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**ADVANCING DISABILITY RIGHTS IN THE EU:**  
a blueprint in the social agenda of the Spanish presidency

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***Advancing disability rights in the EU: a blueprint in the social agenda of the Spanish presidency******Abstract***

The 2023 Spanish Presidency of the Council of the European Union marks the fifth time Spain has taken on this presidency since joining the former European Community (EC) in 1986. This presidential term arrives at a key juncture for the European Union (EU) as it falls in the final stretch of the EU institutional cycle before the European Parliament elections, scheduled in May 2024, which will see the appointment of a new Commission. In such a critical period, Spain is challenged with completing negotiations on strategic issues related to the digital and green transitions and a broad social agenda. Notably, at the beginning, Spain announced that “promoting greater social and economic justice” was one of the four thematic areas characterising its aspirations for its presidency. This area is quite wide-ranging, but includes specific actions related to the protection of vulnerable groups, including people with disabilities, and places strong emphasis on the advancement of the European Disability Card (EDC) as a vital instrument to enhance free movement of people with disabilities in the EU. Against this background, this article discusses the role of the Spanish Presidency in advancing disability rights within the remit of its social agenda. It focuses on the EDC as testbed for the Presidency. In fact, the Spanish support and vision will be key to bringing this forward and preparing the ground for adoption of the EDC directive, before “passing the baton” to the forthcoming Belgian Presidency.

**Keywords:** Spanish presidency, social agenda, disability rights, European Disability Card, free movement.

***Promoción de los derechos de las personas con discapacidad en la UE: Un proyecto clave en la agenda social de la Presidencia española******Resumen***

La Presidencia española del Consejo de la Unión Europea de 2023 marca la quinta vez que España asume esta presidencia desde su ingreso a la Comunidad Europea (CE) en 1986. Este mandato presidencial llega en un momento clave para la Unión Europea (UE), ya que cae en la recta final del ciclo institucional de la UE antes de las elecciones al Parlamento Europeo, previstas para mayo de 2024, en las que se nombrará una nueva Comisión. En un período tan crítico, España tiene como objetivo completar negociaciones sobre cuestiones estratégicas sobre la transición digital y ecológica y una amplia agenda social. Al principio España anunció entre las cuatro áreas temáticas que caracterizaban sus aspiraciones la de “promover la justicia social y económica”. Este ámbito incluye acciones específicas por la protección de grupos vulnerables, incluidas las personas con discapacidad, y pone especial énfasis en el avance de la Tarjeta Europea de Discapacidad como instrumento vital para mejorar la libre circulación de las personas con discapacidad en la UE. En este sentido, este artículo analiza el papel de la Presidencia española y comenta a la promoción de los derechos de las personas con discapacidad en el marco de su agenda social. El apoyo y la visión españoles serán clave para preparar el terreno para la adopción de la directiva sobre la Tarjeta Europea, antes de “pasar el testigo” a la Presidencia belga.

**Palabras clave:** presidencia española, agenda social, derechos de las personas con discapacidad, Tarjeta Europea de Discapacidad, libre circulación

**SUMMARY<sup>1</sup>:** I. INTRODUCTION. II. THE “SOCIAL AGENDA” OF THE SPANISH PRESIDENCY AND DISABILITY RIGHTS. 1. The Social Agenda: Aspirations and Key Priorities. 2. Disability in the Spanish Presidency’s Social Agenda: An Overview. III. THE EUROPEAN DISABILITY CARD AS KEY TESTBED FOR THE SPANISH PRESIDENCY. 1 Setting the Scene. The Long Road Towards the Card. 2 The EDC Proposal at a Glance. 3. A Testbed for the Spanish Presidency. IV. CONCLUDING REMARKS.

## I. INTRODUCTION

The 2023 Spanish Presidency of the Council of the European Union marks the fifth time Spain has taken on the presidency since joining the former European Community (EC) in 1986. This presidential term arrives at a key juncture for the European Union (EU) and in a particularly challenging period, after a long pandemic, amidst the Ukrainian war,<sup>2</sup> during the so-called rule of law crisis<sup>3</sup> and the rise of populism.<sup>4</sup> Notably, the Spanish Presidency also falls in the final stretch of the EU institutional cycle before the European Parliament elections, scheduled in May 2024, which will see the appointment of a new European Commission. Thus, in the six months of its Presidency, Spain is being challenged with completing negotiations on strategic issues. It has inherited over 300 pieces of unfinished legislation, and has named more than 120 of these as priorities.<sup>5</sup>

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<sup>2</sup> ANGHEL, V. and JONES, E., “Is Europe Really Forged Through Crisis? Pandemic EU and the Russia - Ukraine War” *Journal of European Public Policy* 30(4) (2023) pp. 766-786.

