

STUDY

Requested by the EMPL Committee

Analysis of the European Disability Card

The Proposed Directive:
Shortcomings, Strengths
and Opportunities



Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies

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Abstract

This study provides an in-depth analysis of the Proposal for a Directive establishing the European Disability Card and the European Parking Card for persons with disabilities, and outlines recommendations. This Proposal represents an important stepping stone to promote free movement of persons with disabilities. It is based on mutual recognition of disability status, but does not harmonise disability assessments. It would ensure that holders of the cards may avail of disability benefits in a range of services across the EU. However, the current text presents some shortcomings.

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LIST OF ABBREVIATIONS

AG	Advocate General
ANED	Academic Network of European Disability experts
CfE	Call for Evidence
CFR	Charter of Fundamental Rights of the European Union
CoR	Committee of the Regions
CJEU	Court of Justice of the European Union
CRPD	United Nations Convention on the Rights of Persons with Disabilities
EAA	European Accessibility Act
EASPD	European Association of Service Providers for People with Disabilities
EBU	European Blind Union
EDF	European Disability Forum
EDS	European Disability Strategy 2010-2020
EESC	European Economic and Social Committee
ENAT	European Network for Accessible Tourism
ENIL	European Network on Independent Living
EP	European Parliament
EPSR	European Pillar of Social Rights
EU	European Union
EUD	European Union of the Deaf
IA	Impact Assessment
ISSG	Inter-Service Steering Group
MFF	Multi-annual Financial Framework
OMC	Open Method of Coordination

ONCE	<i>Organización Nacional de Ciegos Españoles</i> - Spanish National Organisation of the Blind
OPDs	Organisations of Persons with Disabilities
OJ	Official Journal
PETI	Committee on Petitions of the European Parliament
RSB	Regulatory Scrutiny Board
SDG	Sustainable Development Goals
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNE	<i>Asociación Española de Normalización</i> - Spanish Association for Standardisation
WAD	Web Accessibility Directive

EXECUTIVE SUMMARY

Background

This study, commissioned by the European Parliament's Committee on Employment and Social Affairs (EMPL), provides an **in-depth analysis of the European Commission's 'Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities'** (hereafter 'Proposal' or 'proposed directive'), which was released on **6 September 2023**. The study takes into account the obligations contained in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as well as recent disability policy developments at European Union (EU) level.

The deployment of a European Disability Card features among the flagship initiatives of the 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030' (Strategy 2021–2030) with a view of **facilitating free movement of persons with disabilities across the EU**. However, the input for a European Disability Card predates the Strategy 2021–2030 and arises from the strong advocacy of organisations of persons with disabilities (OPDs).

The current Proposal **builds on the experience of the EU Parking Card** for persons with disabilities which was **introduced by the Council Recommendation 98/376/EC** on a parking card for people with disabilities. It takes into consideration the insights gained through the **Pilot Project on a European Disability Card** which ran between 2016 and 2018 in eight Member States. Furthermore, the Proposal takes into account and incorporates the results of a broad **participatory process**.

A two-phase consultation process comprising a **Call for Evidence** (CfE) and a **public consultation** took place **between November 2022 and May 2023** and allowed OPDs, persons with disabilities, as well as a range of civil society organisations to comment on the initiative and provide relevant insights. This process was further complemented by other consultative activities, which included targeted interviews, focus groups, online workshops and online surveys carried out by an external contractor for the European Commission. Input into the Proposal was also provided, at various junctures, by EU institutions and bodies, as well as by the Disability Platform. This Platform, which was established at the end of 2021, currently includes representatives of national CRPD focal points, OPDs, other civil society organisations active at EU level, as well as representatives of the Commission.

Overall, in the **pre-legislative phase**, a **strong and widespread support** for the deployment of a European Disability Card, a revamping of the existing EU Parking Card, and a **legislative initiative** in this regard emerged among all stakeholders, including Member States' authorities. EU legislation providing for the mutual recognition of the disability status across the territory of the Union has been regarded as necessary and compliant with the principle of subsidiarity.

Aim

Against this background, this study assesses the strengths and shortcomings of the Proposal and outlines policy recommendations.

In particular, this study:

- examines the extent to which the principle of mutual recognition supports the enhancement and promotion of disability rights;
- identifies and describes the most significant normative elements of the Proposal;

- discusses the type of legislation proposed (directive), evaluating if it is adequate and commensurate with achieving the objectives of the initiative;
- delineates the material scope (i.e. the areas, services and benefits) covered by the Proposal and detects the limits of such scope;
- analyses the personal scope of the Proposal identifying limits and challenges;
- examines provisions related to the format(s) of the card, and evaluates the extent to which the Proposal supports accessibility of information on the cards as well as awareness-raising activities;
- assesses the extent to which the Proposal provides for the involvement of persons with disabilities and their representative organisations in the design, implementation, monitoring and communication of the Proposal;
- examines issues related to financial costs and funding of the cards.

This study also highlights the **extent to which requests made by the European Parliament (EP) and various stakeholders, in particular OPDs, have been incorporated** in the current Proposal. It also endeavours to ascertain whether policy choices that disregard the input received are justified.

This study was **drafted in October 2023**, taking into account relevant literature, policy and legal documents as well as position papers up until 26 October 2023. Following the publication of the Commission Proposal for a directive extending the European Disability Card and the European Parking Card to third country nationals legally residing in a Member State, on 31 October 2023, the study was amended to include **key legal developments occurred up until 5 November 2023**. On the whole, the study is primarily based on the review of the text of the Commission's Proposal, and its accompanying documents, including the Impact Assessment (IA) Report, as well as a range of policy documents of the EP, the European Economic and Social Committee (EESC) and various stakeholders, in particular OPDs. It draws on previous research and studies commissioned by the EP.

Key Findings

Previous research has widely demonstrated that **people with disabilities face additional barriers when exercising their free movement rights**. These additional barriers are mostly related to the current **lack of mutual recognition of disability status**, but also to the limited cross-border portability of social assistance and non-contributory disability benefits.

The Proposal attempts to remove barriers to mobility ensuring mutual recognition of disability status through the European Disability Card and the European Parking Card, but only for those who travel for short periods of time. It **does not harmonise disability assessments**, nor does it require Member States to adhere to certain norms when ascertaining disability status. Rather, it provides for the European Disability Card and the European Parking Card to be based on the principle of **mutual recognition of the disability status across the EU**.

The cards as regulated in the Proposal will allow a limited 'portability' of nationally recognised disability status in order to access certain special treatments, facilities, concessions or benefits within the material scope of the directive. In practice, EU citizens that hold a European Disability Card issued by a Member State can be recognised by service providers in another (host) Member State on an equal basis with persons with disabilities who are resident in that State. This is the case even if they would not be eligible for the card if they were assessed in the host Member State.

The principle of **mutual recognition** that underpins the Proposal can be seen as a **double-edged sword**. On the one hand, it will indeed **facilitate free movement of persons with disabilities and their access to services in host Member States**. On the other hand, as confirmed by previous research, it **runs the risk of legitimising disability assessments that are based on extremely medicalised models, which are at odds with the CRPD**, by equalising those outdated assessments with more progressive and human-rights oriented ones. It would remain open to Member States to challenge the degree of equivalence between regimes of disability assessment and mutual recognition in front of the Court of Justice of the European Union (CJEU). However, as suggested by earlier studies, the principle of mutual recognition and the deployment of the European Disability Card might trigger soft mechanisms of coordination of disability assessment, either through well-rooted soft governance tools, such as the Open Method of Coordination (OMC), or within the recently formed Disability Platform.

The Proposal **does not merge the European Disability Card and the European Parking Card**. It refrains from creating a unique multi-purpose disability card, an option which had been pushed back by OPDs and the EESC in its Opinion. In fact, merging the two cards would have been unadvisable given their rather diverse scope and purpose, with the European Parking Card being relevant to people travelling by car only. Further, while not all Member States have a disability card, parking cards do exist in all Member States.

The **European Disability Card will not replace existing national disability certificates or cards**. The new European Parking Card, by contrast, will replace existing EU Parking Cards. In that connection, Article 17 of the Proposal establishes the obsolescence of Council Recommendation 98/376/EC.

Regulating these different cards with the same legislative instrument appears, at first sight, a **pragmatic** and more **rapid option**, especially at a critical political juncture with the looming European elections. It may guarantee a quick approval before the new EP is established and the new Commission takes office. Opting for two instruments would certainly have elongated the process and perhaps would have run the risk of delaying the deployment of one or both cards. However, it would have allowed the adoption of a dedicated regulation on a single legal basis (Article 91 TFEU) on the European Parking Card. By contrast, **the choice to opt for a single instrument to enact the two cards seems to have orientated the Commission towards a directive, rather than a regulation**. In fact, a directive is the only type of instrument that can be adopted on the basis of Article 53(1) TFEU.

A **regulation** (which is directly applicable in all its elements) **on the sole European Parking Card would have best addressed current differences and inconsistencies in the deployment of existing parking across the EU**. In addition, a dedicated regulation could have laid out some rules about parking and the provision of information on those rules and on parking spaces, which is one of the gaps in the current text identified by the European Disability Forum (EDF).

The choice of a **directive** presents **two main strengths**. First, it is most **respectful of the principle of subsidiarity**. Secondly, the use of a directive to set up a new card – such as the European Disability Card that is not in existence in all Member States – gives **flexibility to Member States to take into account their specific national context**. However, **a directive leaves room for differences and discrepancies among the Member States**. Further, even in the event of a timely transposition, the effects of a directive reach individuals through the implementing measures adopted by the Member States concerned, and thus are delayed in time.

The **material scope** of the current Proposal is rather **wide** and encompasses virtually all areas, services, activities and facilities as a broad range of special conditions, benefits and concessions, **except for** benefits in the area of **social security** which are covered by Regulations (EC) No 883/2004 and (EC)

No 987/2009, special contributory or non-contributory cash benefits or benefits in kind, and **social assistance**. The fact that the proposed directive does not address social assistance and social security aligns with the commitment expressed by the Commission in the CfE. It also responds to the request of Member States (expressed, *inter alia*, in the Social Protection Committee in April 2023 and at a meeting on the European Disability Card organised by Finland in May 2023). In this respect, the choice of the Commission may facilitate a rapid agreement in the legislative phase, especially within the Council under the auspices of the Spanish Presidency currently in office.

Although the **material scope** of the proposed text is potentially very broad, it is **limited indirectly by the fact that the European Disability Card and the European Parking Card will only be used for 'short stays'**. The concept of 'short stay', while undefined in the current Proposal, might be equated to a period of stay not exceeding three months, as provided in the EU Citizenship Directive.

Another limitation to the reach of the current Proposal derives from the fact that **it remains in the hands of the Member States and of private service providers 'to grant or require to grant special benefits or specific, preferential conditions'**. According to Article 15(2), Member States must 'encourage private operators or public authorities to voluntarily provide special conditions or preferential treatment for persons with disabilities'. It remains unclear how Member States should encourage those private providers. It seems that Member States could potentially use financial incentives within the limits of State aid rules. However, it remains unclear whether and to what extent EU funding might support the provision of financial incentives.

The personal scope of the Proposal encompasses **Union citizens whose disability status is recognised by the competent authorities in the Member State of their residence**. Other beneficiaries will be their family members, as well as persons accompanying them (including personal assistants). The Proposal as such does not include third country nationals who are resident in a Member State and have their disability recognised by that Member State. However, on **31 October 2023**, just eight weeks after the release of the Proposal, the Commission, in an evident effort to respond to the concerns expressed by EDF and other OPDs, published an additional **proposal for a directive extending the European Disability Card and the European Parking Card to third country nationals legally residing in a Member State** (Follow-up Proposal). The explicit aim of this Follow-up Proposal, which is based on Article 79(2) lett. b) TFEU, is to make it easier for persons with disabilities, who are third country nationals legally residing in the territory of a Member State and whose disability status has been recognised by that Member State, to travel across the EU. The rules laid out in this Follow-up Proposal will not affect general rules governing the mobility of third country nationals.

The Proposal requires Member States to take a range of necessary measures to introduce, issue and renew the cards, ensure mutual recognition, but also to guarantee that the cards are used effectively. The Proposal **leaves exclusively to the Member States the task of providing information and conduct awareness-raising campaigns**. This is a major **pitfall** of the proposed directive, which disregards the Opinion of the EESC and input from OPDs to deploy an EU-website or repository and to provide for a role of the Commission in awareness-raising. The Proposal also **fails to mention the important role that OPDs may play raising awareness** among persons with disabilities about the role of the cards.

Even though it will be up to Member States to involve national OPDs in the transposition of the directive in compliance with the CRPD, **the Proposal is silent on the role of OPDs in the transposition of the directive and in monitoring its implementation**. This is a major gap of the current text.

The Proposal provides for both the European Disability Card and the European Parking Card to be released in **physical and digital format**, and for digital features to be embedded in the physical format. This is a **significant strength** of the Proposal, which **takes into account the Opinion of the EESC, the contributions of OPDs** to the various consultation activities, as well as the **insights provided by the IA Report**. The **requirements of the digital format of both cards will be determined by delegated acts** to be adopted by the Commission. Article 8 of the Proposal also establishes that **implementing acts**, equally to be adopted by the Commission, **will establish common technical specifications** 'for further specifying the formats of the European Disability Card and European Parking Card for persons with disabilities, their respective security and state of the art digital features including their specific format and, the data contained therein, including the appropriate security measures for the personal data, as well as interoperability matters'.

Lastly, it is worth noting that the text of the proposed directive **does not address issues related to the funding of the cards** and to incentives that the EU might put in place for service providers.

Recommendations

The weaknesses and loopholes of the Proposal might be addressed by **the co-legislators**, who could:

- consider clarifying, either in the preamble or in Article 3, that the European Disability Card should never become a necessary eligibility condition to be recipient of services already granted under other EU legislation or for reasonable accommodation under the Employment Equality Directive;
- consider amending Article 3 to include a definition of 'short stays';
- consider amending the wording of Article 6(4) to eliminate the word '*directly* ...' and insert a paragraph that clarifies the European Disability Card should be voluntary;
- consider whether a provision on the validity of the European Parking Card can be inserted;
- consider amending substantially Article 9 of the Proposal by a) including a role of the EU (namely the Commission) and OPDs in the provision of information and in awareness-raising; b) including a specific provision on the creation of an EU website; c) laying out in a separate/dedicated provision Member States' obligations in relation to surveillance issues and compliance; d) including a provision that obliges Member States to ensure the participation of OPDs in the implementation and monitoring of the cards;
- consider providing for the list of competent authorities notified to the Commission to be published on a dedicated EU website;
- consider explicitly requiring Member States to ensure that the cards will bear no cost for the holders and will be issued free of charge.

Alongside these amendments, **co-legislators could work with the Commission** to clarify whether dedicated EU funding can support the deployment of the cards. They could also explain the extent to which current funding streams can be used to encourage service providers to set out and provide special conditions and preferential treatment.

Finally, the **Commission** could clarify the role that soft governance tools, such as the Disability Platform, can play in relation to the transposition and implementation of the proposed directive. It would also be important for the Commission to clarify the role of *AccessibleEU* in supporting the deployment of the cards and ensuring compliance with accessibility obligations.

1. CONTEXT AND BACKGROUND

KEY FINDINGS

The deployment of a European Disability Card features among the flagship initiatives of the 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030' (Strategy 2021-2030) with a view of facilitating free movement of persons with disabilities across the European Union (EU). However, the input for a European Disability Card predates the Strategy 2021–2030 and arises from strong advocacy of organisations of persons with disabilities (OPDs).

The main predecessor and trailblazer for the European Disability Card is the EU Parking Card, whose adoption was provided for in the Council Recommendation 98/376/EC on a parking card for people with disabilities.

A Pilot Project on a European Disability Card involving eight Member States (i.e. Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania, Slovenia) was launched in 2016 and financed under the Rights, Equality and Citizenship Programme 2014–2020. Alongside the territorial limitation of the pilot, the Card was limited to services in the sectors of transport, leisure, sport and culture.

Building on the results of the study that assessed the Pilot Project, and the longstanding requests for a European Disability Card from OPDs, a two-phase consultation process comprising a call for evidence and public consultation was conducted between November 2022 and May 2023. This wide consultation process allowed OPDs and persons with disabilities to provide input in the design of the legislative proposal.

In the pre-legislative phase strong support for a legislative initiative that provides the deployment of a European Disability Card has also been expressed by all stakeholders as well as by the European Parliament, the European Economic and Social Committee (EESC) and national authorities.

On 6 September 2023 the 'Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities' was released by the Commission. On 31 October 2023, a follow up 'Proposal for a Directive extending [the cards] to third country nationals legally residing in a Member State' was published by the Commission.

This study, commissioned by the European Parliament's Committee on Employment and Social Affairs, provides an in-depth analysis of the key elements of the Commission's Proposal, assesses its strengths and shortcomings and proposes recommendations that are addressed primarily to the EU co-legislators. This study also discusses the main features of the proposed cards. It takes into account the obligations contained in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as well as recent disability policy developments at European Union (EU) level.

This chapter sets out the **objectives and structure of the present study** and gives an overview of the **relevant policy and legal context** in which the proposed directive on the European Disability Card and the European Parking Card for persons with disabilities situates. It also discusses the background to such proposed directive, highlighting the **main steps that have preceded and supported the release of the current text**. Without duplicating existing documents, it reviews the outcome of the Impact Assessment (IA) Report, as well as relevant positions of key institutional actors, such as the European Parliament (EP), the European Economic and Social Committee (EESC), and various organisations of persons with disabilities (OPDs) in the pre-legislative phase. In doing so, the chapter sheds a light on the extent to which **persons with disabilities** and **OPDs have been involved in the**

design of the proposed directive. Further, this chapter aims to give the **necessary background information** to understand the extent to which requests made by OPDs as well as by the EP and other relevant institutional actors are covered in the proposed directive.

1.1. Objectives and structure of this study

On **6 September 2023**, the European Commission released the '**Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities**' (hereafter 'Proposal' or 'proposed directive')¹, which aims to establish common rules for a European Disability Card, as proof of a recognised disability status, and the European Parking Card for persons with disabilities, as proof of their right to parking conditions reserved for persons with disabilities. Just eight weeks after publishing the Proposal, on 31 October 2023, the Commission released an additional 'Proposal for a Directive extending [the cards] to third country nationals legally residing in a Member State' (Follow-up Proposal)².

On foot of a thorough desk-based research, **the present study provides an in-depth legal analysis of the key elements** of the Proposal, with a particular focus on the European Disability Card and its potential to advance the rights of persons with disabilities and its limitations. It discusses the text of the Proposal, and the main features of the proposed cards. In doing so, it endeavours to assess if these features are **necessary, adequate and sufficient** to support its main objective of facilitating free movement. The analysis also endeavours to identify and discuss any pitfalls, gaps and missing elements, which could hamper the achievement of the proposed disability card's objectives. Due to the timeframe of the study, limited attention is paid to the Follow-up Proposal, but no in-depth commentary is provided. This study finally presents **recommendations** on amendments that may ameliorate the text of the Proposal. Those recommendations are addressed primarily (although not exclusively) to the EU co-legislators – the EP and the Council. The study takes into account the obligations contained in the United Nations Convention on the Rights of Persons with Disabilities (CRPD)³ as well as recent disability policy developments at European Union (EU) level.

Notably, this study uses **person-first language** in line with the CRPD and EU law. This terminology 'recognizes an individual's abilities by placing the person, as a subject, before a disabling identifier'⁴. Only occasionally, to avoid repetitions, the term 'disabled people' is utilized.

It is structured into **five main chapters**. As noted above, building on existing studies and academic literature, **Chapter 1** briefly outlines the relevant legal and policy **context** and discusses the **background** to the current initiative. **Chapter 2** discusses the **rationale** underpinning the Proposal. It also addresses subsidiarity concerns and the strengths and weaknesses of mutual recognition in this context. **Chapter 3** provides an **in-depth analysis of the text** of the proposed directive. It critically discusses the structure of the Proposal. It further comments on advantages and disadvantages related to the type of legislative act chosen (i.e. a directive), and investigates whether and to what extent a regulation could have best achieved the objectives of the initiative. Chapter 3 pays particular attention

¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

² European Commission, *Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State*, COM(2023) 698 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:698:FIN>.

³ UN Convention on the Rights of Persons with Disabilities, 13 December 2006, in force 03 May 2008, UN Doc. A/RES/61/106, Annex I. The text is available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

⁴ Sabatello, M., 2019, *Cultivating inclusivity in precision medicine research: disability, diversity, and cultural competence* 10(3) *Journal of Community Genetics*, pp. 363-373, available at: <https://link.springer.com/article/10.1007/s12687-018-0402-4>.

to the scope *ratione materiae* (i.e. the areas covered by the proposed text). It also zooms in on the scope *ratione personae* (i.e. the beneficiaries) and its current limits. **Chapter 4** focuses on the format of the cards, as well as on issues related to accessibility of information and awareness-raising activities. It also briefly addresses funding issues. **Chapter 5** provides **conclusions**, summarising strengths and pitfalls of the current text, and lays out **policy recommendations**.

This study was drafted in October 2023, taking into account relevant literature, policy and legal documents as well as position papers up until 26 October 2023. Following the publication, on 31 October 2023, of the Follow-up Proposal mentioned above, the study was amended to include **key legal developments occurred up until 5 November 2023**. On the whole, the study is primarily based on the review of the text of the Commission's Proposal, and its accompanying documents, including the Impact Assessment (IA) Report, as well as a range of policy documents of the EP, EESC and various stakeholders, in particular OPDs. The present study also draws on the findings of previous relevant studies⁵. Given the constrained timeframe, the study is exclusively rooted in desk-based research and secondary data. It does not provide any novel empirical data.

1.2. The legal and policy context

The EU's engagement with disability issues is long-standing. Until the late 1990s it was mostly characterised by soft law and programmes aimed at exchanging best practices in the field of employment and vocational training⁶. The Treaty of Amsterdam, which entered into force in 1999, conferred onto the former European Community the competence to enact legislation to combat discrimination on the grounds, *inter alia*, of disability. On the basis of former Article 13 of the Treaty establishing the European Community (now Article 19 of the Treaty on the Functioning of the European Union – TFEU) the Employment Equality Directive⁷ was enacted. Further, Declaration No. 22 attached to the Treaty of Amsterdam encouraged the EC to take account of the needs of persons with disabilities when adopting internal market measures on the basis of (now) Article 114 TFEU. In fact, since the early 2000s, the EU has also adopted measures that directly or indirectly support disability rights within the remit of market integration⁸. The Charter of Fundamental Rights of the EU (CFR), proclaimed in 2000, gave further visibility to disability rights. The CFR prohibits discrimination *inter alia* on the ground of disability in Article 21. Article 26 CFR also provides that 'the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community'. Commentators have suggested that the latter provision 'must be connected to Article 1, which states that dignity is 'inviolable' and 'must be respected and protected', and pointed to the fact that the Commission has cited Article 1 CFR alongside Articles 26 and 21 as indicative of a strong mandate to 'improve the social and economic situation of persons with disabilities'⁹.

⁵ Particularly, Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁶ Waddington, L., 2006, *From Rome to Nice in a Wheelchair, The Development of a European Disability Policy*, Europa Law Publishing, Groningen, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1026549. See also Broderick, A. and Ferri, D., 2019 *International and European Disability Law and Policy: Text, Cases and Materials*, Cambridge University Press, Cambridge, Chapter 10.

⁷ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

⁸ Waddington, L., 2009, *A Disabled Market: Free Movement of Goods and Services in the EU and Disability Accessibility*, 15 *European Law Journal*, pp. 575-598, available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-0386.2009.00470.x>.

⁹ O'Brien, C., *Article 26 CFR*, in Peers, S., Herve, T., Kenner, J. and Ward, A. (eds), 2021, *The EU Charter of Fundamental Rights: A Commentary*, Hart Publishing, Oxford, pp. 743-778, available at: <https://www.bloomsburycollections.com/encyclopedia-chapter?docid=b-9781509933495&tocid=b-9781509933495-8924486>.

The most important driver for the expansion of EU disability law has been the conclusion of the CRPD in 2010¹⁰. Having been ratified by the EU alongside its Member States, the CRPD qualifies as a mixed agreement for the purpose of EU law¹¹, forms integral part of EU law¹², and has a sub-constitutional status, below the EU Treaties and the CFR and above EU legislation¹³. As observed elsewhere, '[t]he need to comply with the wide-ranging obligations provided for in the CRPD gave rise to an immediate and visible shift in the EU's approach to disability'¹⁴. In particular, the conclusion of the CRPD prompted the EU to adopt more comprehensive policy strategies, and supported the embracing of a social-contextual understanding of disability, i.e. the view of disability as stemming from the interaction between the individual's impairment and external barriers¹⁵.

The **European Disability Strategy 2010–2020** (EDS)¹⁶, adopted by the Commission in 2010 with the express aim of implementing the CRPD, included a range of actions to support the realisation of disability rights in eight main areas: accessibility, participation, equality, employment, education and training, social protection, health, and external action¹⁷. On foot of the EDS, the EU action has been particularly prominent in the field of accessibility with the adoption of the **Web Accessibility Directive** (WAD)¹⁸, which provides for mandatory accessibility requirements for websites and mobile applications of public sector bodies, and the **European Accessibility Act** (EAA)¹⁹, which mandates the accessibility of a range of products and services in the internal market, including, among others, software, banking services, payment terminals, e-books and ticketing machines.

In 2017, the proclamation of the **European Pillar of Social Rights** (EPSR) gave further visibility to disability rights²⁰. The EPSR, while not binding and of 'uncertain legal significance'²¹, aims to complement the CFR and make the social dimension of the EU more visible. It includes a general clause providing for equal treatment and opportunities regardless of 'gender, racial or ethnic origin, religion or belief, *disability*, age or sexual orientation' (principle 3). It also sets out a provision on '**Inclusion of people with disabilities**' (principle 17) which states that:

'People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment

¹⁰ Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0048>.

¹¹ Chamon, M., 2020, *Negotiation, Ratification and Implementation of the CRPD and Its Status in the EU Legal Order*, in Ferri, D. and Broderick, A. (eds), 2020, *Research Handbook on EU Disability Law*, Edward Elgar Publishing, pp. 52-70, available at: https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/60576559/Chamon_2020_Negotiation_Ratification_and_Implementation_of_the_CRPD_and_its_Status_in_the_EU_Legal_Order.pdf.

¹² Joined Cases C-335/11 and C-337/11, *HK Danmark*, ECLI:EU:C:2013:222, para. 30.

¹³ Waddington, L. and Broderick, A., 2020, *The Post-2020 European Disability Strategy*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Luxembourg, available at: [The Post-2020 European Disability Strategy | Think Tank | European Parliament \(europa.eu\)](https://www.europarl.europa.eu/ThinkTank/en/european-parliament/european-disability-strategy).

¹⁴ Ferri, D. and Broderick, A., 2020, *Introduction*, in Ferri, D. and Broderick, A. (eds), 2020, *Research Handbook on EU Disability Law*, Edward Elgar Publishing, pp. 1-10, available at: <https://china.elgaronline.com/edcollchap/edcoll/9781788976411/9781788976411.00007.xml>.

¹⁵ Ferri, D. and Favalli, S., 2016, *Defining Disability in the EU Non-Discrimination Legislation: Judicial Activism and Legislative Restraints*, 22 *European Public Law*, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2659829.

¹⁶ European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, COM(2010) 636 final, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2010%3A0636%3AFIN%3Aen%3APDF>.

