version of the document concerning the standards applicable to these premises should include internal regulations to ensure access, movement within buildings, evacuation in case of emergencies, and sanitary installations.

(3) Information and communication : The Commission noted that a number of important documents had been produced in Braille, including the White Paper on the Reform of the Commission and the Consultative Document on Improving Working arrangements for People with Disabilities. These documents can be consulted in two of its libraries. In September 2001, the institution adopted a Communication on "eEurope 2002: Accessibility of Public Websites and their Content", aimed at making websites more accessible for older people and people with disabilities. Work had already begun to make the EUROPA website compliant with international standards (conformity Level "A"), even though this task had to be carried out in the future. The Commission pointed out that some top-level EUROPA websites, such as the home page of EUROPA and the home page of the Commission, already meet these international requirements, having been designed with accessibility in mind.

(4) The European Schools : The Commission referred to the educational programme for pupils with Special Educational Needs ("SEN") established by the European Schools in 1999. The programme addressed both learning as well as physical disabilities, with a view to integrating SEN students into school life as much as possible by means of, for example, specialised teachers who provide class assistance to pupils. Accordingly, a tailor-made programme for each SEN student is decided upon, based on the pupil's ability and needs, in a special council comprising the director, teachers, parents and usually a medical specialist. The result of the council is a contract, renewable on a yearly basis, which sets out the responsibilities undertaken by each party. The Commission underlined that there is no individual budgetary restriction for the provision of services to students with disabilities. The number of students in the SEN programme has increased each year. Its progress has been closely monitored and a revision of the 1999 programme was under consideration in 2004 for future adoption.

The Commission also referred to the issue of accessibility of the Schools' premises. It





noted that many of the buildings were built or adapted to cater to people with physical disabilities. Moreover, the premises that were recently built or renovated have incorporated the latest standards for access for persons with disabilities. Although access to the buildings of the Schools and their upkeep is the responsibility of the Member States, the Commission undertook to contact, if necessary, the responsible authorities in order to ensure that all the Schools' premises were suitably adapted.

(5) Internal co-ordination: The Commission mentioned its recent review of the Code of Good Practice, which led, on 25 November 2003, to the formal adoption of a revised code. This initiative sought to integrate a number of legal changes brought about most notably by the new Staff Regulations. The revised Code of Good Practice is intended to be more inclusive of people with disabilities. It provides for: (i) appropriate office accommodation to be determined by the particular needs of the individual; (ii) suitable recruitment and selection procedures to ensure that candidates with disabilities are not at a disadvantage; (iii) specialist advice for disabled candidates who are on a reserve list; (iv) elimination of physical or technical environmental barriers which may create problems for staff with disabilities; (v) information and awareness-raising through, among other means, training courses which deal with the question of disabilities; and (vi) continuous monitoring and improved procedures for the proper application of the provisions contained in the Code, to be carried out throughout an official's career.

The Commission added that, as foreseen in Section 8 of the Code of Good Practice, it had planned to review, in the course of 2004, the provision of that Code, in order to establish baseline data on its staff with disabilities. The Commission also announced its intention to publish, in the future, an anonymous statistical report based on the data gathered in the course of that review (7).

### **Public participation**

On 28 April 2004, the Ombudsman posted on his website an open letter in which he invited the public to send comments on the Commission's opinion. In his letter, the Ombudsman noted that all comments received would be included in the Ombudsman's file on the inquiry, and eventually forwarded to the Commission. The Ombudsman received a total of 56 contributions from the public, non-governmental organisations and national ombudsmen. These observations, whose total length ran to many hundreds of pages, addressed in detail each of the aspects referred to in the Commission's opinion. Since, in his letter to the Commission of 19 November 2003 opening the inquiry, the Ombudsman had stated that he intended to publicise all relevant documents pertaining to the inquiry on his website, all observations from the public which did not have a confidential nature were also posted on the Ombudsman's website.

Following the criteria and categories set out by the Commission in its opinion, the observations made by the public were, in summary, as follows:

1. Employment : According to some of those who submitted comments, the Commission's



opinion failed to refer to Budget line A4301 which constitutes the institution's most important instrument for the financial support of officials with a disability, or officials with disabled family members (8) .

It appears that, in its role as employer, the Commission gives two forms of assistance: (i) statutory assistance, as in the case of family allowances, which, as laid down in Article 67(3) of the Staff Regulations (9) , allows an official to be granted double the normal dependent child allowance if his or her child is disabled; and (ii) an additional contribution made towards the costs arising from a disability, by means of budget line A4103, known as "supplementary aid for the disabled". The distribution of this supplementary aid for the disabled is governed by a number of provisional guidelines which stipulate that the beneficiary must make a contribution depending on taxable family income.

In the observations from the public, it was argued that support from this line is still regarded as a sort of favour, rather than a right. The budget line providing the funds is provisional and costs are reimbursed only if sufficient funds are available. Moreover, in the view of some of the persons making observations, the Commission only reimburses well-documented expenses. Beneficiaries have to pay a substantial contribution, which may well constitute discrimination by comparison with national residents benefiting from national provisions. The best-known examples are the costs of special education for disabled children, even though the situation is similar as regards transport or tutorial costs.

As regards the recruitment of disabled persons, some of the comments received (10) stated that the Commission did not appear to be particularly transparent in relation to the proactive recruitment methods it had announced. Even though the institution had noted in its opinion that it had set up a sub-working group to issue a report on the accessibility of recruitment procedures for candidates with visual impairments, some of the contributors considered that this initiative was insufficient, and that concrete action would be needed to address the needs of all disabled people.

In the view of some of the contributors (11) , the Commission had painted an unduly positive picture of the measures it had undertaken to ensure that disabled people were not discriminated against and of the positive impact of these measures on its recruitment policy. Accordingly, a more realistic view of the situation was needed in order to take into account the number of disabled people recruited on a yearly basis. This perspective would lead to a more reliable evaluation of the situation over time.

For some of the contributors, a more active recruitment policy of disabled people could only be achieved through positive discrimination, whereby a specific percentage of vacancies, for example 5% of vacancies, should be reserved for candidates with disabilities (12) .

2. Accessibility of the Commission's premises : The comments from the public as regards this aspect of the problem were generally rather critical of the Commission's policy. It was stated that the institution unjustifiably refused to participate in a comprehensive



accessibility audit of all EU institutions, launched by Parliament in 2003. A number of contributors also noted that the Commission's Communication on Buildings Policy and Infrastructures in Brussels (13) had given scant attention to the issue of accessibility for disabled persons (14).

Some of those who made comments also mentioned the need for the Commission to adopt comprehensive accessibility plans for disabled people in all its premises, with clearly defined medium-term and long-term objectives (15).

3. Information and communication : Some of the observations sent by the public underscored the need for the Commission to take a more proactive role in the dissemination of information across Europe (16).

According to some of those who submitted comments, the Commission should recognise that not only persons with visual disabilities may require information in accessible formats but also other disability groups, such as persons with learning disabilities, deaf-blind and deaf persons (17).

Disabled people's access to the contents of the Commission's websites constituted a focus of great interest among the public. It was suggested that independent experts should assess the Commission websites on a yearly basis, with a view to ensuring that these websites comply with international standards (18). Moreover, it was noted that particular attention should be given to the problems caused by the display of files in PDF format (19).

Whilst the efforts undertaken by the Commission to produce material in Braille, for blind and partially sighted people, appeared to have been very much appreciated by the public, some of those who submitted comments pointed out that the institution only referred to Braille as an alternative format. In their view, the Commission needed to go further in ensuring that all EU documents are available to the general public upon request and without undue delay in a number of alternative formats such as Braille, large print, audio and electronic formats (20).

4. The European Schools : This aspect of the inquiry attracted considerable public attention, most of the comments being highly critical of both the Commission and the European Schools. The main criticism related to what was generally perceived as the Schools' failure to put effectively into practice their stated commitment towards a real integration of SEN children into school life (21).

In the face of all the pledges made by the Commission for the integration of SEN children, the comments received from the public gave a rather different view of the real situation, in which the integration of disabled pupils into mainstream education seemed to be attainable only in the long term. On the basis of these public comments, it appeared that (i) the Schools frequently have refused to accept SEN children on the grounds that their premises do not have either the know-how or the human resources to deal with some types of disabilities (22); (ii) the Schools' SEN programme has become increasingly



restrictive since no real effort has been made to promote a more inclusive education (23) ; (iii) SEN children have often not been really welcome, and qualified staff and support for integrating such children were lacking (24) ; and (iv) a significant number of pupils, whose needs can still not be catered for by the European Schools, was forced to find alternative schools (25) . Since the current policy of the European Schools towards disabled children was perceived to be a failure, it was even proposed that a whole new policy on physical and learning disabilities be developed to make the Schools inclusive instead of elitist (26) . In this context, the need for an educational perspective based on "preventive integration" was also suggested (27) .

A number of critical remarks concerning specific aspects of the way in which the European Schools cater for the needs of SEN children were expressed. These included:

- The convention upon which individual programmes for SEN children are established has to be renewed each year. As a result, parents cannot be certain of how the situation is to develop over time (28) .
- The Schools have been unable to devise adequate programmes for certain learning difficulties such as dyslexia, for which teachers are generally ill prepared. It would be necessary to give teachers appropriate in-service training on how to support dyslexic pupils in their classes (29) .
- Parents of SEN children do not receive enough information on the status and eventual progress of their children, and they were concerned about proposals recently made to further restrict their potential intervention in the Schools' SEN advisory groups (30) .
- Individual schools implement the Schools' policy towards SEN children in an often contradictory manner. It would therefore be necessary to consider creating a position of SEN co-ordinator in each of the Schools (31) .

Some of the observations sent by the public also underscored the financial constraints of the Schools' SEN programme resulting from budgetary limitations. It was noted that, notwithstanding the Commission's claim that no individual budgetary restriction had been put in place, the overall budgetary situation did in fact limit the assistance to be given to each individual (32) .

5. Internal co-ordination : According to some of those who submitted observations, the Commission's Code of Good Practice did not meet the expectations it had raised. It was noted with disappointment that the Commission had made no effort to consult with representatives of disability organisations in this review process. A number of critical remarks were made as regards some aspects of the Code, such as the narrow scope of fundamental concepts, including disability or disability-based discrimination (33) , or the lack of a clear definition of integration (34) . Furthermore, it was suggested that the provisions of the Code should not be mere criteria or guidelines, but rather binding rules (35) .

