

## **The Directive on the European Disability Card and European Parking Card:**

### **Promoting Disability Rights and Making the EU “More than a Market”?**

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**Abstract:** *The recent adoption of the Directive on the European Disability Card and the European Parking Card has been heralded as a significant step forward in advancing the rights of persons with disabilities to move freely and enjoy a range of services across the European Union (EU) on an equal basis with others. Yet, this Directive only concerns disability benefits and special conditions in access to services outside the perimeter of social security and social assistance, which raises questions as to whether the envisaged cards truly address the main hurdles encountered by disabled persons in moving across the EU. This article, further having outlined the trajectory that led to the enactment of the Directive, critically discusses its key tenets, and interrogates its strengths and limits in advancing disability rights. On the basis of this analysis, but zooming out of the discrete disability perspective, this article concludes with some reflections on what this Directive tells us about the EU’s longstanding commitment, recently reiterated in the Letta Report, to be “much more than a market”.*

## **Introduction**

On 14 November 2024, Directive (EU) 2024/2841 of the European Parliament and the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities (“Directive on the European Disability Card and the European Parking Card” or simply the “Directive”) was published in the Official Journal (OJ).<sup>1</sup> This Directive establishes common rules for the European Disability Card, as a proof of a recognised disability status or proof of entitlement to specific services based on a disability,

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<sup>1</sup> Directive 2024/2841 of the European Parliament and the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities [2024] OJ L2024/2841 (the “Directive”).

and the European Parking Card for persons with disabilities, as a proof of their right to parking conditions reserved for persons with disabilities.<sup>2</sup>

The Directive on the European Disability Card and European Parking Card represents the latest milestone in the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD, or the “Convention”), concluded by the European Union (EU) alongside its Member States in 2010.<sup>3</sup> It is also an important achievement in advancing disability rights in that it endeavours to counter (some of) the multiple barriers that people with disabilities face when travelling within the EU. These barriers are linked to the lack of mutual recognition of disability status, which prevents people with disabilities from accessing a range of disability entitlements, special conditions and discounts when availing of services in Member States other than the country of residence.<sup>4</sup> These barriers also encompass most fundamental hurdles in accessing social security and social assistance, which, due to the limitation of the existing social coordination regime, place EU migrants with disabilities at “a significant disadvantage”.<sup>5</sup> As noted by O’Brien, the lack of portability of non-contributory benefits impacts disproportionately on persons with disabilities.<sup>6</sup> Yet, the latter hurdles are not dented and remain out of the scope of the Directive.

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<sup>2</sup> On the same day, a ‘sister’ Directive that extends the cards to third-country nationals legally residing in a Member State was also published. Directive 2024/2842 of the European Parliament and the Council of 23 October 2024 extending Directive 2024/2841 to third-country nationals legally residing in a Member State [2024] OJ L2024/2842.

<sup>3</sup> Decision 2010/48 of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

<sup>4</sup> P. Gyselinck, G. Marliere and O. Magritte, “The need for a European mobility card for persons with disabilities: A contribution from the Belgian disability forum” (2014) 5 *European Yearbook on Disability Law* 159. For an account of barriers see also A. Vasilj, “The Right to Mobility in Public Transportation of Persons with Disabilities and Reduced Mobility - Are We on the Right Way?” (2023) 11 *South East European Law Journal* 55.

<sup>5</sup> C. O’Brien, “Union citizenship and disability: restricted access to equality rights and the attitudinal model of disability” in: D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (Cambridge: Cambridge University Press, 2017) 524. See also L. Waddington, “Disability Benefits and Entitlements in European Countries: Mutual Recognition and Exportability of Benefits” (2010) ANED, <https://www.disability-europe.net/downloads/76-aned-2010-task-7-disability-benefits-and-entitlements-report-final-2> [Accessed 10 February 2025].

<sup>6</sup> O’Brien, “Union citizenship and disability: restricted access to equality rights and the attitudinal model of disability” in: D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (2017) 524.

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This Directive is noteworthy as it adds to the recent strand of disability-specific legislation,<sup>7</sup> and contributes to the building of EU disability law as a stand-alone body of law aimed to advance disability rights and to implement the CRPD.<sup>8</sup> However, while it endeavours to respond to the longstanding quest of organisations of persons with disabilities (OPDs) to support free movement of persons with disabilities,<sup>9</sup> this Directive looks like an impressionist painting where contrasts between lights and shadows emerge strikingly. This article, by proffering a timely analysis of the Directive, discusses those “lights and shadows”, although it does not engage in a compliance assessment with the CRPD. In doing so, the article reflects on what this Directive tells us about the EU’s longstanding commitment to be, as recently reiterated in the Letta’s Report, “much more than a market”.<sup>10</sup> Following these introductory remarks, this article is divided into five main sections. The second section revisits the trajectory that led to the approval of the Directive, providing a background to the ensuing analysis. The third section examines the key tenets of the Directive. While comprehensive, the critical examination conducted does not aim to be exhaustive, but rather to hint to the complexity of the text and its most intriguing facets. The fourth section identifies and discusses three fundamental issues that this Directive addresses. These issues go beyond the importance of the cards as gateway to equal access to services and relate to the contribution of the Directive to the “Europeanization” of the social-contextual understanding of disability,<sup>11</sup> to free movement

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<sup>7</sup> See e.g. Directive 2019/882 of the European Parliament and the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70.

<sup>8</sup> D. Ferri and A. Broderick, “Introduction to the Research Handbook on EU Disability Law” in: D. Ferri and A. Broderick (eds), *Research Handbook on EU Disability Law* (Cheltenham: Edward Elgar, 2020) 1.

<sup>9</sup> European Disability Forum (EDF), “Freedom Guide” (2011) [https://www.edf-feph.org/content/uploads/2022/04/EDF\\_FreedomGuide.pdf](https://www.edf-feph.org/content/uploads/2022/04/EDF_FreedomGuide.pdf) [Accessed 10 February 2025].

<sup>10</sup> E. Letta, “Much More than a Market. Speed, Security, Solidarity: Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens” (2024) <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf> [Accessed 10 February 2025].

<sup>11</sup> On the social-contextual model in the EU context see D. Ferri, “The role of disability studies in the advancement of EU law scholarship”, in R. Deplano et al., *Interdisciplinary Research Methods in EU Law. A Handbook* (Cheltenham: Edward Elgar, 2024).

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of persons with disabilities, and to engendering participation of disabled people in policy making. The final section presents some concluding remarks.

## **Revisiting the Trajectory of the Directive**

The trajectory that led to the Directive looks like a marathon followed by a 100 metre sprint. That is to say, with almost two decades of advocacy laying the groundwork for the release of the initial proposal by the European Commission,<sup>12</sup> there was then a rather speedy ordinary legislative procedure which saw the enactment of the Directive in approximately a year. The latter sprint illustrates a commitment towards disability rights and the willingness to implement the CRPD. It also showcases a sense of urgency and opportunity, in light of the review of the EU combined second and third report by the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) – the treaty body set up by the CRPD - ,<sup>13</sup> planned in March 2025. In its Concluding Observations on the EU initial report, the CRPD Committee had in fact called upon the EU to foster mobility by means of what was then termed a “European mobility card”.<sup>14</sup>

The following subsections discuss the two phases of the trajectory of the Directive.

### ***The Marathon***

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<sup>12</sup> 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.

<sup>13</sup> The CRPD Committee as a monitoring body examines an initial report (which is submitted after two years after the entry into force of the Convention) and subsequent reports submitted at least every four years and further whenever the Committee so requests (Article 35 CRPD). Upon the examination of the reports, the CRPD Committee provides Concluding Observations on the reports received.

<sup>14</sup> CRPD Committee, “Concluding Observations on the initial report of the European Union” CRPD/C/EU/CO/1 (2 October 2015) para. 53.

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The input and idea for a European Disability Card has come a long way.<sup>15</sup> The forerunner of the current European Disability Card and, even more so, of the European Parking Card, is the EU Parking Card. In the late 1990s, the adoption of such a card by Member States was advocated by the Council Recommendation 98/376/EC on a parking card for people with disabilities,<sup>16</sup> which was amended in 2008 after the corresponding strand of EU enlargement.<sup>17</sup> The EU Parking Card was explicitly aimed at enabling citizens with disabilities “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”.<sup>18</sup> The EU Parking Card is currently in use in all Member States, but will be phased out. As provided for in Article 8(5) of the Directive on the European Disability Card and the European Parking Card, Member States will have to ensure that new European Parking Cards “[replace] all existing parking cards for persons with disabilities issued in accordance with Recommendation 98/376/EC” by 5 December 2029.

Since the release of Recommendation 98/376/EC, the European Disability Forum (EDF) - the most important disability umbrella organisation acting at the EU level – had pushed, in line with scholars,<sup>19</sup> for a generic disability card to be used across the EU.<sup>20</sup> EDF launched a fully-fledged and bespoke campaign in 2011.<sup>21</sup> This campaign dovetailed the vague

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<sup>15</sup> M. Priestley, “Disability assessment, mutual recognition and the EU Disability Card: progress and opportunities” (2022) European Parliament [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2022\)739397](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)739397) [Accessed 10 February 2025].