¹⁷ Lecerf, M., 2022, *Understanding EU policies for people with disabilities*, European Parliamentary Research Service, European Parliament, p. 7, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI\(2021\)698811_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698811/EPRS_BRI(2021)698811_EN.pdf).

¹⁸ Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1, available at: <https://eur-lex.europa.eu/eli/dir/2016/2102/oj>.

¹⁹ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L 151/70, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0882>.

²⁰ The European Pillar of Social Rights (EPSR) is available at: <https://ec.europa.eu/social/main.jsp?catId=1606&langId=en>.

²¹ Garben, S., 2018, *The European pillar of social rights: effectively addressing displacement?*, 14(1) *European Constitutional Law Review*, pp. 210 et seq., available at: <https://www.cambridge.org/core/journals/european-constitutional-law-review/article/european-pillar-of-social-rights-effectively-addressing-displacement/162B548D38A7D7385F4C8FF0A19C61CF>.

adapted to their needs'.

To give the EPSR 'more bite', an Action Plan was released by the Commission in 2021²². This Action Plan refers to specific actions to be undertaken and mentions the adoption of a new strategy, i.e. the '**Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030**' (Strategy 2021–2030)²³.

The Strategy 2021–2030, while addressing most (albeit not all) of the shortcomings that characterised the EDS²⁴, visibly adopts a **rights-based approach to disability**²⁵. It highlights that accessibility is a gateway to inclusion, and, alongside monitoring the implementation of the WAD and the EAA, it envisions the launch of the European resource centre *AccessibleEU*. Eventually, this centre was set up at the beginning of 2023, and is currently funded by the Directorate-General Employment, Social Affairs of the European Commission and carried out by a consortium of OPDs, think tanks and civil society organisations which include: ONCE (Spanish National Organisation of the Blind/*Organización Nacional de Ciegos Españoles*) Foundation for Cooperation and Social Inclusion of People with Disabilities, the Johannes Kepler University of Linz, the European Network for Accessible Tourism (ENAT), the Spanish Association for Standardisation (UNE) and the European Association of Service Providers for People with Disabilities (EASPD). This centre is not an agency, nor a formal body. It is a network of experts and aims to bring together 'a community of practice comprising accessibility and disability experts' as well as to share best practices and support the implementation of the EAA and the WAD as well as more generally accessibility requirements²⁶.

The **Strategy 2021–2030** articulates policy initiatives to be adopted around three core themes: enjoying EU Rights, decent quality of life and living independently, equal access and non-discrimination. It **lists an array of flagship initiatives** aimed at supporting the realisation of disability rights and ensuring alignment with, and implementation of, the wide-ranging obligations provided for in the CRPD. For the purpose of this study, it is useful to highlight that the **deployment of a European Disability Card features among those flagship initiatives**.

After the release of the Strategy 2021–2030, the commitment towards the creation of a **European Disability Card** was also expressed at several junctures by the Commission²⁷. Notably, such commitment was also mentioned in the combined second and third report to the UN Committee on the Rights of Persons with Disabilities (CRPD Committee), the treaty body monitoring the compliance of States Parties to the CRPD, which was delivered in April 2023²⁸.

²² European Commission, *The European Pillar of Social Rights Action Plan*, COM/2021/102 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A102%3AFIN&qid=1614928358298#PP1Contents>.

²³ European Commission, *Union of Equality Strategy for the Rights of Persons with Disabilities 2021 – 2030*, COM(2021) 101 final, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>.

²⁴ European Court of Auditors, 2023, *Special Report. Supporting persons with disabilities - Practical impact of EU action is limited*, para. 90, available at: https://www.eca.europa.eu/ECAPublications/SR-2023-20/SR-2023-20_EN.pdf. On the shortcomings of the EDS see also Waddington, L. and Broderick, A., 2020, *The Post-2020 European Disability Strategy*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Luxembourg, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/656398/IPOL_STU\(2020\)656398_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/656398/IPOL_STU(2020)656398_EN.pdf).

²⁵ Ferri, D., 2021, *The New Strategy for the Rights of Persons with Disabilities 2021–2030: A Step Forward in Realising the Human Rights Model of Disability*, EU Law Live, available at: <https://eulawlive.com/op-ed-the-new-strategy-for-the-rights-of-persons-with-disabilities-2021-2030-a-step-forward-in-realising-the-human-rights-model-of-disability-by-delia-ferri/>.

²⁶ See at: https://accessible-eu-centre.ec.europa.eu/about-accessibleeu_en.

²⁷ See e.g. Von Der Leyen, U., 2022, *State of the Union. Letter of Intent*, p. 6, available at: https://state-of-the-union.ec.europa.eu/system/files/2022-09/SOTEU_2022_Letter_of_Intent_EN_0.pdf. See also European Commission, *Commission Work Programme 2023. A Union Standing Firm and United*, COM(2022) 548 final, p. 12, available at: https://commission.europa.eu/publications/2023-commission-work-programme-key-documents_en.

²⁸ European Union, *Combined second and third reports submitted by the European Union under article 35 of the Convention, pursuant to the optional reporting procedure, due in 2021*, CRPD/C/EU/2-3, 4 May 2023, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2F2-3&Lang=en.

As mentioned at the outset of this chapter, on **6 September 2023**, the Commission released the **'Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities'**, with a view of facilitating cross-border access to a range of services and facilities and, ultimately, enhancing free movement in the EU²⁹. As it was done for the Strategy 2021-2030, the announcement of the Proposal was made available in standard format and in easy-to-read format³⁰. This effort to ensure that everyone can access the proposal is in compliance with the CRPD and was praised by Inclusion Europe³¹.

In line with EU standard practice, the Proposal is accompanied by an Explanatory Memorandum and a Legislative Financial Statement³². It is complemented by an IA Report³³, an Executive Summary of the IA³⁴, and a Subsidiarity Grid³⁵. Notably, the IA Report, as all IAs prepared upon the mandate of the European Commission, includes an assessment of subsidiarity and proportionality which couples the Commission's assessment presented in the Explanatory Memorandum in compliance with Protocol No. 2 of the TFEU on the application of the principles of subsidiarity and proportionality. The additional Subsidiarity Grid, introduced upon the input of 'Task force on subsidiarity, proportionality and doing less more efficiently' is meant to ensure a 'pragmatic approach to assessing subsidiarity and proportionality' and 'to foster a common understanding and create a more effective application of these principles by all bodies and institutions in preparing new legislation'³⁶.

On **31 October 2023**, the Commission released a further **'Proposal for a Directive extending [the cards] to third country nationals legally residing in a Member State'**³⁷. This Follow-up Proposal aims to ensure that the same framework as laid down in the proposed directive establishing the European Disability Card and the European Parking Card for persons with disabilities applies to third country nationals with a disability, who are legally residing in the territory of a Member State, when travelling or moving to another Member State for a short period.

²⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³⁰ The Easy-to-Read format announcement is available at: <https://ec.europa.eu/social/main.jsp?catId=1626&langId=en>.

³¹ Inclusion Europe, 2023, *EU Disability Card - #IncludeNews September 2023*, available at: <https://www.inclusion-europe.eu/includenews-september-2023/#:~:text=The%20European%20Commission%20proposed%20to,when%20visiting%20another%20Member%20State.%E2%80%9D>.

³² European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³³ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁴ European Commission, *Commission Staff Working Document Executive Summary of the Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 291 final available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0291>.

³⁵ European Commission, *Commission Staff Working Document Subsidiarity Grid Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 289 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0289>.

³⁶ European Commission, 2018, *Report on the Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently"*, p. 7, available at: https://commission.europa.eu/document/8530a17b-e2b8-4cd4-a68d-597767cfbad7_en.

³⁷ European Commission, *Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State*, COM(2023) 698 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:698:FIN>.

1.3. The background: from the EU Parking Card to the European Disability Card

1.3.1. The 'trailblazer': the EU Parking Card

The input and idea for a European Disability Card predates the Strategy 2021–2030 and has come a long way. Its main predecessor and trailblazer is the EU Parking Card, whose adoption was recommended by a soft law instrument: the **Council Recommendation 98/376/EC on a parking card for people with disabilities**³⁸. That Recommendation, which was amended in 2008 following the EU enlargement³⁹, prompted Member States to introduce national parking cards for persons with disabilities and to recognise cards issued by other Member States. The card was explicitly aimed to enable these citizens 'to park as near to their destination as possible', in order to assist them with 'getting about independently for purposes of occupational and social integration'⁴⁰. In substance, the EU Parking Card allows the holder to avail of any parking concessions for persons with disabilities - including reserved parking spaces, free parking or parking at reduced fees – across the EU. While Annex I of the Recommendation has provided for minimum standards in terms of design and layout of the EU Parking Card, it has left to Member States to deploy the card taking into account their own concerns, national specificities and requirements⁴¹.

The **European Disability Forum (EDF) has considered the EU Parking Card as 'one of the most practical and visible EU initiatives on disability issues'**, while noting the purely 'soft' (i.e. non-binding) nature of the Recommendation and pointing to the actual limits of mutual recognition⁴². In that connection, **EDF has consistently suggested to consider such card as a stepping stone for a more generic EU disability card**. Together with other OPDs, it also consistently advocated for the harmonisation of some of the requirements to obtain such parking card, but also advised that a substantial upgrade of its functioning across the EU was needed⁴³. In a similar vein, scholars⁴⁴, while highlighting the limits of the card, have argued that it could serve as a model for a broader disability card to support free movement⁴⁵.

A study recently published for the EP found that the 'EU parking card scheme, or "Blue Badge", for persons with disabilities has existed for more than 20 years and is recognised across all Member States', but several discrepancies remain in its implementation⁴⁶. In fact, **EU Parking Cards are currently in use in all Member States** and are generally characterised by a standard format⁴⁷. However, in most

³⁸ Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L 167/25, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0376>.

³⁹ Council Recommendation 2008/205/EC adapting Recommendation 98/376/EC on a parking card for people with disabilities [2008] OJ L63/43, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008H0205>.

⁴⁰ Recital 3 of Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L 167/25, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0376>.

⁴¹ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁴² European Disability Forum (EDF), 2021, *Recommendations for strengthening the EU Parking Card European Disability Forum Position Paper February 2021*, available at: <https://www.edf-feph.org/publications/edf-recommendations-for-strengthening-the-eu-parking-card-2020/>.

⁴³ Ibid. p. 9.

⁴⁴ Ibid. pp. 8-9.

⁴⁵ Waddington, L., 2017, *The potential for, and barriers to, the exercise of active EU citizenship by persons with disabilities: The right to free movement*, in Halvorsen, R. et al. (eds), *The Changing Disability Policy System: Active Citizenship and Disability in Europe Volume 1*, Routledge, pp. 196-214.

⁴⁶ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 65, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁴⁷ Ibid. p. 65.

instances, the format has not been updated to reflect technological progress, although **12 Member States have added digital security features** to discourage fraud (which has increased differences in the card design)⁴⁸. The EU Parking Card is administered according to different national rules and issued by national authorities on foot of national requirements and in light of the disability assessment in that Member State⁴⁹. The IA Report and the Legislative Financial Statement accompanying the Proposal highlight discrepancies in the implementation of the EU Parking Card⁵⁰. These are evidenced by the fact that, from 2018 until 2022, around 260 enquiries about the EU parking card were submitted on the SOLVIT platform⁵¹, and that:

'those complaints mainly regarded *uncertainties* as to the rights granted by the card to persons with disabilities when travelling to other Member States (around 30% of cases), *mutual recognition* of national parking cards, issued based on the EU model (around 25% of cases), as well as the justification for fines received even when showing the EU parking card (around 12% of cases)⁵².

1.3.2. From the idea of an 'EU Mobility Card' to the Pilot Project for a European Disability Card

The **EDS** recognised the 'obstacles preventing people with disabilities from fully exercising their fundamental rights – including their Union citizenship rights – and limiting their participation in society'⁵³. It generally pledged to work to 'overcome the obstacles to exercising their rights as individuals, consumers, students, economic and political actors'⁵⁴. It referred to the need to tackle the problems related to intra-EU mobility and 'facilitate and promote the use of the European model of disability parking card'⁵⁵. However, it **did not set out any specific commitment** in relation to the deployment of a European Disability Card.

In 2011, the EP Resolution on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 called:

'for the reduction of barriers to the freedom of movement of people with disabilities, via the adoption of a European Mobility Card, based on mutual recognition by Member States of disability cards and disability benefits and entitlements so as to make it easier for people with disabilities to study, work and travel'⁵⁶.

⁴⁸ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 10, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁴⁹ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 65, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁵⁰ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>. Emphasis added.

⁵¹ See SOLVIT platform at: https://ec.europa.eu/solvit/index_en.htm.

⁵² European Commission, *Legislative Financial Statement of the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 5, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>. Emphasis added.

⁵³ European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, COM(2010) 636 final, p. 5, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2010%3A0636%3AFIN%3Aen%3APDF>.

⁵⁴ *Ibid.* p. 5.

⁵⁵ *Ibid.* p. 5.

⁵⁶ European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)) OJ C 131E, para. 35, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011IP0453>.

On foot of the explicit reference to disability benefits, this EP Resolution also solicited the use of the Open Method of Coordination (OMC) framework, a well-established EU soft governance tool, to deploy such a card while it did not foreground any legislative act⁵⁷. As argued in a recent study⁵⁸, the move towards a 'mobility' card denotes 'a conceptual shift from a mechanism for mutual recognition of concessions when 'parking', to the wider context of driving, and from there to 'mobility', and to enabling 'freedom of movement'⁵⁹.

In 2013, the Commission established a 'Project Working Group' of interested Member States to exchange ideas and pave the way for a possible future 'European Mobility Card', whose aim 'was to create a voluntary system of mutual recognition between Member States based on a single European model disability card associated to a number of benefits freely identified by Member States'⁶⁰. In its first report to the CRPD Committee⁶¹, the Commission indicated that it was 'supporting the development of a mutually recognised EU disability card with a view to tackling the problems related to intra-EU mobility and ensure equal access within the EU to certain benefits, mainly in the areas of transport, tourism culture and leisure'.

The term 'EU mobility card' was soon abandoned to leave space for what seemed a broader initiative – the European Disability Card. After a call released in 2015, **a Pilot Project on a European Disability Card involving eight Member States** (i.e. Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania, Slovenia) **was launched in 2016**⁶². It was welcomed by the EP which also regretted the limited participation of Member States in the Pilot Project⁶³. It was financed under the Rights, Equality and Citizenship Programme 2014–2020 and implemented through further eight national projects between 2016 and 2018. The Pilot Project entailed the issuing of a card to persons who were recognised as persons with disabilities according to national legislation and were residing in the issuing Member State. Similarly to the EU Parking Card, it was up to each Member State to decide the eligibility criteria for receiving the card. It was also up to each participating Member State to identify the benefits offered to the card holders. Alongside the territorial limitation of the pilot, and the **voluntary and soft nature of the card**, it is notable that the very purpose of the card was that of facilitating access to services and facilities **only** in the **transport, leisure, sport and cultural sectors**. National **service providers** in these sectors **were not obliged** to recognise the card but **could voluntarily adhere** to the card's scheme. If they joined the scheme, they were obliged to offer card holders from other Member States participating in the pilot the same benefits they provided to nationals with disabilities⁶⁴.

⁵⁷ Ibid.

⁵⁸ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁵⁹ Ibid. p. 67.

⁶⁰ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits Final Report*, Publications Office of the European Union, Luxembourg, p. 5, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

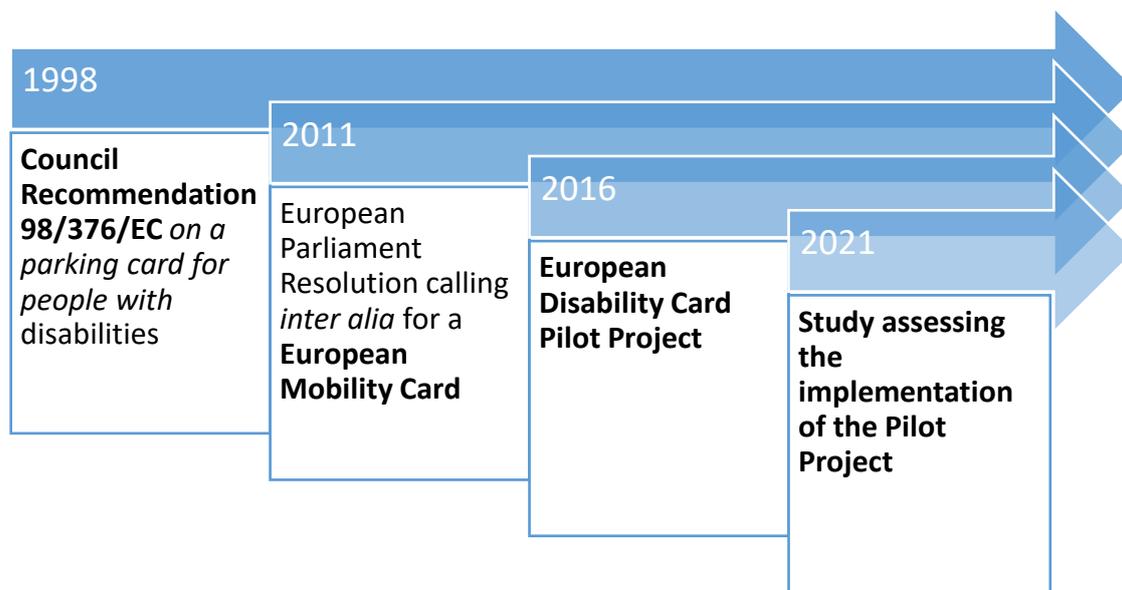
⁶¹ European Union, *Initial report of States parties due in 2012 European Union*, CRPD/C/EU/1, 3 December 2014, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2F1&Lang=en.

⁶² European Commission, 2015, *Call for proposals to support national projects on a mutually recognised European Disability Card and associated benefits*, VP/2015/012, available at: <https://ec.europa.eu/social/main.jsp?catId=629&langId=en&callId=456>.

⁶³ European Parliament Resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee (2015/2258(INI)), P8_TA(2016)0318, OJ C 101/138, point 71, available at: <https://op.europa.eu/en/publication-detail/-/publication/d2f3ee88-28ea-11e8-b5fe-01aa75ed71a1>.

⁶⁴ Van Dijck, C., 2018, *Case Study—The European Disability Card*, in Brandsen, T., Steen, T. and Verschuere, B. (eds), 2018, *Co-Production and Co-Creation. Engaging Citizen in Public Services*, Routledge, pp. 145-147, available at: <https://www.taylorfrancis.com/books/oa-edit/10.4324/9781315204956/co-production-co-creation-taco-brandsen-bram-verschuere-trui-steen>.

Figure 1: The major steps towards a European Disability Card



Source: Author's own elaboration, 2023.

1.3.3. Strengths and weaknesses of the Pilot Project for a European Disability Card

In 2021, a study assessing the impact of the Pilot Project was published by the Commission⁶⁵. It analysed the implementation of the card in the participating Member States. It also assessed the 'added value' brought by the card with regard to the mutual recognition of disability status and free movement of persons with disabilities across the Member States involved in the Pilot Project⁶⁶. Without reiterating the findings of this study, which are summarised in other reports⁶⁷ and in the IA⁶⁸, it is useful to highlight a few key issues for the purpose of the current analysis.

This study found that the Pilot Project 'proved to be *effective* as it supported the implementation of a card which **contributed towards the mutual recognition of disability status** in the participating Member States'⁶⁹. It also confirmed that the card enhanced participation of persons with disabilities in the culture and leisure sectors, although it did not definitively demonstrate an increase in cross-border tourism. Furthermore, it established that the benefits of the card clearly outweigh its costs and indicated that there is 'no evidence that participating in the programme bears a high cost on service providers'⁷⁰.

The **limited territorial scope** of the Pilot Project and the **constraints in terms of services covered** were the **main shortcomings** highlighted. In this respect, the study echoed positions already expressed by the EP, which had called on the Commission to expand the Pilot Project to all Member

⁶⁵ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

⁶⁶ Ibid. p. 109.

⁶⁷ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁶⁸ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁶⁹ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 2, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

⁷⁰ Ibid. p. 3.

States and to extend its material scope⁷¹, as well as petitions received by the Committee on Petitions of the European Parliament (PETI) which have pointed to the need to adopt a card that ensures mutual recognition of disability status across the EU⁷².

The study further highlighted that the card was clearly perceived as an 'enabler of the mutual recognition of disability status across Member States that would not have been feasible without the European Commission's intervention'⁷³. The study further revealed that the card 'contributed to moving service providers closer to persons with disabilities and to increasing awareness of the needs of persons with disabilities'⁷⁴.

Box 1: Recommendations provided by the Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits (2021)

Recommendations provided by the Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits (2021)

- Member States adopting the European Disability Card should cover all the four sectors in scope (i.e. transport, leisure, sport and cultural activities).
- Participation of national service providers should be mandatory.
- Service providers should follow and/or implement clear accessibility standards and the Commission should provide guidelines and training to Member States and national service providers on EU accessibility standards.
- The use of the European Disability Card should be regularly monitored.
- Consistency should be ensured in the provision of information about the Card.

1.4. The road towards the current proposal

Taking into account the results of the study assessing the Pilot Project, the longstanding requests from OPDs, as well as the EP call for the creation of a European Disability Card based on a binding EU legislative act covering a range of areas beyond culture, leisure and sport and usable for national, regional and local public services such as transport⁷⁵, in 2022, the Commission undertook an **extensive two-phases consultation**.

Between November 2022 and May 2023, a **Call for Evidence** (CfE) and a **public consultation** were carried out. These were complemented by other consultative activities, which are described in the IA

⁷¹ European Parliament Resolution of 18 June 2020 on the European Disability Strategy post-2020 (2019/2975(RSP)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0156_EN.html; European Parliament Resolution of 7 October 2021 on the protection of persons with disabilities through petitions: lessons learnt (2020/2209(INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0414_EN.html.

⁷² See various petitions cited in Waddington, L. and Broderick, A., 2020, *The Post-2020 European Disability Strategy*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Luxembourg, pp. 102-118, available at: [The Post-2020 European Disability Strategy | Think Tank | European Parliament \(europa.eu\)](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397). See also petitions cited in Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, pp. 14-17, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

⁷³ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, Publications Office of the European Union, Luxembourg, p. 4, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adb538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

⁷⁴ Ibid. p. 113.

⁷⁵ European Parliament Resolution of 13 December 2022 towards equal rights for persons with disabilities (2022/2026(INI)), P9_TA(2022)0435, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0435_EN.html.

Report published by the Commission alongside the Proposal⁷⁶. These consultative activities included targeted interviews, focus groups, online workshops and targeted online surveys, which were carried out by an external contractor to support the preparation of the IA⁷⁷.

The Commission also consulted with the Disability Platform. This Platform was established at the end of 2021 via a binding Commission decision⁷⁸, and currently includes representatives of national CRPD focal points, OPDs, other civil society organisations active at the EU level, as well as representatives of the Commission⁷⁹. Additionally, the Commission discussed the initiative on the European Disability Card with Member States in the Social Protection Committee in April 2023 and at a meeting on the European Disability Card organised by Finland in May 2023⁸⁰. Recommendations emerging from these meetings include a 'careful planning of the extension of the services covered, no merger of the European parking card for persons with disabilities with the European Disability Card into a single card, and no coverage of social security and healthcare benefits'⁸¹.

On the whole, the goal of this **multifaceted participatory process** was that of collecting evidence and views on obstacles to free movement of persons with disabilities in the EU and on the relevance of the European Disability Card in dismantling those obstacles and facilitating cross-border mobility. The participation of OPDs in policy making is an obligation under the CRPD (particularly, although not exclusively, Article 4(3) CRPD)⁸². Thus, the wide **participatory process** not only responds to Better Regulation Guidelines⁸³, but also to CRPD obligations.

⁷⁶ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁷⁷ Ibid., Annex 2.

⁷⁸ Commission Decision of 27 October 2021 setting up the group of experts Disability Platform [2021] OJ CI 457/1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2021:457:FULL>.

⁷⁹ Recital 6 and Article 4(1) of the Commission Decision of 27 October 2021 setting up the group of experts Disability Platform (2021/C 457 I/01) OJ CI 457/1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2021:457:FULL>.

⁸⁰ European Commission, *Commission Staff Working Document - Subsidiarity Grid Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 289 final, 6 September 2023, p. 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2023%3A289%3AFIN&qid=1694085405186>.

⁸¹ Ibid. p. 2.

⁸² Article 4(3) CRPD reads as follows: 'In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations'.

⁸³ These guidelines are available at: https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en.

Figure 2: The two-phases consultation process



Source: Author's own elaboration, 2023.

1.4.1. The call for evidence

The **CfE ran between 23 November 2022 and 9 January 2023**. The document launching this CfE indicated that 'multiple options' were under consideration⁸⁴. The 'baseline option would mean leaving in place the two current cards – the EU Parking Card based on the 1998 Council Recommendation and the EU Disability Card adopted as a pilot in eight Member States with voluntary participation of service providers in the areas of culture, leisure, sport and (to a more limited extent) transport'⁸⁵. However, 'policy options explored will look into possibilities to make the application of one or both cards binding' and include the possibility to 'merge the two cards'. The document gave some indication on the legal basis (Article 21 TFEU on the right of Union citizens to move and reside freely within the territory of the EU and Article 56 on free movement of services) and stated that such initiative would fall under EU shared competence.

This CfE situated the card in the broader disability policy context, citing the CRPD, the Sustainable Development Goals (SDG), the Strategy 2021–2030 and the EPSR. Further, the CfE cited Article 26 CFR and highlighted that the European Disability Card 'implements' principles 3 (Equal Opportunities), 17 (Inclusion of people with disabilities) and 20 (Access to essential services) of the EPSR.

A total of **272 valid submissions** were recorded for the CfE⁸⁶. Without engaging in a thematic analysis, nor a quantitative account or a summary of the results (which is included in the IA Report), it seems useful to highlight five findings that emerge from the CfE.

First, **none of the contributions addresses in any depth legal issues linked to the legal bases** that best support legislation on the European Disability Card, nor questions the EU competence to deploy

⁸⁴ European Commission, *European Disability Card Call for Evidence*, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card_en.

⁸⁵ Ibid.

⁸⁶ The submissions to the Call for Evidence (CfE) are available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793. See also European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

such a card. Quite the contrary: the **EU action is perceived as essential** and the card is defined as 'godsend'⁸⁷, a 'very important initiative'⁸⁸, and something that is 'long overdue'⁸⁹. As highlighted in the IA Report, participants in the CfE suggested that lack of mutual recognition of disability status limits the opportunity to use existing national disability cards abroad, and travels are costly and require a lot of planning for persons with disabilities⁹⁰. In that regard, some respondents pointed to the need for binding legislation to be introduced and expressed a preference for a regulation to avoid discrepancies at national level.

Secondly, as the IA Report indicates, the majority of respondents to the CfE expressed **support for a card that is mutually recognised across the EU** and 'provides for access to same preferential conditions already granted by Member States to residents with disabilities, regardless of the areas or services'⁹¹. Importantly, however, even though the CfE makes explicit that social security falls outside the scope of a prospective card, several submissions point to **differences in access to social benefits and hurdles to free movement linked to the lack of portability of non-contributory benefits**. For example, the European Network on Independent Living (ENIL)'s contribution to the CfE (and its subsequent submission to the public consultation) highlights that Regulation No 883/2004⁹² gives citizens with disabilities access to health insurance, unemployment benefits and pensions, but does not allow access to disability specific services which are vital⁹³. In that regard ENIL claims that the European Disability Card should entail the recognition of a disability status in the EU and 'full access to rights and services, as available to holders of a nationally awarded disability status', including access to personal assistance⁹⁴. Submissions to the CfE also highlight divergences in social assistance coverage, scope and 'quality' – with these divergences indicated as a major hindrance to the enjoyment of the right to freedom of movement⁹⁵. These submissions echo what had already been highlighted in several petitions to the EP discussed in a previous study⁹⁶.