In some comments from the public, it was underlined that training for all staff who work alongside people with disabilities ought to be required.

FURTHER INQUIRIES



After careful consideration of the Commission's opinion and the observations received, the Ombudsman took the view that the concerns expressed by the public ought to be put to the Commission in the context of an open and transparent dialogue. For this purpose, the Ombudsman sent a request for further information to the Commission on the following matters:

#### 1. Employment :

- Employment and Disproportionate Burden : In his letter to the Commission, the Ombudsman welcomed the inclusion of the principle of non-discrimination on grounds of disability in Article 1d(1) of the new Staff Regulations, which entered into force on 1 May 2004. The Ombudsman noted, however, that the Commission's interpretation of these clauses in the context of a previous case (1391/2002/JMA) had given rise to a special report from the Ombudsman to Parliament of 27 May 2005. Given the nature of the Commission's comments at the time, the Ombudsman considered it pertinent to revisit the Commission's interpretation of some of these clauses in the context of his own-initiative inquiry. The Ombudsman pointed out that, in its detailed opinion in case 1391/2002/JMA, the Commission referred to Article 1d(4) of the Staff Regulations concerning the accommodation to be provided to officials with a disability so that they can perform their assigned tasks. This provision establishes that the appointing authority should provide "reasonable accommodation", but only to the extent that such measures do not " *impose a disproportionate burden on the employer* ". In its comments, the Commission appeared to imply that this limitation to the principle of non-discrimination might be extended to other situations involving people with disabilities.

In view of the above, the Ombudsman recalled that Article 1d(6) of the Staff Regulations explicitly stated that any limitation to the application of the principle of non-discrimination must be justified on objective and reasonable grounds, and must be aimed at legitimate objectives based on the general interest. The Ombudsman therefore requested information on:

The criteria or guidelines to be defined by the Commission to assist its services to decide whether or not a measure to promote the integration of people with disabilities is deemed to impose a disproportionate burden.

- Financial Support for Officials and Family Members with Disabilities : The Ombudsman noted that some of those who had submitted comments believed that the Commission's opinion had failed to refer to Budget line A4301, and therefore requested further information on:

The Commission's position under the 2006 budget.

- Accessibility of Recruitment Procedures : As regards the recruitment of disabled persons, the Ombudsman pointed out that some of the comments received had taken the view that the Commission did not appear to be transparent in relation to the proactive recruitment



methods it had announced. Accordingly, the Ombudsman requested further information from the Commission on:

Whether or not its services intended to produce any further report on the accessibility of recruitment procedures for candidates with disabilities other than visual impairment.

- Periodic Reports on Recruitment Policy : Since, in the view of some of the contributors, the Commission's recruitment policy should allow for a more reliable evaluation of the measures undertaken to combat discrimination, the Ombudsman requested further information from the Commission on:

Whether or not it may consider establishing periodic reports on the development of its recruitment policy concerning people with disabilities, and if so when this measure was to be implemented.

- Positive Measures to Promote Recruitment : Taking into consideration that, for some of the contributors, a more active recruitment policy of disabled people could only be achieved through positive discrimination, the Ombudsman requested further information from the Commission on:

Whether or not its services may consider developing positive measures to promote recruitment of disabled people.

## 2. Accessibility of the Commission's premises :

- Building Standards : As some of those who made comments mentioned the need for the Commission to adopt comprehensive accessibility plans for disabled people in all its premises, the Ombudsman requested further information from the Commission on:

Whether or not the announced new version of the document containing the standards applicable to the accessibility of the Commission's premises for disabled people (2004) had been adopted, and if so, what was the main thrust of its provisions.

- Parking facilities : The Ombudsman recalled some of the considerations made in his decision of 31 January 2005 on complaint 2415/2003/JMA, concerning the alleged lack of parking spaces for disabled people near the main buildings of the Commission in Brussels. In that case, the Ombudsman took the view that access to the Commission's premises for disabled people travelling by car should be an important aspect of his own-initiative inquiry. In pursuit of this aim, he undertook to monitor the actions taken by the institution in this regard. At that time, the Ombudsman noted that, notwithstanding the Commission's pledges to develop and support a comprehensive and integrated strategy to deal with social, architectural and design barriers that unnecessarily restrict access for people with disabilities (36) , no specific follow-up measures had yet been announced. In addition, he also noted that negotiations with the Belgian national authorities were under way in order to improve the situation. The Ombudsman therefore requested further information from



the Commission on:

Whether or not any progress had been achieved as regards the availability of parking spaces reserved to people with disabilities either in or near all of its buildings.

### 3. Information and communication :

- Accessibility of Information : Taking into consideration some of the observations sent by the public which underscored the need for the Commission to take a more proactive role in the dissemination of information across Europe, the Ombudsman requested further information from the Commission on:

How it intended to improve the accessibility of the information it produced for disabled people, not only for those with visual impairments, but also for other disability groups.

- Accessibility of Websites : As regards the accessibility to the contents of the Commission's websites offered to disabled people, the Ombudsman requested further information from the Commission on:

Whether or not it planned to carry out a regular assessment of the accessibility of its websites for disabled people, and if so, how it intended to implement this initiative.

- Alternative Accessible Formats for all EU Public Documents : Since some of the people who submitted observations had suggested that independent experts should assess the Commission websites on a yearly basis, the Ombudsman requested further information from the Commission on:

Its plans to make EU documents accessible through alternative formats, such as large print, audio and electronic formats.

### 4. The European Schools :

- Integration of SEN Children : The Ombudsman noted that this aspect of the inquiry had attracted considerable public attention, and that most of the comments had been highly critical of both the Commission and the European Schools. The main criticism was addressed to what was perceived to be the Schools' failure effectively to put into practice their stated commitment towards real integration of SEN children into school life.

The Ombudsman recalled that he had already had an opportunity to review this issue in the context of a previous complaint, 1391/2002/JMA, for which he submitted a special report to Parliament on 27 May 2005. In that case, one of the allegations was that the European Schools had failed to establish an integrated and unified education system to cater for the needs of all SEN children. Having reviewed the relevant legal arguments, the Ombudsman found that there appeared to be no binding legal provision requiring the Commission to set up a unified educational system. In the absence of such a legal basis,



the Ombudsman could not conclude that the Commission failed to act properly by not ensuring that the European Schools provide education programmes for all SEN children of EU officials (37) .

Although the Ombudsman did not find maladministration in this regard, he commented on the inconsistency between the Schools' practice and the public commitments, made by both the EU in general and the Commission in particular, towards an integrated education. The Ombudsman noted that the EU and its Member States had singled out the integration of SEN children into a unified education system as one of their goals in the Council's Resolution of 31 May 1990 (38) . The Commission itself had adopted an identical perspective in a Communication of 12 May 2000 ("Towards a barrier-free Europe for people with disabilities") (39) , which addressed the integration of SEN children. In this Communication, the Commission made a commitment to

*" (...) continue to support the efforts made by the European Schools to give appropriate support to pupils with disabilities with a view to integrate them into its mainstream classes and in particular to better assist students with specific learning disabilities. "* (40)

The Ombudsman noted that, in its reply to the Ombudsman's own-initiative inquiry , the Commission had restated its undertaking towards the integration of all SEN children into a unified educational system, as originally stated in the 1999 European Schools' programme for SEN pupils.

The Ombudsman also explained that, at its meeting of 1 and 2 February 2005, the Board of Governors of the European Schools had approved a new document entitled "Integration of SEN pupils into the European Schools" (41) , which should have laid the ground for a revised policy in this area. As stated in that document's Preamble, the new guidelines sought to adapt the admission and integration procedures for pupils with learning disabilities, and to introduce improvements and innovations into the system to cater to the growing number of SEN pupils.

In view of the Commission's initiatives in this area, the Ombudsman requested further information from the Commission on:

How it intends to assess the results the European Schools' new policy for the integration of SEN children and what its timetable for doing so was.

##### 5. Internal co-ordination :

- Analysis of Disability Survey : In light of the Commission's comments on this aspect of the problem, the Ombudsman assumed that the first review of the Commission's 2004 review of its Code of Good Practice had been completed. The Ombudsman requested therefore further information from the Commission on:

Whether the survey had been analysed and, if so, what conclusions the Commission had





drawn from it and what action it proposed to take based on those conclusions.

- Raising awareness of disability : The Ombudsman pointed out that the revised Code of Good Practice included a section on information and awareness-raising which foresaw that the Code should be brought to the attention of all staff. The same section also provided that training courses to deal with the question of disability should be organised for those most particularly involved in this area. However, the Commission did not give any timetable or any more precise indication as to how this should be done in the future (42) . The Ombudsman requested further information from the Commission on:

Whether or not it has established, or intends to establish courses or information campaigns on disability awareness for its staff.

### **The Commission's second opinion**

In its second opinion in reply to the Ombudsman's queries, the Commission stated that it had adopted a broad, progressive and proactive approach to its policies in relation to people with disabilities. The new Staff Regulations, the revised Code of Good Practice, and the various services provided, had taken account of the special needs that people with disabilities may have in their dealings with the Commission. It argued that its policy aimed at ensuring that the principle of non-discrimination was applied to all its dealings with people with disabilities. The Commission undertook to continue consulting with its services and with the representatives of staff with disabilities, in particular through the Interservice Group on Disability.

As regards each of the queries made by the Ombudsman, the Commission's reply was, in summary, as follows:

#### 1. Employment :

- Employment and disproportionate burden : The Commission explained that, on 20 June 2004, in order to implement Article 1d(4) of the Staff Regulations, it had adopted Administrative Notice N° 69-2004 (43) . This Notice was intended to assist its services in deciding, *inter alia* , whether or not a measure to promote the integration of people with disabilities was deemed to impose a disproportionate burden. The implementing rules deal with, *inter alia* , the recruitment of disabled persons, disability in the course of the official's career, reasonable accommodation, and undue burden.

