Reply by the Commission to the Strategic Initiative SI/2/2024/AML from the European Ombudsman

I. THE EUROPEAN OMBUDSMAN STRATEGIC INITIATIVE

On 16 February 2024, the European Ombudsman opened a Strategic Initiative (SI) on how the European Commission ensures that the revised rules governing the Joint Sickness Insurance Scheme (JSIS) for EU staff guarantee comprehensive coverage for disability-related health needs. The intention is to assess whether the steps that were taken were effective in delivering concrete and positive change for those concerned and whether they were also in line with what UN experts had called for. The Concluding observations of the UN Committee on the Rights of Persons with Disabilities received in 2015 indicate that "*The Committee is 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 Committee recommends 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*". As part of the SI, the Ombudsman asked the Commission to reply to the following questions:

A) Could the Commission please provide the Ombudsman with an update on the action taken following her recommendation and her suggestions for improvement related to healthcare in OI/4/2016/EA?[1] How do the changes introduced to the JSIS General Implementing Provisions fulfil the UN Committee recommendation that the JSIS should comprehensively cover disability-related health needs in a manner compliant with the Convention?

B) The new JSIS GIPs maintain the four pre-existing criteria for full reimbursement of medical costs. Could the Commission please inform the Ombudsman about the way these criteria, and in particular those related to "aggressive diagnostic and/or therapeutic procedures", "serious handicap", and "shortened life expectancy" are applied to cases of disability? What happens when it is not just one, but several of these criteria that are not fulfilled?

C) Could the Commission please set out its view as regards whether it is legitimate to differentiate between types of impairments (physical, mental, intellectual, or sensory) or the perceived "degree" of disability when deciding whether to grant full reimbursement?

D) An important change introduced by the 2020 revision of the JSIS GIPs is the increased degree of flexibility that Medical Officers have in assessing one criterion as fulfilled in light of the others. How does the Commission ensure that this greater flexibility does not

[1] Available at: https://www.ombudsman.europa.eu/lt/decision/en/112191. The Ombudsman's recommendation was that "The Commission should immediately set about the task of revising the GIPs (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 GIPs, 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." As regards suggestions, please comment in particular on suggestions 1, 4, and 5.

result in unpredictability of reimbursements?

E) Could the Commission please inform the Ombudsman of any steps it has taken under Article 25(d) of the UNCRPD? Is awareness-raising around the CRPD and the human rights approach to disability part of the training of EU health professionals or staff working for the JSIS?

F) In OI/4/2016/EA, the Ombudsman asked for an overview of the number of applications for the recognition of a "serious illness" submitted by or on behalf of persons with disabilities, as well as their outcomes (number of rejections, number of Article 90(2) complaints, and subsequent decisions). As this type of statistics did not exist at the time, the Commission provided the Ombudsman with information about the number of complaints related to serious illness, and among these, the number of complaints in which the complainants self-declared a disability – and their final outcome. If it is now possible, could the Commission please provide the Ombudsman with an overview of disability related applications for the recognition of "serious illness" and their outcomes, starting from 2020 and the entry into force of the revised GIPs? Alternatively, could the Commission please provide the Ombudsman with the same type of information it had communicated in OI/4/2016/EA?

II. THE REPLIES OF THE EUROPEAN COMMISSION

General Statement

The EU Strategy for the Rights of Persons with Disabilities 2021-2030 (EU Disability Strategy) set the ambition for the Commission to lead by example. In this spirit, the Commission has included in its 2022 Human Resources strategy actions to boost the recruitment, effective employment and career perspectives of staff with disabilities and to create inclusive work environments, reinforcing its commitment as an employer to foster diversity and equality while also ensuring that accessibility and reasonable accommodation are provided for.

The present Strategic Initiative "*How the European Commission ensures that the revised rules governing the Joint Sickness Insurance Scheme (JSIS) for EU staff guarantee comprehensive coverage for disability-related health needs*" follows up on the inquiry OI/4/2016/EA[2]. The purpose of this inquiry was to examine whether the treatment of persons with disabilities under the JSIS complied with the UN Convention on the Rights of Persons with Disabilities ('UNCRPD').