<sup>3</sup> UITZ, R., “The Rule of Law in the EU: Crisis, Differentiation, Conditionality” *European Papers* 7(2) (2022) pp. 929-948. For a critical overview see JAKAB, A., “Three misconceptions about the EU rule of law crisis” (*VerfBlog*, 17 October 2022) available at <https://verfassungsblog.de/misconceptions-rol/>.

<sup>4</sup> FOSSUM, J.E., “In what Sense does Right-Wing Populism Pose a Democratic Challenge for the European Union?” *Social & Legal Studies* 32(6) (2023) pp. 930-952.

<sup>5</sup> HOMEL, L. and JOURDAIN, M., “Five Things to Expect from Spain’s EU Presidency” (*Atlantic Council*, 17 July 2023) available at <https://www.atlanticcouncil.org/blogs/new-atlanticist/five-things-to-expect-from-spains-eu-presidency/>.

Spain's predecessor – Sweden – had focused on security, European unity, democratic values, and the rule of law, alongside competitiveness and the green transition. Spain is continuing on the Swedish path but has placed greater emphasis on economic and social issues.<sup>6</sup> It has announced four main thematic areas for action for its Presidency:<sup>7</sup> reindustrialization and economic priorities; advancing the green transition; promoting social and economic justice; strengthening European unity. These are juxtaposed to cross-cutting issues that the Spanish Presidency will tackle, such as the management of migration and the Russia-Ukraine war. Spain has also worked on the “trio of Presidencies” collaboration. Liaising with Belgium and Hungary, which will take this office in 2024, Spain aims to achieve continuity and bring to completion certain dossiers before the election. In that way, Spain has mostly worked on shared solutions to the challenges identified,<sup>8</sup> shading away from Hungary's much-debated unfitness for the Presidency.<sup>9</sup>

It is evident that the ongoing crisis in Ukraine has significant implications for Europe's security and stability, and the Spanish Presidency is backing ongoing sanctions on Russia and military help to Ukraine. Notably, Pedro Sánchez, acting President of the Government of Spain, speaking in New York at the Security Council's open debate on Ukraine on 20 September 2023, reiterated the EU support for Ukraine's sovereignty and territorial integrity.<sup>10</sup> He also stressed Spain's and EU commitment “*to an effective multilateralism*

<sup>6</sup> STEINBERG, F. and ARNAL, J., “What to Expect from the Spanish Presidency of the Council of the European Union” (*Centre for Strategic & International Studies*, 27 June 2023) <https://www.csis.org/analysis/what-expect-spanish-presidency-council-european-union>.

<sup>7</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, “Priorities” available at <https://spanish-presidency.consilium.europa.eu/en/programme/priorities/>. For a comment see OCVIRK, M., “Spain's EU Presidency: The Agenda to Bring “Europe, Closer”” (*Wilson Centre*, 18 July 2023) available at <https://www.wilsoncenter.org/article/spains-eu-presidency-agenda-bring-europe-closer>.

<sup>8</sup> COUNCIL OF THE EUROPEAN UNION, Taking forward the Strategic Agenda 18-month Programme of the Council (1 July 2023 - 31 December 2024), 10597/23, 20 June 2023 available at <https://data.consilium.europa.eu/doc/document/ST-10597-2023-INIT/en/pdf>.

<sup>9</sup> The matter remains outside the scope of this article. However, it is worth noting that the European Parliament raises serious concerns over developments in Hungary, in light of the upcoming Hungarian Presidency of the Council of the EU. EUROPEAN PARLIAMENT, “Hungary: MEPs denounce deliberate and systematic efforts to undermine EU values” (Press Release, 1 June 2023) available at <https://www.europarl.europa.eu/news/en/press-room/20230524IPR91910/hungary-meps-denounce-deliberate-and-systematic-efforts-to-undermine-eu-values>.

<sup>10</sup> LA MONCLOA, “Pedro Sánchez reiterates Europe's support for Ukraine's territorial integrity in the UN Security Council” (President's News, 20 September 2023) available at

*that defends the purposes and principles of the United Nations Charter*". However, the Spanish Presidency seems to have placed "front and centre" the need to redressing the economic crisis and social malaise that is traversing the EU. This seems to be linked to the fact that Spain, alongside Italy, is one of the European economies that have been most affected by low economic growth, which has been further exacerbated by the COVID-19 pandemic.<sup>11</sup> In fact, Spain is still in post-COVID recovery and faces double-digit inflation.<sup>12</sup> Further, similarly to Italy,<sup>13</sup> but also to Sweden<sup>14</sup> and other EU countries,<sup>15</sup> Spain has seen a rise in nationalism – even though the populist party Vox,<sup>16</sup> did not manage to capitalise on discontent at the fringe of Spanish society in the latest elections earlier this summer.

The Spanish Presidency seems to cherish the idea of a "social market economy",<sup>17</sup> and clearly stated in its priorities that "[i]n the future, it will not be enough for Europe's GDP to grow. It will be necessary to ensure that the wealth generated benefits all citizens and serves to improve their opportunities and living standards. We need a more competitive economy, but also a fairer and more caring one".<sup>18</sup>

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[https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2023/20230920\\_un-security-council.aspx](https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2023/20230920_un-security-council.aspx).