The Commission explained that, in addition, point 3 of its Code of Good Practice (Work-related accommodation) provides that stringent standards should apply when assessing what is a disproportionate burden for the European institutions. It argued that, in order to conclude that to provide accommodation to a particular disabled person imposes an undue burden on the institution, the costs of providing it must be more than the institution can reasonably be expected to bear.



The Commission referred to a number of examples of reasonable accommodation which are mentioned in point 8 of the implementing rules, such as (i) making facilities that are already in use by employees, readily accessible for and usable by people with disabilities; (ii) job re-structuring; (iii) provision of assistance; (iv) part-time working or modified work schedules; (v) acquisition or modification of devices; (vi) adjustment of training materials; and (vii) altering policies or practices. In addition, the Commission also made reference to several considerations when assessing what constitutes an undue burden, as set out in point 13 of the implementing rules. These considerations included the (i) the type and cost of the accommodation; (ii) the cost of making the accommodation, relative to the average overhead costs for each member of staff; (iii) the cost of making the accommodation, relative to the available budget; (iv) the number of people in the particular area who require accommodation; and (v) health and safety needs of all staff.

- Financial support for officials and family members with disabilities : As it had argued in the context of the Ombudsman's inquiry in complaint 1391/2002, the Commission underlined that it does not discriminate in relation to the support it provides for officials and family members with disabilities. The Commission argued that the whole range of financial support resulting from the sickness insurance for medical costs, the statutory allowances and the supplementary aid for disabled for non-medical costs was appropriate to compensate for supplementary costs linked to a disability. The guidelines for implementation of the budget concerning welfare appropriations for disabled persons entered into force on 1 May 2004, and provide that a recipient's personal contribution can range from 5% to 35%, calculated on the basis of his taxable family income. The guidelines are inter-institutional and each institution determines its own budget resources in this regard.

As for the budgetary situation, the Commission noted that, in 2005, all funds under the budgetary heading "supplementary aid for the disabled" (EUR 1 350 000) had been spent in connection with 85 cases. About half the dossiers concerned costs linked to severe handicaps, whereas the other cases involved the reimbursement of costs of education or specific training necessary to offset the effects of a disability. As for the budget 2006, the budgetary authority had granted an amount of EUR 1 770 000 (a 30% increase in comparison with 2005). The Commission regretted however that this amount would not be sufficient to ensure a full reimbursement in all cases.

Although the Commission argued that it did not have a legal obligation to reimburse all costs arising from a disability, it undertook to provide a full reimbursement of these costs on the condition that the budgetary authority guaranteed the availability of sufficient funds, and that an inter-institutional agreement on a revised proposal of the guidelines referred to above could be reached.

The Commission did not consider that the personal contribution provided for in the guidelines (5% to 35%) was socially unfair since it is based on taxable family income. It noted that, since 1 May 2004, individual financial aid has expanded, following changes in the policy on the supplementary allowance for disabled persons and an increase in the



amount of available funds. Between 2003 and 2005, the number of dossiers increased by nearly 50% (from nearly 60 to 85 dossiers) and the funds available were increased by 130% (from EUR 770 000 to EUR 1 770 000). A new sector "practical help for disabled" was also established in 2004 to provide general information, counselling and support.

The Commission also announced that it intended to publish in 2006 a new Communication dealing with assistance for people with disabilities (44) .

- Accessibility of recruitment procedures : The Commission argued that several practical measures have been implemented in order to facilitate the participation in competitions of candidates with disabilities. Thus, all notices of competition included a standard paragraph reminding candidates of the non-discriminatory nature of the Union's recruitment policy (45) , and candidates with a disability are invited to submit a certificate so that Selection Boards can adopt the necessary measures to facilitate their participation (46) . In Annex 2 of the "Guide for Applicants", published at the same time as each notice of competition, candidates with a disability are reminded of the opportunity to ask for special arrangements on account of their disability.

On the EPSO website, direct reference is made to equal opportunities. The same applies for all advertisements that appear in the Press when a competition is announced.

The Commission considered that numerous practical measures had already been undertaken and enumerated a series of examples in cases of disabilities involving problems with: sight (47) , hearing (deaf or partially deaf candidates) (48) , the hands (49) , the use of a wheelchair (50) , debilitating illness/cerebral handicap (51) or dyslexia (52) . In order to comply with these requests, EPSO has the option of inviting those candidates with a disability to separate test centres.

- Periodic Reports on Recruitment Policy : The Commission noted that it had reviewed, jointly with EPSO, the content of publicity for recruitment with a view to encouraging more applications from people with disabilities. The question of preparing reports on specific disabilities should be examined in this context.

The Commission stressed that anonymity is a guarantee of equal treatment for candidates and that its selection procedures are organised, to the greatest extent possible, to ensure equal treatment. In this respect, EPSO arranges special facilities to enable disabled persons to compete in the competitions.

The Commission undertook to examine how existing and future statistics on the employment of people with disabilities could be made more reliable and regularly updated, while respecting the obligations of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (53) . The Commission agreed to consider publishing such statistics in the future, as part of the examination to improve the reliability of statistics.



- Positive measures to promote recruitment of people with disabilities : In the Commission's view, the best guarantee of equal treatment in the recruitment process involves the development of anonymous tests and the provision of reasonable accommodation to participate in these tests. The Commission however did not see a need further to intervene by providing, at this stage of the recruitment procedures, positive action measures specifically for people with disabilities.

The Commission explained that its services, namely, the Directorate-General for Personnel and Administration ("DG ADMIN") are notified when laureates from recruitment competitions indicate that they have a disability requiring special accommodation in the recruitment process. In such cases, these services adopt a proactive approach to their recruitment on a case-by-case basis.

The Commission undertook to explore the various means by which the recruitment of people with disabilities could be promoted within the institution, and referred to the need to carry out a review of the current situation. This review should consider the question of developing in greater detail positive measures to promote the recruitment of people with disabilities, such as (i) establishing and monitoring some form of employment target for people with disabilities, and (ii) individual follow-up by the administration after the medical examination to ensure appropriate assignments and equipment. The Commission further added that the question of disability had been addressed in courses on selection interviewing and training of the members of the Selection Board, in order to ensure sensitisation to the issues.

## 2. Accessibility of the Commission's premises :

- Building standards in relation to accessibility : The Commission explained that the latest version of its buildings standards manual, *Manuel d'Immeuble Type* ("MIT") had been adopted by the Management Committee of the OIB on 29 June 2004. Chapter B.III of the manual addressed the requirements for the disabled, covering general access issues, reserved parking spaces, mobility, lighting and signposting in buildings, sanitary installations and emergency evacuation. The MIT was compliant with both Belgian and European legislation in this area, and took account of the provisions of the Commission's Code of Good Practice.

The Commission explained that a further revision of the MIT was not planned. The current document was only adopted in mid-2004 and is up to date in terms of accessibility standards. The matter should be kept under review in light of the new MIT standards and the experience gained by the recently appointed specialist responsible for the ergonomic appraisals of the office environment.

- Parking facilities : The Commission noted that, in line with its Code of Good Practice, a minimum of two parking spaces are reserved for disabled visitors either inside or outside each Commission building except for the Berlaymont building. In all, the Commission has



114 such reserved spaces. Since access to the Berlaymont building is restricted for security reasons, the Commission requested the Brussels authorities to reserve disabled parking spaces on the Boulevard Charlemagne, which runs alongside the Berlaymont street. The Commission explained that, in October 2005, the Police Commissioner for Brussels-Capital had agreed to reserve three such places in the Boulevard Charlemagne and had further requested the department of public works to carry out the necessary work. The Commission has also 216 reserved parking places within its buildings for its own staff suffering from permanent or temporary disabilities/health-related difficulties (54) .

### 3. Information and communication :

- Accessibility of information disseminated for people with disabilities : The Commission referred to its position on accessibility of information laid down on the "EUROPA - Web Accessibility Policy" page (55) . According to this position, the Commission decided to adopt level A (Priority 1) conformity for new and updated websites hosted on the EUROPA server, in order to facilitate their use not only by visually impaired persons, but also by people with other impairments and disabilities, rendering them therefore in compliance with WAI ("Web Accessibility Initiative") standards.

- Accessibility of websites to the public : The Information Providers Guide ("IPG") is intended for authors of pages on the EUROPA website (co-ordinators, webmasters, contractors) and covers editorial, technical and graphic aspects. The rules set out in the IPG (56) must be followed in order to ensure a coherent and user-friendly service. According to the IPG, pages to be published on EUROPA should meet the Level A accessibility criteria. The webmasters of directorates-general and services are responsible for the assessment of the accessibility of their respective websites and for ensuring that the websites and webpages are IPG and WAI-A compliant. Furthermore, the EUROPA co-ordination team of the Directorate-General for Press and Communications provides systematic assistance to the Webmasters in their task of validation of the websites and webpages.

- Alternative accessible formats for all EU public documents : WAI-compliant EUROPA pages can, with the appropriate end-user software, be used to create large prints, Braille, audio and electronic formats. Because of the multilingual nature of EUROPA, not all languages can be read by assistive software. The Commission will improve the existing WAI-compliant pages by providing audio files or sign language files generated from these pages. This solution, however, could cause problems, as the technique in question is still being developed. Alternatively, a link could be provided to an audio output next to introductory texts of any long articles/information, in order for impaired people to understand quickly whether the information is of interest to them. Otherwise, the Commission considers that the multilingual nature of the EUROPA website is best served by ensuring that its contents are easily accessible and WAI-compliant. The Commission underlined it has adopted a Web Content Management system which should guarantee conformity with the minimum accessibility requirements on all its pages (57) .

### 4. European Schools :



- Integration of SEN children : The Commission noted that it does not have competence in educational matters and cannot therefore assess or evaluate the new SEN programme in the European Schools nor give instructions to the latter. It explained that the Schools' Board of Governors takes all decisions in this area, and that the Commission has only one vote on the Board (58) . However, as a member of the Board, and as a responsible employer whose staff is expressing dissatisfaction with this service of the Schools which are funded largely with Community resources, the Commission noted it was actively pursuing the matter by requesting that an evaluation of the SEN programme be made.