In her Recommendation of 16 July 2018 issued as a result of inquiry OI/4/2016/EA, the Ombudsman invited the Commission to revise the General Implementing Provisions ('GIPs') which govern the reimbursement of medical expenses under the JSIS[3] '*with a view to ensuring that persons with disabilities will, in the future, be dealt with under the JSIS in a manner that complies with the UNCRPD*'. The Ombudsman also stressed that the revision of the GIPs '*should focus on the criteria for the full reimbursement of medical costs*'.

[2] Decision of the European Ombudsman in her strategic inquiry OI/4/2016/EA into how the European Commission treats persons with disabilities under the Joint Sickness Insurance Scheme for EU staff | Decision | European Ombudsman (europa.eu)

[3] Commission Decision of 2 July 2007 laying down general implementing provisions for the reimbursement of medical expenses.

The Commission accepted the Ombudsman's recommendation to revise the GIPs and adopted Commission Decision C(2020)3002 of 12 May 2020, amending Decision of 2 July 2007 laying down the GIPs for the reimbursement of medical expenses.

As the EU is undergoing its second periodic review under the UNCRPD Convention, the Ombudsman has taken that opportunity to reflect on what has been done since the first review. The Ombudsman's questions are specifically linked to the revised GIPs and their implementation (Recommendation of the Ombudsman in inquiry OI/4/2016/EA) as well as to the suggestions for improvement 1, 4 and 5 issued as a result of inquiry OI/4/2016/EA.

Thus, the Commission's reply below is chiefly focused on the revised GIPs and their application. Nevertheless, the Commission would like to stress that it makes available a full range of other means to assist staff members with a disability or staff members who have a dependant family member with a disability. In particular, in line with Article 76 of the Staff Regulations of Officials of the European Union ("Staff Regulations")[4], the Commission can financially support non-medical costs. This additional support is based on an annual assessment and the availability of budgetary resources within each EU institution[5]. As regard family members of staff with a disability, Article 67(3) of the Staff Regulations foresees the possibility to double the dependent child allowance[6]. Moreover, a single contact point is available for queries concerning medical and non-medical matters related to disabilities. Trained social assistants are able to provide support on a case-by-case basis to staff with disabilities or who have dependent family members with disabilities. The Commission also works with the national authorities to ensure that Commission staff and their dependant family members can effectively access non-medical services in the Member States.

Question A:

> A) Could the Commission please provide the Ombudsman with an update on the action taken following her recommendation and her suggestions for improvement related to healthcare in OI/4/2016/EA?[7] How do the changes introduced to the JSIS General Implementing Provisions fulfil the UN Committee recommendation that the JSIS should comprehensively cover disability-related health needs in a manner compliant with the Convention?

Commission reply:

As noted in its Opinion of 14 January 2019 and reiterated in the Reply of 31 January 2020 given in the context of inquiry OI/4/2016/EA, the Commission wishes to underline its view

[4] Article 76 of the Staff Regulations applies by analogy to temporary and contract staff pursuant to Articles 30 and 98 of the Conditions of Employment of Other Servants ("CEOS") respectively.

[5] Further information is provided in the Guidelines for the implementation of aid for persons with a disability, Conclusion 281/20 of 30.04.2020 of the Heads of Administration.

[6] See also Conclusion of the Heads of Administration 177/87 on the double dependent child allowance for a child whose maintenance involves heavy expenditure by reason of a disability or a long-term illness. This Conclusion is currently being revised.

[7] Available at: https://www.ombudsman.europa.eu/lt/decision/en/112191. The Ombudsman's recommendation was that "The Commission should immediately set about the task of revising the GIPs (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 GIPs, 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." As regards suggestions, please comment in particular on suggestions 1, 4, and 5.

that, at the occasion of the reform of the Staff Regulations carried out in 2013, the Union legislator duly took into account the EU's obligations stemming from the UNCRPD by revising the Staff Regulations and introducing a provision defining and complementing the concepts of disability and reasonable accommodation for the purpose of the implementation of the Staff Regulations, as well as allowing the administration to take measures to the advantage of disabled staff[8]. As such, the Staff Regulations enable the European public administration to offer a comprehensive coverage of medical and non-medical expenses arising from a disability.

It should be recalled that **medical costs** are reimbursed by JSIS which, pursuant to Article 72(1) of the Staff Regulations, is intended by the legislator to be exclusively a medical scheme.