<sup>16</sup> Recommendation 98/376 of 4 June 1998 on a parking card for people with disabilities [1998] OJ L167/25.

<sup>17</sup> Recommendation 2008/205 of 3 March 2008 adapting Recommendation 98/376/EC on a parking card for people with disabilities, by reason of the accession of the Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, Romania, the Republic of Slovenia and the Slovak Republic [2008] OJ L63/43.

<sup>18</sup> Recital 3 Recommendation 98/376. See also E. Varney and A. Pearson, “Disability in EU transport legislation” in: D. Ferri and A. Broderick (eds), *Research Handbook on EU Disability Law* (Cheltenham: Edward Elgar, 2020) 194.

<sup>19</sup> L. Waddington, “The potential for, and barriers to, the exercise of Active EU Citizenship by persons with disabilities: the right to free movement” in: R. Halvorsen et al. (eds), *The Changing Disability Policy System: Active Citizenship and Disability* (London and New York: Routledge, 2017) 196.

<sup>20</sup> M. Lecerf, “The European disability card and European parking card” PE 757.636 (November 2024).

<sup>21</sup> Gyselinck, Marliere and Magritte, “The need for a European mobility card for persons with disabilities: A contribution from the Belgian disability forum” (2014) 5 *European Yearbook on Disability Law* 159.

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intention “to tackle the problems related to intra-EU mobility and facilitate and promote the use of the European model of disability parking card” expressed by the Commission in the European Disability Strategy 2010-2020 (EDS).<sup>22</sup> In 2013, following EDF campaign and a Resolution of the European Parliament,<sup>23</sup> the Commission established a working group to exchange ideas on a prospective “European Mobility Card”.<sup>24</sup> While that terminology was soon abandoned, a pilot project for a disability card was initiated in 2015.<sup>25</sup> It involved eight Member States and was financed under the Rights, Equality and Citizenship Programme 2014–2020.<sup>26</sup> It 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. Similar to the existing EU parking card, it was up to each Member State to decide the eligibility criteria for receiving the card. It was also a brief of each participating Member State to identify the benefits offered to card holders. In essence, the piloted card merely entitled holders to free or discounted access to certain services in the sectors covered (which included transport, leisure, sport and culture). National service providers in these sectors could voluntarily adhere to the card’s scheme. While valuable in its intent, the pilot was geographically constrained and limited in its scope. The study assessing piloted card highlighted its elusive effects and suggested that such trialled card did not significantly foster free movement of persons with disabilities, albeit stimulating good practices.<sup>27</sup> In fact, the pilot had mostly a symbolic value, because it made

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<sup>22</sup> European Commission, “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe” COM(2010) 636 final.

<sup>23</sup> Parliament Resolution 2010/2272(INI) of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 [2011] OJ C131/9.

<sup>24</sup> C. Chiattelli et al., “Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits – Final report” (2021) European Commission <https://data.europa.eu/doi/10.2767/429261> [Accessed 10 February 2025].

<sup>25</sup> D. Ferri, “The Commission’s Proposal for a Directive Establishing a European Disability Card: Is the Glass Half Empty or Half Full?” (2023) *EU Law Live Weekend Edition* No 161.

<sup>26</sup> European Commission, “Call for proposals to support national projects on a mutually recognised European Disability Card and associated benefits” VP/2015/012.

<sup>27</sup> Ferri “The Commission’s Proposal for a Directive Establishing a European Disability Card: Is the Glass Half Empty or Half Full?” (2023) *EU Law Live Weekend Edition* No 161.

service providers move closer to persons with disabilities and increased awareness of disability rights.<sup>28</sup> Its greatest merit was that of “opening up a conversation” on mutual recognition of disability status.

Following another call from the EP to support free movement of persons with disabilities,<sup>29</sup> on the basis of the pilot project and taking into account the recommendation of the CRPD Committee,<sup>30</sup> the “Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030” (Strategy 2021-2030) identified the deployment of a European Disability Card as one of its flagship initiatives.<sup>31</sup> Under the banner “Enjoying EU Rights”, the Commission articulated that “[w]hen moving to another Member State for work, studies, or other reasons, persons with disabilities may experience difficulties to have their disability status recognised”.<sup>32</sup> The Commission further expounded its aim to “work with Member States to expand the scope of the mutual recognition of disability status in areas such as labour mobility and benefits related to conditions of service provision”.<sup>33</sup> The wording of the Strategy 2021-2030 seemed to take into account OPDs’ plea for a wide-ranging card allowing portability of all disability benefits (including social security benefits) across the EU.<sup>34</sup> However, in spite of the comprehensive wording, the preliminary Call for Evidence (CfE)<sup>35</sup> launched by the

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<sup>28</sup> C. van Dijck, “Case Study - The European Disability Card” in: T. Brandsen, B. Verschuere and T. Steen (eds), *Co-Production and Co-Creation: Engaging Citizens in Public Services* (New York: Routledge, 2018) 145.

<sup>29</sup> European Parliament Resolution of 15 March 2017 on obstacles to EU citizens’ freedom to move and work in the internal market (2016/3042(RSP)) [2018] OJ C263/98.

<sup>30</sup> CRPD Committee, “Concluding Observations on the initial report of the European Union” CRPD/C/EU/CO/1 (2 October 2015) para. 53.

<sup>31</sup> European Commission, “Union of Equality. Strategy for the Rights of Persons with Disabilities 2021 – 2030” COM(2021) 101 final.

<sup>32</sup> European Commission, “Union of Equality. Strategy for the Rights of Persons with Disabilities 2021 – 2030” COM(2021) 101 final.

<sup>33</sup> European Commission, “Union of Equality. Strategy for the Rights of Persons with Disabilities 2021 – 2030” COM(2021) 101 final.

<sup>34</sup> See petitions cited in L. Waddington and A. Broderick, “The Post-2020 European disability strategy” (2020) European Parliament <https://data.europa.eu/doi/10.2861/977089> [Accessed 10 February 2025].

<sup>35</sup> European Commission, “Call for Evidence for an Impact Assessment” Ref. Ares(2022) 6746256.

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Commission made it evident that social security and social assistance would not fall within the scope of the card.

Without engaging in any thematic analysis<sup>36</sup> of the results of the CfE and the ensuing public consultation,<sup>37</sup> it seems useful to highlight that none<sup>37</sup> of the contributions questioned the EU's competence to deploy a European Disability Card. Quite the contrary: participants to the CfE defined the card as a “godsend”,<sup>38</sup> a “very important initiative”,<sup>39</sup> and something that is “long overdue”.<sup>40</sup> In a similar vein, the result of the public consultation showcased an overwhelming support for an EU initiative.<sup>41</sup> The majority of participants to both the CfE and the consultation were in favour of keeping the disability and parking cards separate, but both regulated by EU legislation.<sup>42</sup> However, disregarding the clear stand of the Commission that the card will *not* cover social security, quite consistently, many contributions to the CfE pointed at the “elephant in the room”. They denounced the lack of harmonisation and limited portability

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<sup>36</sup> The reference here is to thematic analysis *à la* Braun and Clarke. See V. Clarke and V. Braun, “Thematic Analysis” (2017) 3 *The Journal of Positive Psychology* 297.

<sup>37</sup> European Commission, “Factual summary report of the online public consultation in support of the European Disability Card and the European Parking Card initiative” Ref. Ares(2023) 5961542. The results of the public consultation are also available at [https://employment-social-affairs.ec.europa.eu/news/more-2500-persons-disabilities-contribute-european-disability-card-initiative-2023-09-04\\_en](https://employment-social-affairs.ec.europa.eu/news/more-2500-persons-disabilities-contribute-european-disability-card-initiative-2023-09-04_en) [Accessed 17 April 2025].

<sup>38</sup> Submission to CfE with Reference No. F3371876 (2022) [translation from original Dutch to English] [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3371876\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3371876_en) [Accessed 10 February 2025].

<sup>39</sup> Submission to CfE with Reference No. F3374471 (2023) [translation from original Danish to English] [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3374471\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3374471_en) [Accessed 10 February 2025]; European Down Syndrome Association, “Submission to CfE with Reference No. F3374552” [original English] [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3374552\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3374552_en) [Accessed 10 February 2025].

<sup>40</sup> Submission to CfE with Reference No. F3361882 [translation from original German to English] [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3361882\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13517-European-disability-card/F3361882_en) [Accessed 10 February 2025].

<sup>41</sup> 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, 58.

<sup>42</sup> 83% of respondents to the public consultation agreed that the improved European Parking Card for persons with disabilities should be incorporated into the same legislative initiative as the new European Disability Card. See [https://employment-social-affairs.ec.europa.eu/news/more-2500-persons-disabilities-contribute-european-disability-card-initiative-2023-09-04\\_en](https://employment-social-affairs.ec.europa.eu/news/more-2500-persons-disabilities-contribute-european-disability-card-initiative-2023-09-04_en) [Accessed 17 April 2025]. See also Opinion of the European Economic and Social Committee on 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 — 2023/0311 (COD)) [2024] OJ C2024/1595 para. 2.6.