In March 2004, the Schools' Pedagogical Committee, which is the preparatory sub-committee of the Board of Governors where educational matters are discussed and prepared for the Board's consideration and approval, had the first opportunity to review certain statistics on SEN cases. At that time, the Commission requested that the SEN programme be evaluated by the relevant inspectors/co-ordinators and that the next annual report on the SEN programme provide the results of that evaluation. The most recent report on the SEN programme was similar to the first, however, and the Commission, at the Pedagogical Committee meeting in November 2005, repeated its request. The Commission had also asked the Office of the Secretary-General of the Schools for more information on the application of the SEN programme, arising from other requests for information from the Ombudsman. The Secretary-General had stated in writing the type of information that should be collected. The Commission expressed its regret that, as of the date of its second opinion, March 2006, no data have been provided.

The Commission pointed out that, at the end of January 2006, it had formally requested an evaluation of the implementation of the SEN programme by the Schools' Board of Governors. The Commission announced that an evaluation report should be issued in the course of the next school year (59) .

#### 5. Internal co-ordination :

- Analysis of a disability survey : The Commission underlined that the survey regarding disabilities conducted by its services in December 2004 had been analysed and the results posted on its intranet. Based on the analysis of the replies received, a number of specific actions had been proposed.

The Commission noted that some points were made with regularity and would benefit from further action. It mentioned the difficulties experienced by some staff in getting relatively simple types of accommodation to facilitate their work, such as appropriate chairs or office tables or adapted IT equipment, as well as the difficulties encountered by some disabled persons in accessing certain buildings or moving within them.

The Commission explained that, on the basis of the survey, staff considered that, because of their disability, they had experienced less favourable treatment, which resulted in slower career development, less interesting work or lack of access to training. On an interpersonal



level, a number of staff experienced behaviour from superiors and colleagues that they regarded as humiliating, intimidating or offensive. The Commission announced that the findings of the summary report had been brought to the attention of all services concerned, where useful follow-up could be pursued to ensure greater awareness of the issues.

In the Commission's view, all staff should be made aware that discrimination based on disability is specifically prohibited by the Staff Regulations. Accordingly, the survey and its outcome had been placed on its intranet website in order to sensitise staff to the issues and help bring about change. Staff is also to be reminded on the intranet website that, under the terms of its Code of Good Practice, the Equal Opportunities and Non-discrimination Unit of DG ADMIN may be approached on a confidential basis if members of staff are dissatisfied with the implementation of the Code. The Unit will proceed to pursue such issues discreetly, with due regard to the level of confidentiality sought.

As part of the process of establishing a more visible and active policy in this area, DG ADMIN should consult with the Member States regarding the procedures, if any, adopted in their national administrations to promote the recruitment and accommodation of people with disabilities, with a view to establishing existing best practices that might also be pursued within the Commission.

In order to assess progress, the question of conducting a second disability survey in 2007-2008 will be considered towards the end of 2006. Depending on its results, priorities can be re-directed as required and new priorities can be set.

- Raising awareness of disability : The Commission stated that the primary means of raising awareness and sensitising staff to disabilities had been the publicity gained by the adoption of the revised Code of Good Practice and the conduct of the survey of all Commission staff on disability matters. The next step should be the publication of the results of the survey on the Commission's intranet in early 2006. This action should provide information on the analysis of the replies, together with the follow-up actions.

The Commission announced its intention to organise specific actions on sensitisation through training sessions or through organising a conference or seminar for staff, in 2006 or 2007, to coincide with the annual European Day of Disabled People on 3 December. Such actions should depend on the availability of financial resources (60) .

### **Public participation**

The Ombudsman posted the Commission's second opinion on his website. He did not receive any further comments from the public on it.

### **Additional information from the Commission**



In order to update some of the information provided in its second opinion, in particular as regards three of the commitments made therein, the Commission sent additional information to the Ombudsman. The points raised by the Commission concerned the following aspects:

#### 1. Employment :

- Financial support for officials and family members with disabilities : The Commission announced that it planned to deal with this problem within the framework of a more comprehensive Communication on "Equal opportunities for all" to be presented in the wider context of the designation of 2007 as the European Year of Equal Opportunities for All.

#### 4. European Schools :

- Integration of SEN children : The Commission explained that, in its meeting of 30 January 2006, the Board of Governors of the European Schools did not have the opportunity to examine the report on 2004/2005 SEN statistics, even though this point had been foreseen in the agenda. In its April 2006 meeting, although this issue was not on the agenda, the Commission requested that the next report include (i) more qualitative information about the integration of SEN pupils and their progress, (ii) an evaluation of the SEN program, and (iii) the strategy to be adopted in the European Schools to make provision for such children. The Board of Governors took note of the report, which is now being considered by the Board of inspectors. The Commission noted that no new report had been communicated, though the next report 2005/2006 should include its requested additions of qualitative information and an evaluation of the program.

#### 5. Internal co-ordination :

- Raising awareness of disability : In its first opinion, the Commission had undertaken to publish the results of the Commission-wide survey on disability matters on its intranet website, as a means to provide information on analysis of the replies, together with the follow-up actions planned for 2006. The Commission announced that the results of the survey had already been published (61) . It added that the data should be completed with the information collected through the survey on Member States policies for the employment of people with disabilities in their civil service. The assessment should identify a benchmark of practices, and should also contribute to the definition of an action plan on disability for 2007.

The Commission announced that a practical Guide on Good Practice in the area of non-discrimination aimed at trainers and at managers who have responsibilities for recruitment has also been published (62) . The Commission explained that this guide has been disseminated as widely as possible throughout its services. Although the Commission has not organised specific courses on non-discrimination issues, the subject has been addressed through courses on selection interviewing and training for Selection Boards. In





addition, the Commission undertook to organise, in the near future, additional awareness-raising events addressed to staff particularly concerned (63) .

THE DECISION

## **1 Introductory remarks**

1.1 According to Article 195 of the Treaty Establishing the European Community, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of Community institutions and bodies.

The Ombudsman decided to open an own-initiative inquiry into the subject of the integration of persons with disabilities by the European Commission, in order to ensure that these citizens were not discriminated against in their relations with the institution.

1.2 In launching this initiative, the Ombudsman took account of the fact that, as generally agreed, a disability cannot be defined merely on the basis of a single health problem, or a physical or mental limitation, but rather as the result of a complex interaction between a health problem or functional limitation and the social, political, cultural, economic, and physical environment (64) . The Ombudsman was also mindful that people with disabilities constitute a significant proportion of the population of the European Union (65) . As publicly acknowledged by most European institutions and Member States (66) , this segment of society faces a wide range of obstacles which prevents its members from achieving equal opportunities, independence and full economic and social integration. The Ombudsman notes that, as revealed by a Eurobarometer survey, virtually all Europeans appear to be in favour of a better integration of disabled people and no less than 97% of Europeans think that something should be done to involve people with disabilities more in society (67) .

Even though the European Union has responded to this challenge by adopting a number of legal and political initiatives to redress those obstacles, the Ombudsman considered it important to assess whether or not these commitments had been truly put into action.

The Ombudsman pointed out that recognition of the problem and the need to address it as a fundamental human right led to the inclusion in the Charter of Fundamental Rights of the European Union of a reference to persons with disabilities. Article 26 of the Charter provides that:

*" The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. "*

In opening this initiative, the Ombudsman also acknowledged that the Union had adopted a wide array of legal measures to combat discrimination against people with disabilities, notably the 1998 "Code of Good Practice for the employment of people with disabilities" ("the Code of Good Practice"). This Code provided a common inter-institutional position



designed to combat potential problems encountered by disabled individuals to become EU officials or to develop their careers as such (68) , on the basis of which a number of actions had to be undertaken in areas such as recruitment, careers, working environment, information and awareness, and monitoring.

1.3 The Ombudsman considered that, among the various institutions with special responsibility to ensure that persons with disabilities are not discriminated against in their relations with the EU institution, the Commission deserved special attention because of its central role within the European Union's institutional framework. Moreover, the Commission had taken a thorough approach towards disabled people in its communication of 10 May 2000 entitled "Towards a barrier-free Europe for people with disabilities" ("the Communication"). In this communication, the Commission committed itself to developing and supporting a comprehensive and integrated strategy to deal with social, architectural and design barriers that unnecessarily restrict access for people with disabilities (69) . It not only restated the commitments set out in the Code of Good Practice but, in addition, defined new measures aimed at fostering the development of best practice within its own organisation. The actions outlined in the Communication were grouped into five themes: (i) employment; (ii) accessibility of the Commission's premises; (iii) information and communication; (iv) the European Schools; and (v) internal co-ordination. This strategy was indeed reinforced by the Commission with the formal adoption of a revised Code of Good Practice on 25 November 2003.

The Ombudsman notes that these actions were supported by the European Parliament (70) , which called for the implementation of supplementary actions (71) , such as the creation of an inter-institutional group to examine the conditions of access for people with disabilities to EU institutions.

1.4 Good administration however requires prompt and effective action to implement publicly stated commitments. The Ombudsman took the view that the seriousness of the situation encountered by people with disabilities demanded that the proclaimed commitments be put into practice by means of effective actions. Because of the Commission's central role within the institutional framework of the Union and its specific commitments towards disabled people, the Ombudsman considered it useful to review the actions undertaken by this institution in this area, and to assess whether or not they were consistent with the institution's legal obligations and stated commitments.

The Ombudsman therefore requested the Commission to report on (i) the actions it had taken or intended to take to ensure that persons with disabilities were not discriminated against in their relations with the institution and (ii) the timetable for their adoption.

The Ombudsman made it clear that, in light of the inquiry's outcome, he would consider whether it was necessary to widen the scope of the inquiry and include other EU institutions.

1.5 At the outset, the Ombudsman wishes to make clear that his inquiry did not address



specific cases of potential maladministration concerning the Commission. The Ombudsman has instead focused his inquiry on (i) reviewing the commitments made by the institution towards people with disabilities, and (ii) comparing these undertakings with what has been effectively accomplished.

This process was carried out through an open and transparent dialogue in which the Ombudsman invited individuals with disabilities, representative groups, other ombudsmen at national and regional levels, and citizens to contribute. As announced in his letter of 19 November 2003 opening the inquiry, the Ombudsman posted all relevant documents pertaining to the inquiry on his website, including all observations from the public that did not have a confidential nature. The Ombudsman also forwarded these observations from the public to the Commission and asked it to comment on them.

