

## **Recommendation of the European Ombudsman in her strategic inquiry OI/4/2016/EA against the European Commission on whether the treatment of persons with disabilities under the Joint Sickness Insurance Scheme complies with the UN Convention on the Rights of Persons with Disabilities**

Recommendation

**Case** OI/4/2016/EA - **Opened on** 10/05/2016 - **Recommendation on** 16/07/2018 - **Decision on** 04/04/2019 - **Institution concerned** European Commission ( Recommendation agreed by the institution ) |

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

*EU staff members and their families are covered by a sickness insurance scheme, known as the Joint Sickness Insurance Scheme ('JSIS'). In October 2015 , following a review conducted under the UN Convention on the Rights of Persons with Disabilities ('UNCRPD'), the UN Committee recommended that the European Union should revise the JSIS so as to comprehensively cover disability-related health needs in a manner compliant with the Convention.*

*This inquiry focused primarily on the criteria used by the JSIS for the recognition of "serious illnesses" in relation to disabilities. This issue has important implications for persons with disabilities since medical costs are fully reimbursed only if the illness being treated is classified as "serious".*

*The Ombudsman also received complaints concerning the non-recognition of "serious illness" in cases of disabilities, due to the non-fulfilment of the criterion of "shortened life expectancy".*

*In the course of the inquiry, the Ombudsman received the Commission's reply and conducted a targeted consultation. The Ombudsman's inquiry team also met with Commission representatives to discuss the issues.*

*The Ombudsman finds that the failure of the Commission to take any effective action, in response to the UN Committee's recommendation, amounts to maladministration. The Ombudsman therefore recommends that the Commission should set about the task of revising the General Implementing Provisions (which govern the operation of the JSIS) with a view to ensuring that persons with disabilities will, in future, be dealt with under the JSIS in a manner*



*which complies with the UNCRPD.*

*The Ombudsman further identifies a number of systemic issues relating to the protection of rights of persons with disabilities, and makes a number of suggestions in relation to them.*

## **1. Background**

**1.** The UN Convention on the Rights of Persons with Disabilities ('UNCRPD') [2] , the first Human Rights Convention ratified by the EU, came into force in the EU in January 2011.

**2.** Article 25 UNCRPD on " *Health* " provides that States Parties recognise that " *persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability* ". In particular, States Parties shall, among other things, " *prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner* " .

**3.** In 2015, the EU underwent its first review of compliance with the UNCRPD. In its concluding observations regarding the EU's implementation of the UNCRPD [3] , the UN Committee on the Rights of Persons with Disabilities ('UN Committee') said, in relation to Article 25 UNCRPD, that it was " *concerned that European Union staff members with disabilities or who have family members with disabilities are discriminated against by European Union health insurance schemes* " . The UN Committee recommended that " *the European Union revise its Joint Sickness and Insurance Scheme so as to comprehensively cover disability-related health needs in a manner that is compliant with the Convention* " . [4]

**4.** EU staff members and their families are covered by a sickness insurance scheme, known as the Joint Sickness Insurance Scheme ('JSIS'), which is provided for at Article 72 of the EU Staff Regulations ('Staff Regulations'). There are three levels of reimbursement of costs incurred, 80% or 85% or 100%. The 100% reimbursement level applies to cases of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of " *comparable seriousness* " .

**5.** The European Commission has adopted General Implementing Provisions ('GIPs'), which govern the reimbursement of medical costs. [5] According to these Provisions, serious illnesses " *typically involve, to varying degrees, the following four elements* :

- *a shortened life expectancy*
- *an illness which is likely to be drawn-out*
- *the need for aggressive diagnostic and/or therapeutic procedures*
- *the presence or risk of a serious handicap*" [6] .