Thirdly, several contributions advocate to **keep the Disability Card and Parking Card separate**. Many also suggest that slightly divergent recipients may be addressed by the two cards. However, revisions

⁸⁷ See submission to CfE with Reference No. F3371876 [translation from original Dutch to English], available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793.

⁸⁸ See submissions to CfE with Reference No. F3374471 [translation from original Danish to English] and Reference No. F3374552 [original English], available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793.

⁸⁹ See submission to CfE with Reference No. F3361882 [translation from original German to English], available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793.

⁹⁰ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, p. 57, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁹¹ Ibid.

⁹² Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166/1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A02004R0883-20140101>.

⁹³ European Network on Independent Living (ENIL), 2023, *The new European Disability Card: What can we expect?*, available at: <https://enil.eu/the-new-european-disability-card-what-can-we-expect/>.

⁹⁴ Ibid.

⁹⁵ See, among others, submission to the CfE with Reference No. F3374428 [original English], available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793.

⁹⁶ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, pp. 14-17, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

or updates to the Parking Card are welcomed by many⁹⁷.

Fourthly, submissions suggest the need for a **double format (physical and digital)** and a common graphical layout, including a common pictogram and the EU logo⁹⁸.

Finally, submissions place emphasis on the need for an **EU database or website providing clear information**, as well as for an **EU-wide system to support and monitor the implementation of the European Disability Card**. Further those contributions contend that implementation and monitoring mechanisms should include persons with disabilities to adapt and improve the card. **EU-wide awareness-raising activities** are also pointed to as **vital** to support the use of the card and to inform all the stakeholders involved.

1.4.2. The public consultation

The **public consultation ran between 10 February 2023 and 5 May 2023**. The IA Report highlights that the overall consultation received 3361 replies in three different formats to ensure accessibility⁹⁹. The standard questionnaire online via the 'Have your Say' portal received 1204 replies; the Easy-to-read format online via EU Survey received 2135 replies; and 22 replies were sent via email in the accessible word document¹⁰⁰. The IA Report also indicates that the number of respondents varies across the questions, because the easy-to-read format of questionnaire included fewer questions than the standard one¹⁰¹. The results of the consultation largely (although not entirely) confirm the outcome of the CfE. Without reiterating the thorough analysis included in the IA Report¹⁰², four main issues can be highlighted.

First, in line with the submissions to the CfE and with longstanding claims from OPDs¹⁰³, unsurprisingly, the majority of respondents highlighted that the lack of mutual recognition of disability status represents a major hurdle to free movement¹⁰⁴.

Secondly, consistently with the CfE and with the study assessing the Pilot Project, respondents claimed that the **EU action is needed** to facilitate mutual recognition of disability in the EU and access to services offering preferential conditions to persons with disabilities¹⁰⁵. Respondents also suggested that EU action was needed to improve the implementation of the existing European Parking Card.

Thirdly, respondents to the consultation contended that the European Disability Card should be binding for all Member States, without the possibility of opting out, in that emphasising the need for

⁹⁷ See, among others, submission to the CfE with Reference No. 3372732 [original English], available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/feedback_en?p_id=31636793.

⁹⁸ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, p. 57, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

⁹⁹ Ibid. In its webpage the European Commission indicates that the recent public consultation 'collected over 3,300 replies, of which 78% from persons with disabilities', available at: https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10652&pk_source=newsletter&pk_medium=email&pk_campaign=eu_social_newsletter.

¹⁰⁰ Ibid. Annex 2, p. 54.

¹⁰¹ Ibid. Annex 2, p. 58.

¹⁰² Ibid. Annex 2, p. 58.

¹⁰³ EDF, 2021, *Recommendations for strengthening the EU Parking Card European Disability Forum Position Paper February 2021*, available at: <https://www.edf-feph.org/publications/edf-recommendations-for-strengthening-the-eu-parking-card-2020/>.

¹⁰⁴ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 2, p. 58, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹⁰⁵ Ibid. Annex 2, p. 59.

binding legislation¹⁰⁶. Interestingly, and differently from the CfE, the IA Report underlines that some respondents would like to see the European Parking Card incorporated into the new European Disability Card¹⁰⁷.

Finally, in line with the CfE, respondents found that the European Disability Card should entail both a **physical card** and an **electronic** one¹⁰⁸.

1.5. The final steps towards the proposal

Two important documents, which are briefly examined below, have preceded and supported the release of the Proposal, providing considerable input. The first was the Opinion of the EESC, issued in April 2023 upon referral from the Commission¹⁰⁹. The second one is the IA Report, which, as mentioned above, was made public in conjunction with the Proposal on 6 September 2023. These documents tally with a series of position papers and press releases in which OPDs expressed their expectations towards the new European Disability Card, which will also be referred to on various occasions in the remainder of this study.

1.5.1. The opinion of the European Economic and Social Committee

In line with the outcome of the CfE and consistent with OPDs' prevalent sentiment, the Opinion released by the EESC 'welcomes the flagship initiative of the European Commission which will launch a European Disability Card, enabling the right to free movement and residence across the EU for persons with disabilities'¹¹⁰. The EESC reaffirms what the CfE submissions had already pointed out, as well as what had been highlighted at different junctures by OPDs and scholars alike¹¹¹, i.e. that 'the non-mutual recognition of disability hinders the availability of support measures for persons with disabilities, implying a direct denial of the realisation of their rights to travel and/or move to other EU countries'¹¹².

The **EESC** pleads for 'a legislative initiative' for the European Disability Card and **calls specifically for the adoption of a regulation**, rather than a directive. It suggests that a regulation, which is directly applicable in all Member States 'is a more appropriate instrument to ensure agility in the application and to avoid differences in implementation at national level'¹¹³. Alongside the call for a regulation on the card, four further points of the EESC Opinion are of note.

First, the EESC calls for a **broad scope** of the card that should include 'access to all forms of services, benefits and discounts already granted at national level, accepted by all services offering preferential conditions or adaptations to persons with disabilities, whether provided by public or private entities'¹¹⁴, and recommended that the Card also 'provide the possibility to grant access to benefits linked to public social policies and/or national social security systems on a temporary basis when a person with a disability has moved to a Member State to study or to work, at least throughout the process of getting

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ European Economic and Social Committee (EESC), *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

¹¹⁰ Ibid. para. 1.1.

¹¹¹ Waddington, L., Priestley, M. and Sainsbury, R., 2018, *Disability Assessment in European States ANED Synthesis Report*, available at SSRN: <https://ssrn.com/abstract=3320419>.

¹¹² EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, para. 1.2, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

¹¹³ Ibid. para. 1.6

¹¹⁴ Ibid. para. 1.7.

the disability re-assessed and certified'¹¹⁵. In this respect, the EESC Opinion resonates with the EP Resolution of 13 December 2022 towards equal rights for persons with disabilities, which had advocated for an ambitious initiative, covering a range of different areas beyond culture, leisure and sport¹¹⁶.

Secondly, in line with the CfE, but at odds with the majority of submissions to the public consultation as reported in the IA, the EESC 'supports the proposal to develop the new legislation for the EU Parking Card together with the proposal for a European Disability Card' but 'calls for the Commission to take into account that both cards **must remain physically separate in all cases**'¹¹⁷.

Thirdly, the EESC points to the need to a **physical and digital card**, which is one of the key outcomes of the overall consultation process (both the CfE and the public consultation)¹¹⁸.

Finally, the EESC 'urges the Commission to provide a **funding instrument** to set up the European Disability Card in all EU Member States' and contends that there is the need for an 'EU-wide website' to support consistent provision of information, as well as for the necessity of EU-wide awareness-raising activities which couple with national awareness-raising campaigns¹¹⁹.

1.5.2. The Impact Assessment

The IA on the European Disability Card was coordinated by an Inter-Service Steering Group (ISSG) and the related steering group included members of several Commission Directorate-Generals (DGs)¹²⁰. The **IA Report** includes a brief overview of the legal and political context. Of note is that the IA Report clearly states that a legislative initiative on the European Disability Card 'falls under EU shared competence' and respects the subsidiarity principle. It also suggests the need for multiple legal bases, which are essentially those mentioned in the document launching the CfE: Articles 53/62 TFEU on services provided in the internal market, Article 91 TFEU on transport and Article 21 TFEU on European citizenship. Without surveying the IA Report in detail and without duplicating the executive summary, it seems worth recalling that it considers different policy scenarios.

The baseline scenario (i.e. no major policy action and leaving in place the EU Parking Card for people with disabilities based on the 1998 Council recommendation and the European Disability Card adopted in eight Member States on a voluntary basis) is considered inefficient and leading to further fragmentation in the internal market, ultimately hampering disability rights¹²¹.

The second policy scenario is a mandatory European Disability Card. The IA considers the enactment of minimum common rules on a European Disability Card either extending to the sectors already covered by the pilot project, or with a broader material scope covering all services. Both those options within this policy scenario are deemed 'likely to increase the number of persons with disabilities travelling to other Member States'¹²², although they would create both benefits and costs for service

¹¹⁵ Ibid. para. 1.8.

¹¹⁶ European Parliament Resolution of 13 December 2022 towards equal rights for persons with disabilities (2022/2026(INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0435_EN.html.

¹¹⁷ EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, para. 1.12, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

¹¹⁸ Ibid. para 3.1.

¹¹⁹ Ibid. paras. 3.5 and 3.6.

¹²⁰ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, Annex 1, p. 49, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹²¹ Ibid. pp. 25 *et seq.*

¹²² Ibid. p. 30.

providers. However, the IA Report notes that evidence from the study evaluating the Pilot Project showed that benefits outweigh the costs for service providers¹²³. It also suggests that this policy scenario is likely to support the realisation of fundamental rights of persons with disabilities. It further indicates that extending the validity of the European Disability Card to all services offering preferential conditions would be more effective and suitable to ensure legal certainty¹²⁴.

The third policy scenario dealt with in the IA Report focuses on the European Parking Card. It first considers the possibility of enhancing the existing European Parking Card keeping it voluntary, with the Commission playing a key role in issuing EU common guidelines concerning the establishment of national databases of cardholders. The second option would be that of making the European Parking Card mandatory. While both those options are expected to have positive social impacts, a mandatory parking card is deemed to be more effective in supporting cross-border mobility¹²⁵.

On the whole, the **IA Report contends that deploying a mandatory European Disability Card which covers all services**, beyond the sectors of sports, leisure, culture and transport, would be the **best option** and would entail **higher benefits** to persons with disabilities. Further, the IA Report suggests that **making the European Parking Card mandatory would be the most effective**. It also suggests the combination of those policy options will be the preferred scenario and 'the most favourable'¹²⁶.

While the IA Report presents a thorough analysis, the related Regulatory Scrutiny Board (RSB) opinion is 'positive with reservations'¹²⁷. According to the RSB, the IA Report still contains significant shortcomings. It does not provide sufficient clarification on Member States' views and the need for EU legislative action¹²⁸. The RSB also indicates that the IA Report 'is not clear on the expected level of the value added to the market for accessible tourism for each option'¹²⁹. Further, the RSB expresses dissatisfaction as the IA Report is not sufficiently clear 'on the impacts on public authorities, institutions and public budgets and on the distributional impacts across Member States'¹³⁰.

1.6. Main issues emerged in the pre-legislative phase

The **pre-legislative phase** has been characterised by multifaceted participatory process, which included **participation of OPDs and persons with disabilities as well as other stakeholders** as required by the CRPD.

Overall, in this phase, a **strong and quite widespread support** for the deployment of a European Disability Card and **for a legislative initiative of the Commission** in this regard has emerged. As indicated in a recent European Parliamentary Research Service (EPRS) analysis, Member States' authorities (including authorities at the national and sub-national levels) have generally welcomed the European Disability Card initiative¹³¹. The support generally expressed by Member States tallies with the emphasis placed on this initiative by the Spanish Presidency of the Council of the EU in office from

¹²³ Ibid. p. 33.

¹²⁴ Ibid. p. 42.

¹²⁵ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 38, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹²⁶ Ibid. p. 46.

¹²⁷ Council of the European Union, *Regulatory Scrutiny Board Opinion - European Disability Card*, SEC(2023) 305 final, available at: <https://op.europa.eu/en/publication-detail/-/publication/1669bfcd-4e3b-11ee-9220-01aa75ed71a1/language-en>.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ European Parliament, 2023, *European Disability Card. Pre-legislative Synthesis*, pp. 4-9, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI\(2023\)751454_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI(2023)751454_EN.pdf).

July 2023 until December 2023. In June, speaking at an event organised by ONCE, the Minister of Foreign Affairs, José Manuel Albares, declared that the Spanish Presidency will focus on the European Disability Card 'as a guarantee of equal access to benefits throughout Europe'¹³². Along the same line, the Spanish Ambassador in Ireland, speaking in front of the Irish Parliament, re-affirmed that among the various files in the social field, the European Disability Card will be a priority for the Presidency¹³³. Further, as noted earlier, OPDs active at the European and national levels have welcomed the Commission's plan to put forward a European Disability Card at various junctures¹³⁴, and, as yet, have well received the Proposal¹³⁵.

An EU initiative to support mutual recognition of the disability status has been **generally regarded as necessary and compliant to the principle of subsidiarity**. However, on the actual material scope of the European Disability Card, positions vary. OPDs have often questioned the exclusion of social security and social assistance¹³⁶ or the 'missed opportunity' to facilitate long stays or decisions to move permanently to another EU country¹³⁷, or, like Alzheimer Europe¹³⁸, indicated that the approach proposed, whilst respecting subsidiarity, will not achieve the goals outlined. Member States, by contrast, have generally ringfenced social security and social assistance to exclude them for the material scope of the proposal.

Leaving aside some contradictions that emerged in the consultation process¹³⁹, the pre-legislative phase has also shown a **broad agreement on the fact that the European Disability Card should not be merged with the EU Parking Card**, yet welcoming a revamping of the latter. This input has clearly been taken into account in the current Proposal, as will be discussed in chapter 3. Finally, the pre-legislative phase has also shown **large agreement on the need for the card to have both a digital and physical format**.

¹³² EDF, 2023, *Spanish Presidency of the Council – new focus on disability rights*, available at: <https://www.edf-feph.org/spanish-presidency-of-the-council-new-focus-on-disability-rights/>. See also Spanish Presidency Council of the European Union, *Priorities*, available at <https://spanish-presidency.consilium.europa.eu/en/programme/priorities/>.

¹³³ Houses of the Oireachtas, *Priorities of the Spanish EU Presidency: Discussion with Spanish Ambassador, Joint Committee on European Union Affairs debate*, Wednesday, 5 July 2023, available at https://www.oireachtas.ie/en/debates/debate/joint_committee_on_european_union_affairs/2023-07-05/2/.

¹³⁴ EDF, 2021, *Discussion on the Future of the European Disability Card: Summary Report*, available at: <https://www.edf-feph.org/content/uploads/2021/10/Report-on-Disability-Card-workshop-20210916.pdf>; European Parliament, 2023, *European Disability Card. Pre-legislative Synthesis*, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI\(2023\)751454_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI(2023)751454_EN.pdf).

¹³⁵ See e.g. European Blind Union (EBU), 2023, *Statement - Free movement for disabled citizens: the European Commission puts its cards on the table*, available at:

<https://www.euroblind.org/sites/default/files/documents/Statement%206%20Sept%202023%20European%20Disability%20Card%20proposal.pdf>. See also, among others, EDF's initial statement at: <https://www.edf-feph.org/european-disability-card-will-boost-free-movement-for-persons-with-disabilities/>; and Inclusion Europe, 2023, *EU Disability Card - #IncludeNews September 2023*, available at: <https://www.inclusion-europe.eu/includenews-september-2023/#:~:text=The%20European%20Commission%20proposed%20to,when%20visiting%20another%20Member%20State.%E2%80%9D>.

See also among many others the Spanish organisation ONCE statement released on 7 September 2023, available at: [Tarjeta Europea de Discapacidad, qué es y cómo el Grupo Social ONCE la impulsa](https://www.once.es/actualidad/que-es-y-como-el-grupo-social-once-la-impulsa).

¹³⁶ See ENIL, 2023, *The new European Disability Card: What can we expect?*, available at: <https://enil.eu/the-new-european-disability-card-what-can-we-expect/>. See also EBU, *The EU Disability Card – History and Background*, available at: <https://www.euroblind.org/newsletter/2022/june/en/eu-disability-card-history-and-background>.

¹³⁷ See e.g. EBU, 2023, *Statement - Free movement for disabled citizens: the European Commission puts its cards on the table*, available at: <https://www.euroblind.org/sites/default/files/documents/Statement%206%20Sept%202023%20European%20Disability%20Card%20proposal.pdf>.

¹³⁸ Alzheimer Europe, 2023, *Contribution to the Call for Evidence*, available at: <https://www.alzheimer-europe.org/policy/positions/european-commission-eu-disability-card>.

¹³⁹ See *supra* section 1.5.2.

2. THE RATIONALE FOR A EUROPEAN DISABILITY CARD AND THE ROLE OF MUTUAL RECOGNITION

KEY FINDINGS

Freedom of movement is a key element of Union citizenship. However, persons with disabilities face multiple barriers when travelling within the EU. Those barriers are linked to the lack of mutual recognition of disability status which prevents or inhibits access to a range of disability benefits, entitlements, special conditions and discounts when availing of services in Member States other than the country of residence. Barriers have also arisen in relation to the limited portability of non-contributory social benefits and social assistance.

At present, there is limited acceptance of national disability cards across the EU and there are national divergences in the implementation of the EU parking cards for persons with disabilities. Mutual recognition of disability status via the European Disability Card and the European Parking Card can support free movement of persons with disabilities.

The Proposal does address barriers to free movement of persons with disabilities, whereby mutual recognition can overcome the limitations that emerge from the national asymmetries. It does not attempt to harmonise disability assessment, and is not meant to affect Member States' competence to determine the conditions for recognising disability status, or for granting the right to parking conditions and facilities reserved for persons with disabilities. This is compliant with the principle of subsidiarity and proportionality.

Member States will have the duty to recognise that Card and will not be entitled to request any additional proof or document other than the European Disability Card (or the European Parking Card) to apply the disability benefit in question, in a field covered by the card.

When recognising the Card, host Member States will also (indirectly) recognise the foreign disability assessment. There is a risk that the European Disability Card scheme may reinforce outdated and stigmatising mechanisms of disability assessment in Member States by equalising them with more progressive approaches.

The proposed European Disability Card has the potential to stimulate further debate on disability assessment and support future initiatives, either within the Disability Platform or through the use of soft governance tools, such as the Open Method of Coordination, that promote soft coordination and convergence, by enhancing voluntary adherence to principles of disability assessments that are in compliance with the CRPD.

Further having set out the context and background to the proposed directive, this chapter discusses its **rationale**. It also situates the Proposal within the context of the implementation of the CRPD. It then examines the extent to which the deployment of a European Disability Card **complies with the principle of subsidiarity**. Finally, the chapter examines the **strengths and pitfalls of mutual recognition**. This chapter refers at various junctures to the current text of the Proposal, which will be further analysed in the following chapter.

2.1. The rationale for a European Disability Card: enhancing free movement of persons with disabilities

As recalled in chapter 1, in the EDS, the Commission committed to 'tackle the problems related to intra-EU mobility and facilitate and promote the use of the European model of disability parking card'. This statement hints at the main purpose of the EU Parking Card as a tool to ease free movement of people with disabilities in the EU. The Strategy 2021–2030 does not mention the EU Parking Card specifically, except to say that the European Disability Card will build upon the experience gained through such parking card, alongside the Pilot Project¹⁴⁰. In fact, the Strategy 2021–2030 only focuses on the European Disability Card, but it is relatively vague in delineating its contours¹⁴¹. However, it primarily conceives the **European Disability Card as a tool to enhance free movement of persons with disabilities** (in that regard, aligning it with the rationale of the 'soft' EU parking card). The Proposal clearly highlights such rationale in various Recitals of its preamble¹⁴². This section, after a brief introduction on free movement of persons and its link to Union citizenship, focuses on the role of the European Disability Card in supporting persons with disabilities' movement rights.

2.1.1. Free movement of persons in the EU

Free movement of persons is a cornerstone of European integration and a vital element of EU citizenship. In that regard, the Explanatory Memorandum accompanying the Proposal recalls that '[t]he right of EU citizens to move and reside freely within the European Union is one of the *EU's most cherished achievements*, and an important *driver of its economy*'¹⁴³.

The Treaty of Rome, back in 1957, granted free movement rights to workers and self-employed persons. In 1985, long before constitutional amendments extended the right to free movement also to those EU citizens not engaged in economic activities, the Court of Justice of the European Union (CJEU) held that students enjoy a right of residence¹⁴⁴. It is however only with the Maastricht Treaty that the concept of Union citizenship, which associates with a number of rights, such as the right to move and reside freely in all Member States, was introduced. Scholars contend that 'the introduction of (what is now) Article 21 TFEU represented a qualitative leap, because the right—to move and reside— became 'constitutionalized' as a right granted by the Treaty itself'¹⁴⁵. In 2001, with *Grzelczyk*, the CJEU stated that 'Union citizenship is *destined to be* the fundamental status of nationals of the Member States'¹⁴⁶. Since then, the Court has consistently held that EU citizenship is destined to be the fundamental status of citizens of the Member States¹⁴⁷.

In the current constitutional context, **under Article 20(1) TFEU, all nationals of the Member States also have the status of Union citizens.** Article 21(1) TFEU confers upon Union citizens 'the right to move and reside freely within the territory of the Member States, subject to the limitations and

¹⁴⁰ On the Pilot Project see chapter 1, sections 1.3.2 and 1.3.3.

¹⁴¹ European Commission, *Union of Equality Strategy for the Rights of Persons with Disabilities 2021 – 2030*, COM(2021) 101 final, p. 9, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>.

¹⁴² See Recitals 3 and 4 of the preamble of the Proposal.

¹⁴³ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>. Emphasis added.

¹⁴⁴ Martin, D., 2019, *Article 21 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi-org.may.idm.oclc.org/10.1093/oso/9780198759393.003.94>.

¹⁴⁵ Ibid.

¹⁴⁶ Case C-184/99, *Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, ECLI: EU:C:2001:458, para. 3.

¹⁴⁷ Case C-82/16, *K.A. and Others*, ECLI:EU:C:2018:308, para. 47 and the case-law cited.

conditions laid down in the Treaties and by the measures adopted to give them effect'. Article 21 TFEU is said to have a subsidiary character¹⁴⁸. When the right of every citizen of the Union to move and reside freely within the Union finds specific expression in other TFEU provisions – such as Article 45 TFEU (workers), Article 49 TFEU (self-employed persons), and Article 56 TFEU (provision of services) – Article 21 TFEU is not applicable. Further, the right to move and reside is to be exercised in accordance with the conditions laid down in secondary law that gives effect to those provisions, in particular, Directive 2004/38/EC (EU Citizenship Directive)¹⁴⁹. The EU Citizenship Directive is complemented by other EU acts including rules that coordinate social security¹⁵⁰, i.e. Regulation (EC) No 883/2004¹⁵¹ on the coordination of social security systems and its implementing Regulation (EC) No 987/2009¹⁵².

The right to freedom of movement is a capacious right that 'is reflected in the right of a Union citizen to move temporarily to a Member State other than his Member State of origin for work, study or leisure purposes' and that 'also includes the right to settle in another Member State in the long term and to build his life there'¹⁵³. However, especially with regard to the latter, EU citizens still face obstacles. O'Brien has consistently highlighted the challenges faced by economically inactive citizens or 'working poors' in the exercise of free movement as they cannot access or transfer non-contributory social benefits and social assistance to host Member States¹⁵⁴. The latter aspect links to the limited powers enjoyed by the EU in the field of social security, and the puzzle of EU regulatory interventions in this field¹⁵⁵. A study conducted for the EP has also emphasized that EU citizens still face hurdles when moving within the EU¹⁵⁶. As will be discussed below, those obstacles are greater for persons with disabilities, with O'Sullivan suggesting that the way in which EU citizenship and the ensuing free movement rights have developed is 'highly problematic' in relation to disability¹⁵⁷. In a similar vein, O'Brien contends that persons with disabilities 'are disproportionately more likely to fall through the gaps of Article 7 of Directive 2004/38 and be found to not have an EU law-based right of residence,

¹⁴⁸ Martin, D., 2019, *Article 21 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi-org.may.idm.oclc.org/10.1093/oso/9780198759393.003.94>.

¹⁴⁹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) [2004] OJ L 158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

¹⁵⁰ As part of Labour Mobility Package, in 2016, the European Commission released a proposal for a regulation to modernise EU law on social security coordination to further 'facilitating the exercise of citizens' rights while ensuring legal clarity, a fair and equitable distribution of the financial burden among the Member States and administrative simplicity and enforceability of the rules'. European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004*, COM(2016) 815 final available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes>.

¹⁵¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883>.

¹⁵² Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0987>.

¹⁵³ Among many others, see Opinion of Advocate General (AG) Saugmandsgaard Øe delivered on 11 February 2021 in Case C-535/19, *A in the presence of Latvijas Republikas Veselibas ministrija*, ECLI:EU:C:2021:114. See also Guild, E., et al. 2019, *The EU Citizenship Directive: a Commentary*, Oxford University Press, 2019, pp. 10 et seq.

¹⁵⁴ O'Brien, C., 2016, *Civis capitalist sum: Class as the new guiding principle of EU free movement rights*, 53(4) *Common Market Law Review*, pp. 937 – 977, available at: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\COLA\COLA2016089.pdf>. See also Vonk, G., 2020, *The EU (non) co-ordination of minimum subsistence benefits: What went wrong and what ways forward?*, *European Journal of Social Security*, pp. 138-147, available at: <https://doi.org/10.1177/1388262720928772>.

¹⁵⁵ Renny, N., 2019, *The Trilemma of EU Social Benefits Law: Seeing the Wood and the Trees*, 56 *Common Market Law Review*, pp. 1549 – 1590, available at: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\COLA\COLA2019125.pdf>.

¹⁵⁶ European Parliament, 2016, *Obstacles to the right of free movement and residence for EU citizens and their families. Comparative Analysis*, PE 571.375, Policy Department for Citizens' Rights, Justice and Home Affairs, Brussels, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2016\)571375](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2016)571375).

¹⁵⁷ O'Sullivan, C., 2020, *EU Citizenship and Disability*, in Ferri, D. and Broderick, A. (eds), 2020, *Research Handbook on EU Disability Law*, Edward Elgar Publishing, pp. 105-119.

while also being disproportionately more likely to be in need of some form of welfare assistance, from which the absence of a residence right excludes them¹⁵⁸.