The Ombudsman wishes to thank all those who participated in his inquiry. Their substantive contribution has certainly shed some light on the existing problems, and has helped the Commission identify the actions which might help to improve the situation in the future. The high level of participation from the public underlines the importance which citizens appear to attach to the problems affecting persons with disabilities.

1.6 In order to present the findings of the inquiry in a comprehensive and understandable manner, the Ombudsman, following the Commission's practice in its opinions, will group them round the five areas set out in the Communication, as the Commission did in its opinions, namely (i) employment; (ii) accessibility of the Commission's premises; (iii) information and communication; (iv) the European Schools; and (v) internal co-ordination.

## **2 Commission's actions in the area of employment**

2.1 The Ombudsman acknowledges that a great deal of progress has been accomplished in this area, not only in the definition of clear principles against discrimination on the employment of people with disabilities, but also in relation to aspects such as the financial support of officials and family members with disabilities, as well as recruitment matters.

### General Principles

2.2 The Ombudsman notes that the Commission's Code of Good Practice put forward a number of general principles aimed at facilitating access for people with disabilities to work in the European Public Service. On the basis of these general principles, all reasonable measures were to be adopted to ensure that people with disabilities would be able to participate in competitions on equal terms with other candidates.

2.3 The Ombudsman further notes that these principles have been substantially strengthened with the entry into force, on 1 May 2004, of the amendments to the Staff Regulations, which incorporated the anti-discrimination provisions enshrined in Article 13 of the EC Treaty (72) . Accordingly, Article 1d(1) of the Staff Regulations, expressly forbids any discrimination based on disability:



*" In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited. "*

This principle has been further developed in Article 1d(4) which states that:

*" For the purposes of paragraph 1, a person has a disability if he has a physical or mental impairment that is, or is likely to be, permanent. (...)*

*A person with a disability meets the conditions [ to ] perform the essential functions of the job when reasonable accommodation is made.*

*'Reasonable accommodation', in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. "*

The Ombudsman points out that, even though the Staff Regulations do not define the notion of "reasonable accommodation", its Article 1d(6) sets out a number of criteria on the basis of which

*" [a]ny limitation [of the principle of non-discrimination] must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. "*

2.4 In examining the application of the above provision to individual cases, the Ombudsman is mindful of the fact that an unduly extensive interpretation of the notion of "disproportionate burden" could negate the principle of non-discrimination based on disability. In the Ombudsman's view, that was the position taken by the Commission in the context of a previous case (1391/2002/JMA) concerning the education of children of EU officials with special educational needs ("SEN children").

The Ombudsman takes note that, in reply to his query, the Commission has undertaken to abide by the principles and the criteria stated in its Administrative Notice N° 69-2004 (73) of 20 June 2004. According to the principle set out in Article 12 of the above Notice, the only situation in which the Commission is not expected to provide a person with disabilities with reasonable accommodation to perform a task as a Commission official is if the costs of the operation would go beyond what the institution can reasonably be expected to bear.

The Ombudsman trusts that the Commission will ponder the reasonableness of each situation in a fair and balanced manner, taking into account the guidelines laid down in Articles 8 and 13 of its Notice which include a number of criteria such as the refitting of existing facilities, the introduction of modified work schedules, the acquisition or



modification of devices, and considerations based on the health and safety needs of all staff.

In view of the situation, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

#### Financial Support

2.5 The Ombudsman notes that the financial support given to officials with a disability or with disabled family members is an issue which has drawn great public attention, in particular as regards the so-called "supplementary aid for the disabled". This aid constitutes an additional contribution made by each institution by means of budget line A4103 towards the costs arising from a disability. The Ombudsman also notes that it has been claimed that this type of support should be granted as a matter of right to officials with a disability or with disabled family members and that it should cover all the cost incurred.

It appears that, on the basis of the guidelines governing the use of budget line A4103 dated 1 May 2004, the beneficiaries of supplementary aid for the disabled are reimbursed to the extent that sufficient funds are available and only for part of the costs incurred (5% to 35%). Potential beneficiaries are therefore required to make a contribution that depends on taxable family income. The Ombudsman notes that these rules apply to the costs of special education for disabled children, as well as to transport or tutorial costs.

2.6 As regards the costs of special education for disabled children, the Ombudsman points out that this issue constituted the object of his inquiry into complaint 1391/2002/JMA, which gave rise to a special report submitted to Parliament on 27 May 2005. In his special report, the Ombudsman recommended that the Commission should take the necessary steps to ensure that parents of SEN children who are excluded from the European Schools because of their degree of disability were not required to contribute to the educational costs of their children. The Ombudsman also notes that, by resolution A6-0118/2006 approved on 20 March 2006, Parliament endorsed the Ombudsman's conclusions. In the same resolution, Parliament called on the Commission to take the necessary steps to reimburse the full cost of special educational provision to parents of SEN children who are excluded from the European Schools because of their degree of disability. It added that such reimbursements should form part of a European social protection policy.

2.7 In connection with the distribution of supplementary aid for the disabled under budget line A4103, the Ombudsman notes the Commission's view that it does not have a legal obligation to reimburse all costs arising from a disability, and that the personal contribution provided for in the guidelines (5% to 35%) should not be regarded as socially unfair since it is calculated on the basis of taxable family income.

The Ombudsman notes, however, that notwithstanding its stated position, the Commission has undertaken to provide full reimbursement of the costs linked to a handicap on



condition that the budgetary authority would guarantee the availability of sufficient funds and that an inter-institutional agreement on a revised proposal of the guidelines would be reached.

In view of the public concern about this aspect of his inquiry, the Ombudsman is confident that the Commission will take the necessary steps to try and persuade the budgetary authority of the need to expand the scope of budget line A4103 in order to ensure that officials with a disability or with disabled family members can be granted a complete reimbursement of the costs linked to a handicap.

2.8 The Ombudsman points out that, in the context of the designation of 2007 as the European Year for Equal Opportunities for All, the Commission has undertaken to present a Communication on "Equal opportunities for all" which should deal, among other things, with matters concerning the financial support given to officials with a disability or disabled family members. Even though that Communication does not appear to have been published yet, the Ombudsman considers that the document should give the Commission an opportunity to confirm that it takes its commitments seriously and is willing to act on them.

In view of the situation, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

#### Recruitment

2.9 The Ombudsman considers that the past few years have seen a great deal of progress as regards access for people with disabilities to the European Public Service, in particular, following the establishment of the European Personnel Selection Office ("EPSO").

2.10 The Ombudsman is mindful of the fact that, as stated by the Commission, EPSO appears to have effectively implemented many measures aimed at facilitating the participation of candidates with disabilities in the recruitment procedures. In this vein, the Ombudsman welcomes the fact that all notices of competition include a standard paragraph reminding candidates of the non-discriminatory nature of the Union's recruitment policy, and that candidates with a disability are invited to submit a certificate so that Selection Boards can adopt the necessary measures to facilitate their participation. It also appears positive that the "Guide for Applicants", published at the same time as each notice of competition, includes a section which reminds candidates with a disability of the opportunity available to them to ask for special arrangements on account of their disability. Furthermore, the EPSO website makes a direct reference to equal opportunities. The same applies to all advertisements that appear in the media when a competition is announced.

The Ombudsman also welcomes EPSO's initiative to take a number of practical measures designed to ensure that its non-discrimination policy is properly implemented. An illustrative example of such practical measures is the provision allowing for the possibility of inviting candidates with a disability to separate test centres.



2.11 Notwithstanding this apparent progress, the public still appears to be concerned about the lack of transparency of the new measures and the need for a more reliable evaluation of the situation. The Ombudsman notes that, in reply to his request, the Commission announced that it is reviewing, jointly with EPSO, the content of its publicity for recruitment. This review would consider the possibility of preparing reports on specific disabilities other than visual impairments, with a view to encouraging more applications from people with disabilities.

The Ombudsman welcomes the Commission's undertaking to consider publishing more general reports on the recruitment of persons with disabilities which should include existing and future statistics, provided that these materials fully respect the obligations of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (74) . In the Ombudsman's view, this initiative would contribute to making the Commission's policy in this area more transparent and citizen-friendly, and would be in line with Parliament's consistent calls for such action (75) .

2.12 The Ombudsman notes that some observations submitted by the public in the course of his inquiry were critical of the Commission's failure to favour a more proactive policy towards the recruitment of persons with disabilities, and more particularly, the failure to develop some type of positive action. The Ombudsman is aware that the Commission, at present, does not appear to be willing to reserve a certain percentage of the total number of candidates it recruits to people with disabilities.

In reviewing the Commission's policy in this area, the Ombudsman is mindful of the fact that existing practices in Member States concerning the implementation of positive action measures show a degree of diversity. An important number of EU Member States such as Austria, Belgium (76) , Cyprus, the Czech Republic, France, Germany, Greece, Italy, Lithuania, Malta, Poland, Portugal, Slovenia and Spain have set out quota systems for the employment of disabled persons. Other European countries have chosen a different path for promoting the integration of this group of people into the working environment (77) . The Ombudsman hopes that, in seeking to formulate its own policy on the matter, the Commission will closely monitor the existing situation in the Member States and its evolution over time.

In this context, the Ombudsman finds it important to underline that the Commission has undertaken to explore the various means by which the recruitment of people with disabilities could be promoted within the institution. In this connection, the Commission has referred to a number of examples which include the establishment of some form of employment target for people with disabilities, or individual follow-up by the administration, following the medical examination, to ensure appropriate assignments and equipment.



In view of the situation, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

### **3 Accessibility of the Commission's premises**

3.1 The Ombudsman notes with concern that the accessibility of the Commission's premises is an aspect of his inquiry that has attracted a great deal of interest from the public which, on the whole, has been very critical of the Commission's record in this area.

3.2 It appears that the Commission pledged to adhere to the criteria laid down in both the EU and its own Codes of Good Practice. Accordingly, all reasonable steps were to be taken to minimise problems related to access to buildings, as well as to office accommodation and equipment, so that offices and facilities were to be accessible for disabled persons.

The Ombudsman notes that, in pursuit of these objectives, the Commission had announced that its services, namely, the Office for Infrastructure and Logistics ("OIB") had envisaged carrying out improvements designed to facilitate access for disabled people to the Commission's premises. These improvements should have included new standards to ensure the accessibility of all Commission buildings, in particular as regards access, movement within buildings, evacuation in case of emergencies, and sanitary installations.