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of disability benefits in the welfare sphere. A few contributions emphasised the need to harmonise disability assessment in the EU, eradicating medically oriented forms of assessment across the EU - again a facet that was not touched upon by the Commission, and it is now overtly excluded from the scope of the Directive. Several contributions to the CfE also underscored the need for awareness raising mechanisms to make the card known, and monitoring mechanisms to ensure that the card fulfils the needs of persons with disabilities - an aspect that has been fully incorporated in the final text of the Directive.

On the whole, even though the vagueness of the contributions somewhat matches the nebulousness of the document requesting “evidence”, the CfE was rather instrumental in endorsing an EU action. Both the CfE and the consultation were vital in urging the Commission to release of the proposal.

### ***The 100 Metre Sprint***

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 published by the Commission.<sup>43</sup> Notably, on 31 October 2023, the Commission, eager to respond to the concerns expressed by EDF and other OPDs, also published an additional proposal (follow-up proposal)<sup>44</sup> extending the European Disability Card and the European Parking Card to third country nationals legally residing in a Member State, excluded from the scope *ratione personae* of the main Directive.

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<sup>43</sup> 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.

<sup>44</sup> 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.

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The initial proposal and the ensuing follow-up proposal were immediately tabled for discussion by the EU legislators. Under the leadership of the Spanish Presidency,<sup>45</sup> the Council of the European Union (Council) agreed its general approach at the end of November 2023.<sup>46</sup> Informal interinstitutional meetings including representatives of the Parliament, the Council and the Commission (the so-called “trilogues”) commenced in record time in January 2024,<sup>47</sup> shortly after the European Parliament plenary had adopted the report by designated rapporteur.<sup>48</sup> As noted by the Court of Justice in *De Capitani*, “the aim of such exchanges is to reach a prompt agreement on a set of amendments acceptable to the Parliament and the Council, which must subsequently be approved by those institutions in accordance with their respective internal procedures”, and the “legislative discussions conducted during a trilogue may concern both political and technical legal issues”.<sup>49</sup> This was in fact the case with regard to the Directive on the European Disability Card and the European Parking Card, in which the trilogues played a key role in speeding up the decision-making process and finding agreement on “sticky” issues such as the length of the transposition period.

On 8 February 2024, the EU legislators agreed on key tenets of the text, with final phases and approvals taking place in advance of the elections. Throughout the process OPDs provided inputs and lobbied for changes to the initial text.<sup>50</sup> As noted by Bartlett, “[v]irtually

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<sup>45</sup> D. Ferri, “Advancing Disability Rights in the EU: A blueprint in the social agenda of the Spanish presidency” (2023) 40 *Anales de Derecho* 85.

<sup>46</sup> Council, “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 - General approach” 15782/23 INIT 5.

<sup>47</sup> Council, “Council and Parliament pave the way for a European disability card and a European parking card for persons with disabilities” (Press Release, 16 February 2024) <https://www.consilium.europa.eu/en/press/press-releases/2024/02/08/council-and-parliament-pave-the-way-for-a-european-disability-card-and-a-european-parking-card-for-persons-with-disabilities/> [Accessed 10 February 2025].

<sup>48</sup> European Parliament, “Report on 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” A9-0003/2024.

<sup>49</sup> *De Capitani v European Parliament* (T-540/15) EU:T:2018:167 para. 68.

<sup>50</sup> See e.g. M. Denninghaus, “EDF analysis of the Commission proposal for a European Disability Card” (3 October 2023) <https://www.edf-feph.org/publications/edf-analysis-of-the-commission-proposal-for-a-european-disability-card/> [Accessed 10 February 2025].

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every amendment requested by the EP could be agreed to by the Council because they were largely of a technical nature, with few resource allocation implications”, with any attempt of the EP to reintroduce a discussion on a temporarily limited access to social security being dismissed at the outset.<sup>51</sup> In early March 2024, an agreement was also achieved for the follow-up proposal extending the cards to third country nationals legally residing in a Member State, which however is not examined here. Accord on the text of both Directives was attained before the EP election, in the attempt to provide a sort of “counternarrative” to the discourse on an elitist market-led EU detached from its citizens spurred by populist and far-right parties and by “Euroalternativists”,<sup>52</sup> whilst not *de facto* avoiding the slide to the right in the electoral turn. As mentioned above, both the Directives were then published in the OJ on the same day, in November 2024.

### **The Directive on the European Disability Card and the European Parking Card: A Critical Analysis**

The final text of the Directive on the European Disability Card and the European Parking Card is composed of 23 Articles, divided in five chapters, preceded by a preamble of 50 recitals. The text is complemented by two annexes which lay down the requirements for the format and design of the European Disability Card and the European Parking Card respectively.

Consistent with the initial Commission’s proposal, the Directive is based on multiple legal bases, i.e. Articles 53(1) and 62, Article 91 and Article 21(2) TFEU. Notably, Article 91

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<sup>51</sup> O. Bartlett, “The EU Legislative Institutions and Disability Rights: Uncovering the Factors that Block Progress and Offering Insights for Future Advocacy” in: D. Ferri and E. S. Krolla (eds), *Actors and Roles in EU Disability Law* (Oxford: Hart Publishing, 2025 forthcoming).

<sup>52</sup> On these ‘narratives’ see, among others, M. Caiani et al., “European narratives and Euroscepticism” in: M. Caiani et al. (eds.), *European Narratives and Euroscepticism in the Western Balkans and the EU* (London: Routledge, 2024).

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TFEU, which underpinned Council Recommendation 98/376/EC, provides the apt legal basis for the European Parking Card. Article 21(2) TFEU, which is a residual legal basis to support free movement of EU citizens,<sup>53</sup> facilitates special conditions or preferential treatment for activities and facilities that do not fall within the categories of “services” for the purpose of Article 57 TFEU.

The final wording does not dramatically distance itself from the original Commission’s proposal. The preamble is however longer than the one included in the text initially put forward by the European executive. It includes rather extensive references to the CRPD, incorporating changes that reflect requests of OPDs. Among those, an explicit mentioning of the right of persons with disabilities to liberty of movement and to the freedom to choose their residence on an equal basis with others has been added alongside more general references to the CRPD.<sup>54</sup> While this addition overtly connects the cards to the implementation of Article 18 CRPD, it is a smokescreen for the actual scope of the Directive, which, as will be examined later, chiefly applies to short stays and does not address the right of persons with disabilities “to choose their residence ... on an equal basis with others”.<sup>55</sup> In this respect, the Directive overlooks the recommendation made to the EU by the CRPD Committee in the Concluding Observations under Article 18 CRPD, which places a specific emphasis on the need for the EU to ensure “freedom of movement on an equal basis with others, including with regard to the *portability of social security benefits*, in a coordinated manner across its Member States”.<sup>56</sup> The preamble further includes references to Article 26 of the Charter of Fundamental Rights (Charter),<sup>57</sup> on the integration of persons with disabilities - provision cited in all most recent disability

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<sup>53</sup> D. Martin, “Article 21 TFEU” in: M. Kellerbauer, M. Klamert and J. Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: Oxford University Press, 2019) 241.

<sup>54</sup> Recital 3 of the Directive.

<sup>55</sup> Article 18(1) CRPD.

<sup>56</sup> CRPD Committee, “Concluding Observations on the initial report of the European Union” CRPD/C/EU/CO/1 (2 October 2015) para. 49.

<sup>57</sup> Recital 2 of the Directive.

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legislation, including the European Accessibility Act (EAA).<sup>58</sup> As noted by the Court of Justice in *Glazel*, Article 26 of the Charter “does not require the EU legislature to adopt any specific measure” but “must be given more specific expression in EU or national law”.<sup>59</sup> Thus, this Directive can be seen as legislation implementing or giving effect to Article 26 of the Charter. In that connection, the mentioning of Article 26 is not insignificant in that it makes the Directive subject to judicial review in light of such Charter principle.<sup>60</sup> The preamble also includes references to the European Pillar of Social Rights, giving flesh to this “soft” and somewhat vague legal instrument.<sup>61</sup> Particularly, the Directive refers to Principle No 3, proclaiming the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public.<sup>62</sup> It also includes reference to Principle No 17, which establishes that “persons with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in society and a work environment adapted to their needs”.<sup>63</sup> However, the latter reference is somewhat in conflict with the actual scope of the Directive that does not cover “income supports” nor services for long-term rehabilitation, as will be further expounded below.

The final text of the Directive moreover encompasses new provisions and entirely novel Articles - such as Article 13 that obliges Member States to ensure “active consultation and involvement of representative organisations of persons with disabilities in the development, implementation and evaluation of the European Disability Card and the European Parking Card for persons with disabilities”, and Article 19 on a dedicated Union “webpage” on the cards.

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<sup>58</sup> Directive 2019/882 of the European Parliament and the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70.

<sup>59</sup> Case *Wolfgang Glazel v Freistaat Bayern* (C-356/12) EU:C:2014:350.

<sup>60</sup> J. Krommendijk, “Principled Silence or Mere Silence on Principles? The Role of the EU Charter’s Principles in the Case Law of the Court of Justice” (2015) 11 *European Constitutional Law Review* 321.