6. The Civil Service Tribunal has ruled that the four criteria are cumulative [7] - they must all be met in any given case of illness in order for that case to be deemed “serious”. The Civil Service Tribunal has also ruled that the assessment of one of the criteria is, in view of the interdependence between the four criteria, liable to influence the assessment of the other criteria. [8]

7. Under the UNCRPD, the EU is required to put in place a mechanism (‘Framework’) to monitor compliance with, and to protect and promote the rights arising under, the Convention. The Ombudsman’s Office is a member of this Framework along with the European Parliament, the Commission, the Fundamental Rights Agency and the European Disability Forum. The task of the Framework is to monitor the performance of the EU administration and to promote the UNCRPD at EU level. Since 2014 the Ombudsman has received three complaints from staff members with disabilities, or whose children have disabilities, about the Commission’s refusal to recognise these disabilities as being “serious illnesses” under the JSIS. As the cases raised a systemic issue, and given her role as a member of the Framework, the Ombudsman decided to open a strategic inquiry on her own initiative.

## **2. The strategic inquiry**

8. The Ombudsman opened this inquiry in May 2016 with a letter to the Commission asking how it intends to follow up on the UN Committee’s concluding observation on the JSIS and whether it intends to introduce separate criteria and/or special provisions for the reimbursement of medical costs for persons with disabilities.

9. Following the Commission’s reply, [9] the Ombudsman’s inquiry team met with Commission representatives to discuss the case. The meeting report is available on the Ombudsman’s website. [10]

10. Arising from these contacts with the Commission, the Ombudsman identified a range of issues on which she expected to make suggestions to the Commission. In November 2017, she launched a targeted consultation asking for views on the issues identified. The consultation was addressed to the European Parliament’s Disability Support Group, the European Commission’s Disability Support Group, the Association of Staff with a Disability in the European Commission, as well as to the European Disability Forum. [11] The contributions were received by early February 2018. [12]

## **3. The Ombudsman’s assessment**

### **I. Preliminary Remarks**

11. In its comments, the UN Committee focused on the treatment of persons with disabilities



under the JSIS. The purpose of the JSIS is to provide insurance against “sickness”. While persons with disabilities are likely to have costs arising from sickness, their needs arising from their disabilities are generally far wider than those arising from sickness only. Persons with disabilities may need special appliances, adaptive technology, a range of therapies in addition to medication and drugs. The JSIS is not designed to cater for these wider, disability-related needs; though, in practice, it does cover some of these needs, for example, some therapies as well as the costs of institutional care and of carers in the home - covered under the GIPs’ heading “ *Services associated with dependence* ”.

12. The focus of this Ombudsman inquiry is on how the JSIS can be operated, and if necessary revised, in order to ensure that persons with disabilities are treated correctly and in a non-discriminatory manner. In any future revision of the Staff Regulations it would be good to consider the inclusion of provisions dealing with the wider needs of persons with disabilities. The Staff Regulations already deal with the employment situation of persons with disabilities as well as providing, in certain circumstances, for increased financial allowances for a dependent child with a disability or for EU staff or family members with a disability.

## II. Disability-related needs under the JSIS

### **i) Criteria for the full reimbursement of medical costs for persons with disabilities**

13. In its reply, the Commission noted that the Staff Regulations were revised in 2014. In this context, the co-legislators examined the question of compliance with the UNCRPD and made the changes they felt necessary to bring the Staff Regulations into line with the UNCRPD.

14. The Commission mentions, by way of example, the revision of Article 1 d (4) of the Staff Regulations on the definition of disability. Following the UNCRPD definition, Article 1 d (4) defines disability as “ *a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder [the person's] full and effective participation in society on an equal basis with others* ”.

15. The Commission said it was confident that Article 72 of the Staff Regulations - which provides that the rate of medical reimbursement can be increased to 100% in case of a “serious illness” - is in line with Article 25 [“ *Health* ”] of the UNCRPD.

16. In support of its position, the Commission also relied on the conclusions of the College of Heads of Administration [13] , based on work carried out by an inter-institutional committee, the Preparatory Committee for Social Affairs (‘CPAS’)/Preparatory Committee for Statutory Matters (‘CPQS’), which seem to be that the framework in place was adequate.

17. However, , the Ombudsman notes that, in its 2012 report, the CPAS stated that it was not able to proceed to a uniform framework of UNCRPD compatible measures for the institutions.



The CPAS did comment that an approach, whereby other institutions would simply adopt texts in force within the Commission, would not be sufficient to ensure compliance with the UNCRPD. The CPAS invited EU institutions, at the time, to identify those provisions of the Staff Regulations, and of other regulatory texts adopted for their implementation, that might not be compliant with the UNCRPD. [14] The Ombudsman understands this invitation as a reflection of the fact that the CPAS considered that more needed to be done to ensure compliance with the UNCRPD.