<sup>11</sup> DE LA FUENTE, A., "The economic consequences of Covid in Spain and how to deal with them" *Applied Economic Analysis* 29(85) (2021) pp. 90-104.

<sup>12</sup> NADKARNI, I. and HUCKSTEP, L., "EU: Our Guide to the Spanish Presidency of the Council" (Instinctif Partners, 27 June 2023) available at <https://instinctif.com/articles/eu-our-guide-to-the-spanish-presidency-of-the-council/>.

<sup>13</sup> URSO, G., FAGGIAN, A. and PALMA, A., "Discontent in the 'peripheries': an investigation of the rise of populism in Italy" *Territory, Politics, Governance* 11(5) (2023) pp. 833-854.

<sup>14</sup> HERLIN-KARNELL, E., "The Swedish Change of Government: Will Swedish Courts Start Asking the EU Court of Justice More Often?" (*VerfBlog*, 1 November 2022) available at <https://verfassungsblog.de/the-swedish-change-of-government/>.

<sup>15</sup> For a general comment see DE JONGE, L. and HEINZE, A-S., "How to Respond to the Far Right" (*VerfBlog*, 14 August 2023) available at <https://verfassungsblog.de/how-to-respond-to-the-far-right>.

<sup>16</sup> On Vox see, *inter alia*, CASTILLO-ORTIZ, P., "Constitutionalism and the Radical Right: The Case of the Spanish Party Vox" *International Journal of Constitutional Law* 20(2) (2022) pp. 733-757.

<sup>17</sup> FERRI, D. and CORTESE, F., "Introduction" in FERRI, D. and CORTESE, F. (eds), *The EU Social Market Economy and the Law. Theoretical Perspectives and Practical Challenges for the EU*, Routledge, London-New York, 2018.

<sup>18</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, "Priorities" cit..

As noted by the Spanish Ambassador addressing the Irish Parliament's (*Oireachtas*) Joint Committee on European Union Affairs debate,<sup>19</sup> both objectives (a more competitive and fairer economy) are compatible, and Spain aims to “*work on an adequate reform of the economic governance rules to increase transparency and combine the sustainability of public finances with the proper financing of social services and the green and digital transitions*”. In line with this commitment, the Spanish social agenda, alongside a series of dossiers on fairer taxation, makes a strong pivot on equality.<sup>20</sup> It also places robust emphasis on disability and on the advancement of the proposed directive on the European Disability Card (EDC) and the European Parking Card<sup>21</sup> as a vital legislative instrument to enhance free movement of people with disabilities in the EU.

Against this background, this article discusses the role of the Spanish Presidency in advancing disability rights. While focusing on most recent legal developments – particularly the proposal for a directive on the EDC and the European Parking Card released by the European Commission on 6 September 2023 – it situates them in the broader EU policy arena. In this respect, adopting a “law in context” approach, this article critically engages with the extent to which the Presidency has been able to direct the Council’s political attention to certain disability priorities so far. As noted by Häge, “*even though much of the Council’s agenda might be inherited, subject to medium- and long-term programming, reliant on co-ordination with other institutional actors like the European Parliament (EP) or the Commission, or shaken up by unforeseen shocks and external developments (e.g., the financial crisis), much of the variation in the Council’s political attention is systematically related to the rotation of the Council’s chairmanship*”.<sup>22</sup>

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<sup>19</sup> HOUSES OF THE OIREACHTAS, “Priorities of the Spanish EU Presidency: Discussion with Spanish Ambassador” (Joint Committee on European Union Affairs debate, Wednesday, 5 July 2023) available at [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_european\\_union\\_affairs/2023-07-05/2/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_european_union_affairs/2023-07-05/2/).

<sup>20</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, “Programme Spanish Presidency of the Council of the European Union Second Half of 2023 Europe, closer” available at <https://spanish-presidency.consilium.europa.eu/media/e4ujaagg/the-spanish-presidency-programme.pdf>.

<sup>21</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>22</sup> HÄGE, F.M., “The scheduling power of the EU Council Presidency” *Journal of European Public Policy* 24(5) (2017) pp. 695-713.



After these introductory remarks, the following section briefly discusses the social agenda of the Spanish Presidency to set the scene and zooms in on disability rights. The third section focuses on the proposal for a directive on the EDC and the European Parking Card as testbed for the Presidency. Further having recalled the background to the current initiative, it examines the key features of the Commission's proposal and its shortcomings, focusing on the EDC. In doing so it articulates why and to what extent, the Spanish support and vision will be key to bringing this forward and preparing the ground for adoption of this directive, before "passing the baton" to the forthcoming Belgian presidency. The final section presents some concluding remarks.