<sup>61</sup> S. Garben, “The European Pillar of Social Rights: Effectively Addressing Displacement?” (2018) 14 *European Constitutional Law Review* 210.

<sup>62</sup> Recital 7 of the Directive.

<sup>63</sup> Recital 7 of the Directive.

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The latter innovations address specific requests from OPDs and instances that had already emerged in the CfE. They also align with some of the recommendations issued in a study for the EP.<sup>64</sup> The final text additionally includes an extended period for transposition, compared to the initial proposal. In that regard, the Council was able to consolidate its own position with the period afforded to Member States to implement the Directive extended up to 5 June 2027, and a delayed application of the cards from 5 June 2028. This “extra-time” evidently signals that to fully enact, operationalise and effect the cards will not be an easy and immediate task.

After these general remarks, the subsections below focus on the purpose, scope and core tenets of the Directive.

### ***The Purpose and Subject Matter***

As made explicit in Article 1(a):

the Directive lays down the rules governing the issuance of the European Disability Card to persons with disabilities as proof of a disability status or proof of entitlement to specific services based on a disability, with the aim of promoting freedom of movement for persons with disabilities and facilitating short stays of persons with disabilities in a Member State other than that of which they are a resident, by granting them equal access to any special conditions or preferential treatment with respect to services, activities or facilities, including where not provided for remuneration, offered to or reserved for persons with disabilities in that Member State, including those making

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<sup>64</sup> D. Ferri, “Analysis of the European Disability Card. The Proposed Directive: Shortcomings, Strengths and Opportunities” (2023) European Parliament [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754192/IPOL\\_STU\(2023\)754192\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754192/IPOL_STU(2023)754192_EN.pdf) [Accessed 10 February 2025].

use of assistance animals, and, where applicable, persons accompanying or assisting persons with disabilities, including their personal assistants.<sup>65</sup>

Further, as made explicit in Article 1(b), the Directive sets out the rules governing the issuance of the European Parking Card for persons with disabilities as proof of the right to parking conditions and facilities reserved for persons with disabilities. The Directive aims to ensure that holders of the cards, while travelling to or visiting a Member State other than that of which they are a resident, are granted access on equal terms and conditions as those provided to persons with disabilities who are resident in that Member State.<sup>66</sup> It also establishes common templates for both of the cards,<sup>67</sup> empowering the Commission to adopt delegated acts for creating a QR code and “state-of-the-art digital features” for the physical versions of the cards, with a view to preventing fraud, as well as digital features that ensure interoperability across the EU.<sup>68</sup> Article 9 further enables the Commission to adopt “implementing acts to set the accessible digital versions” of both cards.

The Directive is based on the principle of mutual recognition, which is a cornerstone of the internal market since *Cassis de Dijon*.<sup>69</sup> Article 7(2) and 8(2) explicitly state that cards “issued by Member States shall be mutually recognised in all Member States”. As previously mentioned, the Directive conceives of the cards as a proof of disability throughout the EU. It allows a limited “portability” of an administratively recognised disability status in order to access certain benefits related to services covered by the Directive. However, as Van Dijck

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<sup>65</sup> Article 1(a) of the Directive.

<sup>66</sup> Articles 5 and 6 of the Directive.

<sup>67</sup> Article 1(c) of the Directive.

<sup>68</sup> Articles 7(7), (8) and 8(7) of the Directive.

<sup>69</sup> *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* (Case 120/78) EU:C:1979:42 para. 14; C. Janssens, “The Principle of Mutual Recognition as Judicial Impetus for the Free Movement Provisions” in: C. Janssens, *The Principle of Mutual Recognition in EU Law* (Oxford: Oxford University Press, 2013) 11.

suggests, “[i]n terms of equal rights, [the principle of mutual recognition] 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”.<sup>70</sup> In that regard, Article 2(4) makes it clear that the Directive “does not affect Member States’ competence to determine the conditions for assessing and recognising disability status or the entitlement to specific services based on a disability, or for granting the right to parking conditions and facilities reserved for persons with disabilities”. In practice, the host Member State in recognising the card issued by another country (indirectly) acknowledges their disability assessment.<sup>71</sup> This is the case even when this assessment does not align with national rules of that host Member State, or is deeply rooted in the medical-model (i.e. in the equation between disability and impairment) which is at odds with the CRPD and with the current EU definitions of disability.<sup>72</sup> Thus, as will be further illustrated in the following section, the main drawback of mutual recognition lies in how it inherently “equalises” disability assessments across the EU, regardless of their compliance with the CRPD and with the social-contextual conceptualisation of disability embedded in the same Directive – which in fact conceives of disability as stemming from the interaction between the individual’s impairments and external barriers, in line with Article 1(2) CRPD.<sup>73</sup>

### ***The Personal Scope***

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<sup>70</sup> Van Dijck, “Case Study - The European Disability Card” in: T. Brandsen, B. Verschuere and T. Steen (eds), *Co-Production and Co-Creation: Engaging Citizens in Public Services* (New York: Routledge, 2018) 145.

<sup>71</sup> Ferri, “Analysis of the European Disability Card. The Proposed Directive: Shortcomings, Strengths and Opportunities” (2023); See also Priestley, “Disability assessment, mutual recognition and the EU Disability Card: progress and opportunities” (2022).

<sup>72</sup> On the EU definitions of disability see L. Lourenço and P. Pohjankoski, “Breaking Down Barriers? The Judicial Interpretation of “Disability” and “Reasonable Accommodation” in EU Anti-Discrimination Law” in: U. Belavusau and K. Henrard (eds), *EU Anti-Discrimination Law Beyond Gender* (Oxford: Hart Publishing, 2019).

<sup>73</sup> Ferri, “Analysis of the European Disability Card. The Proposed Directive: Shortcomings, Strengths and Opportunities” (2023).



Article 3 of the Directive includes a broad definition of persons with disabilities, which, as indicated earlier, aligns with Article 1(2) CRPD.<sup>74</sup> However, such definition is somewhat deceptive. In fact, persons with disabilities do not constitute the personal scope of the Directive and are not, as such, the recipient of the cards. Instead, according to Article 4 of the Directive, the actual beneficiaries of the European Disability Card are Union citizens and family members “whose *disability status* or entitlement to specific services based on a disability is *recognised by the competent authorities or bodies in their Member State of residence*, including by means of a disability certificate, disability card or other formal document issued in accordance with national competences, practice and procedures [...]”. A similar definition qualifies beneficiaries of the European Parking Card. There is consequently a significant mismatch between the social-contextual definition included in Article 3 and the actual beneficiaries of the cards. This is particularly so considering that, as noted by Waddington and Priestley, across the EU disability “assessments for access to cash income maintenance benefits or general disability status recognition (e.g. admission to a public disability register, which is itself a gateway to benefits) tend to rely on more categorical diagnostic assessments, or standardized tests of physical and mental function, conducted in isolation from social context”, which are at odds with the CRPD and its social-contextual understanding of disability.<sup>75</sup>

The Directive importantly extends the categories of beneficiaries to family members of persons with disabilities. This approach can be seen in compliance with the CRPD, and, particularly, with obligations - ensuing from the Convention - to support family members in facilitating inclusion of persons with disabilities in society. Notably the CRPD, in its preamble,

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<sup>74</sup> Article 3 of the Directive 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”.

<sup>75</sup> L. Waddington and M. Priestley, “A Human Rights Approach to Disability Assessment” (2021) 37 *Journal of International and Comparative Social Policy* 1. Those authors recall that, in spite of promising practices, in at least nine countries in the EU, assessment for an “invalidity” pension tends to be based primarily on medical diagnosis of a named condition or medical assessment.

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specifies that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities *and their family members should receive the necessary protection and assistance* to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities”.<sup>76</sup> Further, in its General Comment No. 5 on Independent Living, the CRPD Committee stated that Parties to the Convention “should *empower family members* to support the family members with disabilities to realize their right to live independently and be included in the community”.<sup>77</sup> Further, the Directive complies with Article 7 of the Charter which enshrines the respect for family life, a right that, as Nic Shuibhne puts it, is “woven into the framework of Union citizenship”.<sup>78</sup> All in all, Article 4 of the Directive recognises that family members accompany and support persons with disabilities, and are often entrusted with caring responsibilities.

Family members for the purpose of this Directive are those “defined in Article 2, point (2), of [the Citizenship Directive]<sup>79</sup> or within the meaning of Article 3(2) of that Directive, irrespective of their nationality”.<sup>80</sup> Such definition encompasses the spouse, the partner with whom the Union citizen has contracted a registered partnership according to national law, 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 partner.<sup>81</sup> Importantly, the reference to Article 3(2) of the Citizenship Directive seems to allow for the extension of the card to partners with whom the EU citizen has a durable relationship which is

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<sup>76</sup> Lett. x of the Preamble to the CRPD. Emphasis added.

<sup>77</sup> CRPD Committee, “General comment No. 5 (2017) on living independently and being included in the community”, CRPD/C/GC/5 (27 October 2017).

<sup>78</sup> N. Nic Shuibhne, “Who is Protected? Part II: Defining the Family Members of Union Citizens” in: N. Nic Shuibhne, *EU Citizenship Law* (Oxford: Oxford University Press, 2023).