**18.** Notwithstanding the above, this Ombudsman inquiry is not examining whether or not the Staff Regulations comply with the UNCRPD. The primary focus of this inquiry, rather, is on the criteria **chosen by the Commission** for the purposes of classifying an illness as “serious” and thus providing full reimbursement of medical costs. These criteria are set out in the Commission’s GIPs. The Ombudsman specifically asked whether the Commission intends to introduce separate criteria **under the GIPs** and/or special provisions for the reimbursement under the JSIS of the medical costs of persons with disabilities.

**19.** The Ombudsman understands the concern, raised by some respondents to her consultation, that applying the notion of “serious illness” to persons with disabilities is not appropriate. In particular, the respondents pointed out that, although they may overlap in certain cases, “illness” and “disability” are not identical concepts.

**20.** While this is a legitimate point, from a purely technical perspective, the reimbursement of medical costs for any EU official (or a family member), including persons with disabilities, can be done only under the JSIS, and in the context of the Staff Regulations and the GIPs which implement the Staff Regulations. Article 72 of the Staff Regulations refers to the concept of “serious illness” and establishes a more favourable reimbursement regime for cases that can be classified as such. The Ombudsman will therefore make her assessment in this context.

**21.** As regards the application of the GIPs’ four criteria for the recognition of a “serious illness”, the Commission notes that although the four criteria are, according to the case law, cumulative, the Court has also ruled on their interdependent character.

**22.** In meeting with the Ombudsman’s inquiry team, the Commission representatives stated that the Commission does not in fact take a ‘tick all the boxes’ approach in applying the criteria. Rather, a flexible approach is applied. This means that if a person meets one criterion **to a very large extent**, this may compensate for the fact that the person does not meet another criterion to a significant extent. **The Commission gave the example of a decision which recognised the existence of “serious illness” in the case of a child with autism, even though there was no shortened life expectancy.**

**23.** The Ombudsman recognises and welcomes the Commission’s efforts to apply the criteria for the recognition of a serious illness in a flexible way in the case of persons with disabilities. The question for the Ombudsman, however, is whether this flexible approach needs to be formalised so as to ensure that it is applied consistently in the interests of all persons with disabilities who are covered by the JSIS.



**24.** The Ombudsman recognises that, although many disabilities do not necessarily impact negatively on life expectancy, they may give rise to high and continuous expenses in terms of treatment, medication or special devices/equipment, which are essential to maximise the opportunities for that person to fully and effectively participate in society on an equal basis with others. These expenses may be prohibitive for many persons, especially when incurred continuously.

**25.** By way of example, one of the complaints to the Ombudsman concerned a child with permanent hearing loss in both ears who needs cochlear implants. [15] The request that this condition should be recognised as a “serious illness” was rejected in this case. The Ombudsman understands the high costs involved in providing such vital life-changing treatment, which include evaluation, surgery, device, rehabilitation, as well as repair and maintenance costs. Full reimbursement of the costs in such cases can make an essential difference for the person concerned compared to normal reimbursement (80% or 85%).

**26.** An appropriate framework, ensuring that persons with disabilities can have their medical costs fully reimbursed in certain cases, is thus of great importance in ensuring that there is no discrimination in their cases and that their rights are respected in accordance with Article 25 UNCRPD.

**27.** The Ombudsman draws attention to the Court of Justice statement that, since the EU ratified the UNCRPD, its provisions are, from the time of its entry into force, an integral part of the EU legal order. [16] According to the Court’s case law, the primacy of international agreements concluded by the EU over provisions of secondary legislation means that such provisions (e.g. the Staff Regulations) must, so far as is possible, be interpreted in a manner that is consistent with those agreements. [17]

**28.** Furthermore, the fact that the Charter of Fundamental Rights of the EU constitutes primary EU law reinforces the need to interpret secondary legislation, such as the Staff Regulations, in the light of the fundamental rights recognised in the Charter.