2.1.2. The card as a tool to dismantle (some) barriers to free movement faced by persons with disabilities

It is well-known that **'people with disabilities face additional barriers to mobility in the EU, whether they are travellers, cross-border workers, job seekers or residents'**¹⁵⁹. These hurdles are generally related to the current lack of mutual recognition of disability status, as consistently highlighted by scholars, policy studies and OPDs¹⁶⁰, by the EP rapporteur on the Proposal Lucia Ďuriš Nicholsonová,¹⁶¹ as well as acknowledged by the IA Report¹⁶². Such barriers are also recognised by the current text of the Proposal, especially in Recitals 10, 12, 14 and 15 of the preamble¹⁶³. In this respect, the IA Report found that:

'[t]he number of persons with disabilities travelling and experiencing the problems may be small when compared to the total population travelling, yet for them these problems are very significant as shown in the answers to the public consultation by persons with disabilities'¹⁶⁴.

As recalled in the Explanatory Memorandum accompanying the Proposal, 'high travelling expenses are a key factor discouraging many persons with disabilities from travelling'¹⁶⁵. Further, **'persons with a recognised disability status in their Member State of residence travelling to another Member State may encounter difficulties with accessing special conditions or preferential treatment offered** in or provided for in the Member State they are visiting, often due to a lack of recognition of their disability card or certificate issued by their Member State of residence'¹⁶⁶. The case of *Gottwald* is illustrative in this respect¹⁶⁷.

¹⁵⁸ O'Brien, C., 2021, *Article 26 CFR*, in Peers, S., Hervey, T., Kenner, J. and Ward, A. (eds), 2021, *The EU Charter of Fundamental Rights: A Commentary*, Hart Publishing, Oxford, pp. 743–778, available at: <https://www.bloomsburycollections.com/encyclopedia-chapter?docid=b-9781509933495&tocid=b-9781509933495-8924486>.

¹⁵⁹ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 76, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

¹⁶⁰ *Ibid.* pp. 76-77.

¹⁶¹ EDF, *Interview with MEP Lucia Ďuriš Nicholsonová - "The portability of social rights is essential to the promotion of the free movement, European Disability Forum*, 25 October 2023, available at: <https://www.edf-feph.org/interview-with-mep-lucia-duris-nicholsonova-the-portability-of-social-rights-is-essential-to-the-promotion-of-the-free-movement/>.

¹⁶² European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>. See further Chapter 2.

¹⁶³ Recitals 10, 12, 14,15 of the preamble of the Proposal.

¹⁶⁴ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 6, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹⁶⁵ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

¹⁶⁶ *Ibid.*

¹⁶⁷ Case C-103/08, *Gottwald*, ECLI:EU:C:2009:597. For a comment Waddington, L., 2010, *Case Note: Judgment of the European Court of Justice in Case C-103/08 Gottwald, 1 October 2009 (March 1, 2010)*, 17(1) Maastricht Journal of European and Comparative Law, pp. 91-97, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3206604.

Box 2: The Gottwald case

The Gottwald case

Mr Gottwald was a German national with paraplegia and was identified as a person with a severe disability according to German law. Mr Gottwald was driving to Austria to spend his holidays there, but he was fined by Austrian authorities because he had not paid the time-dependent toll by purchase of a toll disc to be affixed to his vehicle. Mr Gottwald appealed the fine in front of the Austrian Court. He claimed that he had been 'issued with a German disabled person's card' that would entitle him to be issued with a toll disc free of charge in Austria pursuant to relevant Austrian legislation on the same basis as persons with disabilities resident in Austria. In short, Mr Gottwald argued that the Austrian decision of only giving free toll discs to persons with disabilities who were resident in Austria was discriminatory on the ground of nationality. The Austrian Court sought a preliminary ruling from the CJEU. The Luxembourg judges reiterated that citizenship of the Union constitutes a fundamental status of nationals of the Member States, and that 'rules regarding equality of treatment between nationals and non-nationals prohibit not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead to the same result'. The CJEU further stated that a difference in treatment can be justified only if it is based on objective considerations and is proportionate. Ultimately, the Court viewed the Austrian measure as 'intended to facilitate regular journeys in Austria by disabled persons with a view to their integration in national society' and accepted that residence in Austria was a suitable criterion to establish the existence of a connection between those persons and the society of the Member State concerned and it was proportionate.

The coming to existence of the European Disability Card would prevent cases like that of Mr Gottwald to occur. Notably, as will be discussed in chapter 3, the Proposal, in Recital 24 of its preamble, includes reduced charges for toll among the several examples of disability benefits that the European Disability Card can give access to¹⁶⁸. In particular, **the European Disability Card would support the extension of schemes or certain disability benefits such as the Austrian one mentioned in the Gottwald case to other EU citizens on the basis of that they hold such a European Disability Card.** As noted in the IA, the European Disability Card:

'would eliminate uncertainty for both service providers having to check disability status of customers and for persons with disabilities travelling and/or visiting other Member States having to prove their disability status. Persons with disabilities would be able to rely on a homogeneous card showing disability status and valid at the EU level, and thus access preferential conditions across the EU'.

However, **barriers faced by people with disabilities are also (and mostly) intertwined to the limited cross-border portability of disability benefits and entitlements that fall within the remit of social assistance**¹⁶⁹. It has been affirmed that the 'limitations and conditions placed on claiming equal access to benefits in a host State [...] disproportionately exclude disabled persons, meaning that

¹⁶⁸ Recital 24 of the preamble of the Proposal.

¹⁶⁹ ENIL, 2023, *The new European Disability Card: What can we expect?*, available at: <https://enil.eu/the-new-european-disability-card-what-can-we-expect/>. See also European Economic and Social Committee, 2019, *Shaping the EU agenda for disability rights 2020-2030: a contribution from the European Economic and Social Committee (own-initiative opinion)* (Rapporteur: Ioannis Vardakastanis, 11 December 2019), SOC/616-EESC-2019, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/shaping-eu-agenda-disability-rights-2020-2030-contribution-european-economic-and-social-committee-own-initiative-opinion>.

the rights associated with Union citizenship are unevenly distributed¹⁷⁰. Under Regulation (EC) No 883/2004, cash benefits that relate to sickness, invalidity, old age, accidents at work and occupational disease, and unemployment are generally exportable, while social assistance benefits and benefits in kind are (for the most) not exportable¹⁷¹. However, the Proposal **clearly excludes social security and social assistance from the remit of the European Disability Card** and from the scope of the directive.

On the whole, **the European Disability Card** as delineated in the current Commission's Proposal:

- **is designed to and will facilitate the cross-border consumption or use of a range of services** in host Member States by **persons with disabilities who travel abroad for short periods** (mostly for tourism or for work-related purposes)¹⁷²;
- will do little (or nothing) for those who actually move into another Member State for the purpose of staying long periods or residing there¹⁷³.

2.2. The European Disability Card and the European Parking Card as tools to implement the UN Convention on the Rights of Persons with Disabilities

The commitment to create a European Disability Card and revamp the European Parking Card is aimed to foster free movement and, in that way, EU integration. However, it also sits well with the rights-based approach adopted by the Strategy 2021–2030¹⁷⁴, and it is an **important milestone in the process of implementation of, and alignment with, the CRPD principles, values, and obligations**. As noted in chapter 1, the EU has concluded the CRPD in 2010, undertaking the obligation to implement it. This is highlighted in the Explanatory Memorandum and in the Proposal. Recital 6 of the preamble to the current Proposal additionally recalls that:

'The purpose of the [CRPD] is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect of their inherent dignity, thus ensuring their full and effective participation and inclusion in society on an equal basis with others. The [CRPD] also recognises the importance of the need to take appropriate measures to ensure accessibility to persons with disabilities'.

The reference to the principle of accessibility embedded in the CRPD tallies with explicit references to

¹⁷⁰ O'Brien, C., 2021, *Article 26 CFR*, in Peers, S., Hervey, T., Kenner, J. and Ward, A. (eds), 2021, *The EU Charter of Fundamental Rights: A Commentary*, Hart Publishing, Oxford, pp. 743–778, available at: <https://www.bloomsburycollections.com/encyclopedia-chapter?docid=b-9781509933495&tocid=b-9781509933495-8924486>.

¹⁷¹ See van der Mei, A.P., 2020, *Freedom of movement for persons with disabilities and coordination of social security within the EU*, in Ferri, D. and Broderick, A. (eds), 2020, *Research Handbook on EU Disability Law*, Edward Elgar Publishing, p. 164; Roberts, S., 2016, *Free movement and special non-contributory benefits for disabled people: between the devil and the deep blue sea*, 17 ERA Forum, pp. 221–232, available at <https://doi.org/10.1007/s12027-016-0434-3>. See also Waddington, L., 2010, *Disability Benefits and Entitlements in European Countries: Mutual Recognition and Exportability of Benefits A synthesis of evidence provided by ANED country reports and additional sources*, VT/2007/005, ANED, available at: <https://www.disability-europe.net/downloads/76-aned-2010-task-7-disability-benefits-and-entitlements-report-final-2>.

¹⁷² See Recital 29 of the preamble of the Proposal.

¹⁷³ ENIL, 2023, *Statement of the European Network on Independent Living on the European Disability Card and the European Parking Card for persons with disabilities*, available at: <https://enil.eu/statement-of-the-european-network-on-independent-living-on-the-european-disability-card-and-the-european-parking-card-for-persons-with-disabilities/>.

¹⁷⁴ Ferri, D., 2021, *The New Strategy for the Rights of Persons with Disabilities 2021–2030: A Step Forward in Realising the Human Rights Model of Disability*, EU Law Live, available at: <https://eulawlive.com/op-ed-the-new-strategy-for-the-rights-of-persons-with-disabilities-2021-2030-a-step-forward-in-realising-the-human-rights-model-of-disability-by-delia-ferri/>.

the European Accessibility Act¹⁷⁵ in Recital 8 of the preamble and throughout the Proposal.

While references to the CRPD in preambles of EU legislative acts have been generally broad, it is interesting to note that the current Proposal does not (nor does the Explanatory Memorandum) mention any other specific obligation of the CRPD. It is telling that no reference is made to liberty of movement (Article 18 CRPD)¹⁷⁶ and the right of persons with disabilities to live independently and be included in the community (Article 19 CRPD). The lack of mentioning can be explained on foot of the fact that both provisions place an emphasis on the right of persons with disabilities to choose their place of residence, an issue which is not addressed by the Proposal as it only concerns 'short stays'.

On the whole, however, as stated at the outset, the **proposed directive does implement the CRPD**. It is an initiative that contributes to the realisation of the very purpose of the Convention to ensure equal enjoyment of rights to persons with disabilities. It can also be considered vital to realise the capacious principle of equality, i.e. inclusive equality, which the CRPD embraces¹⁷⁷. Inclusive equality encompasses a fair redistributive dimension, which requires that socio-economic disadvantages are addressed; a recognition dimension which necessitates the combatting of stigma, stereotyping, prejudice and violence, and the recognition of the dignity of human beings and their intersectionality; a participative dimension which aims to reaffirm the social nature of people with disabilities as members of the society; and an accommodating dimension, which entails making 'space for difference as a matter of human dignity'. It seems evident that the European Disability Card and the European Parking Card would be important to ensure the realisation of both the **redistributive and participative dimensions of equality**. The proposed directive also contributes to the implementation of various provisions of the CRPD. Among those, particularly relevant is Article 30 CRPD, on participation in cultural life, recreation, leisure and sport. This provision is never mentioned in relevant documents, although services in the areas of sports, culture and leisure are covered by the Proposal, as it was in the earlier Pilot Project. In fact, the latter demonstrated that the piloted European Disability Card has been particularly effective in enhancing cultural participation¹⁷⁸.

2.3. The need for an EU action

It is well-known that in fields in which the EU does not have exclusive competence, the principle of subsidiarity safeguards Member States' competence to act¹⁷⁹.

¹⁷⁵ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151, available at: <https://eur-lex.europa.eu/eli/dir/2019/882/oj>.

¹⁷⁶ Notably, however, the Study assessing the Pilot Project especially refers to Article 18 CRPD and states that: 'The Card is consistent with Art. 18 of the UNCRPD as its objective is to establish a voluntary system of mutual recognition of disability status among Member States and to promote equal access to disability-related benefits across borders for persons with disabilities'. See European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, pp. 104 et seq. available at <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

¹⁷⁷ CRPD Committee, *General comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, 26 April 2018, para. 11, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

¹⁷⁸ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 74, available at <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

¹⁷⁹ C-176/09, *Luxembourg v Parliament and Council*, ECLI:EU:C:2011:290, para. 76. See Öberg, J., 2017, *Subsidiarity as a Limit to the Exercise of EU Competences*, Yearbook of European Law, pp. 391, 404.

Box 3: The principle of subsidiarity

The Principle of Subsidiarity

The principle of subsidiarity is enshrined in Article 5(3) Treaty on European Union (TEU), which provides that:

'in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

Furthermore, Protocol No 2 of the TFEU on the application of the principles of subsidiarity and proportionality lays down guidelines for the purposes of determining whether those conditions are met.

The principle is key to determine the appropriate level of action in areas where both the EU and its Member States are competent to act. Subsidiarity is said to entail a presumption in favour of Member States' action, given the proximity of government to the citizens, while the EU can only act when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level. The principle of subsidiarity translates into an obligation to give reasons, which encompass both a negative and a positive constituent element. The negative component of the subsidiarity test corresponds to a requirement of necessity of supranational action, because action at the national level would be ineffective, i.e. incapable of sufficiently reaching the envisaged objectives. The positive element of the subsidiarity test requires proving whether EU-level action would exhibit any added value, either in terms of scale of the proposed action or in terms of its effects. As indicated by Advocate General (AG) Maduro in *Vodafone Ltd*, 'the judgment to be made under the principle of subsidiarity is not about the objective pursued but whether the pursuit of that objective requires [EU] action' (Opinion of Advocate General Poiares Maduro delivered on 1 October 2009 in Case C 58/08, *Vodafone Ltd*, ECLI:EU:C:2009:596, para. 30).

The principle of subsidiarity is complemented by the principle of proportionality which is laid down in Article 5(4) TEU. Under this principle, 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'.

In relation to the current Proposal, **no subsidiarity or proportionality concerns have been raised as yet**, nor can arguably be raised. In fact, the Proposal has been considered – both in the IA Report¹⁸⁰ and in the Explanatory Memorandum¹⁸¹ – to be in compliance with the subsidiarity and proportionality principles. The Subsidiarity Grid, building on the IA Report, also clarifies that the Proposal fully respects the principles of subsidiarity and proportionality¹⁸². Respect of subsidiarity and proportionality is likewise highlighted in Recital 38 of the current text.

¹⁸⁰ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 45, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹⁸¹ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, pp. 7-8, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

¹⁸² European Commission, *Commission Staff Working Document Subsidiarity Grid Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 289 final, pp. 3, 7, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0289>.

In fact, **the Proposal does address barriers to free movement of persons with disabilities, whereby mutual recognition can overcome the limitations that emerge from the national asymmetries.** The IA Report has also clearly emphasised the benefits accruing from the EU Disability Card, and the increase of fragmentation deriving from the lack of action¹⁸³. As made clear in the preamble as well as in Article 1 of the Proposal, the proposed directive **does not attempt to harmonise disability assessment. It is not meant to affect Member States' competence to determine the conditions for recognising disability status,** or for granting the right to parking conditions and facilities reserved for persons with disabilities¹⁸⁴. As highlighted by previous research, disability assessments are a gateway to public resources, and pertain to national welfare systems¹⁸⁵. In that regard, harmonisation of disability assessment is not (yet) an option, as it would seem to lead to a partial harmonisation of national social security systems, which would go beyond current EU competences¹⁸⁶. Further, as noted above and as will be discussed in chapter 3, the Proposal does not cover social security and social assistance, which are fields in which the EU enjoys limited competences and has no harmonising powers.

2.4. Strengths and limits of mutual recognition

The **European Disability Card and the European Parking Card are based on the principle of mutual recognition of the disability status across the EU.** After a brief introduction, this section presents arguments that support the use of mutual recognition. It also compares and contrasts its benefits with its potential drawbacks.

2.4.1. The principle of mutual recognition

The principle of mutual recognition is traditionally rooted in the *Cassis de Dijon* judgment¹⁸⁷, and was elaborated by the CJEU to support the free movement of goods, but progressively gained primary status in the other free movement areas¹⁸⁸. In relation to the free movement of persons, reference to such principle originated in the context of mutual recognition of diplomas¹⁸⁹, but goes far beyond that. This principle has been developed and applied by the CJEU generally in cases where no harmonised measures were present. The Court has in substance held that goods, services, and persons respectively lawfully marketed, provided, or employed in the home Member States must be recognised in the host Member State¹⁹⁰. Such principle has also been interpreted by the CJEU in a way that 'any document, certificate, certification, attestation, control, or any other kind of factual or legal component related to these goods, services, or persons must also be recognised insofar as these elements have been

¹⁸³ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 14, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

¹⁸⁴ See Recital 9 of the preamble and Article 1 of the Proposal.

¹⁸⁵ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 17, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

¹⁸⁶ *Ibid.* p. 17.

¹⁸⁷ Case C-120/78, *Rewe-Zentral AG (Cassis de Dijon)*, ECLI:EU:C:1979:42, para. 14. In that seminal case, the CJEU held that a minimum requirement of alcohol content for spirits was an 'obstacle' to the free movement of goods. In that decision and subsequent decisions, the CJEU elaborated that, in the context of the free movement of goods, 'mutual recognition' entails the presumption that goods that are lawfully manufactured in one Member State could be marketed and sold in any other Member State.

¹⁸⁸ Janssens, C., 2013, *The Principle of Mutual Recognition as Judicial Impetus for the Free Movement Provisions*, in Janssens, C., 2013, *The Principle of Mutual Recognition in EU Law*, Oxford Studies in European Law, Oxford Academic, online edn, pp. 11-66, available at: <https://academic.oup.com/book/25529/chapter/192787607>.

¹⁸⁹ Case C-340/89, *Vlassopoulou*, ECLI:EU:C:1991:193, paras. 16 and 19.

¹⁹⁰ Janssens, C., 2013, *Conclusions on the Principle of Mutual Recognition in the Internal Market*, in Janssens, C., 2013, *The Principle of Mutual Recognition in EU Law*, Oxford Studies in European Law, Oxford Academic, online edn, pp. 123-130, available at: <https://doi.org/10.1093/acprof:oso/9780199673032.003.0005>.

(lawfully) attested by the competent authority of a Member State¹⁹¹.

However, as fundamental freedoms, the principle of mutual recognition is not unfettered and is subject to the limits provided for in the Treaty¹⁹². The CJEU has granted Member States a considerable margin of discretion when it comes to the protection of public interests, reasons of public policy, including public morality that may limit fundamental freedoms¹⁹³. The Court has also stated the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly¹⁹⁴. As de Vries notes, 'to successfully rely on public policy [...] there must be a genuine and sufficiently serious threat to a fundamental interest of society'¹⁹⁵. However, the CJEU has also accepted that such concept may vary¹⁹⁶.

In the *Gebhard* case¹⁹⁷, the CJEU stated that national measures that may hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions:

'they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it'¹⁹⁸.

When it comes to free movement of persons in connection to the exercise of EU citizenship rights, the CJEU has consistently held that national legislation which places nationals of a Member State at a disadvantage simply because they have exercised their freedom to move is a restriction on the freedoms conferred by Article 21(1) TFEU¹⁹⁹. In *Garcia Avello*²⁰⁰, the CJEU held legislation of a Member State which obliged a person to use different family names in different Member States to be incompatible with the Treaty provisions on Union citizenship²⁰¹. In *Sayn-Wittgenstein*²⁰² the CJEU stated that only public policy considerations that are linked to fundamental values of the host Member State may constitute a legitimate limit to the application of the principle of mutual recognition, and ultimately to the freedom of movement of Union citizens.

2.4.2. Strengths of mutual recognition in the context of the European Disability Card

As noted in previous studies and mentioned earlier, the principle of mutual recognition entails that citizens with a European Disability Card issued in one Member State can be recognised by providers in another Member State, even if they would not qualify for the card if they were assessed in that Member

¹⁹¹ Janssens, C., 2013, *Conclusions on the Principle of Mutual Recognition in the Internal Market*, in Janssens, C., 2013, *The Principle of Mutual Recognition in EU Law*, Oxford Studies in European Law, Oxford Academic, online edn, pp. 123-130, available at: <https://doi.org/10.1093/acprof:oso/9780199673032.003.0005>.

¹⁹² See generally Koutrakos P., Nic Shuibhne N. and Syrpis P. (eds), 2016, *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality*, Hart.

¹⁹³ See e.g. Case C-34/78, *Henn and Darby*, ECLI:EU:C:1979:295, para. 15; Case C-137/09, *Josemans* [2010] ECR I-13019, ECLI:EU:C:2010:774.

¹⁹⁴ Case C-33/07, *Jipa*, ECLI:EU:C:2008:396, para. 23.

¹⁹⁵ de Vries, S.A., 2013, *Balancing Fundamental Rights with Economic Freedoms According to the European Court of Justice*, 9(1) Utrecht Law Review, pp. 169-192, available at: <https://ssrn.com/abstract=2212134>.

¹⁹⁶ Case C-36/02, *Omega*, ECLI:EU:C:2004:614.

¹⁹⁷ Case C-55/94, *Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, ECLI:EU:C:1995:411; Case C-274/20, *GN, WX v Prefettura di Massa Carrara*, ECLI:EU:C:2021:1022, para. 31.

¹⁹⁸ Case C-55/94, *Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, ECLI:EU:C:1995:411.

¹⁹⁹ Case C-221/07, *Zablocka-Weyhermüller*, ECLI:EU:C:2008:681, para. 35.

²⁰⁰ Case C-148/02, *Garcia Avello*, ECLI:EU:C:2003:539.

²⁰¹ In this decision the Court suggested that a discrepancy in surnames is liable to cause serious inconvenience for those concerned at both professional and private levels resulting from, inter alia, difficulties in benefiting, in the Member State of which they are nationals, from the legal effects of diplomas or documents drawn up in the name recognised in another Member State of which they are also nationals.

²⁰² Case C-208/09, *Sayn-Wittgenstein*, ECLI:EU:C:2010:806.

State²⁰³. It has also been highlighted, with regard to the Pilot Project, that:

'[i]n terms of equal rights, this does not ensure that a citizen who would be eligible for the card in country A is eligible for the card in country B, **but it does guarantee that everyone eligible for the card in their own country can enjoy all benefits connected to it in all countries that signed the protocol for the European Disability Card**'²⁰⁴.

Further, **host Member States** (and service providers within host Member States) **will not be entitled to request any additional proof or document other than the European Disability Card (or the European Parking Card) to apply the disability benefit or special treatment in question**, in a field covered by the proposed directive. In this respect, as it stands, the Proposal does respond to the core request of OPDs, i.e. to deploy a Card which is recognised throughout the EU and confers upon its holders disability related benefits and discounts in all Member States regardless of whether they are resident or not of that State, albeit only within the material scope of the Proposal²⁰⁵.

As noted earlier in this study and as highlighted by the IA Report²⁰⁶ as well as by various OPDs²⁰⁷, mutual recognition of the cards is a mechanism that respects national competences related to disability assessment.

While respecting the principles of conferral and subsidiarity, the application of mutual recognition, as thoroughly discussed by Priestley in his study for the PETI Committee of the European Parliament²⁰⁸, can also trigger and support further soft cooperation and coordination on disability assessment. This may in the long run reduce current differences and asymmetries in disability assessment, which vary deeply across the Member States²⁰⁹. Particularly, the deployment of the European Disability Card might **prompt further initiatives, either within the Disability Platform or through the use of soft governance (e.g. OMC), that support voluntary adherence to certain principles** and enhance exchange of best practices²¹⁰. As noted in previous research, 'trends are evident – moving away from medically dominated approaches' towards more 'socially contextualised assessments'²¹¹. Those trends might be strengthened, spread and amplified through 'soft' cooperation accompanying the

²⁰³ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 72, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²⁰⁴ van Dijck, C., 2018, *Case Study—The European Disability Card*, in Brandsen, T., Steen, T. and Verschuere, B. (eds), 2018, *Co-Production and Co-Creation. Engaging Citizen in Public Services*, Routledge, pp. 145-147, available at: <https://www.taylorfrancis.com/books/oa-edit/10.4324/9781315204956/co-production-co-creation-taco-brandsen-bram-verschuere-trui-steen>.

²⁰⁵ EDF, 2021, *Discussion on the Future of the European Disability Card: Summary Report*, available at: <https://www.edf-feph.org/content/uploads/2021/10/Report-on-Disability-Card-workshop-20210916.pdf>.

²⁰⁶ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

²⁰⁷ See e.g. EBU, 2023, *Analysis of the Proposed Directive for a European Disability Card and a European Parking Card for persons with disabilities EBU position paper October 2023*, available at: <https://www.euroblind.org/sites/default/files/documents/EBU%20position%20paper%20Oct%202023%20European%20Disability%20Card%20proposal.pdf>.

²⁰⁸ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²⁰⁹ Waddington, L., Priestley, M. and Sainsbury, R., 2018, *Disability Assessment in European States ANED Synthesis Report*, available at SSRN: <https://ssrn.com/abstract=3320419>; See also Waddington, L. and Priestley, M., 2021, *A human rights approach to disability assessment*, 37(1) *Journal of International and Comparative Social Policy*, pp. 1-15, available at: <https://www.cambridge.org/core/journals/journal-of-international-and-comparative-social-policy/article/human-rights-approach-to-disability-assessment/38A82E7D5EA9E662A9A61B7D8F6088F8>.

²¹⁰ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, pp. 72, 87, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²¹¹ Ibid. p. 43.

implementation of the proposed directive.

2.4.3. The potential pitfalls of mutual recognition

In a recent report, released at the beginning of October, the European Court of Auditors indicated that:

'the implementation of this card to be a step towards the mutual recognition of persons with disabilities, facilitating their free movement in the EU. However, its effectiveness will depend on the scope defined and **may be hampered by potential asymmetries in the assessment of the disability criteria selected by the different Member States** given their competence in this area'²¹².

However, the European Court of Auditors does not engage further with the extent to which asymmetries may hamper the functionality of the card. In practice, as noted above, the principle of mutual recognition entails that when an individual complies with specific national requirements so that they are eligible for a European Disability Card in their home Member State, the **host Member State** has the **duty to recognise that Card and (indirectly) recognise the foreign disability assessment**. This is so, in principle, even when this assessment does not comply with national rules of the host Member States, or is deeply rooted in the medical-model which is at odds with the CRPD. Hence, as noted by previous research, there is a risk that the European Disability Card may reinforce outdated mechanisms of disability assessment in certain Member States by equalising them with more progressive approaches²¹³.

In other words, the European Disability Card will operate in such a way that public authorities will have to tolerate, recognise and impose to providers the recognition of disability status on foot of disability assessment regimes that differ from their own. If they do not want to do so, they may bring a challenge in front of the CJEU. However, they will have to demonstrate why such disability assessments 'are not good enough' in a way that infringes a specific public interest protected by their national legislation. If we look at disability as one layer of a person's identity on foot of the CRPD Committee General Comment No. 6²¹⁴, CJEU case law related to names offer an important bedrock to support the use of the principle of mutual recognition, but also to understand its limitations. Particularly, as noted above, in *Sayn-Wittgenstein*²¹⁵, the CJEU did accept that public policy considerations whereby linked to fundamental values of the host Member States may constitute a legitimate limit to the application of the principle of mutual recognition. In that case, the CJEU stated that:

'it is not indispensable for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States as regards the precise way in which the fundamental right or legitimate interest in question is to be protected and that, on the contrary, the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted by another State'²¹⁶.