Hence, medical costs incurred by a person with a disability fall within the scope of the reimbursement foreseen by Article 72 of the Staff Regulations under the regular reimbursement rules.

Pursuant to Article 72(1) of the Staff Regulations, all beneficiaries of the JSIS are entitled, subject to certain conditions, to reimbursement of medical costs of up to 80% or 85% of the expenditure incurred, depending on the type of treatment, regardless of whether they are persons with disabilities or not. If an affiliate, including an affiliate with disabilities, is affected by a 'serious illness' within the meaning of Article 72(1) of the Staff Regulations and its implementing provisions, the reimbursement is increased to 100% for all related medical costs.

In line with the case law[9], the Commission had already in the past taken a flexible and holistic approach with regard to the application of the four criteria that should be met for a recognition of the existence of a serious illness, allowing for the medical costs of, *inter alia*, affiliates with disabilities who have a serious illness (following the mentioned criteria) to be covered 100%.

Following the **Ombudsman Recommendation** in OI/4/2016/EA, the Commission decision C(2020)3002 of 12 May 2020, amending Decision of 2 July 2007 laying down general implementing provisions for the reimbursement of medical expenses, now codifies this pragmatic approach, ensuring equality of treatment but also individual and comprehensive assessment of the situations at hand:

"*Serious illnesses include tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of comparable seriousness.*

Such illnesses typically involve, to varying degrees, the following four elements:

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[8] See Article 1d(4) of the Staff Regulations: "*For the purposes of paragraph 1, a person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others. The impairment shall be determined in accordance with the procedure set out in Article 33.A person with a disability meets the conditions laid down in point (e) of Article 28 if he can 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 principle of equal treatment shall not prevent the appointing authorities of the institutions from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers*".

[9] See Judgments of 28 September 2011, *Allen v Commission*, F-23/10 EU:F:2011:162, paragraphs 77 to 79, and of 28 April 2016, *FY v Council*, F-76/15, EU:F:2016:83, paragraph 31.

- *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*
- *a shortened life expectancy.*

These cumulative criteria must be subject to an overall assessment of the seriousness of the consequences of the illness in question. Given the way in which they may be interlinked, the assessment of one of the criteria is likely to influence the assessment of the other criteria, particularly as regards cases of serious disability. The examination of one criterion in the light of the assessment of the other criteria may lead to the conclusion that the criterion in question, in particular the criterion relating to shortened life expectancy, has been fulfilled." However, the mere presence of a "serious handicap" does not necessarily imply the recognition of a serious illness.

In line with Article 1d(4), subparagraph 4, of the Staff Regulations and Article 25 of the UNCRPD[10], this new decision falls within the framework currently provided by the Staff Regulations, and the dichotomy laid down by the legislator between, on the one hand, the reimbursement of medical costs under the JSIS and, on the other hand, the possibilities foreseen outside that system, such as reasonable accommodations and social aid for non-medical expenses pursuant to Article 76 of the Staff Regulations, as well as the possibility to grant a double child allowance when the child concerned has a disability which involves the official in heavy expenditure.

Indeed, as underlined by the Ombudsman in her opening letter for this new Strategic Initiative, the 2020 revision of the JSIS General implementing provisions was meant to guarantee comprehensive coverage for disability-related health needs of EU staff and their families. She also notes that such changes were in line with what the UN Committee on the Rights of Persons with Disabilities had called for.

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[10] *Article 25 – Health – "States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:*

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) 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;

(f) *Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability*."

As explained in the Commission reply of 31 January 2020[11], this targeted amendment of the GIPs is without prejudice to a more extensive revision of the GIPs in the future.

In **suggestion 1** of her previous inquiry, the Ombudsman also stressed the need for publishing a non-exhaustive list of assistive devices reimbursable under the GIPs. As announced in the Commission Opinion of 14 January 2019 and in the Commission's reply of 31 January 2020, the Commission reflected on the most suitable modalities of publishing this non-exhaustive list to complement the one already set out in Annex II to the GIPs. As also underlined in 2020, such process is very complex and lengthy, also due to the fast evolution the sector. That said, the Centre of Excellence for Disabilities, a dedicated team within the JSIS Settlements Office, which provides a personal and dedicated approach to the JSIS affiliates and manages all files linked to disability, also in cases where no serious illness is recognised, is currently collecting a non-exhaustive list of devices, which would be reimbursable under the GIPs, that would complement the one already existing in Annex II of the GIPs.