**29.** The Commission says it is satisfied that the Staff Regulations, following their revision in 2014, reflect properly the requirements of the UNCRPD and that the GIPs, which give practical effect to the sickness insurance provisions in the Staff Regulations, operate in a manner which respects the requirements of the UNCRPD and of the Charter of Fundamental Rights. The UN Committee takes a different view to that of the Commission, at least in terms of how the JSIS operates in practice. It is clear that the UN Committee does not believe that the JSIS complies with the UNCRPD in how it deals with the needs of persons with disabilities. The UN Committee’s position is that the JSIS needs to be revised in order to ensure compliance with the UNCRPD.

**30.** The key consideration in this context is how the concept of “serious illness” is applied. The Ombudsman believes that there is scope for the Commission to further develop the GIPs’ criteria governing “serious illness” in order to ensure that the Staff Regulations, in practice, do



respect article 25 UNCRPD on “ *Health* ”. Article 26 UNCRPD on “ *Habilitation and rehabilitation* ” [18] is relevant also in this context. Article 21 of the Charter on non-discrimination (including on the ground of disability) and Article 26 of the Charter, on the integration of persons with disabilities, are also relevant.

**31.** The principles of equal treatment and non-discrimination require that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. [19] In the present context, this means not applying the same criteria to assess the seriousness of different conditions without providing an objective justification.

**32.** The Ombudsman notes that the definition of “disability”, provided for in the 2014 revision of the Staff Regulations, endorses the social model approach to disability as promoted by the UNCRPD. [20] An interpretation of Article 72 of the Staff Regulations, in the light of the definition of disability, and having regard to the UNCRPD, would allow for a new approach to what constitutes a “serious illness”. This, in turn, should remove the concerns expressed by the UN Committee.

**33.** The Ombudsman believes that the Commission should amend the GIPs in order to ensure that they are more appropriate and effective in assessing the seriousness of the specific situation of persons with disabilities. Without being overly prescriptive, this could be achieved either by clarifications in the current text, through the introduction of specific additional provisions or by way of a set of alternative criteria specifically providing for the full reimbursement of medical costs for persons with disabilities.

**34.** For example, the Commission could decide to exclude the criterion of shortened life expectancy as being relevant in assessing the needs of persons with disabilities. Alternatively, the Commission could provide that the criteria need not be “cumulative” in the case of persons with disabilities.

**35.** The Ombudsman acknowledges that in amending the GIPs, the Commission has also to consider how best to protect the financial position of the JSIS. [21] Any amendment is likely to entail budgetary implications. The Ombudsman is confident, however, that the Commission can come forward with provisions that make financial sense and are legally sound.

**36.** In its reply to the Ombudsman in November 2016, the Commission stated that it was ready to examine the day-to-day application of the JSIS in relation to disability-related health needs, **notably as regards the suitability of the criteria for “serious illness”** . The Commission said that it was considering tasking a suitable body, involving representatives of disabled persons, disabled employees and/or disabled persons' associations, to study the current situation and, if necessary, to propose ideas and means to develop further such an approach.

**37.** The Ombudsman regrets that the Commission has not yet taken any action in this regard. Furthermore, the Ombudsman finds that the failure of the Commission to take any effective action, in response to the UN Committee's recommendation of 2 October 2015, amounts to





maladministration. The Ombudsman will make a related recommendation in this regard.

38. According to its Diversity Communication of July 2017, the Commission will "*set up a suitable body to study the current situation and to propose ideas and means to lighten as far as possible the burden of staff with disabilities*". [22] The Ombudsman welcomes this commitment but notes that it concerns a consultation on general issues and does not focus specifically on the JSIS, something which it stated in November 2016 that it was willing to do.

39. Some of the respondents to the Ombudsman consultation proposed that any review should cover all provisions relating to the JSIS, including the GIPs, the JSIS Joint Rules and the related forms, and that it should be done by external independent experts. The Ombudsman urges the Commission to consider this option.

## ii) Introduction of a list of reimbursable assistive devices under the GIPs

40. In the course of the inquiry, was argued by some respondents to the consultation that the **framework for the reimbursement of assistive devices and therapies under the JSIS is inconsistent or insufficient** . [23]

41. According to the Commission, the absence of a detailed list of reimbursable assistive devices under the JSIS allows for more flexibility, which is necessary in dealing with disability-related health needs.