<sup>79</sup> Directive 2004/38 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 [2004] OJ L158/77 (Citizenship Directive).

<sup>80</sup> Article 3(2) of the Directive.

<sup>81</sup> Article 2 of the Citizenship Directive.

duly attested (for which Article 3(2) lett. b) of the Citizenship Directive provides that the host Member State shall *facilitate* entry and residence in its territory).

Article 4 of the Directive recognises that the beneficiaries might be “accompanied or assisted by one or, where necessary, more than one other persons, including a personal assistant or personal assistants, or by assistance animals, which may be indicated by the letter ‘A’ on their European Disability Card”.<sup>82</sup> Personal assistants are defined as people who are “accompanying or assisting a person with disabilities” and are “recognised as such in accordance with national law or practice”.<sup>83</sup> By virtue of this recognition, Article 4 seems to bring personal assistants and other people accompanying persons with disabilities within the scope of the cards.

On the whole, the personal scope of the Directive is both narrow and wide. It is narrow (or at least narrower) than the scope of the CRPD and, for example of that of the EAA, in that it does not comprise the whole spectrum of persons with disabilities in a social-contextual meaning and is *de jure* determined by the scope of national law on disability assessments. It is however wide as it includes, in the range of beneficiaries, family members that act as carers to support or accompany people with disabilities, particularly children with disabilities,<sup>84</sup> in a range of activities. In this respect, the Directive, albeit from a discrete angle, contributes to the recognition of care relationships and further shows the growing (albeit patchy) EU engagement with “care”.<sup>85</sup>

### ***The Material Scope***

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<sup>82</sup> Article 4 of the Directive

<sup>83</sup> Article 3(4) of the Directive.

<sup>84</sup> European Commission, “Communication on the European care strategy” COM(2022) 440 final.

<sup>85</sup> E. Caracciolo di Torella and A. Masselot (eds), *Caring Responsibilities in European Law and Policy. Who Cares?* (Abingdon: Routledge, 2020).

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As established in Article 2, the Directive applies to parking conditions and facilities and to all situations where special conditions or preferential treatment are offered by public authorities or private operators to persons with disabilities as regards access to services within the meaning of Article 57 TFEU, passenger transport services, other activities and facilities, including where not provided for remuneration. This material scope is very broad as it encompasses the wide-ranging notion of services for the purpose of Article 57 TFEU and goes beyond that. “Services” include activities of an economic character and have been conceived of quite broadly by the CJEU to include, among others, sport,<sup>86</sup> gaming,<sup>87</sup> health services<sup>88</sup> and educational ones.<sup>89</sup> Further, the residual reference to “other activities and facilities, including where not provided for remuneration” allows for the recognition of disability status via the European Disability Card in virtually all public and private facilities. The wording of Article 2(1) opens up the material scope of the Directive to a wide variety of “ever-changing activities” in a variety of policy domains “such as culture, leisure, tourism, sports, public and private transport, and training”, as the preamble elucidates.<sup>90</sup> In this respect, the Directive, while leaving a wide room for manoeuvre to Member States, does play an important role in effecting “measures designed to ensure [...] independence [...] and participation in the life of the community” as stipulated in Article 26 of the Charter, as well as prescribed by the CRPD.

The broad material scope is matched by an equally comprehensive definition of benefits. According to Article 3(5) of the Directive, special conditions or preferential treatment encompass:

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<sup>86</sup> *David Meca-Medina and Igor Majcen v Commission of the European Communities* (C-519/04 P) EU:C:2006:492 paras 22 and 23.

<sup>87</sup> *Associação Nacional de Operadores de Máquinas Recreativas (Anomar) and Others v Estado português* (C-6/01) EU:C:2003:446 paras 46 and 56.

<sup>88</sup> *B.S.M. Geraets-Smits v Stichting Ziekenfonds VGZ and H.T.M. Peerbooms v Stichting CZ Groep Zorgverzekeringen* (C-157/99) EU:C:2001:404 paras 47 - 69.

<sup>89</sup> *Herbert Schwarz and Marga Gootjes-Schwarz v Finanzamt Bergisch Gladbach* (C-76/05) EU:C:2007:492 paras 35 - 47.

<sup>90</sup> Recital 27 of the Directive.

any specific conditions, including those related to financial conditions, or any differentiated treatment related to assistance and support offered to persons with disabilities or, where applicable, to persons accompanying or assisting them including personal assistants, or to assistance animals, irrespective of whether they are offered on a voluntary basis or imposed on the basis of a legal obligation.

A similarly worded definition is proffered of parking conditions.<sup>91</sup>

A non-exhaustive list of examples of special conditions and preferential treatment covered by the Directive is then included in Recital 28. This mentions among others: free or priority access, reduced tariffs, reduced tolls, access to restricted traffic and pedestrian zones, priority or designated seating on public transport and other services. Recital 28 further names specific leisure/tourism or cultural benefits such as “assistance on the beach to enter the water, support such as access to braille, audio guides or sign language interpretation, provisions of aids or assistance, loan of a wheelchair, loan of a floating wheelchair, obtaining tourist information in accessible formats”.

Notably, as it was in the initial text propounded by the Commission, the notions of “special conditions or preferential treatment” are tied one another. It is not fully clear how these two concepts relate to each other, and the Directive fails to distinguish them clearly. However, the wording of Article 3(5) seems to conceive of “special conditions” as specifically related to reduced prices, lower fees, or discounts, to access a service or partake in an activity covered by the Directive. By contrast, the notion of “preferential treatment” seems to allude to benefits

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<sup>91</sup> Article 3(6) of the Directive.

in kind and bespoke assistance provided to people with disabilities. The latter interpretation seems to be supported by the reading of Recital 20 of the Preamble, which states that:

Preferential treatment, *such as personal assistance, priority access or the possibility to bypass queues*, whether or not offered for remuneration, is often important for the purpose of *enabling persons with disabilities to access various services*, activities and facilities and to fully benefit from them.

As noted elsewhere, neither special conditions nor preferential treatment cannot be equated conceptually or normatively to reasonable accommodation, which is a necessary and appropriate adjustment tailored to specific individual needs and adopted in a particular case.<sup>92</sup> 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 rights’.<sup>93</sup> Conversely, special conditions or preferential treatment are usually pre-determined in their form and substance and are not tailored to the need of an individual.

Article 2(3) clarifies that benefits in the area of social security; special contributory or non-contributory cash benefits or benefits in kind in the area of social security, social protection or employment, social assistance; remunerated or non-remunerated services that are provided for the long-term inclusion, habilitation or rehabilitation of persons with disabilities; as well as individualised special conditions or preferential treatment based on needs-assessment fall outside the scope of the Directive. Those benefits remain governed by national rules and, in a

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<sup>92</sup> D. Ferri, “Analysis of the European Disability Card. The Proposed Directive: Shortcomings, Strengths and Opportunities” (2023)

<sup>93</sup> CRPD Committee, General comment No. 6 on equality and non-discrimination, CRPD/C/GC/6 (26 April 2018).

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cross-border context, by Regulations (EC) No 883/2004<sup>94</sup> and No 987/2009<sup>95</sup> on the coordination of social security systems or by the Citizenship Directive. The initial restraint of the Commission was never questioned by the co-legislators and the fear of “benefits tourism” was “alive and kicking” in Council discussions, leading to the overt exclusion from the scope of the Directive of services provided for long-term inclusion, habilitation and rehabilitation as well as special conditions based on individual needs, which had not been explicitly mentioned in the proposal. The attempt of the Parliament to insert a derogation into Article 2 to facilitate temporary access to social security benefits and social assistance when card holders move to another Member State for work, educational purposes or mobility programmes was, rather unsurprisingly, discarded.

Arguably, any extension of the scope to social security would have been legally incompatible with the actual legal basis of the Directive. It would have instead required Article 21(3) TFEU as legal basis.<sup>96</sup> That provision states that the Council is the sole legislator and requires unanimity, being *de iure* conflicting with the other legal bases.<sup>97</sup> In this respect, as will be further expounded in the following section, the Directive showcases the limits of the EU powers when it comes to social security matters and fails to address the major hurdles faced by person with disabilities when travelling across the EU.

### ***Short and... not-so-short... stays***

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<sup>94</sup> Regulation 883/2004 of 29 April 2004 on the coordination of social security [2004] OJ L166/1.

<sup>95</sup> Regulation 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L284/1.

<sup>96</sup> Ferri, “Analysis of the European Disability Card. The Proposed Directive: Shortcomings, Strengths and Opportunities” (2023).

<sup>97</sup> The Court of Justice has admitted that when a 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, it has clarified that ‘no dual legal basis is possible where the procedures laid down for each legal basis are incompatible with each other’. See *Commission v Council* (C-338/01) EU:C:2004:253 para. 57.

The Directive applies to short stays, which differently from the text of the proposal, are now openly defined in Article 3 as “visit or stay in another Member State of up to three months”.<sup>98</sup> This definition aligns with explanation of short stay in the Citizenship Directive. Remarkably, while the Commission’s proposal was silent in that regard, the final text of the Directive requires Member States to “apply the Directive for periods *longer than a short stay* to holders of the European Disability Card or the European Parking Card for persons with disabilities who participate in a Union mobility programme, for the duration of that programme”.<sup>99</sup> This represents an important success for OPDs which had vigorously advocated for such a provision to be included. According to Recital 14:

Union mobility programmes encompass programmes established by the Union to support mobility of persons for a fixed period to another Member State for educational, training, professional, civic or cultural purposes, such as the European Solidarity Corps Programme or Erasmus+ [...]

