

**Opinion of the Commission on the recommendation of the European Ombudsman  
- Own-initiative inquiry OI/4/2016/EA 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 (UNCPRD)**

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The Commission acknowledges receipt of the recommendation and the suggestions for improvement sent by the European Ombudsman on 16 July 2018.

The Commission would like to make the following comments on the case at hand:

**Recommendation of the European Ombudsman**

The European Ombudsman indicated in her recommendation that the “*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 UNCPRD. For the purposes of this 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 dependents 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.*”

**Commission Reply**

On the occasion of the reform of the Staff Regulations conducted in 2013, the European legislator duly took into account the EU’s obligations stemming from the UNCPRD by revising and complementing the already specific provision relating to the rights of persons with a disability (Article 1d (4)) in order to make the Staff Regulations compliant with the EU's international obligations in this field.

The Commission reiterates its view that the text of Article 72 of the Staff Regulations is in line with Article 25 of the UNCPRD. Pursuant to Article 72(1) of the Staff Regulations, all beneficiaries, whether they are disabled or not, receive reimbursement of sickness costs under certain conditions of 80% or 85%, depending on the pathology. Medical costs related to a disability are thus in any event reimbursed at the level of at least 80% or 85% provided that they meet the conditions for reimbursement set by the implementing rules.

When the status of “serious illness” is granted, this reimbursement is increased to 100% for all related medical costs. In accordance with the General Implementing Provisions (GIPs), the assessment is made on the basis of 4 criteria which, according to case law, are cumulative. However, the case law has also clarified that these criteria are interdependent.<sup>1</sup>

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<sup>1</sup> Judgment of the European Union Civil Service Tribunal of 28 September 2011, Case F-23/10, Allen / European Commission.

Taking account of this case law on the interdependence of the criteria, the Commission has in practice taken a flexible and holistic approach with regard to the application of these criteria in the case of medical costs linked to a disability.

Thus, in practice, a significant number of medical-related expenses linked to disabilities are already reimbursed at 100% by following this flexible approach to the 4 criteria for the recognition of the status of serious illness.

By means of this pragmatic approach the Commission aims to ensure compliance with the UNCRPD. However, it recognises that there is a case for improving this situation by legal means.

In consequence, the Commission agrees that legal texts could be updated in the light of current practice. The Commission therefore agrees to formalise this flexible approach through a revision of the GIPs.

In this context, the Commission will rapidly launch a process of revision of the GIPs on this particular element. However, this process does not involve the Commission alone. According to the Joint Rules on Sickness Insurance for EU Officials, amending the GIPs will require prior consultation of the Interinstitutional Management Committee of the Joint Sickness Insurance Scheme (JSIS) as well as the Staff Regulations Committee. Also, the Commission will of course comply with the applicable rules on social dialogue in order to discuss the revised text with the trade-unions and consult as well the Staff Committee. It will also make sure that the joint committee for equal opportunities (COPEC) is consulted, and that representatives of staff members with disabilities or of staff members with dependents with disabilities are consulted as well.

The Commission reminds the Ombudsman that any change of the GIPs will need to comply with the Staff Regulations, and in particular with Article 72 thereof. Notably, as the JSIS is a medical scheme, any change to the GIPs will have to remain in the medical area. It should also be noted that changes should not be of such a nature as to put at risk the long-term financial equilibrium of the JSIS.

### **Suggestions made by the Ombudsman for improvement of the Joint Sickness Insurance Scheme**

- 1. The Commission should publish a non-exhaustive list of assistive devices which are reimbursable under the General Implementing Provisions.*

### **Commission Reply**

The Commission considers that inserting a detailed and exhaustive list in the GIPs would not be an appropriate solution, since it would impede flexibility. The Commission will however initiate a process of reflection regarding the most suitable modalities of a publication on its website of a non-exhaustive list of assistive devices, which are reimbursable under the GIPs if the medical situation of the concerned person so requires.

- 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.*

## **Commission Reply**

### 2.1. Introduction

As already stated, the JSIS is a medical scheme which was not intended by the legislator to cover non-medical costs.

However, in addition, the Commission provides supplementary, non-medical aid for people with disabilities within the framework governed by inter-institutional guidelines that were, for the Commission, published in the administrative notice N° 58 of 2004.

This aid for people with disabilities is one of the financial support schemes under Article 76 of the Staff Regulations.<sup>2</sup>

The main purpose of the aid scheme is to financially support colleagues or one of their family members for non-medical costs directly linked to a disability that is recognized as such by the Commission's Medical Service.

In addition to this Commission support it should be noted that staff members with disabilities are resident in a given Member state and, as residents, are entitled to a number of non-medical benefits linked to their disability. Within this context, the Commission works with the national authorities to ensure that Commission staff can access non-medical services in Member States (for more details on this point, see our answer to question 5).

### 2.2. Nature of costs supported and cooperation between DG HR and PMO/JSIS

The Commission has two means of reimbursing expenses linked to disabilities. Medical costs are covered by the JSIS, while non-medical costs are supported by supplementary aid for people with disabilities under article 76 of the Staff Regulations. This additional support is based on an annual assessment and the availability of budgetary resources.

Within the Commission, over the past few years, close cooperation has been established between DG HR and the PMO/JSIS. The main purpose has been to clearly define the nature of the different cost items (being either medical or non-medical) and thus the responsible service (either JSIS or DG HR). This mutual exercise has led to a more efficient and effective use of available resources for the benefit of the target population of disabled staff members and dependents, better understanding of the relevant costs and to a shift of financial responsibility in both directions.