With her **suggestion 4** in the previous inquiry, the Ombudsman recommended 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 staff at management level*'. While this aspect is also dealt with under reply to question E below, the Commission notes that the induction course for new managers addresses both the needs of staff members with disabilities and the role of the managers in dealing with staff or dependants with disabilities. Moreover, a variety of training and learning materials is also available on the EU learn training platform for all the staff, especially for those working on related issues, as described below.

The current Action Plan on Diversity and Inclusion in the Workplace 2023-2024 (preceded by the ones of 2018 and 2019) sets out key diversity and inclusion actions including specific actions catering for the needs of staff with disability or a dependent with a disability, as well as cross-cutting actions on awareness-raising and on learning and development, as a part of the implementation on the commitments of the Commission's 2022 Human Resources Strategy. Furthermore, in line with the von der Leyen Commission's priority to build a Union of Equality, while ensuring a diverse, discrimination-free and inclusive workplace for all staff, the Diversity and Inclusion Office ('DIO') was created in 2020 within the Directorate-General for Human Resources and Security ('DG HR') to oversee the development and implementation of all the relevant actions.

In this context, the DIO regularly organises awareness sessions and events for managers, HR professionals, other specific groups, and all staff. For example, it organised workshops for carers in 2021 and 2022, as a part of the European Diversity month and in cooperation with the EC Disability Support Group ('ECDSG')[12] and with the services from DG HR and the JSIS Settlements Office providing support to carers. The DIO also organised a session "Hidden Disabilities Matter" as a part of the European Diversity month in 2021, and a lunchtime conference "Support to colleagues with disabilities or serious illness" in 2022. Also, in 2022 the DIO developed a learning path entitled "Don't be disabled by disability" which is quickly gaining interest across the services. These in-person sessions are delivered to Commission services and adapted to different audiences – non-managers and managers.

Finally, under her **suggestion 5**, the Ombudsman proposed that the Commission '*should establish regular contacts with the associations of EU staff members with disabilities, or who*

[11] Commission reply to the European Ombudsman on Complaint ref. OI/4/206, C(2020) 601.
[12] EC disability support group

have family members with disabilities' and should '*consult them in the development and implementation of legislation and policies concerning them*'.

The Commission wishes to stress that its legislative proposals and policies concerning staff members 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.

Moreover, the Commission has regular contacts with the associations of EU staff members with disabilities, or who have family members with disabilities. Since its establishment in 2021, the DIO holds biannual meetings with the board of the Association of Staff with a disability in the European Commission ('ASDEC')[13] and regular exchanges with the board of the ECDSG giving them an opportunity to raise their concerns. DIO relays these concerns to the services concerned at corporate or local levels, as it was the case, for example, concerning the need for simplified and streamlined information access, but also when it came to the development of the European Disability Card, as well as input to the content of the International Disability Day events raising general awareness on the specific needs. To raise general awareness of various types of support available for dependants with disability, DIO organised in 2021 a hands-on session "Support for Carers for dependents with a Disability - Who, What and How?" and in 2022 a workshop "Caring for carers". Staff associations were also consulted on the "Diversity, inclusion, and respect in the workplace survey" in 2021 and it is now the case concerning the upcoming similar survey that is planned for 2025 where staff associations are part of the discussions from the inception. Furthermore, throughout the years informal contacts took place on a regular basis to address the matters on accessibility (buildings, IT, information) and concerning the support for integration of colleagues with disability in the workplace.

The Commission makes sure to consult these associations, as well as the Joint Committee on Equal Opportunities ('COPEC') when it comes to new legislative or policy proposals concerning staff members with disabilities and with family members with disabilities. As mentioned in the Reply of 31 January 2020 given in the context of inquiry OI/4/2016/EA, such consultations were organised when the GIPs were revised.