²¹² European Court of Auditors, 2023, *Special Report. Supporting persons with disabilities - Practical impact of EU action is limited*, para. 56, available at: https://www.eca.europa.eu/ECAPublications/SR-2023-20/SR-2023-20_EN.pdf.

²¹³ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 73, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²¹⁴ CRPD Committee, *General comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, 26 April 2018, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

²¹⁵ Case C-208/09, *Sayn-Wittgenstein*, ECLI:EU:C:2010:806, para. 93.

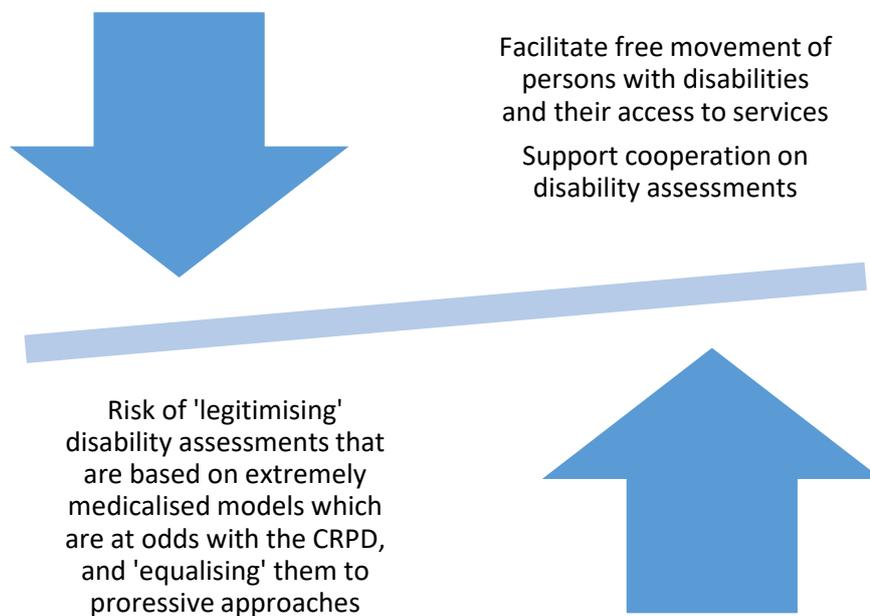
²¹⁶ *Ibid.* para. 91.

Taking into account this line of case law, Member States might be able to challenge the mutual recognition in front of the CJEU, but will have to demonstrate that the assessment fundamentally breaches national constitutional principles, such as the principle of human dignity or the principle of equality.

2.4.4. Mutual recognition as a double-edged sword

In sum, the **principle of mutual recognition can be seen as a double-edged sword**. On the one hand, it will **facilitate free movement of persons with disabilities and their access to services** in host Member States, within the material scope of the card. On the other hand, as noted in previous studies²¹⁷, it **runs the risk of 'legitimising' disability assessments that are based on extremely medicalised models which are at odds with the CRPD** and arguably with the principle of human dignity, although it remains of course open to Member States to challenge mutual recognition in front of the CJEU²¹⁸.

Figure 3: Strengths and pitfalls of mutual recognition



Source: Author's own elaboration, 2023.

²¹⁷ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 73, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²¹⁸ Ferri, D., 2023, *Op-Ed: "The Road towards a 'European Disability Card'"*, EU Law Live, available at: <https://eulawlive.com/op-ed-the-road-towards-a-european-disability-card-by-delia-ferri/>.

3. ANALYSIS OF THE PROPOSAL

KEY FINDINGS

The current text of the Proposal is composed of 20 Articles, articulated in five Chapters, preceded by a preamble comprised of 38 Recitals. The text is complemented by two annexes (Annexes I and II) which lay down requirements for the format and design of the European Disability Card and the European Parking Card respectively.

The preamble recalls EU values and rights that underpin the Proposal. Recital 37 constitutes the European Disability Card and European Parking Card as an 'explicit expression' of Article 26 CFR, making Article 26 CFR 'judicially cognisable' in any instance in which the proposed directive will have to be interpreted or reviewed.

The Proposal does not merge the European Disability Card and the European Parking Card, and refrains from creating a unique multi-purpose disability card, an option which had been firmly pushed back by OPDs and the EESC.

The choice of a directive is respectful of the principle of subsidiarity, and gives flexibility to Member States to take into account the specific national context. However, a directive leaves room for differences and discrepancies among the Member States.

Although the material scope of the Proposal is very broad, it does not encompass social security and social assistance. Furthermore, it is indirectly constrained by the fact that the use of the European Disability Card and the European Parking Card is limited to 'short stays'. The concept of 'short stay', while undefined in the current Proposal, may be equated to a period of stay not exceeding three months as provided for in the Citizenship Directive.

The personal scope of the Proposal encompasses Union citizens whose disability status is recognised by the competent authorities in the Member State of their residence. Other beneficiaries will be their family members, as well as persons accompanying them (including personal assistants). On 31 October 2023, the Commission put forward an addition proposal for a directive extending the European Disability Card and the European Parking Card to third country nationals legally residing in a Member State (Follow-up Proposal).

The Proposal requires Member States to take a range of measures to introduce, issue and renew the cards, ensure mutual recognition, as well as to guarantee that the cards are used effectively. It will be up to Member States to involve national OPDs in the transposition and implementation of the directive in compliance with the CRPD. However, the Proposal is silent in this respect, and the co-legislators could consider amending it to include an obligation for Member States to involve OPDs in the national policy cycle related to the cards.

The Proposal leaves exclusively to the Member States the task of providing information and conducting awareness-raising campaigns. This is a significant weakness of the proposed text, which disregards the requests of OPDs to deploy an EU-website, and to provide for a role of the Commission in awareness-raising. The Proposal also fails to mention the important part that OPDs can play in raising awareness among persons with disabilities.

On foot of the examination of the background to the Proposal conducted in chapter 1, and further having discussed the rationale of the proposed directive in chapter 2, this chapter undertakes a **legal analysis of the text of the Proposal**.

3.1. The structure of the Proposal

The text of the 'Proposal' is composed of 20 Articles, articulated in five Chapters, preceded by a preamble comprised of 38 Recitals. The text is complemented by two annexes (Annexes I and II) which lay down requirements of the format and design of the European Disability Card and the European Parking Card respectively.

As per Article 1, the proposed directive aims to lay down 'the rules governing the issuance of the European Disability Card and the European Parking Card for persons with disabilities as proof respectively of a disability status or of a right to parking conditions and facilities reserved for persons with disabilities' (Art. 1 lett. a) and to provide for 'common templates' for these cards (Art. 1 lett. b).

The **Proposal does not merge the two cards and refrains from creating a unique multi-purpose disability card**, an option which had been pushed back by OPDs²¹⁹ and the EESC²²⁰. In fact, **merging the two cards would have been inadvisable given their rather diverse scope and purpose**, with the European Parking Card being relevant to people travelling by car only. Further, while not all Member States have a disability card²²¹, as mentioned, parking cards do exist in all Member States, albeit with some differences. Thus, the Commission's choice to keep the two cards distinct is to be welcomed. Similarly **welcome is the decision to actually revamp the European Parking Card, update it, taking advantage of digitalisation advancements, and make it binding.**

Figure 4: The structure of the Proposal

Preamble					
Chapter I - General Provisions (Arts. 1-5)	Chapter II - European Disability Card and European Parking Card for Persons With Disabilities (Arts. 6-7)	Chapter III - Common Provisions (Arts. 8-10)	Chapter IV - Delegated Implementin g Powers (Arts.11-12)	Chapter V - Final Provisions (Arts. 13-20)	Annex I - Annex II

Source: Author's own elaboration, 2023.

²¹⁹ European Parliament, 2023, *European Disability Card. Pre-legislative Synthesis*, p. 11, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI\(2023\)751454_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751454/EPRS_BRI(2023)751454_EN.pdf).

²²⁰ European Economic and Social Committee, 2023, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, SOC/765-EESC-2023, [2023] OJ C 228/71, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

²²¹ Van Dijck, C., 2018, *Case Study—The European Disability Card*, in Brandsen, T., Steen, T. and Verschuere, B. (eds), 2018, *Co-Production and Co-Creation. Engaging Citizen in Public Services*, Routledge, p. 146, available at: <https://www.taylorfrancis.com/books/oa-edit/10.4324/9781315204956/co-production-co-creation-taco-brandsen-bram-verschuere-trui-steen>.

3.1.1. The preamble

With regard to the **non-binding preamble** to the proposed directive three key features can be highlighted.

First, as usual practice in EU legislation, the **preamble recalls the EU values and rights that underpin the Proposal**. Notably, the preamble cites Article 26 CFR in Recital 2 and Recital 37. Recital 2 only recalls the content of Article 26, while Recital 37 establishes that the proposed:

'Directive seeks to ensure full respect for the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community and **to promote the application of Article 26 of the Charter**'.

The wording is similar to that used in the Recital 103 of the preamble of the EAA²²², which affirms that the directive is a measure to 'promote the application of', *inter alia*, Article 26 CFR. As noted by the CJEU in *Glatzel*²²³, Article 26 CFR is a principle and not an enforceable right: it 'cannot *by itself* confer on individuals a subjective right which they may invoke as such', and must be given 'more specific expression in European Union or national law'²²⁴. Hence, Recital 37 constitutes the European Disability Card and European Parking Card as an 'explicit expression' of Article 26 CFR, making Article 26 CFR 'judicially cognisable' in any instance in which the proposed directive will have to be interpreted or reviewed by EU courts. In other words, the Proposal opens an avenue for the justiciability of Article 26 CFR.

Further, as discussed in chapter 2, the preamble refers to the CRPD in Recitals 5 and 6, allowing to qualify the **proposed directive as an implementing measure of the CRPD**²²⁵. Recital 6 highlights the purpose of the CRPD and recalls the obligation to ensure accessibility, but does not refer to any specific provision of the Convention²²⁶. The reference to accessibility tallies with the mentioning of the EAA and relevant legislation in the area of transport articulated in Recital 8. In addition, Recital 7 refers to principles 3 and 17 of the EPSR – that were also cited in the CfE²²⁷ and at various junctures in the IA Report²²⁸. The reference to principle 17 of the EPSR matches the citation of Article 26 CFR, in that this principle is considered to give further expression to Article 26 CFR²²⁹. It should be noted, however, that principle 17 does refer to social protection measures and provides for 'the right to income support', which could hint at some kind of extension of the scope of the card to social security, social assistance and non-contributory disability benefits, which are instead explicitly excluded from the scope of the

²²² Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L 151/70, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0882>.

²²³ Case C-356/12, *Glatzel v Freistaat Bayern*, ECLI:EU:C:2014:350, particularly para. 78.

²²⁴ *Ibid.* para. 78. The Luxembourg judges held that Article 26 CFR 'does not require the EU legislature to adopt any specific measure', but 'in order for that Article to be fully effective, it must be given more specific expression in European Union or national law'. This is in line with Article 52(5) CFR which reads as follows: 'The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality'.

²²⁵ Recital 5 of the preamble of the Proposal recalls that the CRPD is an 'integral part of the Union legal order'.

²²⁶ See *supra* chapter 2, section 2.2.

²²⁷ European Commission, *European Disability Card. Call for Evidence*, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card_en.

²²⁸ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, pp. 16, 161, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

²²⁹ European Commission, 2019, *2018 Report on the application of the EU Charter of Fundamental Rights*, Publications Office of the European Union, Luxembourg, pp. 105-107, available at: <https://op.europa.eu/en/publication-detail/-/publication/784b02a4-a1f2-11e9-9d01-01aa75ed71a1/language-en>.

Proposal.

Secondly, the **preamble**, after emphasising the rationale of the proposed directive of dismantling barriers faced by persons with disabilities when moving across the EU (which was discussed in chapter 2 of this study)²³⁰, **makes explicit the limitations of the Proposal**. It clarifies that it only concerns short stays²³¹, and that '[p]ersons with disabilities moving for longer periods to other Member States for employment, study or other purposes [...] may have their disability status assessed and formally recognised by the competent authorities in the other Member State' (Recital 11). In that regard, the preamble also states that the proposed directive accords with the principle of conferral and subsidiarity and does not impinge on the competences of the Member States (particularly, Recitals 30 and 38).

Thirdly, the **preamble gives interpretive aid** in terms of the material scope of the proposed directive and the services covered, which is laid out in Article 2. Notably **Recital 23** mentions a **variety of policy domains in which the European Disability Card may find application**. Further, as will be discussed in section 3.4., **Recital 24** gives examples of benefits and special conditions covered by the directive and to which the European Disability Card and the European Parking Card can give access to. These recitals may be very **helpful in the transposition, implementation and application of the directive**.

3.1.2. The current text

As noted above, the 'Proposal' is composed of 20 Articles articulated in five Chapters.

Chapter I includes five general provisions. **Article 1** sets out the **subject matter** and the **purpose** of the proposed directive. **Article 2** defines the **material scope** of the Proposal and reiterates that Member States remain competent to assess disability status, to issue the European Disability Card and the European Parking Card for persons with disabilities, to determine the procedures for issuing these cards and to decide whether to grant disability benefits and which benefits and special conditions to provide for. **Article 3** contains relevant **definitions**. **Article 4** outlines the **personal scope** of the Proposal by listing the beneficiaries of the cards. **Article 5** provides for **equal access** to special conditions, preferential treatment and parking conditions in host Member States for holders of the European Disability Card and the European Parking Card for persons with disabilities and person(s) accompanying or assisting them.

Articles 6 and 7 form part of Chapter II and **establish mutual recognition of the cards** as well as **rule on the format and procedures** for the European Disability Card and the European Parking Card for persons with disabilities respectively. These provisions also empower the Commission to adopt delegated acts to set out detailed provisions on the digitalisation of the Cards, with delegated and implementing powers being further regulated in Chapter IV (Articles 11 and 12).

Chapter III establishes common provisions which relate to both cards. **Article 8** entrusts the Commission with the power to adopt **implementing acts** setting out common technical specifications to further specify the format of the cards, as well as their digital features. **Article 9** sets out a **range of obligations that Member States** will have to implement. **Article 10** requires Member States to **notify the Commission** of the competent authorities that will issue the cards.

As mentioned above, Chapter IV comprises **Articles 11 and 12** concerning the **exercise of delegated and implementing powers** by the Commission as mandated by Articles 6, 7 and 8.

²³⁰ See e.g. Recitals 10, 12, 14, 15, 16 of the preamble of the Proposal.

²³¹ See Recital 12 of the preamble of the Proposal.

Chapter V includes miscellaneous final provisions. **Articles 13 and 14** require Member States to put in place adequate **enforcement procedures** and 'effective, proportionate and dissuasive' **penalties**. **Article 15** obliges Member States to **ensure that service providers guarantee access to information** in relation to disability benefits and preferential conditions offered to cards holders in accessible formats. Notably **Article 15(2) also requires Member States to 'encourage private operators' to provide such special conditions and preferential treatment**. Article 16 relates to reporting and review. Article 17 provides for the obsolescence of Council Recommendation 98/376/EC on a parking card for people with disabilities²³², while Articles 18 and 19 provide for transposition deadlines and entry into force timing.

3.2. The legal basis

Since the EU is governed by the principle of conferral, a 'legal base' or 'legal basis' is necessary to support the adoption of a legislative measure.

Box 4: The choice of legal basis

The choice of legal basis

The terms 'legal base' or 'legal basis' specifically refer to a Treaty provision that empowers the EU to enact legislation. Hence, the identification of legal basis has constitutional significance. Furthermore, **the choice of an incorrect legal basis can be challenged in front of the CJEU** and is therefore liable to invalidate an act.

The CJEU has consistently held that **'the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review'** (Case C-440/05, *Commission v Council*, ECLI:EU:C:2007:625, para. 61). These factors 'include the **aim and content of that measure**' as well as 'the **legal framework within which new rules are situated** may be taken into account, in particular in so far as that framework is capable of shedding light on the purpose of those rules' (Case C-482/17, *Czech Republic v Parliament and Council*, ECLI:EU:C:2019:1035, paras. 31 and 32). The CJEU has also held that:

'If an examination of an EU measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main or predominant purpose or component whereas the other is merely incidental, the measure must be based on a single legal basis, namely that required by the main or predominant purpose or component. **By way of exception, if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure must be founded on the corresponding legal bases.** However, no dual legal basis is possible where the procedures laid down for each legal basis are incompatible with each other' (Case C-94/03, *Commission v Council*, ECLI:EU:C:2006:2).

The Proposal identifies four Treaty Articles as legal bases, which the Commission deem necessary as the Proposal 'has multiple, interlinked objectives concerning several policy areas, such as services,

²³² Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L 167/25, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0376>.

transport, and rights to free movement²³³. **The choice of multiple legal basis seems adequate in that regard and compliant with settled CJEU case law.**

Articles 53(1) TFEU empowers the EU to 'issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons'. **This provision specifically requires for the legislative act to take the form of a directive**, thus it would not be an adequate legal basis for a regulation. As yet, Article 53(1) TFEU has been used as legal basis for a series of directives on cross-border exercise of professional activities as well as for EU public procurement legislation²³⁴.

Article 62 TFEU provides for the application of Articles 51 to 54 TFEU on the freedom of establishment and freedom of services. As a consequence, the Treaty's provisions on services do not apply to activities connected with the exercise of official authority (Article 51). In addition, Member States remain entitled to restrict the application of the freedom as regards non-nationals on grounds of public policy, security, or health (Article 52). By virtue of the application of Article 53 TFEU, the empowerment conferred on the Union legislature to adopt measures facilitating the pursuit of self-employed activities, also empower the Union legislature to facilitate the provision and receipt of services. The CJEU has also stated that coordination measures adopted by the EU legislature, on the basis of Article 53 TFEU, read together with Article 62 TFEU, must not only have the objective of making it easier to exercise the freedom to provide services, but also of ensuring, when necessary, the protection of other fundamental interests that may be affected by that freedom. Reference to Article 62 TFEU, hence, also alludes to the limits of mutual recognition and to the possibility for Member States to restrict fundamental freedoms on public policy grounds.

Article 91 TFEU is also listed as legal basis with respect to special conditions and preferential treatment to access to services in the field of transport, including parking facilities, provides the necessary legal base. Notably Article 91 TFEU underpinned Council Recommendation 98/376/EC on a parking card for people with disabilities²³⁵, and is the **legal basis for secondary legislation** in land transport which encompasses a number of regulations and directives²³⁶. The CJEU has consistently held that Article 91 TFEU also encompasses a competence to create an obligation to foresee national criminal sanctions.²³⁷

Additionally, the Proposal lists as legal basis **Article 21(2) TFEU**²³⁸. As noted in chapter 2, this is a residual legal base, providing for the possibility for the European Union to act and adopt provisions to facilitate the right of EU citizens to move and reside freely within the territory of the Member States. The Explanatory Memorandum indicates that such legal basis allows to cover special conditions or preferential treatment within activities and facilities that do not fall into the categories of 'services' covered by Article 53 and 62, in particular activities and facilities not provided for remuneration.

²³³ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 6, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

²³⁴ Tomkin, J., 2019, *Article 53 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi.org/10.1093/oso/9780198759393.003.136>.

²³⁵ Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L 167/25, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0376>.

²³⁶ Rusche, T.M., 2019, *Article 91 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi.org/10.1093/oso/9780198759393.003.183>.

²³⁷ Case C-97/78, *Schumalla*, ECLI:EU:C:1978:211.

²³⁸ This provision reads as follows: 'If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1'.

Notably, **if the directive were to be extended to social security, Article 21(3) would seem to be the most appropriate legal basis.** It is worth recalling that social security coordination measures in relation to economically active citizens are required by Article 48 TFEU when necessary for the exercise of the right to free movement²³⁹. Economically inactive citizens are not concerned by Article 48 TFEU, but are covered by Article 21 TFEU. If the EU legislature adopts legislation for the coordination of social security of economically active and inactive citizens alike, it would need to have recourse to Article 21(3) TFEU²⁴⁰. The latter legal basis requires the Council to act unanimously after consulting the EP. Notably, the reform of social security coordination advanced by the Commission in 2016 was based only on Article 48 TFEU²⁴¹. However, in that case, provisions related to economically inactive citizens were limited and ancillary²⁴². With regard to the current Proposal, while, as noted above, Article 21(3) TFEU would seem to be the most appropriate legal basis to cover social security provisions, concerns as to the compatibility of this legal basis with the other indicated arise, since the procedure for the adoption of the act would be different. Namely, while Article 21(2) TFEU as well as other current legal basis require the ordinary procedure, Article 21(3) TFEU, as noted above, provides that the Council is the sole legislator and unanimity is required.

3.3. The type of legislative proposal

As noted above, the current Proposal is a **directive** that aims to establish both a European Disability Card and a European Parking Card for persons with disabilities. As per Article 288 TFEU, a directive is **'binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'**. Directives must be transposed into national law and Member States must take all the measures necessary to achieve the result prescribed by the directive²⁴³. As the text currently stands, Member States will have 18 months from the date of entry into force of the final text to transpose the directive (Article 18(1) of the Proposal) and 30 months from the entry into force of the directive to apply the provisions.

As noted by Klamert and Loewenthal, directives are commonly referred to as 'indirect legislation' since they require transposition²⁴⁴. The provisions of a directive are capable of having direct effect and therefore may give rise to rights that natural or legal persons could invoke before national courts, provided that they are sufficiently precise and unconditional²⁴⁵. Member States have discretion as to when and how transposing a directive into national law, in order to take into account special national circumstances within the boundaries of the transposition provisions, but must ensure that the directive is fully effective²⁴⁶. They are obliged to give effect to the directive by means of national provisions that

²³⁹ The provision does not limit national powers to organize their social security and to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted, in compliance however with EU law. Article 48 TFEU provides for the ordinary legislative procedure to be used but each Member State in the Council that considers that important aspects of their national social security system would be affected may ask for the involvement of the European Council. See Martin D., 2019, *Article 48 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://academic.oup.com/book/41771/chapter/354440189>.

²⁴⁰ Martin D., 2019, *Article 48 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://academic.oup.com/book/41771/chapter/354440189>.

²⁴¹ Proposal for a Regulation of the EP and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004, COM(2016) 815 final, available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes>.

²⁴² Ibid. That proposal, in relation to access by economically inactive mobile EU citizens to social benefits, would amend the current equal treatment provisions of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38/EC.

²⁴³ Case C-51/76, *Verbond van Nederlandse Ondernemingen*, ECLI:EU:C:1977:12, para. 22.

²⁴⁴ Klamert, M. and Loewenthal, J-P., *Article 288 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi.org/10.1093/oso/9780198759393.003.432>.

²⁴⁵ Case C-41/74, *Van Duyn*, ECLI:EU:C:1974:133, para. 12.

²⁴⁶ Case C-10/76, *Commission v Italy*, ECLI:EU:C:1976:125, para. 12; Case C-551/13, *SETAR*, ECLI:EU:C:2014:2467, para. 37.

have binding nature²⁴⁷.

Directives are usually published in the Official Journal (OJ) in accordance with Article 297(1) TFEU and they enter into force on the date specified in them or on the twentieth day following that of their publication.

EDF has welcomed the Proposal and the use of binding legislation²⁴⁸. While OPDs would have preferred a regulation²⁴⁹, which is directly applicable and does not necessitate transposition, a directive represents an important advancement.

The following subsections present the arguments in favour and against the choice to regulate the two cards with the same instrument and discuss the main advantages and disadvantages in the use of a directive.

3.3.1. A single legislative instrument for two cards

Regulating these different cards with the same legislative instrument is a pragmatic solution, especially at a critical political juncture with the looming European elections. It may in fact guarantee a quick approval. In that regard, as noted above, it has been welcomed by OPDs²⁵⁰.

However, **the choice of a single instrument seems to have orientated the Commission towards a directive rather than a regulation**. As will be further discussed in subsection 3.3.2., a directive – which requires transposition at the national level and leaves room for manoeuvre to Member States – might arguably be considered an adequate instrument (although not ideal from a disability rights perspective) to regulate a novel European Disability Card. Further, as noted earlier, Article 53(1) TFEU as legal basis only concerns the adoption of directives. By contrast, a directive does not seem the best option for the European Parking Card.

Opting for two instruments would certainly have elongated the process and perhaps would have run the risk of delaying the deployment of one or both cards. However, it would have allowed the adoption of a dedicated regulation on a single legal basis (Article 91 TFEU) on the European Parking Card. As noted in chapter 1 and as discussed in previous studies²⁵¹, EU parking card schemes have been in existence for more than 20 years and are recognised across all Member States. Given the longstanding existence and application of the parking cards in the EU, **a regulation based only on Article 91 TFEU and providing for full harmonisation would have best harnessed the consensus and practice built in the past twenty years**²⁵². Further, a **regulation**, which is directly applicable in all its elements,

²⁴⁷ Case 252/85, *Commission v France*, ECLI:EU:C:1988:202, para. 5.

²⁴⁸ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>. See also European Union of the Deaf (EUD), 2023, *EUD Welcomes the European Commission's Proposal for a EU-wide Disability Card*, available at: <https://www.eud.eu/eud-welcomes-the-european-commissions-proposal-for-a-eu-wide-disability-card/>.

²⁴⁹ See EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>, but also EBU, 2023, *Analysis of the Proposed Directive for a European Disability Card and a European Parking Card for persons with disabilities EBU position paper October 2023*, p. 1, available at: <https://www.euroblind.org/sites/default/files/documents/EBU%20position%20paper%20Oct%202023%20European%20Disability%20Card%20proposal.pdf>. See also responses to the CfE (section 1.4.1. of this study).

²⁵⁰ EBU, 2023, *Analysis of the Proposed Directive for a European Disability Card and a European Parking Card for persons with disabilities EBU position paper October 2023*, p. 1, available at: <https://www.euroblind.org/sites/default/files/documents/EBU%20position%20paper%20Oct%202023%20European%20Disability%20Card%20proposal.pdf>.

²⁵¹ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 65, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

²⁵² Ferri, D., 2023, *The Commission's Proposal for a Directive Establishing a European Disability Card: Is the Glass Half Empty or Half Full?*, (EU Law Live, 3 November 2023), p. 5, available at <https://eulawlive.com/weekend-edition/weekend-edition-no161/>.

would have best addressed current differences and inconsistencies. In addition, a dedicated regulation could have better addressed rules about parking, and the provision of information on those rules and on parking spaces, which is one of the gaps in the current text identified by EDF²⁵³. Arguably, the current text could be amended to include further provisions in this respect. Yet a dedicated regulation would have supported more specific and, most importantly, directly applicable rules. A final point is that regulations are largely deployed in the field of transport on foot of Article 91 TFEU and a regulation on the European Parking Card would have complemented the already successful mainstreaming of disability in that sector²⁵⁴.

3.3.2. The choice of a directive: strengths and pitfalls

As noted above, directives leave to national authorities the choice of form and means that are more appropriate to achieve the objectives laid down by the directive in question. Thus, directives are legal instruments which leave more room for, and positively require, national intervention and action in implementing their aims, and for this reason are said to reflect the principle of subsidiarity²⁵⁵.

In this particular instance, the choice of a **directive** has two main strengths. First, it is certainly the most **respectful of the principle of subsidiarity**. Secondly, a directive to regulate a new instrument that is not in existence in all Member States such as the European Disability Card **gives flexibility to Member States to take into account their specific national context and circumstances**.