## II. THE "SOCIAL AGENDA" OF THE SPANISH PRESIDENCY

### 1. The Social Agenda: Aspirations and Key Priorities

As mentioned in the introduction, the Spanish Presidency has adopted a dense social agenda, which brings to the fore a number of priorities within the broader vow of an economic growth that "reaches all Europeans".<sup>23</sup>

In the Spanish vision, the need for strengthening the European welfare state goes hand in hand with "tax justice". Spain is committed to advocating for minimum corporation tax standards for Member States, with a view to ensuring fair taxation and preventing tax evasion by large multinationals. A brand-new proposal was released on 12 September 2023 by the European Commission. Particularly, the Commission adopted a package of initiatives to reduce tax compliance costs for large, cross-border businesses which should reduce tax avoidance.<sup>24</sup> The "Business in Europe: Framework for Income Taxation (BEFIT)"<sup>25</sup> is a rather loose text according to Oxfam,<sup>26</sup> but has already raised concerns

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<sup>23</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, "Programme..." cit..

<sup>24</sup> EUROPEAN COMMISSION, "Taxation: new proposals to simplify tax rules and reduce compliance costs for cross-border businesses" (Press Release, 12 September 2023) available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4405](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4405).

<sup>25</sup> EUROPEAN COMMISSION, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM(2023) 532 final.

<sup>26</sup> OXFAM INTERNATIONAL, "EU leaves big loopholes open for tax dodging companies in new tax reform" (Press Release, 12 September 2023) available at <https://www.oxfam.org/en/press-releases/eu-commission-leaves-big-loopholes-open-tax-dodging-companies-new-tax-reform>.

among tax experts since its inception.<sup>27</sup> Whether the current text could gather the agreement in the Council is hard to say, but certainly Spain will have a vital role in bringing the BEFIT directive forward.

More just and predictable fiscal rules are only one of the strands of the Spanish social agenda, as Spain aims to substantively progress on the initiatives set forth in the European Pillar of Social Rights Action Plan (EPSR Action Plan).<sup>28</sup> Particularly, Spain intends to advance active labour market policies, to fight unemployment, but also to promote social protection. In a recent meeting of the Social Protection Committee (SPC), a political advisory committee of ministers in the Council (in its Employment and Social Affairs – EPSCO configuration), improvements in social protection of self-employed workers were one of the key topics.<sup>29</sup>

Spain has also placed great emphasis on community based social care services throughout the EU. In that connection, the Presidency has sponsored a conference organised by the European Social Network on how to further promote community care across Europe.<sup>30</sup> Notably for the purpose of this analysis, “Community Care for People with Disabilities” features as one of the key streams of the conference, in line with the EU commitment manifested by the Commission in the “Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030” (Strategy 2021–2030).<sup>31</sup> In fact, one of the main areas of that Strategy is “*decent quality of life and living independently*” which is rooted in the plea of reinforcing community-based services. Arguably this conference can contribute to the building of a specific framework for Social Services of Excellence for

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<sup>27</sup> See for example IRISH TAX INSTITUTE, “Business in Europe: Framework for Income Taxation (BEFIT)” available at <https://taxinstitute.ie/tax-insight/international-tax-policy/european-commission/business-in-europe-framework-for-income-taxation-befit/>.

<sup>28</sup> EUROPEAN COMMISSION, “The European Pillar of Social Rights Action Plan” available at <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>.

<sup>29</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, “Social Protection Committee meeting” (Meeting of experts/ officials, 26 September 2023) available at <https://spanish-presidency.consilium.europa.eu/en/events/social-protection-committee-meeting/>.

<sup>30</sup> EUROPEAN SOCIAL NETWORK, “Social Services Leading Care in the Community. 9 October – 10 October 2023 Barcelona, Spain” available at <https://www.esn-eu.org/events/social-services-leading-care-community>.

<sup>31</sup> EUROPEAN COMMISSION, Union of Equality: Strategy for the Rights of Persons with Disabilities 2021 – 2030 COM(2021) 101 final.



persons with disabilities, which is a goal of the Commission for 2024 (probably before the elections). Such Framework should improve service delivery and enhance the upskilling and reskilling of service providers. It is evident that Spain is endeavouring to discuss how and to what extent the EU can effectively promote community care and push Member States away from institutional models of care. In this respect, the Spanish Presidency might have a small yet important role in continuing the building a “deinstitutionalised” Europe.

In the Spanish “Social Agenda”, the goal of “*promot[ing] equal treatment and inclusivity, paying particular attention to gender equality and to children and persons with disabilities*” is prominent. Before focusing on disability rights in the next section, it is worth mentioning that Spain is particularly committed to further advance gender equality, which is already the crown jewel in a rather uneven EU equality law,<sup>32</sup> and will endeavour to get the current European Child Guarantee recommendation, adopted by the Council in 2021,<sup>33</sup> into a directive to ensure that every child at risk of poverty or social exclusion has access to basic rights like healthcare and education.