The list included in Recital 14 is clearly explanatory and non-exhaustive. In that regard, it seems that persons with disabilities that partake in other mobility programmes, such as Horizon Europe,<sup>100</sup> will also be covered by the Directive. For example, people undertaking research abroad – as professional researchers - under the Marie Skłodowska-Curie Actions (MSCA) seem to be encompassed by the Directive, with the card having to be recognised by

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<sup>98</sup> Recital 12 of the Directive also refers to the Citizenship Directive and states that: ‘For periods longer than three months, Article 7 of that Directive requires additional conditions to be met and, in that case, Article 8 of that Directive provides that the host Member State is able to require Union citizens to register with the relevant authorities’.

<sup>99</sup> Article 2(2) of the Directive. Emphasis added.

<sup>100</sup> Regulation (EU) 2021/695 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 [2021] OJ L 170/1.



the host Member States for the period of their stay (which, in some instances, may be up to 36 months).

Further, Article 2(2) allows (albeit does not oblige) Member States “to apply this Directive for periods longer than a short stay to holders of the European Disability Card or European Parking Card for persons with disabilities visiting or staying in their territory”. In substance, it will be up to the Member States in transposing the Directive to decide whether and in what circumstances (if any) a short stay may be in fact longer than three months. While this is a notable provision from a disability perspective, by the same token it is likely to create inconsistencies and further contradictions across the EU.

### ***The Core Provisions***

As mentioned above, the Directive obliges Member States to introduce physical versions of both cards following the common standardised and accessible formats set out in the annexes, and to include a QR code in the physical version of the card in line with delegated acts to be adopted by the Commission by 5 December 2025.<sup>101</sup> A digital format will also have to be issued in compliance with the implementing acts that are expected to be adopted by the Commission in the forthcoming months.<sup>102</sup>

The cards will be issued or renewed by the Member State of residence directly or upon application by the person with disabilities or by an authorised person, free of charge (as advocated for by OPDs).<sup>103</sup> Member States may charge card holders for re-issuance. In the case of the disability card, however, rates can be charged only in the event of loss or damage,<sup>104</sup> and

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<sup>101</sup> Articles 7(7) and 8(7) of the Directive.

<sup>102</sup> Article 9 of the Directive.

<sup>103</sup> Denninghaus, “EDF analysis of the Commission proposal for a European Disability Card” (3 October 2023).

<sup>104</sup> Articles 7(4) and 8(4) of the Directive.

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fees associated with the cards may not exceed their administrative costs, in order to avoid discouraging people from applying for the cards.<sup>105</sup>

Member States should also inform persons with disabilities about the possibility to apply for the cards, where they are not issued directly upon recognition of disability status.<sup>106</sup> This information duty tallies with more general awareness raising obligations laid out in Article 11 and with the information duties laid out in Article 18. In this respect the Directive fully responds to quests for wide awareness raising raised in the CfE. Differently from the Commission's proposal, the Directive places information obligations onto the Commission itself. In particular, following pressing demands from OPDs, Article 19 now imposes on the European executive a duty to set up a "dedicated Union webpage" in all official EU languages containing links to the national websites.

In compliance with Article 12, Member States "shall designate one or more competent authorities or bodies responsible for the issuance, renewal and withdrawal of the European Disability Card and the European Parking Card for persons with disabilities" as well as "one or more national contact points" to facilitate dialogue on transposition and implementation. It is evident that this provision goes in the direction to softly harmonise processes related to the cards through dialogue between the Member States and the Commission. It is unclear whether the Disability Platform - established in 2021<sup>107</sup> and including representatives of the Member States, representatives of OPDs and civil society organisations active at the EU level, and the Commission - will play a role in such dialogue. However, it is likely that the Platform - which was already an important forum for the discussion of the legislative proposal -<sup>108</sup> will be an

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<sup>105</sup> Articles 7(4) and 8(4) of the Directive.

<sup>106</sup> Articles 7(4) and 8(4) of the Directive.

<sup>107</sup> Commission Decision of 27 October 2021 setting up the group of experts 'Disability Platform' [2021] OJ CI457/1.

<sup>108</sup> Three discussion sub-groups were created within the Platform, but as yet there is no documentation of the deliberations, aside the agenda for some (but not all) of the meetings. See e.g. Directorate-General for

important medium to facilitate the implementation of the Directive and “nudge” Member States towards adopting akin processes.

The Directive requires Member States to set out adequate and effective means to ensure compliance with, and enforcement of, the Directive. These include the possibility to appeal against decisions regarding the issuance, renewal or withdrawal of the cards, as well as the possibility to enforce before courts or competent bodies instances of non-compliance with the obligations or rights provided for in the Directive.<sup>109</sup> Public bodies and private associations which have a legitimate interest in ensuring compliance, including OPDs, must be granted *locus standi* and be empowered by national law to take action before the courts, or before the competent administrative bodies, “on behalf or in support of persons with disabilities protecting their rights, and with their approval, in any judicial or administrative proceedings provided for the enforcement of obligations under this Directive”.<sup>110</sup> While Article 16 is silent in this respect, Recital 47 of the preamble to the Directive mentions explicitly equality bodies among those who might take action on behalf or in support of a person with disabilities. These bodies might in fact play a decisive role in the implementing phase of the Directive and in the deployment of the cards, particularly in the aftermath of the recent directive on equality bodies that reinforces their position and overarching standing, as well as mandates their accessibility and provision of reasonable accommodations for persons with disabilities.<sup>111</sup>

### ***Involvement of Organisations of Persons with Disabilities: “Call me, call me any, anytime”***

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Employment, Social Affairs and Inclusion, “Draft minutes from the meeting of the Disability Platform” (February 2022).

<sup>109</sup> Article 16 of the Directive.

<sup>110</sup> Article 16(2)(c) of the Directive.

<sup>111</sup> Council Directive 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC [2024] OJ L2024/1499.

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As will be further discussed in the reminder of this article, the Directive includes multiple references to consultation of OPDs which were pushed ahead during the legislative process by the EP (on foot of OPDs' recommendations).

Articles 9 and 14 require the Commission to consult OPDs when adopting respectively implementing acts laying down digital requirements for the cards, and delegated acts. These consultations are specifically aimed to allow the Commission to make use of external expertise and ensure that the cards are “fit for purpose”. Article 11(2) further demands OPDs to be targeted in awareness raising campaigns. OPDs must also be involved in the reporting processes connected to the Directive.<sup>112</sup> Additionally, Article 20 establishes that the Commission shall, by 5 June 2031 and every four years thereafter, “submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a report on the application” of the Directive, taking into account “the viewpoints of persons with disabilities, of relevant non-governmental organisations in particular *organisations representing persons with disabilities*, and of economic stakeholders”.

Compared to the initial proposal, which was silent in this respect, Article 13 now obliges Member States to ensure “active consultation and involvement of representative organisations of persons with disabilities in the development, implementation and evaluation of the European Disability Card and the European Parking Card for persons with disabilities”, giving a voice to OPDs in the actual deployment of the cards. This provision tallies with the *locus standi* of OPDs to ensure the enforcement of the Directive at the national level. It is worth noting that multiple references to consultation with OPDs by Member States are also included in the preamble, although in more elusive terms. *Inter alia*, Recital 41 states that “Member States should seek to develop, implement and evaluate” special conditions or preferential

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<sup>112</sup> Article 20(5) of the Directive.

treatment measures “in consultation with persons with disabilities and their representative organisations”, and Recital 43 necessitates the involvement of OPDs in the adoption of measures aimed to prevent fraud.

## **A Directive of Lights and Shadows**

The previous section, in examining the text of the Directive, has identified and commented upon some of its strengths and pitfalls. This section identifies and focus on three fundamental issues. First, it looks at the extent to which the Directive contributes to an ongoing trend of “Europeanization” of the social-contextual contextual understanding of disability.<sup>113</sup> Secondly, it discusses the role of the Directive in facilitating free movement of persons with disabilities. Finally, it examines the way in which the Directive, by embedding participatory features, enhances participation of disabled people in policy making. In doing so this section endeavours to understand the contribution of this Directive to the advancement of disability rights in the EU.

### ***Enhancing the “Europeanisation” of the Social-Contextual Understanding of Disability***

As noted above, the Directive does not affect the way in which Member States recognise disability, i.e. it does not impinge on the process to ascertain a disability (disability assessment). Such processes often precede the issuance of a disability certificate or card that gives entitlement to various benefits and forms of support. As Priestley puts it, disability assessments might include medical, functional or needs-based assessments and function as “a gateway to public resources” in the form of services, health treatments, and benefits that fall

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<sup>113</sup> D. Ferri and N. Šubic, “The European Union: Federal Trends in Disability Rights” in: D. Ferri, F. Palermo and G. Martinico (eds), *Federalism and the Rights of Persons with Disabilities* (Oxford: Hart Publishing, 2023).