42. In order to provide clarity to persons with disabilities, the Ombudsman suggests that the Commission should publish a **non-exhaustive** list of assistive devices which are reimbursable under the GIPs.

43. One consultation respondent suggested that the WHO Priority Assistive Products List (APL) could be used as a reference. It was also proposed that the list should be open to regular review. The Ombudsman urges the Commission to consider these options.

## II. Non-medical needs of persons with disabilities

44. In its reply to the Ombudsman, the Commission pointed out that payments by the JSIS should not be seen in isolation, because staff members with disabilities or their family members with disabilities can benefit from other payments outside the JSIS, notably:

i) the doubling of the dependent child allowance (Article 67(3) of the Staff Regulations) [24] ,

ii) the social aid scheme for the reimbursement of non-medical costs related to a disability (Article 76 of the Staff Regulations) [25] , and





iii) reasonable accommodation provided by the institutions in their capacity as employers (Article 1 d (4) of the Staff Regulations) [26] .

**45.** As a preliminary remark, the Ombudsman notes that the existence of these additional schemes is unlikely to compensate for an insufficient coverage of the medical needs of persons with disabilities under the JSIS. In its observations, the UN Committee specifically referred to the need to revise the JSIS to ensure its compliance with the UNCPRD.

**46.** The existence of these schemes was raised by the Commission presumably to demonstrate that the Staff Regulations as a whole do contribute to a general compliance with the social model of disability as promoted by the UNCPRD. While these schemes are not explicitly covered within the scope of this inquiry, the Ombudsman will comment on them given that the Commission has referred to them.

**47.** First, the Ombudsman finds that these schemes cover the non-medical needs of persons with disabilities in a limited way and there appear to be certain restrictions.

**48.** As regards payments under the social aid scheme, the Ombudsman understands that there is a limited budget available for this purpose in each institution. Moreover, the entitlement to reimbursement is linked to specific thresholds as regards family income.

**49.** In the Ombudsman's view, the fact that payments granted under the social aid scheme depend on limited budgets, specific to each institution, may create inconsistencies in the treatment of such requests from staff members with disabilities or whose children have disabilities. It can be assumed that it is more difficult for smaller institutions to accommodate requests should they have to deal with a number of calls on such funds. The Ombudsman thus considers that it would be more appropriate if a separate budget line, common for all EU institutions, were to be made available for this purpose.

**50.** The Ombudsman suggests that the Commission should carry out an assessment to identify - in a non-exhaustive way - non-medical needs relating to disabilities. It should initiate a procedure to ensure that the non-medical needs of staff - and their families - with disabilities are addressed in a satisfactory way, through the allocation of sufficient resources and within an appropriate framework, under the EU institutions' social schemes.

**51.** As regards reasonable accommodation provided to Commission's staff, the Ombudsman notes that the Commission adopted its current rules in 2004, long before the UNCPRD entered into force in 2011.

**52.** The Ombudsman therefore suggests that the Commission should review its current rules in the light of the provisions of the UNCPRD which apply since 2011.

**53.** This review should include the need for a range of accommodation measures. For example, respondents to the consultation said that working time can be an issue for some staff with disabilities, because of the need to attend regular medical appointments and/or therapy



sessions, or because it may take them longer to do specific tasks, due to fatigue.

54. Respondents to the consultation also suggested a need to change the current practice whereby the direct line manager of the staff member with a disability decides on what constitutes reasonable accommodation. They argue that the current approach may lead to inconsistencies. The Ombudsman understands these concerns. She considers that in reviewing the current rules, the Commission should consider whether decisions on requests for reasonable accommodation should be taken centrally in order to ensure consistency.

### III. Training of staff and consultation with interested parties

55. One of the issues raised by the Ombudsman in her consultation was whether the Commission should ensure that special training on dealing with disability is part of the induction programme for its staff working on related issues. Respondents to the consultation suggested mandatory participation in such training for new managers and current managers who have persons with a disability on their staff.

56. The Ombudsman agrees that such training should be mandatory not only for staff working on disability-related issues but also for staff at management level in general, since it may often occur that they have persons with a disability on their staff.