Further, the Presidency has promised to resume the discussion on the 2008 proposal for a Horizontal Non-Discrimination Directive,<sup>34</sup> which has stalled for almost fifteen years.<sup>35</sup> The aim of this proposal is to implement the principle of equal treatment and non-discrimination on the grounds of religion or belief, disability, age or sexual orientation outside the labour market, complementing the existing Employment Equality Directive.<sup>36</sup>

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<sup>32</sup> On the differentiated equality protection see, *inter alia*, XENEDIS, R., “Shaking the normative foundations of EU equality law: Evolution and hierarchy between market integration and human rights rationales” *EUI Working Papers* 4/2017 available at [https://cadmus.eui.eu/bitstream/handle/1814/45489/LAW\\_2017\\_04.pdf](https://cadmus.eui.eu/bitstream/handle/1814/45489/LAW_2017_04.pdf).

<sup>33</sup> Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee ST/9106/2021/INIT OJ L 223, 22.6.2021, 14–23.

<sup>34</sup> EUROPEAN COMMISSION, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM (2008) 426 final. On the proposal see WADDINGTON, L., “Future prospects for EU equality law: lessons to be learnt from the proposed Equal Treatment Directive” *European Law Review* 36(2) (2011) pp. 163-184.

<sup>35</sup> This is reported by EUROPEAN DISABILITY FORUM (EDF), “Spanish Presidency of the Council – new focus on disability rights” (20 July 2023) available at <https://www.edf-feph.org/spanish-presidency-of-the-council-new-focus-on-disability-rights/>.

<sup>36</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

The proposal is meant to align non-discrimination protection across all grounds. At present, discrimination based on race or ethnic origin as well as on sex is prohibited in employment, occupation and vocational training, as well as in non-employment areas and access to goods and services. However, discrimination based on other grounds is only banned in employment. In spite of the fact that a more even approach to non-discrimination will be badly needed, to bring this legislative initiative back on the discussion-track, and reverse its unsuccessful trajectory, will prove difficult. Certainly, regardless of the Spanish endeavours, the prospects of the proposed directive being passed anytime soon are slim. Unanimity has not yet been reached in the Council, and notably the bone of contention revolves around the material scope of the directive to cover areas such as social security and healthcare, as well as disability provisions related to reasonable accommodation.

## 2. Disability in the Spanish Presidency's Social Agenda: An Overview

Disability features prominently in the Spanish Presidency's agenda, which was endorsed by the European Disability Forum (EDF), the main umbrella organisation of persons with disabilities at the EU level.<sup>37</sup> Alongside a general commitment to protection and promotion of disability rights, Spain has made it clear that it intends to advance the EDC as far as possible.

In June, speaking at an event organised by the Spanish National Organization for the Blind (ONCE), the former Minister of Foreign Affairs, José Manuel Albares, declared that the Spanish Presidency will place a particular emphasis on the initiative on the European Disability Card “*as a guarantee of equal access to benefits throughout Europe*”.<sup>38</sup> Along the same line, the Spanish Ambassador in the *Oireachtas* explicitly affirmed that “[a]mong the various files in the social field, I am proud to say that the *European Disability Card will be our priority*”.<sup>39</sup> In fact, the EDC features as one of the initiatives that Spain wants to push forward this autumn in a High-Level Meeting on the Rights of Persons with Disabilities taking place on 16 November 2023 in Palma. This

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<sup>37</sup> EDF, “Spanish Presidency...” cit..

<sup>38</sup> EDF, “Spanish Presidency...” cit..

<sup>39</sup> HOUSES OF THE OIREACHTAS, “Priorities...” cit..



meeting “*will be the culmination of work carried out by Spain with the countries that preceded it in the Spanish [P]residency of the EU to formulate a consensus proposal that will serve to implement the European [D]isability [C]ard. Likewise, the intention is to take stock of good practices by some countries that are becoming benchmarks in the field of disability*”.<sup>40</sup>

As noted elsewhere and as will be further discussed in the following section, the strong support of the Spanish Presidency, which claims to have a “social DNA” might in fact facilitate the reach of an agreement on the EDC in the EU legislature (at least in the Council) and the release of the directive.<sup>41</sup>

Finally, while disability accessibility does not feature overtly in the Presidency’s programme, the launch of the Commission’s flagship centre “AccessibleEU”,<sup>42</sup> led by the Spanish ONCE Foundation,<sup>43</sup> will offer the opportunity for Spain to foster a pan-European approach to access for persons with disabilities. AccessibleEU is one of the flagship initiatives proposed by the Strategy 2021-2030. It is a rather hybrid structure, as it is not an EU agency but a resource centre and a network comprising accessibility experts from different EU countries as well as other people with interest in accessibility. A range of events will be organised in Spain including a large networking event to be held in Madrid at the beginning of November. It is expected that such an event will be an important platform to reaffirm Spain’s political leadership on disability issues, and might further enhance the Presidency’s abilities to successfully bring the EDC legislative files across the finish line by the end of the year.