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within Member States' social policy broadly conceived of.<sup>114</sup> At present, different types of assessments co-exists in the EU (and often in Member States themselves).<sup>115</sup> Medical-model oriented assessments are still prevalent in the social security field, but there is ample variation in the eligibility criteria applied to disability pensions across the EU.<sup>116</sup> Needs-based assessment are more frequent in relation to benefits in kind but still fragmented across the EU.<sup>117</sup>

The chief pitfall of mutual recognition – which is the key cipher of the Directive - is that it leaves the door open to divergent disability assessments across the EU and equates them, regardless of their compliance with the CRPD and with the social-contextual conceptualisation of disability. Hence, as mentioned by Priestley, the risk that the Directive may reinforce outdated disability assessments - characterised by inherent reproductions of disability as an individual impairment or deficit - in certain Member States by functionally treating them as equivalent to more progressive approaches.<sup>118</sup> The only boundary to that being the (quite unlikely) option for the host Member State to demonstrate that the foreign disability assessment “is not good enough” in a way that infringes national constitutional values, leveraging on the *Sayn-Wittgenstein* jurisprudence.<sup>119</sup>

Yet, in spite of this risk, the Directive does *de facto* contribute to the “Europeanisation” of the social-contextual understanding of disability beyond non-discrimination law and the

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<sup>114</sup> Priestley, “Disability assessment, mutual recognition and the EU Disability Card: progress and opportunities” (2022) p. 17.

<sup>115</sup> Ibid. pp. 43 et seq. See also L Waddington, M. Priestley, & R.Sainsbury, “Disability Assessment in European States”, ANED Synthesis Report, European Commission (2018); and <https://www.edf-feph.org/publications/improving-disability-assessment-procedures-in-the-european-union/> [Accessed 17 April 2025].

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid. p. 73.

<sup>119</sup> *Sayn-Wittgenstein v Landeshauptmann von Wien* (C-208/09) EU:C:2010:806. On this point see Ferri, “The Commission’s Proposal for a Directive Establishing a European Disability Card: Is the Glass Half Empty or Half Full?” (2023) *EU Law Live Weekend Edition* No 161.

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judicial activism of the Court.<sup>120</sup> As noted earlier, it includes a social-contextual definition of persons with disabilities in Article 3 that while being immaterial to the scope of application of the Directive cannot be considered a mere “lip service” to the CRPD. This definition will inevitably trickle down into national transposing legislation and is likely to indirectly influence national definitions of disability for the purpose of the entitlement to the cards. The implementation of the Directive may be a catalyst towards pushing its “Europeanisation” further. In fact, full accordance with the Directive would actually call for disability assessments that align with the definition of disability laid out in Article 3. A holistic reading of the Directive might further engender national definitions of disability that encompass references to barriers that disable the individual. Notably such references are included at multiple junctures of the preamble of the Directive and confirm that for the purpose of EU law personal impairments cannot be considered independently of environmental factors that hamper participation and inclusion.

In the long run, the Directive can also contribute to the rooting of assessments that are CRPD-compliant. This is so because the informal collaboration around the implementation of the Directive – which is envisaged in Article 12(2) - further brings “the potential for greater harmonisation or shared principles of disability assessment”, which may be achieved “softly” as already forecast by Priestley.<sup>121</sup> The Commission, through the Structural Reform Support Programme (SRSP),<sup>122</sup> has already encouraged and supported Member States in reforming their assessments.<sup>123</sup> Funding, technical support and “nudging” through soft law have been important tools so far and might prove important also in the context of the

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<sup>120</sup> Ferri and Šubic, “The European Union: Federal Trends in Disability Rights” in: D. Ferri, F. Palermo and G. Martinico (eds), *Federalism and the Rights of Persons with Disabilities* (2023) 23.

<sup>121</sup> Priestley, “Disability assessment, mutual recognition and the EU Disability Card: progress and opportunities” (2022).

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<sup>123</sup> See [https://reform-support.ec.europa.eu/what-we-do/labour-market-and-social-protection/reforming-assessment-disability\\_en](https://reform-support.ec.europa.eu/what-we-do/labour-market-and-social-protection/reforming-assessment-disability_en) [Accessed 17 April 2025].

implementation of the Directive . The Disability Platform is likely be an additional *locus* to discuss definitions of disability and assessments. Any dialogue would probably revolve around aspirational and loose objectives, but the Platform may still be a considerable forum for soft coordination.

### ***Fostering Free Movement of “Cives Economici”***

As indicated above, the Directive represents a significant a step forward in countering some of the hurdles faced by persons with disabilities when travelling across the EU for leisure or tourism, or for work, if their stay is inferior to three months, or for educational, training, professional, civic or cultural related purposes in the context of an EU programme, even when their stay is longer than three months. In that regard, the Directive marks a “sliding doors moment”. Back in 2009, in the *Gottwald* decision,<sup>124</sup> the CJEU - while confirming that a Union citizen travelling in the territory of a Member State has the right not to be discriminated against by reason of their nationality – by applying a proportionality test, accepted that Member States can restrict access to certain disability benefits related to services (such as a free toll disc for travel on the motorway) to residents and people who have a close connection with the Member State in question. With the Directive on the European Disability Card and the European Parking Card cases like *Gottwald* are unlikely to happen in the future, given that persons with disabilities will have to be accorded equal access to any special conditions or preferential treatment with respect to services, activities or facilities, including where not provided for remuneration, in a host Member State at the same conditions of disabled people resident in that Member State.

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<sup>124</sup> *Arthur Gottwald v Bezirkshauptmannschaft Bregenz* (C-103/08) EU:C:2009:597. For a comment see L. Waddington, “Case Note: Judgment of the European Court of Justice in Case C-103/08 *Gottwald*, 1 October 2009” (2010) 17 *Maastricht Journal of European and Comparative Law*.



Focusing on the mobility aspect, some commentators see this Directive as complementary and ancillary to existing EU transport legislation and recent accessibility legislation. For instance, Rodríguez Guillén et al. suggest that the cards “shows the willingness of European activities to advance in a harmonisation in the area of transport accessibility”.<sup>125</sup> In fact, while the emphasis has been on free movement, the Directive will have no impact on long stays and will not support EU migrants with disabilities. This is so because the Directive does nothing to address the highly fragmented European landscape of social security and social assistance for persons with disabilities,<sup>126</sup> as it does not touch upon nor affect the puzzle of EU regulatory interventions in this field, which “spans a number of complex, overlapping and dynamic legal frameworks” including “the abstruse Regulation 883/2004 on the coordination of social security systems; the open-textured Treaty provisions on free movement and EU citizenship; their partial codification in the Citizenship Directive, the Patient Mobility Directive and Regulation 492/2011”.<sup>127</sup> O’Brien notes that even where disability benefits are exportable, “that exportability can be undermined by extra conditions attached by a Member State”.<sup>128</sup> In that regard, Renny, speaks of a “integration-protection nexus”.<sup>129</sup> Further, leaving aside the case of *D.P.W. Hendrix*,<sup>130</sup> the CJEU has generally accepted that non-contributory benefits are reserved for individuals residing in that same Member State and are not, as such, portable.<sup>131</sup>

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<sup>125</sup> D. R. Guillén, J. A. C. Soler and J. C. Solano Lucas, “Transport accessibility for disabled people in the European Union” (2024) 8 *Journal of Infrastructure, Policy and Development*.

<sup>126</sup> I. Baptista and E. Marlier, “Social protection for people with disabilities – An analysis of policies in 35 countries” (2022) European Commission [https://employment-social-affairs.ec.europa.eu/news/social-protection-people-disabilities-europe-analysis-policies-35-countries-2023-01-03\\_en#:~:text=This%20Synthesis%20Report%20prepared%20by%20the%20European%20Social,and%20above%20have%20effective%20access%20to%20social%20protection](https://employment-social-affairs.ec.europa.eu/news/social-protection-people-disabilities-europe-analysis-policies-35-countries-2023-01-03_en#:~:text=This%20Synthesis%20Report%20prepared%20by%20the%20European%20Social,and%20above%20have%20effective%20access%20to%20social%20protection) [Accessed 12 February 2025].

<sup>127</sup> N. Renny, “The trilemma of EU social benefits law: Seeing the wood and the trees” (2019) 56 *Common Market Law Review* 1549.

<sup>128</sup> O’Brien, “Union citizenship and disability: restricted access to equality rights and the attitudinal model of disability” in: D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (2017) 524.

<sup>129</sup> Renny, “The trilemma of EU social benefits law: Seeing the wood and the trees” (2019) 56 *Common Market Law Review* 1549.

<sup>130</sup> *D.P.W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen* (C-287/05) EU:C:2007:494.

<sup>131</sup> A. P. Van der Mei, “Freedom of movement for persons with disabilities and coordination of social security within the EU” in: D. Ferri and A. Broderick (eds), *Research Handbook on EU Disability Law* (2020) 164.