**57. The Commission representatives mentioned that the Commission had been in contact with the then newly established Association of Staff with a Disability in the European Commission, and with the European Commission's Disability Support Group . The Ombudsman welcomes these contacts and also the fact that the Commission encouraged the establishment of the Association of Staff with a Disability in the European Commission .**

58. However, respondents are concerned about the lack of structured consultation between the Commission and their associations on matters related to disabilities and especially in the development of relevant policies, for example, during the preparation of the Diversity Communication.

**59. The Ombudsman suggests that the Commission should establish regular contacts with the associations of staff members with disabilities, or of staff members whose family members have disabilities, in order to receive feedback on the day-to-day application of the JSIS and of the social schemes for persons with disabilities.**

## Conclusion

60. The Ombudsman finds that the failure of the European Commission to take any effective action, in response to the UN Committee's recommendation of 2 October 2015 to revise the JSIS, amounts to maladministration. The UN Committee's recommendation in this regard was



designed to ensure that the JSIS will deal with the disability-related health needs of persons with disabilities in a manner which complies with the UNCRPD. The Ombudsman therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

## **Recommendation**

On the basis of her inquiry, the Ombudsman makes the following recommendation to the European Commission:

**The Ombudsman recommends that the European Commission should immediately set about the task of revising the General Implementing Provisions (which govern the operation of the JSIS) with a view to ensuring that persons with disabilities will, in future, be dealt with under the JSIS in a manner which complies with the UNCRPD. For the purposes of its revision of the General Implementing Provisions, the Commission should set out a clear timeline for consulting relevant representatives of staff members with disabilities as well as representatives of staff members with dependants with disabilities. The revision process should focus on the criteria for the full reimbursement of medical costs but other issues may also need to be considered.**

## **Suggestions for improvement**

- 1. The Commission should publish a non-exhaustive list of assistive devices which are reimbursable under the General Implementing Provisions .**
- 2. The Commission should carry out an assessment to identify - in a non-exhaustive way - non-medical needs relating to disabilities. It should initiate a procedure to ensure that the non-medical needs of EU staff members - and their families - with disabilities are addressed in a satisfactory way, through the allocation of sufficient resources and within an appropriate framework, under the EU institutions' social schemes.**
- 3. The Commission should review its current rules on “reasonable accommodation” for staff with disabilities in the light of the provisions of the UNCRPD.**
- 4. The Commission should ensure, where it is not already happening, that special training on how to deal with disability is part of the induction programme for its staff working on related issues, as well as for staff at management level.**
- 5. The Commission should establish regular contacts with the associations of EU staff members with disabilities, or who have family members with disabilities, in order to receive feedback on the day-to-day application of the JSIS and of the social schemes for persons with disabilities. The Commission should also consult these associations in a meaningful, timely and structured way in the development and implementation of**



## **legislation and policies concerning them.**

The Commission will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 16 October 2018.

Emily O'Reilly

European Ombudsman

Strasbourg, 16/07/2018

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] UN Convention on the Rights of Persons with disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106 and approved on behalf of the EU by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p.35). The Convention is available at:

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [Link]

[3] Concluding observations regarding the EU's implementation of the Convention on the Rights of Persons with Disabilities made by the relevant UN Committee, 2 October 2015.

[4] Points 86 and 87 of the concluding observations.

[5] Commission Decision laying down general implementing provisions for the reimbursement of medical expenses, which entered into force on 1 July 2007, available at:

[http://ec.europa.eu/pmo/tender/06\\_annexe6\\_dge\\_en.pdf](http://ec.europa.eu/pmo/tender/06_annexe6_dge_en.pdf) [Link]

The GIPs reflect an inter-institutional agreement.

[6] Title III, Chapter 5 of the GIPs.

[7] Judgment of the Civil Service Tribunal of 18 September 2007 in Case F-10/07, *Botos v Commission*, paras 41-44.

[8] Judgment of the Civil Service Tribunal of 28 September 2011, in Case F-23/10, *Allen v European Commission*, para 79.



[9] The European Parliament's Disability Support Group spontaneously submitted information to the Ombudsman following the launching of the inquiry.