The current interinstitutional guidelines foresee that the colleagues concerned have to cover a certain percentage of the eligible costs for non-medical needs. This percentage depends on the type of cost (e.g. whether equipment or not) and the revenues of the person concerned. The current average personal participation rate is estimated at around 17%.

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<sup>2</sup> Article 76: "Gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result of serious or protracted illness or by reason of a disability or family circumstances"

The Commission commits to initiating an exchange of views with all institutions concerned on revising the current guidelines, taking into account the budgetary resources available in each Institution. In particular, for staff members who have children with disabilities who need to attend a special school to accommodate their needs, the Commission is in favour of providing 100 percent coverage of the school fees.

Joint preparatory committees of representatives of the administrations and staff of the institutions will also need to be consulted on this matter.

### 2.3. Identification of non-medical costs

The Commission considers that there is no need to establish a non-exhaustive overview of non-medical costs. The non-medical costs are discussed and defined with the colleagues faced with the disability on a case by case basis.

Furthermore, due to the close cooperation between PMO/JSIS and DG HR, individual files and situations are discussed to optimise the support that can be given either by the PMO/JSIS or DG HR.

### 2.4. Budgetary resources

Concerning non-medical needs, the budgetary commitments used for the supplementary aid for the disabled increased from approximately EUR 2.4 million in 2011 to EUR 3 million in 2017 (average annual increase of 3.8 %).

3. *The Commission should review its current rules on “reasonable accommodation” for staff with disabilities in the light of the provisions of the UNCRPD.*

### **Commission Reply**

Reasonable accommodation may concern a variety of aspects (notably the adaptation of the office equipment) and is provided on case by case basis. Though the first contact point for the staff member is the line manager, DG HR ensures consistency in the implementation of the agreements between the colleague concerned and their hierarchy and provides advice or support, depending of the type of accommodation needed. The Commission is focusing on improving communication and staff training which are an important element of the effectiveness of the scheme and believes that there is no need to amend the current rules on reasonable accommodation. In particular a brochure on reasonable accommodation has been drawn up and widely distributed to managers and staff (attached). In case it would need to be revised, such a revision will be done in consultation with associations of employees with disabilities.

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.*

### **Commission Reply**

The first contacts with colleagues faced with disabilities themselves or within their family are, in principle, always with a trained, specialised social assistant. This social assistant is part of the dedicated team dealing with financial support for the disabled. Her/his task goes however beyond the purely procedural issues but also covers

reasonable accommodation issues, choice of appropriate schooling and education, contacts with parties concerned such as the European Schools, etc.

Other members of the dedicated team perform the administrative and financial aspects, but also attend conferences and trainings on all relevant subjects. A dedicated information leaflet (attached) is available since December 2017 and is used both electronically and in hard copies to increase reasonable accommodation awareness among staff members and managers alike.

Concerning management, the Commission will shortly make changes in its induction course for new managers to address the needs of disabled staff and the role of managers in dealing with disabled staff members as well as staff with disabled dependants.

The Commission has also recently developed an intranet toolbox for managers which also includes links to information on disabilities policy and to the brochure on reasonable accommodation. New managers are informed of this toolbox. In 2014 a general “Integrating colleagues with disability” one day course was introduced in the Learning and Development catalogue, intended to take place 6 times a year. The Diversity and Inclusion Action Plan (2018-2019) foresees six new actions for staff with disabilities or with disabled dependants. In particular, an action foresees ensuring that new staff members with disabilities are systematically informed, at entry into service, about possibilities regarding assistance and reasonable accommodation. They will also have the possibility to fill in a voluntary and anonymous questionnaire on disabilities and their special needs.

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.*

### **Commission Reply**

Commission measures are always discussed in the fora provided for in the Staff Regulations, notably with staff representatives and, in many cases, the Staff Committee, thus ensuring an involvement of the staff as a whole, including colleagues with disabilities, in the making of decisions and in the application of the rules by the Commission. A specific joint committee for equal opportunities (COPEC) is consulted for all matters that are related to disability issues. In parallel, PMO and DG HR now have regular contact with associations of staff with a disability and staff who have family members with disabilities and consult them on and inform them of, specific issues and proposed solutions. Under its diversity and inclusion strategy, the Commission gives support and internal publicity to such associations which represent the interests of the disabled and also provide important mutual support.

Furthermore, recent increased cooperation between DG HR and the PMO/JSIS has led to the establishment of a single contact point (website and phone number) for queries from staff members concerning all medical and non-medical matters relating to disabilities.

As Commission staff members are resident in given Member States and entitled to a number of non-medical benefits linked to their disability, it has become clear that it is important to work with national authorities to ensure that Commission staff can access non-medical services in Member States. The Commission organised the first Inter-institutional Conference on Disability in December 2017. The main focus of the conference concerned the Recognition of Disability with the Belgian authorities.

A number of Belgian public authorities and voluntary organisations attended and detailed information was given regarding the benefits which may be available from the Belgian system, other than those covered by the JSIS and/or DG HR. Some examples are: parking card, reduction in house tax (*précompte immobilier*), reduction in transport costs, access to extra service cheques for home help (*titres services*).

As a follow up to the conference, monthly sessions are organised by the Commission. As part of its holistic approach on disabilities, the Commission is also supporting staff members and their families who experience difficulties in obtaining this type of support from national authorities.

#### Enclosure

Leaflet “Reasonable Accommodation for People with Disabilities”