3.3 Notwithstanding these commitments, the Ombudsman received many comments from the public which outlined a number of deficiencies in the Commission's policy in this area. For example, the public criticised the fact that the institution had not participated in a comprehensive accessibility audit of all EU institutions, and that its Communication on Buildings Policy and Infrastructures in Brussels had given scant attention to the issue of accessibility for disabled persons (78) .

The Ombudsman has also received different complaints concerning particular aspects of this issue, such as the accessibility of the Commission's parking spaces or of the EU information centre in Rond Point Schuman, in Brussels, to persons with disabilities. These cases show that accessibility of the Commission's premises is still a problem which needs to be dealt with more efficiently (79) .

3.4 The Ombudsman notes that, on 29 June 2004, in reply to his query, the Commission announced the adoption of new standards on accessibility of its premises for disabled people. Accordingly, the latest version of the Commission's manual on buildings standards addressed, in chapter B.III, the requirements concerning persons with disabilities. These requirements fully respect the standards set out by EU and Belgian law, and cover general access issues, reserved parking spaces, mobility, lighting and signposting in buildings, sanitary installations and emergency evacuation. The Ombudsman also acknowledges that the Commission has pledged to seek further progress as regards the availability of parking spaces for people with disabilities either in or near all of its buildings.

The Ombudsman is confident that the undertakings made by the Commission should





properly address the concerns expressed by the public. The Ombudsman also trusts that the Commission will monitor the situation, making the necessary adjustments to its policy and practices over time, in light of the situation and with due regard to public opinion.

In view of the above, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

#### **4 Information and communication**

4.1 The Ombudsman notes that access to information is a precondition for democratic participation at any political level. In view of the fact that the Commission constitutes one of the main sources of information on EU matters, it is of paramount importance that persons with disabilities can easily access that type of information as a means of ensuring their involvement in the democratic life of the Union. Accessibility of the Commission's documents and website acquires, therefore, particular importance in ensuring that persons with disabilities are not discriminated against.

The Ombudsman points out that, in order to achieve the above objectives, the Commission undertook, in its Code of Good Practice, to amend the guidelines on access to documents to ensure that publications and information were accessible for people with disabilities in alternate formats. Similarly, the Office for Official Publications of the European Communities was to ensure that citizens with disabilities enjoy full access to its information. As a result of these commitments, the Commission adopted, in September 2001, a communication aimed at making websites more accessible for older people and people with disabilities (80) .

4.2 The Ombudsman acknowledges that the Commission has achieved a great deal of progress as regards the accessibility of its information for persons with disabilities. This is particularly true in the case of information contained in the Commission's web page. The Ombudsman welcomes the Commission's initiative to adopt a high-level standard, the so-called conformity level A (Priority 1-WAI ("Web Accessibility Initiative") complaint), for new and updated websites hosted on its EUROPA server. This initiative should facilitate the use of Community websites not only by visually impaired persons, but also by people with other impairments and disabilities. The Ombudsman also notes that the Commission has undertaken to ensure that authors of pages on the EUROPA website, such as webmasters of directorates-general and services, apply the rules set out in the Information Providers Guide (IPG), in order to ensure the provision of a coherent and user-friendly service.

4.3 The Ombudsman is mindful of the fact that the public has criticised the degree of accessibility of the Commission's information, and has stressed the need to make it available not only to those with visual impairments, but also to as many disabled people as possible.

The Ombudsman notes, however, that the Commission has taken a number of initiatives to respond to these concerns, and is seeking to incorporate the appropriate end-user



software to ensure that information contained in WAI-compliant EUROPA pages is used to create large prints, Braille, electronic and audio formats.

4.4 The Ombudsman nevertheless wishes to draw the Commission's attention to the fact that the interest of the public in this issue has not been exclusively focused on information provided through the Internet.

The Ombudsman notes that the Commission produces a significant part of its materials in paper form as well. It appears that a number of documents, such as the White Paper on the Reform of the Commission and the Consultative Document on Improving Working arrangements for People with Disabilities, have been produced in Braille. The Ombudsman finds this effort commendable and hopes that it can be expanded in the future.

The Ombudsman is mindful of the fact that many persons with disabilities would like the Commission to ensure that more EU documents are available in a number of alternative formats such as Braille, large print, audio and electronic formats. The Ombudsman trusts that the Commission, in co-ordination with the Office for Official Publications of the European Communities, will seek to be responsive to this public concern.

In view of the situation, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

## **5 Integration of children with disabilities by the European Schools**

5.1 The Ombudsman notes with concern that this aspect of his inquiry attracted considerable public attention. In general, the public has been critical of both the Commission and the European Schools for their alleged failure effectively to put into practice their stated commitments towards real integration of SEN pupils into school life.

The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body and are therefore not within his mandate under Article 195 of the EC Treaty. The Ombudsman however has also pointed out that the Commission has a certain responsibility for the European Schools' operation, since it is represented in their Board of Governors and contributes largely to their financing. Accordingly, the Ombudsman believes that the Commission has a general responsibility to promote good administration in the European Schools. This responsibility includes the obligation to promote a non-discriminatory policy towards pupils with disabilities of the European Schools designed to ensure their full integration in the Schools. In this vein, the Ombudsman notes that, in its Code of Good Practice, the Commission has undertaken to support the efforts made by the European Schools with a view to better integrating pupils with disabilities.

5.2 It appears that the criteria for the European Schools' policy on SEN children were first laid down in an educational programme dating back to 1999. The programme addressed both learning as well as physical disabilities, with a view to integrating SEN students into



school life as much as possible, by such means as specialised teachers who provide class assistance to pupils. Accordingly, a tailor-made programme, based on the pupil's ability and needs, had to be decided upon, for each SEN student, by a special council comprising the director, teachers, parents and usually a medical specialist. The outcome of this process was a contract, renewable on a yearly basis, outlining the responsibilities assumed by each party.

In light of the comments made by the public in the course of the Ombudsman's inquiry, it appears that the implementation of this programme has generated public concern and that a number of problems have been identified, including the Schools' failure (i) to accept SEN children on the grounds that they lack either the know-how or the human resources to deal with some types of disabilities; (ii) to set up a comprehensive programme for SEN children and to make real efforts to promote a more inclusive education; and (iii) to provide qualified staff and support to integrate SEN children.

5.3 The Ombudsman has already reviewed the European Schools' policy for the integration of children with disabilities in the context of a previous complaint (1391/2002/JMA), in which one of the allegations was that the European Schools had failed to establish an integrated and unified education system to cater for the needs of all SEN children. As a result of his inquiry, the Ombudsman submitted a special report to Parliament on 27 May 2005 (81) . In the context of preparing this report, the Ombudsman found that there appeared to be no binding legal provision requiring the Commission to set up a unified educational system. In the absence of such a legal basis, the Ombudsman could not conclude that the Commission had failed to act properly by not ensuring that the European Schools provide education programmes for all SEN children of EU officials (82) . Notwithstanding this finding, the Ombudsman also pointed to the inconsistency between the Schools' practice and the public commitments made by the EU in general (83) , and by the Commission in particular (84) , in support of an integrated educational system.

5.4 The Ombudsman notes that, in reply to the comments made by the public, the Commission has explained that the Schools' Board of Governors approved in February 2005 a new document entitled "Integration of SEN pupils into the European Schools" (85) . This document is expected to provide the basis for a revised policy in this area. As stated in its Preamble, the new guidelines sought to adapt the admission and integration procedures for pupils with learning disabilities, and to introduce improvements and innovations into the system designed to address the challenges associated with a growing number of SEN pupils.

The Ombudsman recalls that he asked the Commission to explain how it intended to assess the results of the European Schools' new policy for the integration of SEN children and to indicate a timetable for such assessment. In this regard, the Ombudsman notes with concern that the Commission's reply contains no information which might show that the European Schools have changed course or that their efforts to integrate SEN pupils are effectively bearing fruit. The Ombudsman points out that the Commission has simply stated that, on several occasions, it had unsuccessfully requested that the Schools' SEN



programme be reviewed.

5.5 In light of the above, the Ombudsman considers that he does not have sufficient information to conclude that the new policy has properly responded to the concerns expressed by the public. In the absence of such information, the Ombudsman wishes to draw the Commission's attention to a number of issues concerning the Schools' policy for the integration of disabled pupils to which the public appears to attach great importance. These include:

- the view that the educational strategy towards SEN children should be based on a "preventive integration" approach;
- concern over the fact that the annual renewal of the convention upon which individual programmes for SEN children are established produces uncertainty among parents regarding how the situation is to develop over time;
- the need for the Schools to devise adequate programmes for certain learning difficulties, such as dyslexia, which require appropriate in-service training on how to support pupils in their classes;
- the risk that parents of SEN children may be excluded from the Schools' SEN advisory group as a result of the fact that they do not receive enough information on the status and eventual progress of their children; and,
- the absence of coherence in the manner in which individual Schools implement the Schools' policy towards SEN children, and the need for creating a position of SEN co-ordinator in each of the Schools.

5.6 The Ombudsman believes that the Commission should take due account of the above concerns with a view to promoting appropriate solutions in the context of policy decisions to be adopted by the European Schools' Board of Directors. In order closely to monitor how this situation evolves in the near future, the Ombudsman therefore considers it necessary that the Commission should report on the progress accomplished on the integration of children with disabilities by the European Schools by the end of 2007. This report will enable the Ombudsman to decide whether any further action on his part is necessary as regards this issue. The Ombudsman intends to publish this report on his website, so as to inform citizens of its contents.

## **6 Internal co-ordination**

6.1 Since a disability appears to be the result of a complex interaction between a health problem or functional limitation and its social, political, cultural, economic, and physical environment (86) , the integration of persons with disabilities necessitates action in a wide range of areas, such as health care, education, employment, transportation, housing, or social and legal protection, among others.

Accordingly, an efficient action against discrimination on grounds of disability requires that the different departments concerned act in a co-ordinated fashion and, indeed, that a separate administrative entity capable of serving as a focal point for all disability issues be set up in order to enhance and develop a mainstream approach (87) . The absence of an



integrated approach may make it difficult to obtain information on existing programmes and, as a result, prevent persons with disabilities from properly exercising their rights.