Further, the EU has put in place **mechanisms that support and monitor national transposition and discourage from delay**. The financial statement accompanying the Proposal envisages the **'organisation of meetings with the Member States on its transposition**, as well as meetings with the Member States on the adoption of delegated and implementing acts²⁵⁶. In that regard, it is stated that 'the necessary expenditure for the organisation of the meetings, i.e. travel costs of delegates, is covered by the European Social Fund Plus – EaSI strand'²⁵⁷. A Member State needs to notify the Commission of the measures transposing a directive. This is also explicitly provided in Article 18(1) of the Proposal. The current text of Article 16(1) of the Proposal further requires the Commission to submit a report 'three years after the date of application of this Directive, and every five years thereafter'. If a Member State fails to transpose a directive, the Commission may initiate an infringement proceeding²⁵⁸.

However, a **directive leaves room for differences and discrepancies** among the Member States. As noted above, this is a particular drawback for the European Parking Card²⁵⁹. Further, even in the event of a timely transposition, the effects of a directive reach individuals through the implementing measures adopted by the Member States concerned²⁶⁰, and thus are delayed in time. By contrast, a regulation is directly applicable and its application is 'independent of any measure of reception into

²⁵³ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at:

<https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

²⁵⁴ Varney, E. and Pearson, A., 2020, *Disability in EU transport legislation*, in Ferri, D. and Broderick, A. (eds), 2020, *Research Handbook on Disability Law*, Edward Elgar Publishing, pp. 182-200.

²⁵⁵ Bradley, K., 2013, *Legislating in the European Union*, in Barnard, C. and Peers, S. (eds), 2013, *European Union Law*, Oxford University Press, p. 100.

²⁵⁶ European Commission, *Legislative Financial Statement of the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 6 point 1.5.5, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

²⁵⁷ Ibid.

²⁵⁸ A transposition scoreboard is updated every year as part of the single market scoreboard. See The Single Market Scoreboard is available at: <https://single-market-scoreboard.ec.europa.eu/>.

²⁵⁹ See section 3.3.1.

²⁶⁰ Case C-222/84, *Johnston*, ECLI:EU:C:1986:206, para. 51.

national law'²⁶¹. In this respect, Member States have a duty not to obstruct the direct applicability inherent in regulations, and must strictly comply with them, which is an indispensable condition of simultaneous and uniform application of regulations throughout the Union²⁶². As the CJEU has noted:

'owing to their very nature and their place in the system of sources of EU law, regulations have immediate effect and operate to confer rights on individuals which the national courts have a duty to protect'²⁶³.

In sum, a directive seems to respect the principle of subsidiarity and leaves room for manoeuvre to Member States to take into account national specificities. As noted by all OPDs, a regulation would have better ensured uniformity across the EU and would have resulted in a speedier introduction of the card (eliminating the need for national transposition). The choice of a directive also disregards the EESC's plea for a regulation²⁶⁴. However, as noted above, a regulation would seem to be possible only for the European Parking Card on the basis of Article 91 TFEU²⁶⁵.

3.4. The material scope of the proposal

3.4.1. The areas and services covered

According to the current text of Article 2, the proposed directive:

'shall apply to **parking conditions and facilities** and to **all situations where special conditions or preferential treatment are offered by private operators or public authorities** to persons with disabilities as regards access to the following services, activities and facilities:

services within the meaning of Article 57 TFEU;

passenger transport services;

other **activities and facilities, including where not provided for remuneration**'.

The definition of 'parking conditions and facilities' is provided in Article 3 of the proposed directive and encompasses:

'any **parking space reserved for persons with disabilities** in general as well as associated parking benefits for, or preferential conditions afforded to, persons with disabilities, *such as* free parking, reduced tariffs, reduced fees or user charges for toll roads/bridges/tunnels or extended parking spaces irrespective of whether provided on a voluntary basis or imposed by legal obligations'.

The use of an open list of parking benefits (and the wording '*such as*') entails that the list included in the provision is to be considered indicative and other types of benefits may potentially be covered.

With regard to the services covered by the proposed directive, Article 2 must be interpreted taking into account Recital 23, which states that:

'Beside parking conditions and facilities, **the services, activities and facilities covered by this Directive concern a wide variety of ever-changing activities**, including activities provided not for remuneration, by public authorities or private operators, either on a mandatory (on the

²⁶¹ Case C-34/73, *Fratelli Variola*, ECLI:EU:C:1973:101, para. 10.

²⁶² *Ibid.*, para. 10.

²⁶³ Joined Cases C-4/10 and C-27/10, *Bureau national interprofessionnel du Cognac*, ECLI:EU:C:2011:484, para. 40.

²⁶⁴ See *supra* chapter 1 of this study. EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, para. 1.6, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

²⁶⁵ See *supra* section 3.3.1.

basis of national/local rules or legal obligations) but often also on a voluntary basis (in particular by private operators) in a variety of policy domains, **such as culture, leisure, tourism, sports, public and private transport, education**'.

Thus, notably, the material scope is rather **wide** and encompasses virtually all areas, except for social assistance and social security, which is explicitly excluded from the scope by Article 2(2)²⁶⁶. Although the European Union of the Deaf (EUD) has suggested to include an explicit reference to 'employment and healthcare' (which are not mentioned)²⁶⁷, Recital 23 is only meant to give examples of areas covered by the proposed directive. The **wording 'such as' makes the list open ended**, and nothing in the current text excludes those sectors from application.

It encompasses services provided by both **private and public operators**.

The explicit reference to Article 57 TFEU opens up the use of the European Disability Card within a wide range of services. It must be noted, that the notion of 'services' is a Union concept and is subject to a single autonomous interpretation in the EU legal order. The Treaty defines the concept of services as encompassing activities of an industrial or commercial character, including activities carried out by craftsmen or professionals in exchange for remuneration. The CJEU has interpreted such notion quite extensively to include, among others, sport²⁶⁸, gaming²⁶⁹, health services²⁷⁰ and educational ones²⁷¹. The **key factor that makes an activity a 'service' for the purpose of Article 57 TFEU is its economic character**. Notably such character is not dependent on the activity being profit-making, nor does it require remuneration from the actual recipient (i.e. the service does not have 'to be paid for by those for whom it is performed')²⁷².

Furthermore, the residual reference to **'other activities and facilities, including where not provided for remuneration'** *de iure* allows for the recognition of disability status via the European Disability Card in virtually all public and private facilities which cannot qualify as services for the purpose of EU law as they are devoid of economic character.

The current text also covers **passenger transport services**, which, as it stands seems to comprise all transport modes and all levels (i.e. national, regional, local).

Service providers and operators are not obliged to offer special conditions or preferential treatment (unless those are mandated by national law). However, **Member States**, according to Article 15(2) of the Proposal, **'shall encourage private operators or public authorities to voluntarily provide special conditions or preferential treatment for persons with disabilities'**. Whereby services offer special conditions, they will have to accept and recognise the Card. This is a major improvement compared to the Pilot Project, in which participation of service providers was not compulsory²⁷³.

²⁶⁶ Article 2(2) states as follows: 'This Directive does not apply to: (a) benefits in the area of social security under Regulations (EC) No 883/2004 and (EC) No 987/2009; (b) special contributory or non-contributory cash benefits or benefits in kind in the area of social security, social protection or employment; (c) social assistance covered by Article 24(2) of Directive 2004/38/EC'.

²⁶⁷ EUD, 2023, *EUD Position on the European Commission's Proposal for a Directive establishing the European Disability Card*, p. 3, available at: <https://www.eud.eu/euds-welcomes-the-european-commissions-proposal-for-a-directive-establishing-a-european-disability-card/>.

²⁶⁸ Case C-519/04, *Meca-Medina and Majcen*, ECLI:EU:C:2006:492, paras. 22 and 23.

²⁶⁹ Case C-6/01, *Anomar*, ECLI:EU:C:2003:446, paras. 46 and 56.

²⁷⁰ Case C-157/99, *Smits and Peerbooms*, ECLI:EU:C:2001:404, paras. 47–69.

²⁷¹ Case C-76/05, *Schwarz*, ECLI:EU:C:2007:492, paras. 35–47.

²⁷² Case C-352/85, *Bond van Adverteerders*, ECLI:EU:C:1988:196, para. 16.

²⁷³ See *supra* chapter 1.

3.4.2. The benefits covered

With regard to the services covered by the proposed directive, the term 'special conditions or preferential treatment' encompasses a wide range of **financial benefits and benefits in kind**. Those are defined in Article 3 lett. e) which states that:

'special conditions or preferential treatment' means specific conditions, including those related to financial conditions, or differentiated treatment related to assistance and support *such as* free access, reduced tariffs, priority access, offered to persons with disabilities and/or, when applicable, to person(s) accompanying or assisting them including personal assistant(s) or assistance animals recognised in accordance with the national legislation or practices as such, irrespective whether provided on a voluntary basis or imposed by legal obligations'.

The use of an open list of examples allows for the directive to cover benefits that are not explicitly mentioned. Articles 2 and 3 must also be interpreted in light of **Recital 24** of the Preamble which **provides a broad number of examples**, which will be **helpful to Member States when implementing the directive** but also, more generally, **to OPDs and beneficiaries of the card to gauge the scope of the directive**. Namely, it states that:

'Examples of special conditions or preferential treatment include free access, reduced tariffs, reduced fees or user charges for toll roads/bridges/tunnels, priority access, designated seats in parks and other public areas, accessible seating in cultural or public events, personal assistance, assistance animals, assistance on the beach to enter the water, support (such as access to braille, audio guides, sign language interpretation), provisions of aids or assistance, loan of a wheelchair, loan of a floating wheelchair, obtaining tourist information in accessible formats, using a mobility scooter on roads or a wheelchair in bike lanes without a fine, etc.. Parking conditions and facilities include extended parking or reserved parking spaces. With respect to passenger transport services, in addition to the special conditions or preferential treatment offered to persons with disabilities, in accordance with national legislation or practices, assistance animals, personal assistants or other persons accompanying or assisting persons with disabilities (or reduced mobility) may travel free of charge or be seated, where practicable next to the person with disabilities'.

Reduced fees for toll roads are specifically mentioned as benefits that are covered, addressing the issue that had arisen in the *Gottwald* case discussed in chapter 2 of this study.

Box 5: In practice - Benefits covered

In practice – Benefits covered

Julia is a person who is blind and a citizen of Member State A. She wants to visit an exhibition at the National Gallery of Member State B. She knows that the National Gallery of Member State B offers to persons with disabilities free entrance to the exhibition as well as a reduced ticket prices for one person accompanying them, an audio guide free of charge and a dedicated touch tour free of charge. The European Disability Card would allow Julie to avail of all those special conditions on an equal basis with citizens with disabilities of Member State B.

It is important to clarify that special conditions or preferential treatment cannot be equated conceptually or normatively to reasonable accommodation. Reasonable accommodation is a necessary and appropriate adjustment, when needed in a particular case. It is tailored to the need of the person requiring it. Reasonable accommodation is individualised, and it is an *ex nunc* duty, i.e. 'must be

provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights²⁷⁴. By contrast, special conditions or preferential treatment are usually pre-determined in their form and substance and are not necessarily tailored to the need of an individual. Admittedly, in practice, certain special conditions or benefits, such as sign language interpretation, may indeed be perceived as akin to a reasonable accommodation²⁷⁵.

A duty to provide reasonable accommodation currently exists in EU law only with regard to employment and vocational training, as per the Employment Equality Directive²⁷⁶. However, when it comes to employment, it is important to clarify that the possession of the European Disability Card should not, in any way, become a condition to obtain reasonable accommodation provided for in the Employment Equality Directive. No EU legislation at present imposes a duty to reasonably accommodate persons with disabilities in access to services²⁷⁷. The European Disability Card thus cannot give rise *per se* to a right to be reasonably accommodated in access to services.

Furthermore, OPDs have repeatedly asked to make clear that the **European Disability Card should never become an eligibility condition to be recipient of services already granted under other EU legislation**, in particular in the field of transport²⁷⁸. The current text is silent in this respect. An amendment might not be strictly necessary if the proposed directive is interpreted teleologically (i.e. in light of its very purpose) and systematically, but it might enhance legal certainty and clarity.

3.4.3. Strengths and pitfalls of the current material scope

On the whole, the **material scope is very wide**.

With regard to the services covered, EDF in their analysis positively evaluated that the current material scope is broader than the Pilot Project²⁷⁹. In this respect, the Proposal takes into account the call from the EP and EESC to widen the scope of the Pilot Project, as well as the findings of the study assessing this Pilot Project²⁸⁰.

Similarly, in terms of special treatments covered, the proposed directive is very wide. The range of benefits, special conditions and preferential treatments extends potentially to all financial benefits and benefits in kind offered to persons with disabilities. In this respect, previous research has also noted that a wide scope of the card has the potential to 'open doors for disabled people to exercise their rights and freedoms to employment and social protection more easily and on an equal basis with others'²⁸¹.

²⁷⁴ CRPD Committee, *General comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, 26 April 2018, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

²⁷⁵ On reasonable accommodation outside employment contexts see: Waddington L. and Broderick A., 2016, *Disability Law and Reasonable Accommodation Beyond Employment. A Legal Analysis of the Situation in EU Member States*, European Commission, Brussels.

²⁷⁶ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

²⁷⁷ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181} COM/2008/0426 final, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52008PC0426>.

²⁷⁸ Fobe, A., 2023, *Equality for persons with disabilities on the move*, available at: <https://www.socialeurope.eu/equality-for-persons-with-disabilities-on-the-move>. Fobe indicates that '[w]hat matters is that the Commission has heard the civil-society organisations' call for a legally binding instrument'.

²⁷⁹ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

²⁸⁰ See *supra* chapter 1.

²⁸¹ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 73, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

However, as noted by previous research and discussed above in chapter 2, 'as the scope of mutual recognition expands to new and significant policy areas, the inequalities arising from uneven disability assessment criteria become further entrenched'²⁸².

Moreover, two main indirect limitations to the material scope can be identified.

First, where and what type of special treatments are offered remains within the remit of national competence. It is quite evident from the study assessing the Pilot Project that benefits or preferential conditions vary and are not always considered adequate by people with disabilities²⁸³. In particular, the study reports that when asked 'In your opinion, to what extent do current benefits/services provided by the EU Disability Card respond well to the needs of persons with disabilities in the different sectors?', more than 50% of respondents in Romania, Cyprus and Belgium answered 'not at all' or 'slightly', whereas in Finland this rate is slightly below 50% and in Malta around 30%²⁸⁴. However, the study also suggests that the Pilot Project increased the number of service providers offering benefits to persons with disabilities²⁸⁵. According to Article 15(2), Member States must 'encourage private operators or public authorities to *voluntarily* provide special conditions or preferential treatment for persons with disabilities'. It remains unclear how Member States should encourage private providers. It seems that Member States could potentially use financial incentives within the limits of State aid rules. However, it is uncertain whether EU funding might support the provision of financial incentives.

Secondly, indirect limitations to the *prima facie* broad material scope derive from the **fact that services themselves need to be accessible**²⁸⁶. In this respect the Proposal correctly emphasises the link and synergy between the European Disability Card and the EAA, as well as relevant transport legislation²⁸⁷.

On a final note, the fact that the proposed directive does not address social assistance and social security aligns with the commitment expressed by the Commission in the CfE. It embraces the quest from Member States to leave out those fields²⁸⁸. In this respect, the choice of the Commission may facilitate a speedy agreement in the legislative phase and especially within the Council. However, it is a major loophole²⁸⁹. It also remains a sticky point as demonstrated by EBU and EDF analyses²⁹⁰, but also by earlier contributions²⁹¹.

²⁸² Ibid.

²⁸³ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits Final Report*, Publications Office of the European Union, Luxembourg, p. 99, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ See Recital 8 Preamble of the Proposal.

²⁸⁸ European Commission, *Commission Staff Working Document - Subsidiarity Grid Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 289 final, p. 3, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2023%3A289%3AFIN&qid=1694085405186>.

²⁸⁹ See e.g. EDF analysis that states: 'EDF regrets that this opportunity was missed because the problem of moving to another Member State for work or study has not been solved. Persons with disabilities will still face a gap in the provision of vital services, such as personal assistance, adapted housing, provision of reasonable accommodation, assistive devices, etc., when moving permanently to another Member State for work or studies'. See EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

²⁹⁰ EBU, 2023, *Analysis of the Proposed Directive for a European Disability Card and a European Parking Card for persons with disabilities EBU position paper October 2023*, pp. 5-6, available at: <https://www.euroblind.org/sites/default/files/documents/EBU%20position%20paper%20Oct%202023%20European%20Disability%20Card%20proposal.pdf>; EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

²⁹¹ ENIL, 2023, *The new European Disability Card: What can we expect?*, available at: <https://enil.eu/the-new-european-disability-card-what-can-we-expect/>.

Box 6: In practice - Material scope

In practice – Material Scope

John is an EU citizen with disabilities who is resident in Member State A where he studies. He moves to Member State B for a period of study for 2 months at a university of that Member State. The European Disability Card will allow John to avail of all special conditions and preferential treatment in Member State B during the period of his stay in sectors covered by the directive. However, with regard to social security benefits and disability allowances that he receives from Member State A, Regulation 883/2004 applies.

3.4.4. The concept of 'short stay'

The use of the European Disability Card is limited to 'short stays', with no further specification or definition. As it stands, Recital 12 of the preamble to the Proposal makes reference to 'persons with recognised disability status travelling to or visiting for a *short period of time* a Member State other than the Member State in which they reside'. Recital 21 reiterates that the European Disability Card and European Parking Card are meant to:

'facilitat[e] the exercise by persons with disabilities *when travelling to or visiting another Member State for a short period*, of the rights to access special conditions or preferential treatment...'.²⁹²

Recital 29 also states that the European Disability Card and the European Parking Card 'should also be available to *workers who travel to or visit another Member State for work-related purposes*'.

In a similar fashion, Article 1 makes explicit that the European Disability Card is a tool aimed at 'facilitating *short stays* of persons with disabilities'. Furthermore, Recital 11 of the preamble explicitly states that persons with disabilities:

'moving for *longer periods* to other Member States for employment, study or other purposes, except where otherwise provided by law or agreed among Member States, may have their disability status assessed and formally recognised by the competent authorities in the other Member State'.

The concept of 'short stay' while undefined may be equated to a period of stay not exceeding three months as provided for in the EU Citizenship Directive²⁹². In such a period, persons are not 'subject to any conditions or any formalities ...'²⁹³.

It is evident that people that wish to move into another Member State for longer periods will leave their disability benefits and will need to have their disability status re-assessed in the host Member State. The proposed directive **does not provide any measure ensuring transitional application of disability benefits falling within the remit of social security or social assistance as they are excluded from the scope of application**. In this regard, EDF suggests that 'students or interns moving abroad to study or do an internship will still lose their social security benefits from their country of residence and will not automatically get disability status in their host country'²⁹⁴. As it stands, the

²⁹² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

²⁹³ Article 6 of the EU Citizenship Directive.

²⁹⁴ Students will still have access to the inclusion budget under ERASMUS+ or supports provided by the host University. See EDF, 2023, *The European Disability Card*, available at: <https://www.edf-feph.org/eu-disability-card/>. The EUD suggests a modification to Article 2 to include in the scope 'Education, youth exchanges and socio-educational exchanges within the meaning of Article 165 TFEU'. It is

proposed text disregards the opinion given by the EESC which had recommended that the Card also 'provide the possibility to grant access to benefits linked to public social policies and/or national social security systems on a temporary basis when a person with a disability has moved to a Member State to study or to work'²⁹⁵.

As noted above in chapter 2, the proposed directive is likely to facilitate the consumption or use of certain services, but will do nothing (or little) for those who actually move into another Member State for longer periods and for purposes other than leisure or tourism²⁹⁶. EDF notes that:

'Persons with disabilities will still face a gap in the provision of vital services, such as personal assistance, adapted housing, provision of reasonable accommodation, assistive devices, etc., when moving permanently to another Member State for work or studies. While they immediately lose their right to social security related benefits in their home country, it takes months or sometimes years to have their disability recognised in the new country of residence. In the interim period, the persons concerned are left with nothing and must pay for these vital services out of their own pocket'²⁹⁷.

However, a provision aimed at ensuring the transitional application of certain disability benefits within the remit of social security and social assistance would seem to bring *de facto* and *de jure* social security and social assistance into the material scope of the directive. Even a provision concerning a temporary application of disability benefits only in specific situations detailed by the directive would entail an explicit derogation to Article 2(2) of the Proposal *de facto* extending the material scope. While - as pointed out by EDF and EBU in their position papers²⁹⁸ - Article 21 TFEU refers to the right to move and reside freely within the territory of the Member States, it is debatable as to whether a provision relating to disability benefits within the remit of social security and social assistance could be adopted solely on the basis of Art. 21(2) TFEU. As discussed earlier in this study, Article 21(3) TFEU would normally be the legal basis for a measure concerning social security or social protection for economically inactive citizens. However, given the different procedural requirements laid out in Article 21(3) TFEU, it is dubious that the latter Treaty provision may be included alongside other legal basis to support the extension of the material scope of the proposal. Should such provisions related to limited or temporary availability of disability benefits only relate to economically active citizens (i.e. workers or self-employed persons), an additional and apt legal basis could be Article 48 TFEU, which requires the ordinary legislative procedure.

3.5. The personal scope

Article 4 of the Proposal identifies the categories of persons to whom the directive shall apply, and hence people that may be entitled to avail of the benefits provided for on foot of the cards.

submitted here, however, that, this addition would **not** change the position of students moving to another Member State in relation to social security and social assistance. See EUD, 2023, *EUD Position on the European Commission's Proposal for a Directive establishing the European Disability Card*, p. 4, available at:

<https://www.eud.eu/euds-welcomes-the-european-commissions-proposal-for-a-directive-establishing-a-european-disability-card/>.

²⁹⁵ EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, para. 1.8, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>. See *supra* chapter 1.

²⁹⁶ This initial assessment was already included in Ferri, D., 2023, *Op-Ed: "The Road towards a 'European Disability Card'"*, EU Law Live, available at: <https://eulawlive.com/op-ed-the-road-towards-a-european-disability-card-by-delia-ferri/>.

²⁹⁷ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

²⁹⁸ EBU, 2023, *Analysis of the Proposed Directive for a European Disability Card and a European Parking Card for persons with disabilities EBU position paper October 2023*, p. 4, available at: <https://www.euroblind.org/sites/default/files/documents/EBU%20position%20paper%20Oct%202023%20European%20Disability%20Card%20proposal.pdf>.

3.5.1. Persons with disabilities versus beneficiaries

The current text of Article 3 lett. c) provides a broad definition of persons with disabilities which fully aligns with the CRPD²⁹⁹. The Proposal represents the latest evidence that the **social-contextual concept of disability** and the wording of the CRPD have trickled down into EU law, both in CJEU case law³⁰⁰ and in legislation³⁰¹. In this respect, the Proposal further contributes to "Europeanise" the social-contextual notion of disability provided for in Article 1 CRPD³⁰².

However, the **actual beneficiaries** of the European Disability Card **are not persons with disabilities as defined by Article 3** of the proposed text. Rather, they will be **Union citizens** 'whose **disability status is recognised by the competent authorities in the Member State of their residence** by means of a certificate, a card or any other formal document issued in accordance with national competences, practices, and procedures'. In a similar fashion, beneficiaries of the parking card are those 'whose rights to parking conditions and facilities reserved for persons with disabilities are recognised in their Member State of residence by way of a parking card or another document issued'.

As noted in previous research, given that the disability assessment is a gateway to public resources, 'assessment criteria used to determine disability status are among the main mechanisms for rationing public spending in the Member States'³⁰³. The recognition of disability status and national definitions of disability or disability status for the purpose of accessing benefits are generally more restrictive than the social-contextual notion of disability provided in Article 1(2) CRPD and recalled in Article 3 of the proposed Directive. This means that the **definition included in Article 3 of the Proposal is actually immaterial to the scope of application** of the European Disability Card and the European Parking Card.

As already noted, given the differences in assessment across the Member States³⁰⁴, in practice a person that qualifies as beneficiary of the card(s) in a Member State **may not** qualify in a different Member State. As noted by previous research, 'this has great benefits but also raises questions of equity between citizens resident in different Member States'³⁰⁵. It has been pointed out that a person with disabilities who is ineligible for a European Disability Card in their own Member State might be unable to access benefits and concessions in a host Member State, where they would have qualified for one if they applied as a resident there³⁰⁶.

However, it is a significant advancement that, when a person is a card holder in their country of residence, they will enjoy access 'on equal terms and conditions as those provided to persons with disabilities who are holders of a disability certificate, disability card or any other formal document recognising their disability status in that Member State' (Article 5 of the Proposal). Further, the

²⁹⁹ Article 3 of the Proposal reads as follows: "persons with disabilities" means persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

³⁰⁰ Joined Cases C-335/11 and C-337/11, [HK Danmark](#), ECLI:EU:C:2013:222. Among others see also Case C-354/13, [Fag og Arbejde \(FOA\), acting on behalf of Karsten Kaltoft v Kommunernes Landsforening \(KL\), acting on behalf of the Municipality of Billund](#), ECLI:EU:C:2014:2463.

³⁰¹ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70, available at: <https://eur-lex.europa.eu/eli/dir/2019/882/oj>.

³⁰² Ferri, D. and Šubic, N., 2023, *The European Union: Federal Trends in Disability Rights*, in Ferri, D., Palermo, F. and Martinico, G. (eds), 2023, *Federalism and the Rights of Persons with Disabilities: The Implementation of the CRPD in Federal Systems and Its Implications*, Hart Publishing.

³⁰³ Priestley, M., 2022, *Disability assessment, mutual recognition and the EU Disability Card, progress and opportunities*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, p. 18, available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397).

³⁰⁴ Ibid. p. 43 *et seq.*

³⁰⁵ Ibid. p. 72 *et seq.*

³⁰⁶ Ibid. p. 72 *et seq.*

European Disability Card may be particularly helpful for those Union citizens with invisible disabilities, which might have had greater difficulties in accessing certain preferential conditions in host Member States without an accepted evidence of their disability status. This has been highlighted by various OPDs such as Autism Europe³⁰⁷, Rare Diseases Europe (EURORDIS)³⁰⁸, and Alzheimer Europe³⁰⁹. Autism Europe also indicated that the card **'would promote awareness of invisible disabilities such as autism'**³¹⁰.

3.5.2. EU citizens and third country nationals: the Proposal and the Follow-up Proposal

As noted above, Union citizens who have their disability status recognised under national law are the primary recipients of both the cards. In line with Article 20 TFEU, Article 3 lett. a) of the Proposal recalls that 'Union citizen' means any person having the nationality of a Member State. The Proposal as such does not include third country nationals who are resident in a Member State and have their disability recognised by that Member State.

However, as mentioned above, on **31 October 2023**, the Commission released an additional **proposal for a directive extending the European Disability Card and the European Parking Card to third country nationals legally residing in a Member State** (Follow-up Proposal)³¹¹. Notably, the Commission had mentioned the possibility of expanding the beneficiaries of the cards to third country nationals 'legally staying or residing in the territory of a Member State and that are entitled to travel to other Member States in accordance with Union law' in the Explanatory Memorandum of the Proposal released on 6 September³¹². Thus, the Follow-up Proposal is in line with that commitment.

The Commission did not carry out an additional IA for this Follow-up Proposal, as the IA Report had already assessed the situation of persons with disabilities travelling for short periods in the EU, including third country nationals.