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<sup>40</sup> SPANISH PRESIDENCY COUNCIL OF THE EUROPEAN UNION, “High Level Meeting on the Rights of Persons with Disabilities” (Meeting of experts/ officials, 16 November 2023) available at <https://spanish-presidency.consilium.europa.eu/en/events/high-level-meeting-on-the-rights-of-people-with-disabilities/>.

<sup>41</sup> FERRI, D., “Op-Ed: The Road to towards a ‘European Disability Card’” (*EULawLive*, 28 July 2023), available at <https://eulawlive.com/op-ed-the-road-towards-a-european-disability-card-by-delia-ferri/>.

<sup>42</sup> EUROPEAN COMMISSION, “AccessibleEU” available at [https://accessible-eu-centre.ec.europa.eu/index\\_en](https://accessible-eu-centre.ec.europa.eu/index_en).

<sup>43</sup> See Fundación ONCE at <https://www.fundaciononce.es/en>.

### III. THE EUROPEAN DISABILITY CARD AS KEY TESTBED FOR THE SPANISH PRESIDENCY

The Spanish Presidency has placed strong emphasis on the EDC and, among other files, this is probably the one that can realistically be brought close to the finish line if not fully delivered before the elections in May 2024. In fact, on 27 November 2023, Pablo Bustinduy, Spanish Minister for Social Rights, Consumer Affairs and 2030 Agenda, declared that an agreement among EU Member States on the EDC has been reached making the approval of the proposed directive likely to occur in early 2024. This section, after presenting the background to the proposed directive, discusses the key features of the text released by the Commission and then moves onto examining its significance in the context of the Spanish Presidency.

#### 1. The Long Road Towards the European Disability Card

It is worth recalling that the input and idea for the EDC has come a long way. The predecessor and trailblazer of the current idea for an EU Disability Card is certainly the EU Parking Card. In the late 1990s, the adoption of such a card by Member States was recommended by virtue of a soft law instrument: the Council Recommendation 98/376/EC on a parking card for people with disabilities,<sup>44</sup> which was amended in 2008 after the EU enlargement.<sup>45</sup> Namely, on foot of the Commission's proposal for reciprocal recognition of a parking card for disabled persons "*based on a standardised Community model*" included in its communication on a medium term social action programme,<sup>46</sup> the Council recommended Member States to, *inter alia*, "*introduce a parking card*" for people with disabilities and recognise such parking cards issued by other Member States.<sup>47</sup> The card was explicitly aimed to enable these citizens "*to park as near to their destination as possible*", in order to assist them with "*getting about independently for*

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<sup>44</sup> Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L167/25.

<sup>45</sup> Council Recommendation 2008/205/EC adapting Recommendation 98/376/EC on a parking card for people with disabilities [2008] OJ L63/43.

<sup>46</sup> EUROPEAN COMMISSION, Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – Medium Term Social Action Programme 1995 – 1997 COM(95) 134 final p. 24.

<sup>47</sup> Council Recommendation 98/376/EC on a parking card for people with disabilities [1998] OJ L167/25 paras 1-2.

*purposes of occupational and social integration*".<sup>48</sup> The Recommendation required Member States to take the necessary steps to introduce the card by 1 January 2000. In fact, the EU Parking Card is currently in use in all Member States.<sup>49</sup> It is administered according to the national rules of each Member State and issued by national authorities on foot of national requirements and in light of the disability assessment in that Member State.<sup>50</sup>

While EDF heralded the card as "*one of the most practical and visible EU initiatives on disability issues*",<sup>51</sup> it has consistently questioned the soft nature of the Recommendation and pointed to the actual limits of mutual recognition, suggesting harmonisation of requirements to obtain such a card, but also a substantial "upgrade" of its functioning across the EU.<sup>52</sup> In fact, since 2010, the EDF has advocated for a general EU Disability Card as a tool to ensure the equal enjoyment of free movement rights for citizens with disabilities.<sup>53</sup> Such initiative was deemed essential to make the mutual recognition of disability among EU Member States a reality and to fulfil the obligations of the UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>54</sup> ratified by the EU in 2010.<sup>55</sup> Remarkably, the Convention includes, aside a general equality clause, a specific

<sup>48</sup> Recital 3 Recommendation 98/376/EC.

<sup>49</sup> PRIESTLEY, M., "Disability assessment, mutual recognition and the EU Disability Card - Progress and opportunities" PE 739.397 (European Parliament, Committee on Petitions, 28 November 2022) p. 65. See also FERRI, D., "Op-Ed..." cit..

<sup>50</sup> PRIESTLEY, M., "Disability assessment..." cit..

<sup>51</sup> EDF, "Recommendations for strengthening the EU Parking Card European Disability Forum Position Paper" (European Disability Forum Position Paper, February 2021) available at <https://www.edf-feph.org/publications/edf-recommendations-for-strengthening-the-eu-parking-card-2020/>.