6.2 The Ombudsman points out that the EU as a whole, as well as the Commission's Code of Good Practice and Communication on People with Disabilities appear to share this mainstream perspective. They provide for a comprehensive and integrated strategy to combat potential instances of discrimination against people with disabilities, including the appointment of an official or body in each EU institution to be responsible for the implementation of such strategy.

6.3 An integrated approach also requires that information be made available to all services within the administration, so that they can contribute to avoiding potential work-related problems for staff with a disability. The Ombudsman notes that, in its Code of Good Practice, the Commission agreed to provide information and awareness raising through training courses on disabilities, and continuously to monitor and improve procedures for the proper application of its Code at all levels. For this purpose, the Commission undertook to carry out periodic surveys.

6.4 The Ombudsman notes that, to date, only one survey has been carried out, namely the one of December 2004. According to the survey, staff with disabilities indicated that they had experienced less favourable treatment because of their condition, and that this had resulted in slower career development, less interesting work, or lack of access to training. The survey revealed that, on an interpersonal level, a number of staff experienced behaviour from superiors and colleagues that they felt was humiliating, intimidating or offensive. The staff also considered they had encountered difficulties in getting relatively simple types of accommodation for their work, such as appropriate chairs or office tables, adapted IT equipment, or in ensuring access to or within buildings.

The Ombudsman welcomes the Commission's initiative to place the survey and its outcome, as well as its practical Guide on Good Practice, on its intranet website, in an effort to sensitise staff to the issues involved and to help bring about change.

The Ombudsman notes that the Commission is currently considering whether to carry out a new survey for the period 2007-2008. The Ombudsman trusts that, in the framework of that future survey, the Commission would find it helpful to take into account some of the criticism expressed by the public in connection with the application of its Code of Good Practice. The Commission may also consider improving the representation of disability organisations in the decision-making process focusing on potential reforms.

6.5 The Ombudsman points out that, in reply to his queries, the Commission has issued a practical Guide on Good Practice in the area of non-discrimination. This guide is intended to inform managers who have responsibilities for recruitment in the directorates-general. It appears that, in order to sensitise staff to the issues and to influence change, the guide has been disseminated throughout the Commission services, and has also been posted on the Commission's intranet website.



The Ombudsman views in a positive light the Commission's efforts to inform civil servants and agents through its intranet website that, if staff is dissatisfied with the implementation of its Code of Good Practice, a specific service, the Equal Opportunities and Non-discrimination Unit of the Commission's Directorate-General for Personnel and Administration, may be approached on a confidential basis. This service is empowered to pursue the subject-matter of the complaint in the most appropriate way.

6.6 In connection with the Commission's efforts to raise awareness concerning disability, the Ombudsman notes that the institution has also announced its intention to organise in the future specific actions on sensitisation through training sessions and conferences or seminars for staff. The Ombudsman regrets however that, notwithstanding its commitments, the Commission has, until now, been unable to organise specific courses on non-discrimination issues, limiting itself to setting up a number of information sessions for Selection Boards.

The Ombudsman wishes to draw the Commission's attention to the fact that in the comments made in the course of his inquiry, the public strongly supported the idea that training should be organised for all members of staff who work alongside people with disabilities. The Ombudsman hopes that the Commission will take proper account of these public concerns in order to improve the training it provides to its staff regarding disability issues.

In view of the above, the Ombudsman has concluded that, at present, no further action appears to be needed as regards this aspect of the case.

This is the policy approach followed by Canada and the United States. Both countries have sought to develop fully integrated disability policies. In the USA, this responsibility falls on the National Council on Disability, a federal agency established in 1978, with a mission to promote policies, programmes, practices and procedures that guarantee equal opportunity for all people with disabilities ([www.ncd.gov/index.html](http://www.ncd.gov/index.html)). In Canada this task is assigned to the Office for Disability Issues (ODI) which serves as the focal point within the Government of Canada for key partners working to promote the full participation of Canadians with disabilities in learning, work and community life ([www.hrsdc.gc.ca/en/gateways/nav/top\\_nav/program/odi.shtml](http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/odi.shtml)).

## **7 Conclusion**

7.1 The Ombudsman has carefully assessed the Commission's measures for the integration of persons with disabilities through an open and transparent dialogue in which individuals with disabilities, representative groups, other ombudsmen at national and regional levels, and citizens have greatly contributed.

7.2 On the basis of that review, the Ombudsman considers that the Commission has made a genuine effort to integrate people with disabilities, even if certain aspects of its policy do



not appear to have met public expectations. The Ombudsman acknowledges that progress has been accomplished in a number of areas, including the following:

- \* ensuring that the employment of persons with disabilities by all EU institutions respects fundamental principles enshrined in the new Staff Regulations, such as non-discrimination on grounds of disability (Article 1d(1)), or the need to provide officials with disabilities with reasonable accommodation, so that they can perform the tasks assigned to them (Article 1d(4));

- \* candidates to EU competitions with a disability can now benefit from a number of measures to facilitate their participation; moreover, the Commission has undertaken to explore the various means by which the recruitment of people with disabilities can be promoted within the institution;

- \* the adoption of new requirements regarding the accessibility of the Commission's premises, fully in line with the standards set out by EU and Belgian law, and specifically address the needs of disabled people;

- \* making information more accessible for persons with a disability, in particular as regards the data posted on the Commission's website; the institution has made laudable efforts in this direction;

- \* the Commission has made efforts to make its services more attuned to the difficulties encountered by persons with disabilities, so that they can adequately respond, if need be. In this light, the Commission's Code of Good Practice should be a very helpful tool to sensitise its staff, although efforts should be made to ensure that standards of conduct are fully upheld and periodically updated.

7.3 The Ombudsman is mindful of the fact that, as the public has underlined, action is still needed in other areas, including the following:

- \* the financial support given by the Commission to officials with a disability or with disabled family members is still perceived as insufficient; the public also considers that the budgetary allocation for cost linked to disability ought to be increased;

- \* the measures adopted to promote the recruitment of disabled persons appear to lack transparency, and a more reliable evaluation of the situation has been asked for;

- \* there also appears to be dissatisfaction with the insufficient accessibility for certain disabled persons to Commission information;

- \* the situation of pupils with disabilities in the European Schools appears to be inadequate and the Schools' policy for the integration of this category of children does not appear to have effectively contributed to their integration;



\* the application of the Commission's Code of Good Practice has revealed a number of inadequacies, in particular as regards the insufficient number of actions taken to sensitise the institution's staff by means of training courses or seminars.

7.4 The Ombudsman is mindful of the fact that the Commission has made a number of commitments in order to tackle the above public concerns. The Ombudsman notes that the Commission has undertaken to:

\* provide full reimbursement of the costs linked to a handicap; on condition that sufficient funds are made available by the budgetary authority and that an inter-institutional agreement is reached;

\* consider publishing more general reports on the recruitment of persons with disabilities and in these should include existing and future statistics;

\* adopt new standards on accessibility of its premises for disabled people, and increase the number of parking spaces for people with disabilities either in or near all of its buildings;

\* organise in the future specific actions on sensitisation through training sessions and conferences or seminars for staff.

In view of the Commission's undertakings, the Ombudsman considers that, at present, no further action on the above aspects appears to be needed.

7.5 The Ombudsman finds however that, in so far as the situation of pupils with disabilities in the European Schools is concerned, the state of affairs still appears to be unsatisfactory.

In order closely to monitor how this situation evolves in the near future, the Ombudsman therefore considers it necessary that the Commission report by the end of 2007 on the progress accomplished by the European Schools on the integration of children with disabilities. This report will enable the Ombudsman to decide whether any further action regarding this issue is necessary on his part. It should be noted that the Ombudsman intends to publish this report on his website, so as to inform citizens of its contents.

By opening a public debate on the integration of people with disabilities by the Commission, the Ombudsman hopes to have contributed to bringing the voice of disabled citizens closer to the Union's institutions. The Ombudsman is hopeful that the results of his initiative will help the Commission reassess some of its actions in this realm with a view to correcting them if necessary and, in so doing, to serving all European citizens better.

In an effort to inform as many citizens as possible, the Ombudsman will post on his website the full version of this decision in English, as well as a summary of it in all official languages of the EU.





Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities, OJ 1997 C 12, p. 1.

(2) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a barrier-free Europe for people with disabilities, COM(2000)284 final of 12 May 2000.

(3) European Parliament resolution of 4 April 2001 on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a barrier-free Europe for people with disabilities, COM(2000) 284 - C5-0632/2000 - 2000/2296 (COS).

(4) Council Decision 2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003, OJ 2001 L 335, p. 15.

(5) Available on the website of the Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities ([http://europa.eu.int/comm/employment\\_social/soc-prot/disable/codehaen\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/disable/codehaen_en.htm) ).

(6) Supra footnote 3, Parliament resolution of 4 April 2001, paragraph 35.

(7) See below pp. 23-24, as well as point 6.4 of the decision part.

(8) Philip Scott (8 June 2004); Marie Lujten, Disability Support Group EP (26 May 2004).

(9) " *The dependent child allowance may be doubled by special reasoned decision of the appointing authority based on medical documents establishing that the child concerned is suffering from a mental or physical handicap which involves the official in heavy expenditure.* "

(10) See, in particular, Nora Bednarski, European Disability Forum (EDF), (19 May 2004).

(11) Marie Lujten, Disability Support Group EP (26 May 2004).

(12) Pilar Villarino, Comité Español de Representantes de Personas con Discapacidad (CERMI), (31 May 2004).

(13) COM (2003) 755 final.