The explicit aim of this Follow-up Proposal is to make it easier for persons with disabilities, who are third country nationals legally residing in the territory of a Member State and whose disability status has been recognised by that Member State, to travel across the EU. Furthermore, as noted in the Explanatory Memorandum, the Follow-up Proposal

'will help simplify the burden for Member States while respecting their national equal treatment and non-discrimination obligations vis-à-vis third country nationals with disabilities legally residing in their territory'³¹³.

The rules laid out in this Follow-up Proposal will not affect general rules governing the mobility of third country nationals. In that regard, the Explanatory Memorandum to the Follow-up Proposal

³⁰⁷ See particularly the statement of Autism Europe at:

<https://www.autismeurope.org/blog/2023/04/28/provide-your-feedback-on-the-future-eu-disability-card-until-5-may-2023/>.

³⁰⁸ See the words of Raquel Castro, Social Policy and Initiatives Director at EURORDIS, available at:

<https://www.eurordis.org/eurordis-response-disability-card/>.

³⁰⁹ Alzheimer Europe, 2023, *Contribution to the Call for Evidence*, available at:

<https://www.alzheimer-europe.org/policy/positions/european-commission-eu-disability-card>.

³¹⁰ See at <https://www.autismeurope.org/blog/2023/04/28/provide-your-feedback-on-the-future-eu-disability-card-until-5-may-2023/>.

³¹¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State*, COM(2023) 698 final, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:698:FIN>.

³¹² European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>. Emphasis added.

³¹³ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State*, COM(2023) 698 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:698:FIN>.

emphasises that **respect for the principle of subsidiarity** is ensured, highlighting the **cross-border dimension** of the problem addressed.

For the purpose of the Follow-up Proposal, third country nationals are defined as:

'any person who is neither a Union citizen within the meaning of Article 20(1) TFEU nor a family member of a Union citizen exercising his or her right of free movement within the meaning of Articles 2(2) and (3)(2) of Directive 2004/38/EC, and who are legally residing in the territory of a Member State and is entitled to move or travel to other Member States in accordance with Union law'³¹⁴.

Similarly to the proposed directive, the Follow-up Proposal emphasises that the rules will apply for those eligible for short stays, within the limits of the Schengen Agreement³¹⁵.

The Follow-up Proposal is based on Art. 79(2) lett. b) TFEU. This provision grants to the EU the power to adopt measures on the definition of the rights of third country nationals residing legally in a Member State, comprising the conditions under which such persons may enjoy rights of free movement in other Member States. Notably, the territorial scope of measures adopted under Article 79 TFEU is determined by the UK and Ireland Protocol³¹⁶ and the Denmark Protocol³¹⁷. None of the measures adopted under this Article apply to Denmark³¹⁸. Ireland has the option to 'opt-in' to any of the measures enacted pursuant to this Article, and may notify the Council, within three months after the initiative has been presented, or at any time after its adoption, that they wish to take part in the adoption and application of any such proposed measure.

3.5.3. Other beneficiaries

Article 4 of the Proposal identifies other categories of people to whom the directive would apply.

It establishes that other beneficiaries of the special conditions afforded to card holders (if so provided in the Member State) are family members of Union citizens 'whose disability status is recognised by the competent authorities in the Member State of their residence'.

Family member means, according to Article 3 lett. b) of the Proposal, 'a member of the family, whichever the(ir) nationality, of a Union citizen exercising his or her right to free movement in accordance with Union rules'. This definition seems, at first sight, broader than the notion of family member for the purpose of the EU Citizenship Directive³¹⁹, which had already slightly widened the concept of family in comparison to the one adopted in the Migrant Workers Regulation³²⁰. The definition of family member included in the EU Citizenship Directive includes the spouse, 'the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent

³¹⁴ Article 3 of the Follow-up Proposal.

³¹⁵ Recital 4 of the preamble of the Follow-up proposal.

³¹⁶ Protocol (no 21) on the position of The United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, [2016] OJ C 202/295, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F21>.

³¹⁷ Protocol (no 22) on the position of Denmark, [2012] OJ C 326/299, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F22>.

³¹⁸ Recital 7 of the preamble of the Follow-up Proposal.

³¹⁹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

³²⁰ Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] L 257/2 available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31968R1612>. See Milios, G., 2020, *Defining 'Family Members' of EU Citizens and the Circumstances under Which They Can Rely on EU Law*, 39 Yearbook of European Law, pp. 293–319, available at: <https://doi.org/10.1093/yel/yeaa009>.

to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State', the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner, the dependent direct relatives in the ascending line and those of the spouse or partner³²¹.

The notion of family, and consequently of family member, might entail a rather broad margin of appreciation for Member States. Furthermore, the notion of family member in the current text does not seem to encompass partners with whom the EU citizen has a durable relationship which is duly attested (for which Article 3(2) lett. b) of the EU Citizenship Directive provides that the host Member State shall *facilitate* entry and residence in its territory). However, partners might still fall within the beneficiaries of the proposed directive when they are 'accompanying or assisting' card-holders, as per Article 4 lett. a).

Finally, it is important to note that **personal assistants**, as defined in Article 3 lett. d) of the Proposal, **also fall within the scope of the directive**. According to Article 3 lett. d), a personal assistant 'is a person accompanying or assisting persons with disabilities who is recognised in accordance with the national legislation or practices as such'. Given the reference to national law, this provision may potentially give rise to discrepancies across the Member States. However, those who are not formally recognised as personal assistants may still fall within the scope of the directive within the residual and broader category of 'person(s) accompanying or assisting them'.

A final positive note can be made about the terminology used. It is significant that the proposed text does not use the word 'carer' or 'caregiver' which could have hinted at the idea of persons with disabilities as dependent on assistance, or as passive recipients with limited agency or object of charity. The reference to personal assistants, and generally to people accompanying and assisting persons with disabilities, is consistent with the CRPD.

3.6. Obligations of Member States

Being a directive, the Proposal requires Member States to take a range of necessary measures to introduce and issue the cards, ensure mutual recognition, but also to ensure that the card is used effectively and to provide information. Further they have to ensure enforcement mechanisms in case of non-compliance. Those provisions are included in Chapters II, III and V and are discussed below.

3.6.1. Introduction of the European Disability Card and of the European Parking Card

According to Article 6(1) and Article 7(1) of the Proposal, each Member State shall introduce the European Disability Card and the European Parking Card.

As will be discussed in chapter 4, both cards must follow the common standardised formats set out in the annexes to the current text. Member States will have to introduce 'digital features in physical cards using electronic means addressing fraud-prevention'. Requirements concerning the digital features will be laid down by the Commission in implementing acts concerning the technical specifications provided in Article 8.

As per Articles 6(3) and 7(3) of the Proposal, further to the introduction of the cards, Member States will have to designate and empower **competent authorities to issue, renew or withdraw** the European Disability Card and European Parking Card in accordance with their national rules, procedures and

³²¹ Article 2 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

practices, provided the respect of the GDPR³²². In that regard, the competent authority responsible for issuing the cards for persons with disabilities will be considered the data controller. In compliance with the GDPR, the data controller governs the purposes for which, and the means by which, personal data are processed. The Proposal also clarifies that 'cooperation with external service providers shall not exclude any liability on the part of a Member State' for breach of the GDPR or more generally data protection.

Article 10 of the Proposal requires Member States to **notify to the Commission the competent authorities designated**. This is an important obligation, but the text could also explicitly provide for the creation of a database whereby competent authorities are listed. As will be further discussed in chapter 4, and as per the request of OPDs, an EU-level centralised database in all EU languages, including sign languages, showing all relevant information related to the cards would be appropriate³²³.

Article 6(4) of the Proposal establishes that 'the European Disability Card shall be issued or renewed by the Member State of residence directly or upon application by the person with disabilities', while for the European Parking Card Article 7 only provides for the card to be issued 'upon application by the person with disabilities'. While the use of the word '*directly*' in Article 6(4) is unclear, it seems to allude to the European Disability Card being issued automatically and independently from a request of the person. As noted by EDF, the use of the card should be 'fully voluntary' to avoid stigmatisation. To accomplish requests of OPDs, the directive should make clear 'that there should be no direct issuing of the Card unless the person has asked for it or explicitly agreed to have the Card issued or renewed automatically'³²⁴.

Notably, Articles 6 and 7 also diverge with regard to the timing of issuing and renewing the cards. The European Disability Card might be 'issued and renewed within the same period set in the applicable national legislation for issuing disability certificates, disability cards or any other formal document recognising the disability status of a person with disabilities' (Article 6(4) of the Proposal). By contrast, the European Parking Card must be issued or renewed within a reasonable period not exceeding 60 days from the date of the application. The latter provision entails a higher level of harmonisation compared to the European Disability Card, and seems to take into account consolidated practices (and dysfunctionalities that have emerged in the past).

Finally, it is worth noting that Article 6(6) requires the validity of the European Disability Card issued by a Member State to be 'at least *for the same duration* as that of the disability certificate, disability card or any other formal document with the longest duration recognising their disability status', while nothing is specifically established for the European Parking Card. In this respect, an additional paragraph could be added to Article 7 to address the validity of the European Parking Card and increase legal certainty and harmonisation.

³²² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119/1, available at: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

³²³ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

³²⁴ Ibid.

3.6.2. Mutual Recognition

According to Article 5(1) of the Proposal, Member States:

'shall take the **necessary measures** to ensure that holders of a European Disability Card, while travelling to or visiting a Member State other than that of which they are a resident, shall be granted access on equal terms and conditions as those provided to persons with disabilities who are holders of a disability certificate, disability card or any other formal document recognising their disability status in that Member State, to any special conditions or preferential treatment offered with respect to the services, activities and facilities referred to in Article 2(1)'.

A similar wording is used with reference to the European Parking Card in Article 5(2). Each Member State will have room for manoeuvre in deciding what those necessary measures are, taking into account the national context. As noted above, and as explicitly provided in Article 1(3) of the current text, each Member State retains the power to decide who is eligible, according to their national definitions and assessment procedures.

Article 6(2) and 7(2) of the Proposal further specify that the cards '**issued by Member States shall be mutually recognised in all Member States**'.

3.6.3. The role of Member States in ensuring accessibility of information and awareness-raising

Among the provisions under discussion in this section, the most problematic is Article 9 of the Proposal. This provision compounds a series of obligations, bringing together different issues of surveillance, accessibility, provision of information and general awareness-raising activities. It is a lengthy provision which the co-legislators could consider amending. Furthermore, there seems to be no explicit role for the EU (particularly the Commission) in terms of supporting Member States or providing coordination. Although, arguably, the Disability Platform might be the *locus* for providing coordination and sharing of best practices and experiences, there would be scope for the proposed directive to provide more formal mechanisms that allow the EU to support the deployment of the card by the Member States. It is also evident that the current text **disregards** the input received from OPDs and the reiterated **request** emerging in the CfE **for an EU database or website** providing clear information, as well as for an EU-wide system to support and monitor the implementation of the European Disability Card³²⁵.

First, according to Article 9(1) of the Proposal, Member States:

'shall make the conditions and rules, practices, and procedures to issue, renew or withdraw a European Disability Card and a European Parking Card for persons with disabilities publicly available in accessible formats, including in digital formats, and upon request in assistive formats requested by persons with disabilities'.

This provision, however, **does not give any further indication on where and how those conditions and rules, practices, and procedures should be made available**. It clearly leaves a wide room for manoeuvre to Member States and does not incentivise any coordination nor cooperation. **No role for the EU is carved out in this respect, while an EU website or repository** could instead be explicitly provided for in the directive, as will be further discussed in chapter 4.

³²⁵ See *supra* chapter 1.

Secondly, Article 9(2) of the Proposal obliges Member States to:

'take **appropriate measures to raise awareness** among the public and inform persons with disabilities, including in accessible ways, about the existence and conditions to obtain, use, or renew the European Disability Card and the European Parking Card for persons with disabilities'.

No indication of the type of measures to be adopted is given. Article 9(7) only establishes that the information referred to in paras. 1 and 2 of this Article:

'shall be made available **free of charge in a clear, comprehensive, user-friendly and easily accessible way**, including through private operators' or public authorities' official website where available, or by other suitable means, in accordance with the relevant accessibility requirements for services set in Annex I of Directive (EU) 2019/882'.

Another drawback of this provision is that it does not mention the important function that OPDs could play when it comes to awareness-raising and information, nor does it require or encourage Member States to involve OPDs in that regard.

3.6.4. The role of Member States in ensuring surveillance and compliance

Article 9(3) and (4) of the Proposal concern **surveillance activities**. They require Member States 'to take all necessary steps to avoid the risk of forgery or fraud and shall actively combat the fraudulent use and forgery of' the cards, to ensure that holders 'return their cards to the competent authority once the conditions under which they were issued are no longer fulfilled'. Linked to those provisions is Article 9(5) which requires Member States to:

'take the necessary measures to ensure that in case they encounter cases of abuse or misuse of the cards issued by another Member State on their territory, the competent authorities in the Member State who issued the European Disability Card or European Parking Card for persons with disabilities are informed'.

This provision should stimulate cooperation, but could be better **supported by dedicated mechanisms coordinated at the EU level** to allow for a smooth exchange of information, possibly through fully digitalised processes. The Disability Platform might offer a bedrock to support coordination, but the Commission might consider other soft mechanisms to enhance specific coordination and provide technical assistance.

The Proposal attempts to ensure that the cards are effective. To that end Member States will have to carry out 'checks on compliance with the obligations deriving from the European Disability Card or European Parking Card' (Article 9(3) of the Proposal).

3.6.5. Enforcement

Member States must guarantee that **adequate and effective means** exist to ensure compliance with the proposed directive. Article 13 of the Proposal requires Member States to provide for persons with disabilities to be able to take action under national law before national courts or before the competent administrative bodies in case of violations of their rights. It will remain up to the Member States to decide whether, for example, to carve out a role for Equality Bodies in this respect.

Article 13 also requires Member States to empower 'public bodies or private associations, organisations or other legal entities which have a legitimate interest in ensuring that the provisions of this Directive are complied with' to take action. This is a particularly important aspect as it **would allow OPDs to bring actions within the boundaries established by national law and actively contribute**

to making the European Disability Card and the European Parking Card effective.

Article 14 obliges Member States to put in place 'effective, proportionate and dissuasive' penalties. This wording is consistently used across EU legislation, and the three concepts of effectiveness, dissuasiveness and proportionality are deemed closely correlated³²⁶. An effective penalty is one that guarantees that, despite the infringement, the goal of the directive is achieved. A dissuasive penalty is one that, because of its severity and the risk it represents for offenders, has a deterrent effect³²⁷. A penalty must be proportionate, i.e. appropriate to attain the objectives set by the legislation in question and does not go beyond what is necessary in order to attain these objectives. Penalties should also be 'accompanied by remedial action'.

It is evident that Member States are left with wide room for manoeuvre in relation to enforcement and penalties. In other fields, such as non-discrimination, similar provisions have given rise to a wide variety of approaches³²⁸. It will be important to **monitor enforcement procedures and penalties. Lengthy and costly judicial procedures and low levels of compensation may dissuade persons with disabilities to take a case** regarding the non-recognition of the card by service providers, and act as a disincentive for victims to bring complaints. If service providers face a very low risk to be sued for lack of compliance with national norms transposing the directive, or more generally for failing to recognise the disability status on the basis of the European Disability Card or the European Parking Card, the overall effectiveness of the enforcement system is called into question.

3.7. The role of the Commission in the deployment of the cards

The Proposal carves out an important role for the Commission in relation to the adoption of implementing and delegated acts³²⁹.

Box 7: Delegated and implementing acts

Delegated and implementing acts

Delegated acts, i.e. '**non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act**', are provided for and governed by Article 290 TFEU. Implementing acts are also 'non-legislative acts' and are regulated in Article 291 TFEU. While delegated acts are considered quasi-legislative in nature, as they supplement or amend non-essential elements of the basic legislation, implementing acts entail a practical implementation of existing legislative rules. It is within the EU legislature's discretion to decide to confer a delegated power onto the Commission pursuant to Article 290(1) TFEU or an implementing power pursuant to Article 291(2) TFEU.

In substance, the current Proposal leaves it to the Commission to 'flesh out' the details of the digital features of the cards and to ensure the use of an instrument that can be updated quickly to take into account technological developments. In the case of the proposed directive, hence, the choice of

³²⁶ Case C-383/92, *Commission v United Kingdom*, ECLI:EU:C:1994:234, para. 42.

³²⁷ Case C-81/12, *Asociația Accept*, ECLI:EU:C:2013:275.

³²⁸ Iordache, R. and Ionescu, I., 2021, *Effectively enforcing the right to non-discrimination. Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives*, European Commission, Directorate-General for Justice and Consumers, Brussels, pp. 6, 38, available at: <https://www.equalitylaw.eu/downloads/5570-effectively-enforcing-the-right-to-non-discrimination-1-02-mb>.

³²⁹ Loewenthal, P.-J., 2019, *Article 290 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi.org/10.1093/oso/9780198759393.003.434>.

providing for delegated and implementing acts seems appropriate due to the specific technical nature of the provisions to be laid out by the Commission.

First, delegated acts are meant to supplement the directive, in order to set the digital format of the European Disability Card and European Parking Card for persons with disabilities to ensure interoperability, amend the Annexes concerning technical specification of the format³³⁰, as well as to deploy digital features (Article 6(7) and 7(7) of the Proposal). According to Article 8 implementing acts will be establishing 'common technical specifications for further specifying the formats of the European Disability Card and European Parking Card' and ensure security and compliance with most updated digital features.

Overall, for the proposed directive to be effective it will not only have to be transposed at the national level, but also to be complemented by secondary legislation, which is key to determine the requirements of the cards.

The Commission, alongside delegated and implementing powers, has also important monitoring competence. It is required to submit to the EP, the Council, the EESC and the Committee of the Regions (CoR) a report on the application of the directive. Such report must appraise the use of the European Disability Card and European Parking Card 'with a view to assessing the need to review this Directive'. Notably, according to Article 16(4) of the Proposal, the Commission's report:

'shall take into account the viewpoints of persons with disabilities, economic stakeholders and relevant non-governmental organisations, including organisations representing persons with disabilities'.

The latter obligation is key to comply with Article 4(3) CRPD and Article 33(3) CRPD which require for persons with disabilities and their representative organisations to be involved in monitoring the implementation of the CRPD. It is also key to ensure that beneficiaries of the cards have a say on the way in which the cards are deployed, and in shaping future policy developments.

The EUD has suggested a specific 'EU Disability Card Monitoring Body is established at EU level' to promote the full implementation of the Card in all Member States³³¹. However, creating an additional *ad hoc* body might require careful consideration in terms of its legal standing and qualification, relationship with existing bodies, and its composition. The Disability Platform might play an important role in monitoring the implementation of the proposed directive and this might be better highlighted in the Proposal.

³³⁰ The delegation of a power to 'amend' a basic legislative act is allowed whereby the Commission can modify or repeal non-essential elements (such as the Annexes) laid down in that act. See Loewenthal, P.-J., 2019, *Article 290 TFEU*, in Kellerbauer, M., Klamert, M. and Tomkin, J. (eds), 2019, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, New York, online edn, available at: <https://doi.org/10.1093/oso/9780198759393.003.434>.

³³¹ EUD, 2023, *EUD Position on the European Commission's Proposal for a Directive establishing the European Disability Card*, p. 11, available at: <https://www.eud.eu/euds-welcomes-the-european-commissions-proposal-for-a-directive-establishing-a-european-disability-card/>.

4. KEY FEATURES OF THE EUROPEAN DISABILITY CARD AND THE EUROPEAN PARKING CARD

KEY FINDINGS

The European Disability Card and the European Parking Card will have to be issued in a physical and digital format. Digital features will have to be embedded in physical cards.

General requirements of the physical format of the cards are laid out in Annexes I and II of the Proposal. The format of the European Disability Card is laid out in Annex I and builds on the format already used in the Pilot Project. The Card will have credit card type size, will use a common design and include the EU logo. Information on the front of the Card will be in English. A similar format with different design and colours is provided in Annex II for the European Parking Card.

The requirements of the digital format of both cards will be determined by delegated acts to be adopted by the Commission. As provided by Article 8 of the Proposal, the Commission will also adopt implementing acts establishing common technical specifications.

The Proposal does not provide for an EU-wide website, and leaves entirely to Member States the task to provide information about the conditions and rules, practices, and procedures to issue, renew or withdraw a European Disability Card and a European Parking Card. This opens up to discrepancies and information asymmetries in the Member States.

The Proposal does not provide any role for EU institutions when it comes to awareness-raising campaigns. This is a significant gap, and EU-wide engagement will be key to support the deployment of the card and ensure its success.

Although the Proposal is silent on it, the European Accessibility Resource Centre *AccessibleEU* has a role to play in supporting Member States in providing information in accessible formats, and facilitating the exchange of best practices related to special conditions and benefits. *AccessibleEU* could also significantly support service providers and advice on appropriate special conditions.

The Proposal does not include a specific provision on funding. The extent to which EU funding will support the deployment of the cards and the implementation of the proposed directive is unclear.

On foot of the legal analysis of the text of the Proposal laid out in chapter 3, this chapter zooms in on the **key features** of the European Disability Card and the European Parking Card with regard to the format. It then discusses issues related to the **provision of information** on the 'conditions and rules, practices, and procedures to issue, renew or withdraw a European Disability Card and a European Parking Card', as laid out in Article 9(1) of the Proposal. It also examines the weaknesses of the current Proposal in relation to **awareness-raising campaigns**. Finally, this chapter outlines issues related to the **financial costs** associated with the issuing of the cards. It also briefly engages with funding issues, although, at present, no provision is included in the text in that regard.

4.1. The format of the cards

Although several technical specifications will be laid out in dedicated implementing acts envisaged in Article 8 of the Proposal, and the digital format of both cards will be specified by means of delegated acts, the current text does include several indications when it comes to the format of the cards. These will be examined below.

4.1.1. A physical and digital format

First, according to Article 6(5) of the Proposal, the European Disability Card will have to be issued in both a **physical and digital format**. A similar provision is established for the European Parking Card as per Article 7(6). Both formats will have to comply with relevant accessibility requirements and be fully accessible. Further, the proposed directive lays out the requirement to embed digital features in physical cards using electronic means addressing fraud-prevention (Article 6(1) and 7(1) of the Proposal)³³². This choice, as noted in chapter 3, complies with the reiterated requests of OPDs,³³³ as well as with the EESC Opinion³³⁴.

In terms of both physical and digital format, the IA Report highlights that there is the opportunity to build 'on other comparable instruments providing for an EU model format already in place: amongst others, the European Health Insurance Card, the Community model for national driving licences and the European Student Card'³³⁵. The most recent experience with COVID certificates might offer additional insights on solutions that may work well. Further, the Pilot Project could be referred to in order to understand what solutions were perceived most functional by persons with disabilities and other stakeholders. Remarkably, the study assessing the Pilot Project notes that the apposition of the EU logo allowed for the Card to be perceived 'as a trustworthy identification document by service providers, thus increasing its acceptance and recognition across the EU'³³⁶.

As laid down in Article 6(5) and 7(6) of the Proposal, **persons with disabilities shall be given the option to use either the digital or physical card, or both**. This meets the requests of OPDs³³⁷ as well as the explicit call of the EESC³³⁸.

Further, it is worth recalling that the European Disability Card will not replace existing national disability certificates or cards, as it is apparent from Article 6(4) of the Proposal. The new European Parking Card, by contrast, will replace existing EU Parking Cards (Article 7(5) of the Proposal). In that connection, Article 17 of the Proposal establishes the obsolescence of Council Recommendation 98/376/EC.

4.1.2. The physical format

At present, general **requirements of the physical format of the cards are laid out in Annexes I and II**. The current Proposal clearly takes into account the pressing need for a common graphical layout, which emerged in the two-phase consultation process³³⁹.

The format of the European Disability Card as laid out in Annex I builds on the format already used in the Pilot Project. The Card will have credit card type size, will use a **common design** and include the

³³² See also Annex I, point 10. And Annex II point 5. European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³³³ See *supra* chapter 1

³³⁴ EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>. See *supra* chapter 1.

³³⁵ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³³⁶ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 109, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

³³⁷ Fobe, A., 2023, *Equality for persons with disabilities on the move*, available at: <https://www.socialeurope.eu/equality-for-persons-with-disabilities-on-the-move>.

³³⁸ EESC, 2023, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, SOC/765-EESC-2023, [2023] OJ C 228/71, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

³³⁹ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 81, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

EU logo. **Information on the front of the Card will be in English.** Annex I also provides that national information in the national language may be included, and leaves this decision to the issuing Member State. Personal data of the cardholder will include a photo, name, surname, date of birth, along with the Card's serial number and the expiry date.

A similar format with different design and colours (blue and yellow) is provided in **Annex II** for the **European Parking Card**. Alongside personal data of the cardholder, where the card will be associated to a vehicle, the number plate of such vehicle will be visible.

Digital features will have to be embedded in the physical cards. Those might take the form of a **Quick Response (QR) code** (which is a type of two-dimensional matrix barcode) that certifies the authenticity of the card and prevents fraud. QR codes have become quite widespread and can be read and scanned by smartphones or tablets with the appropriate application. They are pictographic hyperlinks that can be embedded in the physical environment, and, when scanned, open a specific page which allows to retrieve additional information. The use of a QR code was also suggested by the EESC³⁴⁰ and the IA Report³⁴¹. Other security features mentioned in the IA Report include 'hologram[s] associated to a unique identified number to prevent card duplication' and 'relief structure[s] in the form of scannable embossed alpha numerical information such as Braille printing'³⁴². Existing EU Parking Cards in some Member States already embed digital features, and these practices could be looked at in order to ascertain what has worked best so far³⁴³.

4.1.3. Data protection

The Proposal highlights the importance of **data protection** in the issuing of the card. Recital 27 of the preamble states that data concerning the card holder's disability status, constitutes 'data concerning health' within the meaning of the GDPR, and Member States must ensure its protection, and more generally 'security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this directive' (Article 6(3) of the Proposal). In that regard, the competent authority responsible for issuing the cards will be considered the data controller³⁴⁴. While the text is silent in that regard, it is expected that National Data Protection Authorities (DPAs), i.e. independent public authorities that supervise the application of data protection law, will exert an important role in controlling that data collection, in procedures related to the issuing and renewal of the card, respects the GDPR and relevant provisions on privacy.

The cards will only include limited personal data as indicated in the Annexes. According to Article 6(1) and 7(1) of the Proposal, the digital storage medium shall not contain more personal data than the data provided for in the physical format.

³⁴⁰ EESC, 2023, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, SOC/765-EESC-2023, [2023] OJ C 228/71, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

³⁴¹ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 153, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁴² European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 17, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁴³ The IA Report recalls that: '10 Member States are already using a hologram to prevent forgery of the Card, and in addition, 3 are using a QR code and 3 are using a bar code'. See European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 39, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁴⁴ See *supra* chapter 3.

Importantly, as praised by EDF, the European Disability Card will 'respect a person's privacy and will **not have any detailed information about the type of disability or "level" of disability**'³⁴⁵. This is certainly important and aligns with the social-contextual understanding of disability embedded in the definition included in Article 3 lett. c) of the Proposal. However, interestingly, EUD, in its recent position paper, presents a different recommendation³⁴⁶. Specifically, EUD recommends that a person applying for the card has 'a choice of what to include about their disability on the Card, e.g. disability type, in the most suitable manner'³⁴⁷. They suggest that those information might be stored digitally and retrieved through a QR code which could also 'link to information about the sort of accessibility and reasonable accommodation measures required for that type of disability'³⁴⁸. The solution argued by EUD would seem to require a textual modification of the current wording of Article 6(1) and 7(1) of the Proposal to allow the digital storage medium to include more information than the physical card. Further, this solution might be problematic in that it may reveal to the service provider information that are immaterial to the special treatment or benefit in question. While this information might be useful to service providers in order to indicate which benefit, among the available special conditions or concessions or benefits in kind, is the most suitable for the person, this might not be essential. Further, in cases of free entrance to museums or discounts on specific charges, this information would be irrelevant.