More recently, the COPEC was consulted during the adoption process and the subsequent evaluation of the Commission Decision on working time and hybrid working[14]. During the latter consultation, the COPEC voiced an overall satisfaction with the Decision on working time and hybrid working, while indicating certain aspects for improvement in its implementation. These aspects were taken into account in the evaluation process. The COPEC will also be consulted on the action plan to address those recommendations. ECDSG also provided feedback on several occasions. For the evaluation of the Decision on working time and hybrid working, the feedback provided by the group was taken into account and incorporated in a dedicated recommendation in the evaluation report[15]. This recommendation, and the evaluation report in general, was welcomed and supported by the group, while a specific request was made to take the necessary action to deliver on the recommendation. Further consultation of the ECDSG is foreseen to deliver on the recommendation concerned.

[13] EC Staff Disability ASDEC

[14] Commission Decision of 24 March 2022 on working time and hybrid working, C(2022)1788.

[15] Evaluation of the Commission Decision on working time and hybrid working.pdf (europa.eu) , see pages 3 and 28 the recommendation : "Follow up on the occurrence and the ability to address more specific situations, such as for carers of children/relatives with a disability"

Finally, the single-entry point for disability within DG HR for staff members, pensioners, and their family members established following inquiry OI/4/2016/EA has proven to be a truly welcomed initiative and handles numerous requests each year. A dedicated intranet page has also been established to cover the different types of support provided by the Commission services and additional relevant information is also available to all Commission staff on the dedicated web page of DIO[16].

Question B:

> B) The new JSIS GIPs maintain the four pre-existing criteria for full reimbursement of medical costs. Could the Commission please inform the Ombudsman about the way these criteria, and in particular those related to "aggressive diagnostic and/or therapeutic procedures", "serious handicap", and "shortened life expectancy" are applied to cases of disability? What happens when it is not just one, but several of these criteria that are not fulfilled?

Commission reply:

It should be first pointed out that the four criteria for the establishment of the existence of a serious illness under Article 72(1) of the Staff Regulations, referred to in the 2007 GIPs and maintained in the GIPs' revision in 2020, were based on an opinion of the Medical Council of JSIS, given at the time those criteria were set up[17]. More specifically, the Medical Council of JSIS concluded that those criteria represented elements common to all serious illnesses listed by the legislator in Article 72(1) of the Staff Regulations and could, therefore, be used to determine whether other illnesses were of comparable seriousness. It must equally be recalled that the Union Courts have repeatedly considered that those four criteria determined by the Medical Council were not manifestly inappropriate or misconceived in light of the objective pursued, namely, to identify illnesses of a 'comparable seriousness' to those expressly listed under Article 72(1) of the Staff Regulations[18].

With this question, the Ombudsman is explicitly requesting information with regard to the application of the four criteria listed in the GIPs 'to cases of disability'. As explained above, it is important to underline that the four criteria were established exclusively to assess whether an illness is of a comparable seriousness to the ones listed by the legislator in Article 72(1) of the Staff Regulations.

As recalled under the reply to the previous question, in line with the case law, the JSIS Settlements Office has taken a flexible and holistic assessment of the interdependence between these criteria, to allow the beneficiaries with a disability to benefit from the full reimbursement of related medical costs. This practice is codified in the 2020 GIPs.

As such, to assess the criteria required for the recognition of a serious illness, the Medical Officer does not merely establish the facts but undertakes a comprehensive medical assessment of those facts.

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[16] Diversity and inclusion - Diversity and Inclusion (sharepoint.com)

[17] Pursuant to Article 20(6) of the Joint Rules on sickness insurance for officials of the European Communities, the consultation of the Medical Council is mandatory before the adoption of the criteria.

[18] Judgments of 23 November 2010, *Marcuccio v Commission*, F-65/09, EU:F:2010:149, paragraphs 51 to 53, and of 28 September 2011, *Allen v Commission*, F-23/10, EU:F:2011:162, paragraphs 49 to 52.

The analysis is first made on each criterion, in order to find the elements prompting to conclude that each one is met or not, in the individual situation at hand. In addition to the assessment of each criterion, a global assessment of the interdependence of the four criteria is then undertaken, in line with the case law, as codified in the 2020 GIPs. This comprehensive assessment bestows upon 'the practitioners with considerable latitude in the medical evaluation of the particular situations they are called upon to assess'[19].

Against this background, it should be underlined that the overall aim remains to identify health conditions of a 'comparable seriousness' as those of the serious illnesses expressly listed under Article 72(1) of the Staff Regulations. Hence, the criteria are meant to remain cumulative and applicable equally to persons with or without a disability, even where this case-by-case flexible and holistic assessment is made with a view to determining whether they are globally fulfilled or not, within an individual situation[20].