<sup>52</sup> EDF, "Recommendations..." cit.. EDF suggests that abuse of the card or fraudulent use of the card are major issues, but it is questionable how those could be addressed at the EU level.

<sup>53</sup> See PRIESTLEY, M., "Disability assessment..." cit. p. 67. See also EUROPEAN BLIND UNION (EBU), "The European Disability Card - A Wider Perspective from the European Disability Forum (EDF)" available at <https://www.euroblind.org/newsletter/2022/june/en/european-disability-card-wider-perspective-european-disability-forum-edf-0>.

<sup>54</sup> On the CRPD the literature is vast. For an overview see generally KAYESS, R. and FRENCH, P., "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" *Human Rights Law Review* 8(1) (2008) pp. 1-34; BRODERICK, A. and FERRI, D., *International and European Disability Law and Policy. Text, Cases and Materials*, Cambridge University Press, Cambridge, 2019.

<sup>55</sup> Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

provision on liberty of movement,<sup>56</sup> the right of persons with disabilities to live independently and be included in the community, as well as the right to an adequate standard of living and social protection.<sup>57</sup> In particular, disability advocacy efforts have consistently pointed to the need for an instrument that addresses hurdles to free movement broadly.

In 2013, the European Commission established a “Project Working Group” of interested Member States to exchange ideas and pave the way for a possible future “European Mobility Card”, whose aim “*was to create a voluntary system of mutual recognition between Member States based on a single European model disability card associated to a number of benefits freely identified by Member States*”.<sup>58</sup> However, the terminology “EU mobility card” was soon abandoned to make space for a broader initiative – the EU Disability Card – but which in reality turned out to be a rather narrow “pilot project”. In 2015, this pilot project, involving eight Member States (i.e. Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania, Slovenia), was launched. It was financed under the Rights, Equality and Citizenship Programme 2014–2020<sup>59</sup> and implemented through eight national projects between 2016 and 2018. It entailed the issuing of a card to persons who are recognised as persons with disabilities according to national legislation and are residing in the issuing Member State. Similarly to the EU Parking Card, it was up to each Member State to decide the eligibility criteria for receiving the card. It was also up to each participating Member State to identify the benefits offered to the card holders. The study that assessed the impact of the pilot revealed the benefits of the card in stimulating further debate on mutual recognition of disability status, and “*contributed to moving*

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<sup>56</sup> Article 18 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

<sup>57</sup> Article 28 CRPD.

<sup>58</sup> See DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION (DG EMPL) (EUROPEAN COMMISSION), ERNST AND YOUNG, IRVAPP, “Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits Final Report” Publications Office of the European Union, Luxembourg, 2021 p. 5.

<sup>59</sup> PRIESTLEY, M., “Disability assessment...” cit. p. 69; EUROPEAN COMMISSION, “Call for proposals to support national projects on a mutually recognised European Disability Card and associated benefits” VP/2015/012 (2015) available at <https://ec.europa.eu/social/main.jsp?catId=629&langId=en&callId=456>.



*service providers closer to persons with disabilities and to increasing awareness of the needs of persons with disabilities”.*<sup>60</sup>

The pilot served as a basis for the elaboration of the current proposal. In line with consolidated practice, the Commission commenced the journey towards deploying an EU Disability Card launching an extensive two-phases consultation that was undertaken between November 2022 and May 2023, and the proposal was released together with the Impact Assessment on 6 September 2023.

## 2. The EDC Proposal at a Glance

On 6 September 2023, the Commission proposed a directive that establishes the European Disability Card and the European Parking Card for persons with disabilities.<sup>61</sup> In this way, the EU executive does not merge the two cards and rejects the option of creating a single disability card – strongly pushed back by disability advocates and the European Economic and Social Committee –<sup>62</sup> but maintains them distinct and regulates them.<sup>63</sup> The choice of regulating them by virtue of the same legal instrument does not seem ideal, given the different purposes of the two cards and the fact that all Member States already have a disability parking card, while not all Member States have a disability card.<sup>64</sup> It may have been more appropriate to pursue a revamping of the parking card by adopting a separate instrument (a regulation, and not a directive) built on foot of the Council Recommendation on a EU Parking Card creating a binding and fully harmonised parking card. However, the provisions on the EU Parking Card are not likely to attract too much

<sup>60</sup> EUROPEAN COMMISSION, ERNST AND YOUNG, IRVAPP, “Study assessing...” cit. p. 113.

<sup>61</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>62</sup> EUROPEAN ECONOMIC AND SOCIAL COMMITTEE (EESC), “The European Disability Card” (Rapporteur: Ioannis Vardakastanis, 27 April 2023) available at <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-card>.

<sup>63</sup> FERRI, D., “Analysis of the European Disability Card The Proposed Directive: Shortcomings, Strengths and Opportunities” European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, November 2023 available at [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)754192](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)754192).