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Under Regulation No. 883/2004, non-contributory benefits which provide “solely specific protection for the disabled” can only be claimed in the Member State of residence. This means that people with disabilities who move to another Member State will eventually be entitled to claim such benefits, but are required to undertake a disability assessment in the new State which will most likely entail a hiatus in their receipt of benefits. Further, scholarly literature has consistently highlighted that economically inactive citizens may face actual barriers in accessing benefits,<sup>132</sup> as *Dano* famously *docet*.<sup>133</sup> As O’Brien puts it, “disabled would-be migrants could still be largely prevented from accessing benefits in the host state as well as from taking it with them from the home state”.<sup>134</sup> The “elephant” - to which, as noted earlier, most of the contributions in the pre-legislative CfE pointed to - remains in the room.

The Directive does not open the “social” protection door, exposing the actual limits of EU competences when it comes to social policy generally. Arguably, as noted above, the actual Directive legal basis did not support an extension of the scope to the welfare field. These objective limits are however compounded by a rather evident unwillingness to impinge on Member States powers in that domain. A question is whether such restraint is tenable in the long run and with a view of implementing the CRPD (and its Article 18 aptly mentioned in the preamble of this Directive), but this remains out of the scope of this article. One may further query why the EU strong commitment to preserving strict confines in the social field goes hand in hand with a rather loose approach to other areas of competence. In fact, the Directive provides for the European Disability Card to operate in material fields where the EU has merely

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<sup>132</sup> Among many others see C. E. O’Sullivan, “Social Assistance for Economically-Inactive Citizens within the EU’s ‘Market State’ Model” (2016) 19 *Irish Journal of European Law* 64.

<sup>133</sup> *Dano v Jobcenter Leipzig* (C-333/13) EU:C:2014:2358. On *Dano*, among others D. Düsterhaus, “Timeo Danones et dona petentes: European Court of Justice (Grand Chamber), Judgment of 11 November 2014, Case C-333/13, Elisabeta and Florin Dano v Jobcenter Leipzig” (2015) 11 *European Constitutional Law Review* 121-139. On the restrictive line of case law ensuing from *Dano* see *inter alia* M. Tecqmenne “Migrant jobseekers, right of residence and access to welfare benefits: one step forward, two steps backwards?” (2021) *E.L. Rev.*, 46(6), 765.

<sup>134</sup> O’Brien, “Union citizenship and disability: restricted access to equality rights and the attitudinal model of disability” in: D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (2017) 526

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supporting competences - such as culture, leisure or sport, and in the field of education. In this respect, the Directive (as many other pieces of legislation) eschews a strict and literal reading of the division of competences leveraging on free movement and on a heavily purposive approach to it.<sup>135</sup>

On the whole, the Directive supports predominantly those people with disabilities who - echoing Kochenov's words -<sup>136</sup> conform to the economic utility of the internal market rationality. In this respect, the Directive somewhat shores up free movement of economically active citizens and ultimately engenders the idea of "market citizenship".<sup>137</sup> In doing so, it begs the perennial question as to whether the Union citizenship is truly a fundamental status or remains merely aspirational. In this respect, the Directive does almost nothing to move towards what O'Sullivan calls "social citizenship".<sup>138</sup>

### ***Enhancing Participation of Persons with Disabilities in Policy-Making***

Notwithstanding its limits, the Directive contributes to participation of peoples with disabilities (at least those that can be defined economically active) in European society. In addition, perhaps more tangentially, the Directive has also a great potential in instilling and rooting participatory processes in European and national decision making.

The various obligations to consult, outlined earlier, respond to OPDs' concerns and recommendations provided just after the release of the proposal. All in all, the obligations to consult are significant in that they align with the requirements laid out in the CRPD, and, at various junctures, echo the wording of Article 4(3) CRPD which prescribes that

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<sup>135</sup> V. Velyvyte, "Competence creep in EU free movement case law", (2023) E.L. Rev., 48(6), 636-661

<sup>136</sup> D. Kochenov, "EU Citizenship: Some Systemic Constitutional Implications" in: N. Cambien, D. Kochenov and E. Muir (eds.), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Leiden: Brill, 2020) 11.

<sup>137</sup> N. Nic Shuibhne, "The Resilience of EU Market Citizenship" (2010) 47 *Common Market Law* 1597.

<sup>138</sup> C. E. O'Sullivan, "EU citizenship and disability" in: D. Ferri and A. Broderick (eds), *Research Handbook on EU Disability Law* (2020).

[i]n 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.

In particular, Article 13 of the Directive refers to “active consultation and involvement”. The obligations to consult notably extend to the Commission and to the Member States alike. While written in prescriptive terms remain rather open ended as regards to the *how* such consultation should occur. The Commission will have to consult OPDs and persons with disabilities, “as well as experts designated by each Member State” before adopting implementing acts, and it is likely that (at least part of) the consultation will occur within the Disability Platform. Such consultation might also feed into the informal participatory trend in EU policy making that consists of work fora, informal meetings and events.<sup>139</sup> With regard to the Member States, it will be up to them to set up processes of consultation through existing bodies - which may involve the focal points or monitoring bodies set up to implement Article 33 CRPD - or via targeted consultation of specific national stakeholders. It remains to be seen whether such consultations will include organisations with a strong representative claim and smaller OPDs, as well as OPDs with a more intersectional remit. It also remains unclear how meaningful will consultation processes be in terms of including OPDs views into the implementation of the cards. The risk is that they remain “legitimising tools”, in a similar way to the CfE that preceded the deployment of the Directive.

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<sup>139</sup> C. Coveney, “The Role of the European Disability Forum and Disability Organisations in Shaping EU Disability Policy” in: D. Ferri and E. S. Krolla (eds), *Actors and Roles in EU Disability Law* (2025 forthcoming).

In spite of its drawbacks, the embedding of participatory features in the Directive is an important novelty compared to previous disability legislation, such as, for instance, the EAA. In that connection, the Directive, besides aligning itself with CRPD obligations to consult persons with disabilities and OPDs, it does stimulate compliance with Article 4(3) CRPD at the national level. While much is left to Member States, it is not untenable to imagine a cross-fertilisation and collaboration across the Member States on how to effect these consultations, pushing towards soft coordination of participatory practices - at least in relation to the subject matter of the Directive, but arguably beyond these and more broadly on disability issues. Moreover, the Directive might also stimulate a horizontal and transnational collaboration among OPDs (particularly, but not exclusively, through EDF) to identify best practices and to identify specific goals when collaborating with individual Member States. This in turn may also be a 'soft' source of harmonisation and cross-fertilisation.

### **Concluding Remarks**

The excitement that has accompanied the whole pre-legislative and legislative process has led to an enthusiastic welcome for the Directive on the European Disability Card and the European Parking Card. This comes as no surprise, considering the long-standing disability advocacy on this issue and the strong call for EU action.

On the whole, the Directive does contribute to the advancement of disability rights by facilitating mobility across the EU, enhancing access to a rather broad range of facilities and supporting participation in society, as mandated by Article 26 of the Charter. The Directive somewhat couples the "social" and the "market" as it supports rights such as the right to education in EU cross border context, and access to culture (considering that the European Disability Card will facilitate access to museums and cultural venues as the pilot already

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highlighted).<sup>140</sup> In that regard, it is the latest evidence that the internal market and the free movement of the “*civis economicus*” are a strong vehicle to legislate on disability issues. More generally, the Directive is the latest proof of how social issues come to be addressed outside of EU social policy *stricto sensu*.<sup>141</sup> Further, the Directive is another step in the Europeanization of the social-contextual model of disability, and is likely to have interesting spillover effects and ultimately enhance the protection of disability rights. The way in which disability is constituted is indeed essential to conceive persons with disabilities as rights holders themselves, and ultimately to comply with CRPD standards. Finally, the Directive is likely to play a key role in enhancing participation of persons with disabilities in decision-making. While this is perhaps a side-effect, it is a notable one that again is relevant to the promotion of disability rights and essential to align with the CRPD. It would be certainly incorrect to downplay the significance, strengths and (still potential) positive effects of the Directive.

Yet, it holds true that the Directive does address mostly (if not exclusively) the rights of those who are “economically active” citizens. The foundational free movement rights situated in the perennial incompleteness of the internal market are pushing the boundaries of EU disability law, but not enough to address the slippery terrain of social security – a terrain that is key to the protection of disability rights. In that, the Directive does not resolve the tensions between the “market” and the “social” and is a stark reminder of the limited powers enjoyed by the EU in the social field. The social goals of this Directive - rather emphasised in the preamble with references to Article 26 CFR, to the EPRS and to the CRPD - remain structurally constrained in a text that, in the end, better epitomises the market-led course of the EU.

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<sup>140</sup> Chiattelli et al., “Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits – Final report” (2021).

<sup>141</sup> E. Muir, “Drawing Positive Lessons From the Presence of ‘The Social’ Outside of EU Social Policy *Stricto Sensu*” (2018) 14 *European Constitutional Law Review* 75.

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On the whole, this Directive of “lights” and “shadows” does tell us that the claim of the EU to be “much more than a market” is yet to be fully realised. It also evidences that the ongoing process of European integration will have, at some stage, to open the “social door” to really fulfil the rights of persons with disabilities, but also to give meaning to the EU citizenship as fundamental status for disabled citizens.