[10] All inquiry-related documents are available here:

<https://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/65814/html.bookmark> [Link]

[11] The European Parliament's Disability Support Group ('EP DSG') was established in 2003 and consists of European Parliament officials who are persons with a disability, carers of a family member with a disability or have a professional interest in disability issues.

The European Commission's Disability Support Group ('EC DSG') is an association of staff of the Commission, as well as of other EU institutions, who are responsible for a person with a disability or a delay in development.

The Association of Staff with a Disability in the European Commission ('ASDEC') was set up in 2017 by a small group of EU officials with a disability or long-term health condition as an internal 'de facto' association for staff with a disability.

The European Disability Forum ('EDF') is an NGO that brings together representative organisations of persons with disabilities from across Europe.

[12] Besides the contributions of the addressees, the Ombudsman received two spontaneous individual contributions.

[13] This body includes the Heads of Administration of all EU institutions, including the Ombudsman.

[14] CPAS report (Rapport de Synthèse) of 13 March 2012 concerning the UN Convention on the Rights of Persons with Disabilities.

[15] A cochlear implant is a surgically implanted electronic device to provide a sense of sound to a person with a severe or complete loss of hearing.

[16] Judgment of the Court of 18 March 2014 in case C-363/12, *Z.*, para 73, Judgment of the Court of 11 April 2013 in joined cases C-335/11 and C-337/11, *HK Danmark*, para 30.

[17] Judgment of the Court of 22 May 2014 in case C-356/12, *Glatzel*, para 70, Judgment of the Court of 18 March 2014 in case C-363/12, *Z.*, para 72, Judgment of the Court of 11 April 2013 in joined cases C-335/11 and C-337/11, *HK Danmark*, para 29, Judgment of the Court of 10 September 1996 in case C-61/94, *Commission v Germany*, para 52.

[18] According to Article 26 UNCRPD, *"States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full*



*inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, [...]."*

[19] Judgment of the Court of 10 January 2006 in case C-344/04, *IATA and ELFAA*, para 95, Judgment of the Court of 12 September 2006 in case C-300/04, *Eman and Sevinger*, para 57.

[20] The social model approach to disability, as opposed to the medical model approach, suggests that the barriers for persons with disabilities are caused by the way society is organised rather than their impairment and that it is the responsibility of the society to remove these barriers.

[21] Joint Rules on sickness insurance for officials of the European Communities, adopted by common accord by all the Community institutions, which entered into force on 1 December 2005, <http://data.consilium.europa.eu/doc/document/ST-9645-2004-INIT/en/pdf> [Link]

Article 52 provides that: "... the institutions shall empower the Commission to lay down, by general implementing provisions, the rules governing the reimbursement of costs with a view to protecting the financial balance of the Scheme and respecting the principle of social security cover forming the basis for the first subparagraph of Article 72(1) of the Staff Regulations".

[22] Communication to the Commission, A better workplace for all: from equal opportunities towards diversity and inclusion, Brussels, 19.7.2017, C (2017) 5300 final.

[23] By way of example, the PMO "practical guide" (2014) to the GIP does not mention wheelchairs at all. There is a rule in the original GIPs (2007) according to which "simple manual wheelchairs" can be reimbursed up to 650 EUR. On the other hand, electronic wheelchairs and items such as communication boards/books/cards, communication software, deaf/blind communicators, and video communication devices do not seem to be reimbursed.

[24] The Ombudsman understands that the detailed provisions for granting this benefit are set out in the Conclusion 177/87 of the College of Heads of Administration regarding the double dependent child allowance for a child whose maintenance involves heavy expenditure by reason of a disability or a long-term illness (Article 67 (3) of the Staff Regulations). The 2nd revised conclusion was approved by the Heads of Administration on 26 March 2014.

[25] The Ombudsman understands that the detailed provisions for granting these benefits are set out in the Provisional Guidelines for implementation of the budget heading "Supplementary aid for the disabled" concerning welfare appropriations for disabled persons, adopted on 19 February 2004 by the College of Heads of Administration.

[26] As regards the Commission, see the Commission decision of 7 April 2004 implementing Article 1d (4) of the Staff Regulations.