

## **Letter: Comments of the Commission on a request for information from the European Ombudsman (OI/3/2003/JMA)**

Correspondence - 13/07/2009

**Case** OI/3/2003/JMA - **Opened on** 19/11/2003 - **Decision on** 04/07/2007

03-03-2004 **GENERAL**

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

In particular, the Commission has taken a number of initiatives over recent years to ensure that the principle of equality of opportunity can become a reality for its staff with disabilities and for those who wish to participate in the recruitment process. These initiatives include both legislative and non-legislative proposals.

The legislative proposals relate to amending the Staff Regulations, a complex and time-consuming process which is nearing completion. The non-legislative proposals include providing special facilities, when requested by people with disabilities, at recruitment competitions; 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 versions.

The Commission's objective is to facilitate people with disabilities in the recruitment process and to allow those already working in the Commission, as well as those who become disabled while they are in service, to enjoy adapted working arrangements, where necessary, and to follow a career development path of the same standards as all other officials.

In relation to the Ombudsman's two specific questions regarding:

- the actions the Commission has taken or intends to take in order to ensure that persons with disabilities are not discriminated against, in their relations with the institutions and;
- the timetable for their adoption.



The Commission responds as follows:

## **A. Actions taken**

### *Staff Regulations 1. Prohibition of discrimination on the ground of disability*

In the Reform process, the Commission has drafted amendments to the Staff Regulations, which broaden their scope to recognise all the discriminatory grounds under Article 13 of the Treaty of Amsterdam. This includes a clear legal statement that any discrimination based on, inter alia, disability is prohibited (new Article 1d 1).

### *2. Definition of disability*

The proposed legislation, which is scheduled for adoption by the Council before 1st May 2004, also provides a definition of 'disability' and places a responsibility on appointing authorities to give a positive response to all reasonable requests from staff for special facilities and adaptations, which are called "reasonable accommodations". A reasonable accommodation is defined as one that does not impose an undue burden on the appointing authority (new Article 1d 4).

### *3. Reasonable accommodation*

Providing reasonable accommodations helps to ensure that people with disabilities can work on a more equal basis with their colleagues, as the accommodation(s) provided should prove to be of practical assistance in facilitating the recruitment and career development of people with disabilities.

### *4. Shift the burden of proof*

In relation to complaints of discrimination, the Commission has also made provision in the revised Staff Regulations (new Article 1d 5) to shift the burden of proof for those who consider themselves wronged because the principle of equal treatment has not been applied to them. In effect, in any case where a person with a disability establishes a *prima facie* case that discrimination on the ground of disability is applied to him/her, the onus is placed on the Institution to prove that there is no breach of the principle of equal treatment.

## **Recruitment by EPSO**

Publicity by EPSO about employment prospects in the Commission has been improved and has become more targeted, in order to stimulate interest among potential disabled candidates and to reassure them that disability is not a barrier to employment in the Commission. 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 is taken to assist them in



finding suitable jobs. Within the framework of an internal Commission interservice group, a sub-working group has been established which has produced a report on the accessibility of the recruitment process for candidates with visual impairments.

### **Proactive recruitment of people with disabilities**

By arrangement with EPSO, the Personnel and Administration Directorate-General (DG ADMIN) is specially notified of laureates from recruitment competitions, who have indicated that they have a disability requiring special accommodation in the recruitment process. DG ADMIN then adopts a proactive approach to their recruitment by services.

### **Accessibility of buildings**

On the basis of a survey carried out in 2002 by DG ADMIN in 52 buildings, the Office for infrastructure and logistics (OIB) included in its work programme the improvements to be undertaken. A series of modifications of buildings have already been carried out such as: improvement of the car park sites, adaptation of fire exits, installation of automatic opening of doors, installation of new toilets for disabled people and installation of door handles (horizontal bars), adaptation of non-conformist entry staircase.