Ultimately, as already noted, it will be up to the delegated and implementing acts to tease out these issues. However, **input from OPDs as well as input from experts on digital systems** in the elaboration of the technical specifications will be important to ensure a balance between data protection and effectiveness of the cards. The European Accessibility Resource Centre - **AccessibleEU** could also provide important **insights on accessibility features of the cards**³⁴⁹.

4.2. Information about the cards and awareness-raising

As mentioned in chapter 3, the current text of the Proposal leaves entirely to Member States the responsibility to make information about the cards and related procedures available and accessible. It also leaves to Member States to organise awareness-raising campaigns. This approach disregards the strong request from OPDs and from the EESC³⁵⁰ for an EU role when it comes to information provision and awareness-raising. It also ignores the important role that OPDs may play in supporting awareness-raising, although nothing in the current Proposal prevents Member States from providing, in their national legislation, for an actual involvement of representative organisations in this respect.

4.2.1. Information about the cards and relevant procedures

As discussed in chapter 3, according to Article 9(1), read in combination with Article 9(7) of the Proposal, Member States 'shall make the conditions and rules, practices, and procedures to issue, renew or withdraw a European Disability Card and a European Parking Card' available, fully accessible and free of charge for persons with disabilities. However, this provision **does not give any further indication on where and how those conditions, rules, practices, and procedures should be made available**.

³⁴⁵ See EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

³⁴⁶ EUD, 2023, *EUD Position on the European Commission's Proposal for a Directive establishing the European Disability Card*, p. 4, available at: <https://www.eud.eu/euds-welcomes-the-european-commissions-proposal-for-a-directive-establishing-a-european-disability-card/>.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ See AccessibleEU at: https://accessible-eu-centre.ec.europa.eu/index_en.

³⁵⁰ See *supra* chapter 1.

It is evident that the Proposal leaves a wide room for manoeuvre to Member States to require the creation of a specific page on the website of the authorities that will be deemed competent to issue the cards, or set up either a dedicated national website that focuses on the European Disability Card and the European Parking Card or two separate websites. While each Member State may opt for the practical solution that best suits the national context, this may lead to a variety of approaches as well as to information asymmetries across the EU.

The Proposal makes it clear that accessibility is to be guaranteed. This is also mandatory on foot of the WAD. However, the experience of the Pilot Project demonstrates that accessibility is not always ensured as it should. The study that assessed the Pilot Project indicated that 'whereas certain national Card's websites fulfil accessibility standards, such as the website of BE, FI and RO, others do not, like the one of CY'³⁵¹.

Article 9 of the Proposal does not incentivise any coordination, nor cooperation among the Member States. This might still be achieved within the Disability Platform, but it may be important to consider amending the provision to encourage Member States to cooperate in this regard. If the current text is not amended, **AccessibleEU would play a crucial role in supporting Member States**. Notably, it released, on **15 September 2023**, a **report on digital accessibility** which could represent an important point of reference for Member States (and service providers)³⁵². *AccessibleEU* could also serve as a *locus* for highlighting and exchanging best practices.

Yet, it would be vital for the EU legislator to consider amending the Proposal and provide for an **EU database**, or **dedicated EU website** or a **dedicated page of the existing EU website** to be set up. This EU database/website could collect and showcase information about national rules and procedures, as well as about benefits covered. This would increase equal access to information across the EU. The Pilot Project has already demonstrated that there were several information asymmetries across the participating Member States and the study assessing such Pilot indicates that:

'only the website of CY, MT, SI, and RO have all the benefits already listed in the national website, whereas for BE and FI only a list of participating service providers with their websites' links is available'³⁵³.

An **EU website would best ensure that information about the cards and relevant procedures is made available free of charge in a clear, comprehensive, user-friendly and easily accessible way and in all EU official languages as well as in the national sign languages and accessible formats**. The EESC already pointed to the need for an 'EU-wide website' to support consistent provision of information as well as for the necessity of EU-wide awareness-raising activities which couple with specific national awareness-raising campaigns³⁵⁴. The European Commission would be best placed to set up a dedicated **EU website, which clearly highlights the reasons, conditions, opportunities, purposes and limits of the Cards**. This point has been raised by OPDs at several junctures and should be considered³⁵⁵. Such website could be financed through dedicated EU funding.

³⁵¹ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 94, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

³⁵² AccessibleEU, *Accessible EU Report – Digital Accessibility*, available at: https://accessible-eu-centre.ec.europa.eu/system/files/2023-09/ACCESSIBLE%20EU%20REPORT%2003%20-%20Digital%20Accessibility.20230629.%20ok_acc_1.pdf.

³⁵³ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 94, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

³⁵⁴ EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, paras. 3.5, 3.6, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

³⁵⁵ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

Notably, Article 15 of the Proposal also requires Member States to ensure 'that private operators or public authorities **make information on any special conditions or preferential treatment pursuant to Article 5 publicly available in accessible formats**'. This information will have to be included on relevant websites of the providers in question, but could also be stored in the dedicated national website on the cards (at least with regard to special conditions offered by main public service providers) or, if it was to be set up, in the EU database. Once again, **AccessibleEU** may play an important role in guiding national operators and service providers, sharing with them best practices, and facilitating mutual learning.

4.2.2. Awareness-raising activities

To ensure the success of the European Disability Card and the European Parking Card, **carefully planned, widespread, thorough and understandable information campaigns are needed**. Article 9(2) of the Proposal leaves to Member States to enact awareness-raising activities. However, this may lead to information asymmetries across the EU. The study assessing the Pilot Project has shown that, in spite of having been quite costly, national awareness-raising campaigns proved rather ineffective³⁵⁶. It has also evidenced that such campaigns were patchy and very diversified in scope and tools across the participating Member States³⁵⁷.

It seems that **the European Commission would be best placed to deploy target campaigns to raise awareness among EU citizens and service providers**. EU-wide campaigns do not necessarily have to substitute national campaigns, but rather can complement them. These campaigns may feed into, or tally with, activities that are already in the disability agenda such as the Access City Award³⁵⁸.

Article 9 of the Proposal does not mention the **important function that OPDs could play when it comes to awareness-raising and information**, nor does it require or encourage Member States to involve OPDs in that regard. It would be important to amend the text to include a reference to the involvement of OPDs in awareness-raising.

4.3. Financial issues and funding of the cards

The text of the Proposal does not include any provision that specifically addresses the financial costs for Member States or the funding of the cards. Hence, this section endeavours to highlight some financial implications of the Proposal on the basis of the IA Report³⁵⁹, the Explanatory Memorandum and Legislative Financial Statement of the Proposal³⁶⁰, as well as on foot of the study assessing the Pilot Project³⁶¹.

³⁵⁶ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, p. 113, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

³⁵⁷ Ibid. pp. 55-56.

³⁵⁸ See Access City Award at: <https://ec.europa.eu/social/main.jsp?catId=1141>.

³⁵⁹ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁶⁰ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512> Emphasis added.

³⁶¹ European Commission, 2021, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits*, available at: <https://op.europa.eu/en/publication-detail/-/publication/4adbe538-0a02-11ec-b5d3-01aa75ed71a1/language-en>.

4.3.1. Financial issues

First, with regard to the **costs associated with the creation and deployment of the European Disability Card** (and, by this token, of the European Parking Card) for the Member States, evidence comes from the study assessing the Pilot Project. This study established that the production and delivery costs of the card 'are minimal even though they vary across countries'³⁶². The study specifically highlighted that:

'unit production costs ranged from €5 per Card in Finland to €0.14 per Card in Belgium and the cost of delivering the Card ranges between €0.5 in Malta and €2 per Card in Cyprus'³⁶³.

According to the study, some Member States reported no costs of updating the national website, such as Cyprus and Romania³⁶⁴. One of the major costs associated with the card, according to the study assessing the Pilot Project, was that of awareness campaigns³⁶⁵. However, as noted above, in spite of their cost, these awareness campaigns 'proved rather ineffective'³⁶⁶. Furthermore, the IA Report highlights that the cost concerning production, delivery, awareness campaigns, website creation and maintenance varies (at times quite significantly) across Member States³⁶⁷.

The Proposal considers that it will be of 'very limited budgetary' impact. The financial implications of the Proposal are primarily related to organisational costs of meetings at EU level and to checks of national transposition and compliance (including anti-fraud checks)³⁶⁸. In a similar vein, the Follow-up Proposal, released on 31 October 2023, states that it 'will not have any additional budgetary implications for the EU budget'³⁶⁹, and 'the only operational costs relate to the organisation of committee and expert group meetings, as well as support for the checks of national transposition measures, i.e. operational appropriation of EUR 0.62 million under existing budget line, as well as administrative expenditure of around EUR 0.342 million per year'.

The financial statement of the Proposal states that the Commission plans to fund the costs through the Multi-annual Financial Framework (MFF) 2021-2027 and considers the impact on the budget to be limited. It also states that the resources under the MFF would suffice to fully cover the budgetary implications through redeployment³⁷⁰. After 2027, the Commission expects the impact to remain low and to be integrated within the next MFF³⁷¹.

³⁶² Ibid. p. 7

³⁶³ Ibid. p. 7

³⁶⁴ Ibid. p. 94

³⁶⁵ Ibid. p. 94

³⁶⁶ Ibid. p. 94.

³⁶⁷ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁶⁸ European Commission, *Legislative Financial Statement of the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, pp. 6-8, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³⁶⁹ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State*, COM(2023) 698 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:698:FIN>.

³⁷⁰ European Commission, *Legislative Financial Statement of the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, pp. 7-8, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³⁷¹ Ibid. p. 7.

The Explanatory Memorandum preceding the Proposal makes clear that **some costs are expected for service providers** at the national level. However, those costs are expected to be **low**³⁷². This confirms the findings of the IA which showed that average costs for service providers will be relatively small and decrease with scale (i.e. roll out at EU level) and be offset by benefits³⁷³. This is also supported by the reports of service providers in pilot countries that experienced little costs and offsetting benefits including greater revenue³⁷⁴.

Finally, the Proposal is unclear (and for the most silent) when it comes to costs for card holders. In this respect, it would probably be important to clarify that Member States should make the cards, and all the relevant procedures to obtain them, available **free of charge to persons with disabilities**. As it stands, Article 9(7) of the Proposal only refers to information that shall be made available *inter alia* free of charge.

4.3.2. Funding and incentives

The Proposal **does not address issues related to the funding of the cards**, nor the particular incentives that the EU or Member States might put in place for service providers.

The lack of any specific provision entails that Member States would arguably be required to use national funding to deploy the cards. It disregards the call of the EESC 'to provide a funding instrument to set up the European Disability Card in all EU Member States'³⁷⁵. As it stands, it is unclear whether existing EU funding mechanisms, such as the Recovery and Resilience Facility, the Digital Europe Programme or the European Structural Funds might support the deployment of the cards. This may be seen as a gap of the Proposal, but the absence of specific norms does not prevent that some EU funding is used to support Member States in complying with all the obligations outlined in the proposed directive.

Finally, as noted earlier in the study, Article 15(2) of the Proposal requires Member States to 'encourage private operators or public authorities to *voluntarily* provide special conditions or preferential treatment for persons with disabilities'. It remains unclear how Member States should encourage those private providers. It seems that Member States could potentially use financial incentives within the limits of State aid rules. However, it is uncertain whether and to what extent EU funding might support the provision of financial incentives.

³⁷² European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, COM(2023) 512 final, p. 10, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0512>.

³⁷³ European Commission, *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities*, SWD(2023) 290 final, p. 97, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023SC0290>.

³⁷⁴ *Ibid.* p. 97.

³⁷⁵ EESC, *The European Disability Card (Rapporteur: Ioannis Vardakastanis, 27 April 2023)*, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

5. CONCLUSIONS AND RECOMMENDATIONS

KEY FINDINGS

The Proposal is symbolically and pragmatically significant and represents another milestone in the development of EU disability law, in the implementation of the CRPD and, more generally, in the protection of disability rights. The Proposal is underpinned by a social-contextual understanding of disability.

The Proposal has been largely welcomed by OPDs. Even though recent analysis released by the main umbrella organisations contend that the Proposal can be ameliorated, OPDs substantially endorse the Commission's initiative.

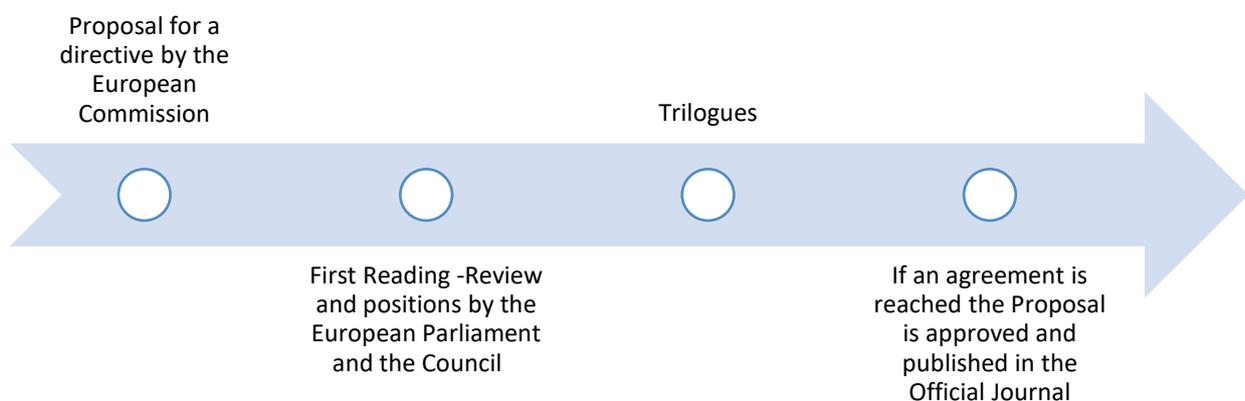
The text of the Proposal, as it currently stands, presents significant strengths, but also some weaknesses that can be addressed in the legislative phase.

The arguments presented in each of the preceding chapters are presented in the Executive Summary, but some cross-cutting concluding remarks are provided in this chapter.

5.1. Concluding remarks

On 6 September 2023 the much anticipated 'Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities' was released by the Commission. In the pre-legislative phase strong support for this initiative was expressed by all stakeholders as well as by EU institutions and national authorities. The Proposal, which is subject to the ordinary legislative procedure, is now in the hands of the Council of the EU and the EP, who are co-legislators and will have to agree on a final text. Informal interinstitutional meetings, known as 'trilogues', will support the reach of an agreement.

Figure 5: The legislative process



Source: Author's own elaboration, 2023.

The Proposal aims to address some of the barriers that persons with disabilities face when exercising their free movement rights, which related to the current lack of mutual recognition of disability status. It **does not harmonise disability assessments**. Rather, it is **based on the principle of mutual recognition of the disability status across the EU**. The European Disability Card and the European Parking Card will allow a limited 'portability' of a nationally recognised disability status in order to

access special treatments, facilities, concessions or benefits within the material scope of the proposed directive. Notably the Proposal has been supplemented by a Follow-up Proposal which aims to extend the cards to third country nationals legally residing in a Member State.

The option of using **binding legislation**, moving away from soft law, has been welcomed by OPDs³⁷⁶. Representative organisations and the EESC would have preferred the enactment of a regulation, which is directly applicable and does not need national transposition. However, the choice of a directive has raised, thus far, limited criticism and concerns³⁷⁷. Further, the decision of setting up the European Disability Card and the European Parking card with the same legislative instrument has been considered 'pragmatic'³⁷⁸ and appropriate to ensure a quick 'turnaround', at a critical political juncture with the looming European elections. Although this may hold true, opting for two different instruments would have possibly allowed the use of a directly applicable and more detailed regulation for the European Parking Card. Certainly, a **directive is more respectful of the principle of subsidiarity**, and, especially when it comes to a new instrument that is not in existence in all Member States such as the European Disability Card, **gives flexibility to Member States to take into account their specific national context**. A directive is also the only instrument that can be adopted on the basis of Article 53(1) TFEU. However, a **directive leaves room for differences and discrepancies among the Member States**. Further, even in the event of a timely transposition, the effects of a directive reach individuals through the implementing measures adopted by the Member States concerned, and thus are delayed in time.

The Proposal **does not merge the European Disability Card and the European Parking Card**. It **refrains from creating a unique multi-purpose disability card**, an option which had been pushed back by OPDs and the EESC. In fact, merging the two cards would have been unadvisable given their rather diverse scope and purpose, with the European Parking Card being relevant to people travelling by car only. Further, while not all Member States have a disability card, parking cards do exist in all Member States.

It is worth recalling that the **European Disability Card will not replace existing national disability certificates or cards**. The new European Parking Card, by contrast, will replace existing EU Parking Cards. In that connection, Article 17 of the Proposal establishes the obsolescence of Council Recommendation 98/376/EC.

The Proposal has been largely welcomed by OPDs. Even though recent analysis released by the main umbrella organisations contend that the Proposal can be ameliorated, OPDs substantially endorse the Commission's initiative. In fact, **the text of the Proposal**, as it currently stands, **presents significant strengths**, but also some **weaknesses** that are summarised below.

5.1.1. Strengths of the Proposal

The Proposal is **symbolically and pragmatically significant**. It represents another milestone in the development of EU disability law, in the implementation of the CRPD and, more generally, in the protection of disability rights. The Proposal is underpinned by a social-contextual understanding of

³⁷⁶ Fobe A., 2023, *Equality for persons with disabilities on the move*, available at: <https://www.socialeurope.eu/equality-for-persons-with-disabilities-on-the-move>. Fobe indicates 'What matters is that the Commission has heard the civil-society organisations' call for a legally binding instrument'.

³⁷⁷ EDF, 2023, *EDF analysis of the Commission proposal for a European Disability Card*, available at: <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/>.

³⁷⁸ Fobe A., 2023, *Equality for persons with disabilities on the move*, available at: <https://www.socialeurope.eu/equality-for-persons-with-disabilities-on-the-move>. Fobe indicates 'What matters is that the Commission has heard the civil-society organisations' call for a legally binding instrument'.

disability, which is made explicit by the definition of persons with disabilities included in Article 3 lett. c) which aligns with Article 1(2) CRPD. This social contextual understanding does not, however, coincide with the personal scope of the proposed directive that is more limited. Being based on the principle of mutual recognition, the Proposal will allow cards holders to enjoy special conditions and treatment across the EU. According to some OPDs, the Proposal would also promote awareness of invisible disabilities, such as autism³⁷⁹.

When it comes to the current text, the following main **strengths** can be identified:

- The Proposal adopts an ostensibly **wide material scope** in terms of areas, services and benefits covered (however, it still excludes social security and social assistance).
- The **beneficiaries** of the cards will be **Union citizens with a nationally recognised disability status, their family members and persons accompanying and assisting them**. The latter term is quite comprehensive and encompasses a broad range of persons, included but not limited to professional personal assistants as defined in Article 3 lett. d) of the Proposal. The **Follow-up Proposal extends the cards also to third country nationals** legally residing in a Member State whose disability status and/or rights to parking conditions and facilities reserved for persons with disabilities have been recognised by the Member State of their residence, as well as to persons accompanying or assisting them, including personal assistant(s).
- The Proposal ensures that the European Disability Card and European Parking Card will take both a **physical and digital format**. The physical format will have to embed digital features. The proposed directive will be complemented by delegated and implementing acts that will detail the characteristics of the cards.
- The Proposal ensures that the European Disability Card and European Parking Card will **comply with data protection** norms. The Proposal also aligns with a social-contextual understanding of disability by refraining from including information about the type of disability or 'level' of disability.
- The Proposal requires Member States to take a range of necessary **measures to introduce, issue and renew the cards, ensure mutual recognition**, but also to guarantee that the cards are used effectively.
- The Proposal requires that both cards, as well as relevant rules, conditions and procedures are made fully accessible.
- The Proposal provides that implementing acts adopted by the Commission lay down for digital features that enhance security and prevent fraud. It also requires Member States to take all necessary steps to avoid forgery and fraud.

5.1.2. Weaknesses of the Proposal

As discussed earlier, the Proposal does not encompass social security and social assistance. This remains a major issue from the point of view of disability rights. Further, the Proposal presents some general weaknesses and gaps, which are summarised below:

- OPDs have repeatedly asked that the European Disability Card should never become an eligibility condition to be recipient of services already granted under other EU legislation, for

³⁷⁹ See particularly the statement of Autism Europe at: <https://www.autismeurope.org/blog/2023/04/28/provide-your-feedback-on-the-future-eu-disability-card-until-5-may-2023/>.

example the field of transport. The current text is silent in this respect. While an amendment in this respect might not be strictly necessary if the proposed directive is interpreted teleologically (i.e. in light of its very purpose) and systematically, it might enhance legal certainty and clarity.

- The Proposal is limited to '**short stays**', with **no further specification or definition**. The concept of 'short stay', while undefined in the current Proposal, may be equated to a period of stay not exceeding three months as provided for in the EU Citizenship Directive³⁸⁰. However, a definition could be included in Article 3 to ensure clarity.
- OPDs have consistently raised concerns in relation to the fact that the current Proposal **does not address in any way barriers faced by persons that move into another Member State** and does not provide for portability of benefits in the interim phase, when people are in the process of reassessing their disability status. While this is in fact a significant concern, it is dubious whether a provision in that regard could be included in the text under the current legal basis. Such provision would *de facto* and *de jure* address social security and social assistance, bringing them into the material scope of the directive.
- The current wording of Article 6(4) is unclear. The use of the wording 'shall be issued or renewed by the Member State of residence *directly* or upon application ...' seems to allude to the European Disability Card being issued automatically and independently from a request of the person. It should, by contrast, be clarified that **the European Disability Card should be voluntary**.
- Article 6(6) of the Proposal requires for the validity of the European Disability Card issued by a Member State to be 'at least for the same duration as that of the disability certificate, disability card or any other formal document with the longest duration recognising their disability status', while nothing is specifically established for the European Parking Card. A provision in that regard for the European Parking Card might also be inserted, and co-legislators could opt for a maximum harmonisation measure in this respect.
- **Article 9 of the Proposal compounds a series of obligations** that Member States will have to fulfil. The provision is comprehensive, but **problematic** as it brings together issues of surveillance with the provision of information and general awareness-raising. Arguably, Article 9 could address information, while a separate provision could be dedicated to surveillance issues (currently Article 9(3)(4) and (5)). Compliance could also be addressed separately to enhance clarity.
- Article 9 of the Proposal does not oblige Member States to **ensure the participation of OPDs in the implementation and monitoring of the cards**. Member States are indeed obliged to include OPDs on foot of the CRPD, and arguably, it will be up to national law to set up adequate mechanisms to ensure the involvement of persons with disabilities in the deployment of the cards. However, this provision could include an explicit statement in this respect according to which for example: '*Member States shall take appropriate measures to ensure that OPDs are involved and appropriately consulted when enacting measures transposing this directive and when deploying and implementing the cards*'.

³⁸⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) [2004] OJ L 158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

- Article 9 of the Proposal **leaves to Member States the tasks related to providing information about the cards**. It does not carve out any role for the EU (particularly the Commission). It disregards the requests of OPDs and the EESC to create an EU website or database available in all EU languages as well as in sign languages. An amendment in this respect and a **new provision on an EU website** could be included.
- Article 9(2) of the Proposal leaves **awareness-raising entirely in the hands of Member States**. By contrast, it will be important to **ensure that the EU plays a role in awareness-raising**. The wording of Article 9(2) could be hence amended to carve out a role for the Commission in raising awareness. This could be linked to the provision on an EU website. It would also be valuable to **ensure that OPDs are involved in these awareness-raising activities**. Although the current text does not prevent Member States to do so, a clear obligation would better comply with the CRPD.
- The Proposal is currently silent on the role of the EU in supporting Member States in the implementation, or in providing coordination. While it may be expected that the Disability Platform will play an important function in that regard and be a *locus* for exchange of information and practices, the Proposal could be amended to incorporate a reference to mechanism of (soft) coordination or to simply indicate that the Commission would encourage coordination within the remit of its functions.
- As per Article 10 of the Proposal, Member States will have to notify to the Commission the competent authorities designated. If an **EU website** were to be created, this could also **include a list of competent authorities** for the purpose of the directive.
- The Proposal **does not address issues related to the costs of the cards, their funding**, nor the particular incentives that the EU or Member States might put in place for service providers. Clarity in this respect would be needed. It would be important to: a) insert the obligation for Member States to ensure that the cards will bear no cost for the holders and will be issued free of charge in Article 9 or in another provision; b) consider supporting the deployment of the cards through EU funding. This may not necessarily need a specific textual amendment, but could be clarified at the policy level.

5.2. Opportunities for amendments and recommendations

The weaknesses and loopholes of the current Proposal could be addressed by the **co-legislators**. Particularly, they **could**:

- consider clarifying, either in the preamble or in Article 3, that the European Disability Card should never become a necessary eligibility condition to be recipient of services already granted under other EU legislation or for reasonable accommodation under the Employment Equality Directive;
- consider amending Article 3 to include a definition of 'short stays';
- consider amending the wording of Article 6(4) to eliminate the word '*directly ...*' and insert a paragraph clarifying that the European Disability Card should be voluntary;
- consider whether a provision on the validity of the European Parking Card can be inserted;
- consider amending substantially Article 9 of the Proposal by a) including a role for the EU (namely the Commission) and OPDs in the provision of information and in awareness-raising b) including a specific provision on the creation of an EU website; c) laying out in a

separate/dedicated provision Member States' obligations in relation to surveillance issues and compliance; d) including a provision that obliges Member States to ensure the participation of OPDs in the implementation and monitoring of the cards;

- consider providing for the list of competent authorities notified to the Commission to be published on a dedicated EU website;
- consider explicitly requiring Member States to ensure that the cards will bear no cost for the holders and will be issued free of charge.

Alongside these amendments, the **co-legislators could work with the Commission** to clarify whether dedicated EU funding can support the deployment of the cards. They could also clarify the extent to which current funding streams can be used to encourage service providers to provide special conditions and preferential treatment.

Finally, it would be important for the **Commission** to clarify the role of soft governance tools, such as the Disability Platform, in relation to the transposition and implementation of the proposed directive. It would also be important to explain what role *AccessibleEU* can play in supporting compliance with accessibility obligations. It would also be vital, within the remit of the powers laid down in Article 16 of the Proposal, that the Commission **monitors the type of enforcement procedures and penalties**. As noted earlier, **lengthy and costly judicial procedures and low levels of compensation may dissuade persons with disabilities to take a case** and ultimately endanger the effectiveness of the European Disability Card and the European Parking Card.

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This study provides an in-depth analysis of the Proposal for a Directive establishing the European Disability Card and the European Parking Card for persons with disabilities, and outlines recommendations. This Proposal represents an important stepping stone to promote free movement of persons with disabilities. It is based on mutual recognition of disability status, but does not harmonise disability assessments. It would ensure that holders of the cards may avail of disability benefits in a range of services across the EU. However, the current text presents some shortcomings.

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