In light of this flexible and holistic approach, the criterion of '*the need for aggressive diagnostic and/or therapeutic procedure*' is recognised as particularly important in the overall assessment of the four interdependent criteria, and, specifically, where the illness has resulted or risks resulting in a *'serious handicap'*. Indeed, when heavy therapeutic or diagnostic measures (including onerous financial costs) are necessary in cases of (risk of) a serious handicap, and even when '*shortened life expectancy'* is not established clearly, such measures may lead to the conclusion that the shortened life expectancy criterion is fulfilled and tilt the overall assessment towards the recognition of a serious illness. As an example, in the case of a child who is deaf for whom a cochlear implant would provide an appropriate response to this impairment, the associated costs of these therapeutic measures are likely to trigger a favourable opinion for the recognition of a serious illness under Article 72(1) of the Staff Regulations.

Question C:

> C) Could the Commission please set out its view as regards whether it is legitimate to differentiate between types of impairments (physical, mental, intellectual, or sensory) or the perceived "degree" of disability when deciding whether to grant full reimbursement?

Commission reply:

As explained above, the system established on the basis of Article 72(1) of the Staff Regulations was only intended to cover the staff members' medical costs. Moreover, only the medical expenses incurred by staff members linked to recognised serious illnesses are eligible for full reimbursement.

Against this background, one of the criteria to be assessed for the recognition of a serious illness under the GIPs, is '*the presence or risk of a serious handicap*'.

When assessing the criterion of '*the presence or risk of a serious handicap*' in the context of the determination of the existence of a serious illness, the existence of a risk of a serious handicap alone is enough for that criterion to be fulfilled. There is therefore no distinction for the type of impairment or assessment of the impact of the impairment on the functioning of the person or on their personal, household or social activities. It is therefore the natural history of the illness, as described in scientific literature and medical textbooks, that will enable the

[19] Judgment of 28 September 2011, *Allen v Commission*, F-23/10 EU:F:2011:162, paragraph 77.
[20] Judgment of 28 September 2011, *Allen v Commission*, F-23/10 EU:F:2011:162, paragraph 79.

doctor to determine whether the person, on the basis of their diagnosis, is at risk of developing a serious handicap. Alternatively, the assessment of the medical file submitted will enable to ascertain whether that risk has already materialised.

The Commission would like to further underline that the only rules where there is still a reference to the type of impairment and 'degree' of disability are in relation to the possibility to double the dependent child allowance pursuant to Article 67(3) of the Staff Regulations. This is not governed by JSIS. The objective of this procedure is to determine whether the conditions to double the dependent child allowance or to extend the period during which it can be paid are fulfilled. That said, following up on another recommendation[21] from the Ombudsman, a revision of the Conclusion of the Heads of Administration which lays down the procedure for requests to double or extend the dependent child allowance has been prepared and is pending validation by the College of Heads of Administration ('CCA').

Question D:

D) An important change introduced by the 2020 revision of the JSIS GIPs is the increased degree of flexibility that Medical Officers have in assessing one criterion as fulfilled in light of the others. How does the Commission ensure that this greater flexibility does not result in unpredictability of reimbursements?

Commission reply:

The Commission's practice codified in the update of the GIPs has proven to offer a sufficient degree of flexibility in the assessment of serious illnesses, while providing at the same time protection against arbitrary or rigid assessments.

If flexibility entails *de facto* some unpredictability as to whether an illness will be recognised as a serious illness, hence opening the right to a full reimbursement of the associated medical costs, this means fundamentally that this approach is respectful of the need for an individual, case-by-case analysis.

Yet, the Commission would like to underline that, in order to ensure consistency in the management of files as well as a harmonised approach, the JSIS medical officers meet twice a month to discuss the most complex files, providing for collegiality.

Furthermore, after the recognition of the serious illness, in order to facilitate the processing of reimbursement requests by the JSIS desk officers, the medical officer creates an internal list of benefits (medicines, specialist consultations, diagnostic examinations, treatments, follow-up measures, paramedical care, etc.) which must be considered systematically in connection with the recognised serious illness. When a benefit is included in this internal list, the JSIS desk officer no longer needs to submit the expenditure to the medical officer to ascertain whether it is connected to the recognised serious illness and thus reimbursable under the applicable 100% rate.