Moreover, the new version of the document 'Manuel des normes applicables à l'Immeuble Type', which is in the process of being adopted, will include the internal regulations to which the "Code of Good Practice for the Employment of People with Disabilities" refers concerning the adjustment of access, movement within buildings, evacuation in case of emergencies, sanitary installations. This also includes a commitment to undertake remedial action to ensure the accessibility of buildings occupied by the Commission.

All of these measures should make a very significant contribution to improving the accessibility for all persons visiting Commission premises, whether they are members of the public or members of staff. The Commission accepts that more still needs to be done and creating better accessibility of buildings occupied by the Commission will continue to be an on-going priority.

### **Accessibility of documents**

To improve accessibility for people with visual impairments to the principle documents produced in the Reform, the White Paper on Reform of the Commission and the Consultative Document on Improving Working arrangements for People with Disabilities have been produced in Braille versions. These Braille documents can be consulted in the Commission's Central Library and in the library of the Joint Interpreting and Conference Service (SCIC) in the Borchette Conference Centre.

Also, in September 2001, the European Commission adopted the Communication entitled 'eEurope 2002: Accessibility of Public Websites and their Content', which aims to make websites more accessible for older people and people with disabilities. By adopting this Communication and implementing the measures contained in it the Commission encouraged



the other European Institutions and Member States to do likewise.

Work has already begun to make the EUROPA site compliant with Conformance Level "A", meaning it satisfies all Priority 1 checkpoints of the internationally accepted Web Content Accessibility Guidelines defined by the Web Accessibility Initiative (WAI) project. However, as the site contains well over a million pages this will take a considerable amount of time. For practical reasons the Commission decided to only adapt new web pages and those that are modified or updated. Therefore, those pages which have already been archived or which were created in the early years of the EUROPA site will not be made fully accessible.

Some top level EUROPA sites (such as the home page of EUROPA and the home page of the European Commission) already meet the requirements of Conformance level "A". These pages contain a logo that indicates that they meet these requirements and that they and some of their sub pages have been designed with accessibility in mind.

### **Revised Code of Good Practice**

In tandem with the proposed new statutory regime and the more targeted approach by EPSO, the Code of Good Practice for the Employment of People with Disabilities that was adopted in 1998 has also been reviewed, within the Commission and with the other Institutions.

Recognising that some of the proposed statutory changes, already referred to above, would supersede provisions of the 1998 Code - such as the definition of disability and of reasonable accommodation - a review was initiated. Additionally, the 1998 Code referred to a derogation from age limits for candidates with disabilities and, as age limits have now been abolished, there was no longer a need for such a provision. The review has resulted in a new Code of Good Practice for the Employment of People with Disabilities being adopted by the Commission on 25 November 2003 <sup>(1)</sup> [\[Link\]](#).

The revised Code aims to be more inclusive of people with disabilities, particularly in relation to its implementation and monitoring procedures. It is considered important that the members of staff most directly concerned are included in these procedures to enable their involvement at a practical level in ensuring the code is put into operation and in monitoring its implementation.

In general, the Code of Good Practice deals with the following themes:

- **Work-related accommodation** : The accommodation required is to be determined by the particular needs of the individual and will normally be provided;
- **Recruitment** : Recruitment and selection procedures are adapted to ensure that they do not disadvantage candidates with disabilities;
- **Careers** : Once candidates with disabilities are on a reserve list, they may avail themselves of specialist advice in securing a post. Having been recruited, officials with disabilities have the right to fully develop their potential, for instance, through training;



- **Working environment** : All reasonable measures are to be taken to eliminate physical or technical environmental barriers that may face some staff with disabilities;
- **Information and awareness-raising** : The Code will be brought to the attention of all staff and training courses which deal with the question of disabilities in depth will be targeted at those most particularly involved;
- **Monitoring** : An essential element in the implementation of the Code is continuous monitoring of how it is performing, thus ensuring that improved procedures for its better application are introduced at all levels, including the recruitment process and throughout an official's career.

The Code is available in all the official languages of the European Union. All 11 languages may be accessed via the following hyperlink

[http://ec.europa.eu/dgs/personnel\\_administration/human\\_resources\\_en.htm#114](http://ec.europa.eu/dgs/personnel_administration/human_resources_en.htm#114) [Link]

The code is also available in Braille versions.