- (14) Marie Luijten, Disability Support Group EP (26 May 2004).
- (15) Supra footnote 11, Mrs Pilar Villarino, CERMI.
- (16) Pilar de la Peña García Tizón (23 May 2004).
- (17) European Disability Forum (EDF), (18 May 2004).
- (18) Catrin Roberts on behalf of Colin Low (European Blind Union, EBU), (24 September 2004), supra EDF.
- (19) Supra footnote 18, EBU; supra footnote 17, EDF.
- (20) Supra footnote 18, EBU.
- (21) Andreas Klumpp (27 July 2004); Marie Luijten, Disability Support Group EP (26 May 2004); addendum to the comments from the Disability Support Group EP (8 June 2004); Colm Begley (28 May 2004); Mr Y (1 June 2004) Confidential; Mr and Mrs Z (28 July 2004) Confidential.
- (22) Andreas Klumpp (27 July 2004).
- (23) Supra footnote 14, Marie Luijten, Disability Support Group EP (26 May 2004); addendum to the comments from the Disability Support Group EP (8 June 2004).
- (24) Supra footnote 14, Disability Support Group EP; Mr and Mrs Z (28 July 2004) Confidential.
- (25) Colm Begley (28 May 2004); Mr Y. (1 June 2004) Confidential.
- (26) Carol McCarthy, Dyspel asbl (21, 23 February and 5 March 2004).
- (27) Werner Salz, Pfalzinstitut für Hörsprachbehinderte (21 May 2004).
- (28) Supra footnote 26, Dyspel asbl.
- (29) Supra footnote 26, Dyspel asbl.
- (30) Brigitte Holst (11 and 12 May 2004); Marie Luijten, Disability Support Group EP (26 May 2004).
- (31) Supra footnote 30, Brigitte Holst.
- (32) Supra footnote 30, Brigitte Holst ; Annica Floren (7 May 2004).



- (33) Nora Bednarski, European Disability Forum (EDF) (19 May 2004).
- (34) Pierrette Hourthouat Bénacq, Association Aide et Information aux Non et Mal Voyants (22 December 2003).
- (35) Pilar Villarino, Comité Español de Representantes de Personas con Discapacidad (CERMI) (31 May 2004).
- (36) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a barrier-free Europe for people with disabilities, COM/2000/0284 final of 12 May 2000.
- (37) See point 1.5 of the decision of the European Ombudsman on case 1391/2002/JMA ( <http://www.ombudsman.europa.eu/decision/en/021391.htm> ).
- (38) Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education; OJ 1990 C 162, p. 2. Point 2 of the Resolution recommended to Member States that:
- " Full integration into the system of mainstream education should be considered as a first option in all appropriate cases, and all education establishments should be in a position to respond to the needs of pupils and students with disabilities "*.
- (39) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, " *Towards a barrier-free Europe for people with disabilities* " COM(2000) 284 final of 12 May 2000.
- (40) Supra footnote 39, Communication, Section 4.3.d (Mainstreaming in the European Schools), p. 19.
- (41) Reference: 2003-D-4710-en-6. This document is available on the European Schools' website ( [http://www.eursec.org/SE/htmlEn/IndexEn\\_home.html](http://www.eursec.org/SE/htmlEn/IndexEn_home.html) ).
- (42) Supra footnote 14, Marie Luijten, Disability Support Group EP (26 May 2004).
- (43) The full text of Administrative Notice 69-2004 is available on the Commission's intracomm website, which is not accessible to third parties ([http://www.cc.cec/guide/publications/infoadm/2004/ia04069\\_en.html](http://www.cc.cec/guide/publications/infoadm/2004/ia04069_en.html)).
- (44) See below p. 25 as well as point 2.8 of the decision part.
- (45) " *The European Union institutions apply a policy of equal opportunities and accept applications without distinction on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religious, political or other convictions or opinions, belonging*



to a national minority, financial situation, birth, disability, age, sexual orientation, marital status or family situation. "

(46) " *If you have a disability that prevents you from registering online, you may request, preferably by fax, a paper version of the form, which you should fill in, sign and return by registered mail, postmarked no later than the closing date for registration. All subsequent communication between EPSO and you will be by post. You must enclose with your application form a certificate attesting your disability, issued by a recognised body. You should also set out on a separate sheet of paper any special arrangements you think are needed to make it easier for you to take part in the tests. "*

(47) Text in Braille; text written in bigger font; the candidate may bring his/her own PC which can read Braille; for the tests, the invigilator may read the questions and answers proposed, the candidate gives his/her answer and the invigilator indicates this on the optical reader form; audio recording; extra time given.

(48) Possibility of being seated at the front of the examination centre to lip-read the spokesperson; having a copy of the spokesperson's text and having an individual invigilator at their disposal.

(49) Either have a PC at the candidate's disposal and be able to print off answers; or the candidate may give their answer verbally to an invigilator and with the use of audio recording.

(50) EPSO makes sure that the candidate has access to the examination centre without any obstacle.

(51) Extra time given to take the tests; a PC, a document holder, a parking place put at the candidate's disposal; an ergonomic chair may be provided.

(52) A PC is put at the candidate's disposal in order to write the test and extra time is given.

(53) OJ 2001 L 8, p. 1.

(54) See below point 3.3 of the decision part.

(55) The EUROPA - Web Accessibility Policy is available on the Europa website ( [http://europa.eu/geninfo/accessibility\\_policy\\_en.htm](http://europa.eu/geninfo/accessibility_policy_en.htm) ).

(56) The IPG rules are available on the Europa website ( [http://ec.europa.eu/ipg/index\\_en.htm](http://ec.europa.eu/ipg/index_en.htm) ).

(57) See below points 4.2-4.4 of the decision part.

(58) The Board comprises 31 members with voting rights. The Commission has one vote,



as does each one of the 27 Member States, and the representatives of the parents associations and the staff. For educational matters, two additional members representing the students and the directors of the Schools can participate in the Board's meetings, although only as observers.

(59) See below page 25, as well as points 5.4-5.6 of the decision part.

(60) See below page 25, as well as point 6.4 of the decision part.

(61) The survey is available on the Commission's intracomm website, which is not accessible to third parties ([http://www.cc.cec/pers\\_admin/equal\\_opp/disabled\\_fr.htm1](http://www.cc.cec/pers_admin/equal_opp/disabled_fr.htm1)).

(62) The Practical Guide is available on the Commission's intracomm website, which is not accessible to third parties ([http://www.cc.cec/persadmin/equal\\_opp/documents/bat\\_goodpractice\\_fr.pdf](http://www.cc.cec/persadmin/equal_opp/documents/bat_goodpractice_fr.pdf)).

(63) See below point 6.4 of the decision part.

(64) See, for example, the UN World Programme of Action concerning Disabled Persons, adopted by the UN General Assembly at its 37th regular session on 3 December 1982 (resolution 37/52 1/); the 2006 annual report from the Canadian government on its progress on disability issues, "Advancing the Inclusion of People with Disabilities", which is available on the Government of Canada's website (<http://www.hrsdc.gc.ca/en/hip/odi/documents/advancingInclusion06/introduction.shtml>).

(65) The Council of Europe has estimated that 10%-15% of the total population in Europe has a disability. See, Council of Europe's Recommendation Rec(2006)5 of the Committee of Ministers of 5 April 2006 "Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015".

For the European Union, close to six Europeans out of ten know someone, in close or more distant circles, who is affected by a long-term illness, disability or invalidity; and more than 5% of EU citizens consider themselves as a disabled person, Eurobarometer (54.2/2001), report on "Europeans and disability".

(66) Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities, OJ 1997 C 12, p. 1.

(67) Supra footnote 65, Eurobarometer (54.2/2001).

(68) The EU Code of Good Practice is available on the Commission's website ([http://europa.eu.int/comm/employment\\_social/soc-prot/disable/codehaen\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/disable/codehaen_en.htm)).



(69) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a barrier-free Europe for people with disabilities, COM/2000/284 final of 12 May 2000.

(70) European Parliament resolution of 4 April 2001 on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a barrier-free Europe for people with disabilities, COM(2000) 284 - C5-0632/2000 - 2000/2296 (COS).

(71) Supra footnote 63, Parliament resolution of 4 April 2001, paragraph 35.

(72) " *[T]he Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.* "

(73) Administrative Notice 69-2004 is available on the Commission's intracomm website, which is not accessible to third parties ([http://www.cc.cec/guide/publications/infoadm/2004/ia04069\\_en.html](http://www.cc.cec/guide/publications/infoadm/2004/ia04069_en.html)).

(74) OJ 2001 L 8, p. 1.

(75) Supra footnote 70, Parliament resolution of 4 April 2001, paragraph 35.

(76) Public sector only.

(77) " *Developing Anti-discrimination Law in Europe. The 25 EU Member States compared* ", report prepared by Mark Bell, Isabelle Chopin and Fiona Palmer for the European Network of Independent Experts in the non-discrimination field, November 2006.

(78) COM (2003) 755 final.

(79) See decisions on complaints 2415/2003/JMA and 1125/2006/JMA.

(80) "eEurope 2002: Accessibility of Public Websites and their Content".

(81) See supra point 2.6 of this decision.

(82) See point 1.5 of the Ombudsman's decision in case 1391/2002/JMA.

(83) Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education; OJ 1990 C 162, p. 2. Point 2 of the Resolution recommended to Member States that,

" *[f]ull integration into the system of mainstream education should be considered as a first*



option in all appropriate cases, and all education establishments should be in a position to respond to the needs of pupils and students with disabilities ".

(84) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, " *Towards a barrier-free Europe for people with disabilities* " COM(2000) 284 final of 12 May 2000.

(85) Reference: 2003-D-4710-en-6. This document is available on the website of the European Schools ( [http://www.eurasc.org/SE/htmlEn/IndexEn\\_home.html](http://www.eurasc.org/SE/htmlEn/IndexEn_home.html) ).

(86) See supra footnote 64, UN World Programme of Action concerning Disabled Persons.

(87) Supra footnote 65, Council of Europe's Recommendation Rec(2006)5 of the Committee of Ministers of 5 April 2006.

This is the policy approach followed by Canada and the United States. Both countries have sought to develop fully integrated disability policies. In the USA, this responsibility falls on the National Council on Disability, a federal agency established in 1978, with a mission to promote policies, programmes, practices and procedures that guarantee equal opportunity for all people with disabilities ([www.ncd.gov/index.html](http://www.ncd.gov/index.html)). In Canada this task is assigned to the Office for Disability Issues (ODI) which serves as the focal point within the Government of Canada for key partners working to promote the full participation of Canadians with disabilities in learning, work and community life ( [http://www.hrsdc.gc.ca/en/gateways/nav/top\\_nav/program/odi.shtml](http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/odi.shtml) ).