Question E:

E) Could the Commission please inform the Ombudsman of any steps it has taken under

[21] Case 535/2021/VS.

Article 25(d) of the UNCRPD? Is awareness-raising around the CRPD and the human rights approach to disability part of the training of EU health professionals or staff working for the JSIS?

Commission reply:

Article 25(d) of the UNCRPD provides the following:

"*Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care*."

Medical officers within the JSIS Settlements Office are, notably, recruited on the basis of their relevant medical training and experience, including in the field of the assessment of physical and psychological impairments. As part of their national registration within the *Ordre des Médecins*, doctors are bound by a continuous training obligation and may attend seminars in relation to their fields of practice covering awareness around the UNCRPD and around the human rights approach to disability.

Occupational physicians working in the Medical Service of the Commission have an in-depth knowledge of the special health needs of persons with disabilities. The associations of occupational physicians provide continuous training on the inclusion of persons with disability at the workplace through congresses, seminars, and workshops. Furthermore, the Commission advises medical officers to follow the online training course on "Law, Diversity Policy and Disability" developed by the Belgian Knowledge Centre on Well-being at Work[22].

Finally, the Centre of Excellence for Disabilities within the JSIS Settlements Office at the Commission provides a personal and dedicated approach to JSIS members and/or their family members who have or live with a person with disability. The team, composed of 7 staff members manages all JSIS files linked to disability and ensures reimbursement of medical and paramedical costs under JSIS. Moreover, the team works closely with the Commission and with HR services of other EU institutions and bodies, which are responsible for other areas of support for persons with disabilities. Thanks to their thorough knowledge of the Commission's rules and procedures and of applicable national and international rules, the Centre of Excellence for Disabilities is best placed to advise the affiliates about their rights and assist them in requesting financial support they could be entitled to. They also participate in different disability related seminars and conferences to keep themselves abreast.

Question F:

F) In OI/4/2016/EA, the Ombudsman asked for an overview of the number of applications for the recognition of a "serious illness" submitted by or on behalf of persons with disabilities, as well as their outcomes (number of rejections, number of Article 90(2) complaints, and subsequent decisions). As this type of statistics did not exist at the time, the Commission provided the Ombudsman with information about the number of complaints related to serious illness, and among these, the number of complaints in which the complainants self-declared a disability – and their final outcome. If it is now possible,

[22] www.eDiv.be

could the Commission please provide the Ombudsman with an overview of disability related applications for the recognition of “serious illness” and their outcomes, starting from 2020 and the entry into force of the revised GIPs? Alternatively, could the Commission please provide the Ombudsman with the same type of information it had communicated in OI/4/2016/EA?

Commission reply:

The statistical data requested by the Ombudsman regarding the number of applications for recognition of a serious illness, which are submitted by or on behalf of persons with disabilities, and regarding the outcome of such requests, is not available to JSIS.

As regards the number of complaints pursuant to Article 90(2) of the Staff Regulations and requests pursuant to Article 90(1) thereof concerning either the recognition of a "serious illness" or the reimbursement of the medical fees incurred at a rate of 100% for an illness already recognised as "serious", there were **39 complaints/requests** since 2020.

Out of those total figures, however, it is very difficult to identify the exact number of complaints which are directly related to a disability. This is because, while some "serious illnesses" may be linked to a situation of a disability, that fact does not necessarily emerge from the elements in the complaint file.

For the sake of completeness, however, among the total of 39 complaints/requests referred to above, there were **9 complaints/requests** in which the complainants/requestors themselves alleged the existence of a permanent disability (physical, mental, intellectual or sensory etc.).

III. CONCLUSIONS

The European Commission would like to thank the European Ombudsman for this opportunity to provide an update on this very important topic and is confident that the steps taken by the Commission in relation to the Committee recommendation since the first periodic review under the UNCRPD from 2015 were effective in delivering tangible and positive changes for the persons concerned.

The European Commission will continue to lead by example in ensuring inclusiveness and diversity in its workforce and, in particular, in removing any identified obstacle faced by people with disabilities, while guaranteeing the sound application of the legal frameworks in place.

For the Commission

Johannes HAHN

Member of the Commission

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For the Secretary-General

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