As the other Institutions were involved in the consultation process to develop the new Code, it is expected that they will adopt the Code, *mutatis mutandis* , in accordance with their own procedures.

When this happens, both the new Staff Regulations and the new Code of Good Practice will apply across all Institutions.

## B. Timetable

### Staff Regulations

The revisions to the Staff Regulations were formally adopted by the European Commission on 18 November 2003. They have been submitted to the Council for final approval and they are expected to come into effect on 1 May 2004.

### Code of Good Practice

The Code of Good Practice is already in operation, with effect from the date of its adoption by the Commission on 25 November 2003. As a preliminary act, in order to ensure implementation within the Commission, Directors-General have been asked to conduct, in 2004, surveys of their staff to establish baseline data on people with disabilities who are employed in the Commission. These surveys are provided for in Section 8 of the Code and it is proposed to publish an anonymous statistical report from the data gathered regarding the number of Commission staff with disabilities.



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The Commission wishes to assure the Ombudsman that it will continue to give particular attention to the issue of people with disabilities within the framework of its reform of personnel policy. The diversity of society must be reflected in the composition of the staff, in order that the Commission can make full use of the wealth of talent available to it.

In addition to the Ombudsman's request for information on the measures dealt with above the Commission would like to provide additional information concerning the integration of pupils with disabilities in the European Schools. In this context, the Commission would like to stress, however, that the responsibility for the European Schools lies with the Board of Governors, where the Commission is represented with one vote only.

## **C. The European Schools**

### **Academic arrangements**

The European Schools adopted an educational programme for pupils with Special Educational Needs (SEN) in 1999. It covers not only learning difficulties but also most forms of learning disabilities as well as physical disabilities. The programme emphasises the integration of the student into school life as much as possible. Although some specialised lessons may be conducted outside the classroom, most take place inside with the assistance of a specialised teacher by the pupil's side in addition to the class teacher.

A tailor-made program for each SEN student is decided upon, based on his/her ability and needs, in a special council comprising the director, teachers, parents and usually medical specialist. The result of the council is a contract which outlines the responsibilities undertaken by each party. The contract is renewable on a yearly basis and modified according to the student's progress. Because each case is examined individually, there is no individual budgetary restriction for the provision of services to students with disabilities.

Besides a reduction and/or alteration to the subject programme and overall curriculum, special provisions are made for the SEN child where necessary in the examination and monitoring of his/her progress. These provisions could be as simple as an increase in the time allowed for an exam or the exam paper being made available in a larger font, or comprise more substantial arrangements, such as the use of a computer, the provision of a person to act as a scribe to record the student's answers or even the possibility to take the exam orally. Progress is measured against personal goals and not those of the class. However, a SEN child can progress (advance in grade) with his classmates although he is not promoted at the end of each year. This and the principle of integration in the classroom ensure the social integration of the student with his peers.



The number of students in the SEN programme increases each year as the programme is implemented and receives more publicity. Its progress is closely monitored and a revision of the 1999 programme is currently under consideration for adoption in the Board of Governors of the European Schools later this spring. It incorporates many good practices identified by experience in the various schools.

### **Accessibility of school premises**

Many of the European Schools were built or adapted to cater for people with physical disabilities. Those which have been recently built or renovated, namely, the three schools in Brussels and the schools in Luxembourg and Alicante, have incorporated the latest standards for access of persons with disabilities. Most of the rest of the Schools have undertaken renovations within the limits of the architecture of old buildings, although lifts are not available in all Schools.

The provision of the buildings for the European Schools and their upkeep is the responsibility of the Member State in whose territory the European School is located. However, the Commission can ask the appropriate national authorities to ensure that the buildings are all suitably adapted and intends to do so at the next meeting of the Board of Governors of the European Schools in April 2004.

(1) [\[Link\]](#) C (2003) 4362 of 25.11.2003