<sup>64</sup> FERRI, D., “The Commission’s Proposal for a Directive Establishing a European Disability Card: Is the Glass Half Empty or Half Full?” (*EU Law Live*, 3 November 2023) available at <https://eulawlive.com/weekend-edition/weekend-edition-no161/>.

opposition in the Council, and the EDC is the “new” card on which the debate will focus on.

As predicted,<sup>65</sup> the EDC is not meant to and will not affect the way in which Member States recognise disability. It does not regulate disability assessment, nor does it address divergences in such assessments as wished for by disability advocates.<sup>66</sup> Being based on the principle of mutual recognition, the proposed EDC directive lays down: *“the rules governing the issuance of the European Disability Card and the European Parking Card for persons with disabilities as proof respectively of a disability status or of a right to parking conditions and facilities reserved for persons with disabilities, in view of facilitating short stays of persons with disabilities in a Member State other than that of which they are a resident, by granting them access to any special conditions or preferential treatment with respect to services, activities or facilities, including when provided not for remuneration, or parking conditions and facilities offered to or reserved for persons with disabilities or person(s) accompanying or assisting them including their personal assistant(s)”*.<sup>67</sup> In other words, the EDC will serve as a proof of disability throughout the EU, granting equal access to special conditions and preferential treatment in a range of services covered by the proposal for short stays in host Member States.

Secondly, the material scope of the proposal is quite wide and encompasses transport services, leisure activities, cultural events, museums and sport centres and all services within the meaning of Article 57 TFEU,<sup>68</sup> but also other activities and facilities, including those not provided for remuneration. The proposal, as announced by the Commission

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<sup>65</sup> FERRI, D., “Op-Ed...” cit..

<sup>66</sup> PRIESTLEY, M., “Disability assessment...” cit. pp. 12, 44-45.

<sup>67</sup> Article 1 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.

<sup>68</sup> The notion of “services” is an EU concept and is subject to a single autonomous interpretation in the EU legal order. The Treaty defines the concept of services as encompassing activities of an industrial or commercial character, including activities carried out by craftsmen or professionals in exchange for remuneration. The CJEU has interpreted such notion quite extensively to include, among others, sport, gaming, health services and educational ones. TOMKIN, J., “Article 57 TFEU” in KELLERBAUER, M., KLAMERT, M. and TOMKIN, J. (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford University Press, Oxford, 2019. Furthermore, 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 which cannot qualify as services for the purpose of EU law as they are devoid of economic character.

since the beginning, excludes social security and social assistance.<sup>69</sup> The restraint of the Commission seems intended to tame Members States' fear of "benefit tourism".<sup>70</sup> The exclusion of social security and social assistance is based on the objective limits of EU competences when it comes to social policy generally. However, it clearly leaves the "elephant in the room". In fact disability advocacy has consistently pointed to the need for an instrument that addresses hurdles to free movement broadly,<sup>71</sup> and highlighted that the EDC should tackle limits in accessing social security benefits in the host Member State.<sup>72</sup> At present, it is notorious that, leaving aside the case of *D.P.W. Hendrix*,<sup>73</sup> the CJEU has generally accepted that non-contributory benefits are reserved to individuals residing in the Member State<sup>74</sup> and are not, as such, portable.<sup>75</sup> Thus the EDC will not in

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<sup>69</sup> Article 2(2) 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.

<sup>70</sup> On the fears of benefit tourism there is a wide array of literature especially following the CJEU decision in *Dano*. Among many others see BLAUBERGER, M. and SCHMIDT, S.K., "Welfare migration? Free movement of EU citizens and access to social benefits" *Research & Politics* 1(3) (2014); VERSCHUEREN, H., "Preventing "benefit tourism" in the EU: A narrow or broad interpretation of the possibilities offered by the ECJ in *Dano*?" *Common Market Law Review* 52(2) (2015) pp. 363-390. See also VON PAPP, K., "'Benefit-Tourism" post- Brexit: Tackling the Ghost by More EU Social Engagement" *Northern Ireland Legal Quarterly* 69 (2018) p. 271.

<sup>71</sup> See for example EDF, "European Parliament event: A Disability Card recognised in all EU. (Andre Felix, 5 December 2022) available at <https://www.edf-feph.org/european-parliament-event-a-disability-card-recognised-in-all-eu/>.

<sup>72</sup> On this issue see VAN DER MEI, A.P., "Freedom of movement for persons with disabilities and coordination of social security within the EU" in FERRI, D. and BRODERICK, A. (eds), *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham, 2020 p. 164. See also WADDINGTON, L., "The potential for, and barriers to, the exercise of Active EU Citizenship by persons with disabilities: the right to free movement" in HALVORSEN, R. ET AL. (eds), *The Changing Disability Policy System. Active Citizenship and Disability in Europe Volume 1*, Routledge - Routledge Advances in Disability Studies, Abingdon, 2017; WADDINGTON, L. and VAN DER MEI, A.P., "Free Movement of Disabled People in the European Union: An examination of relevant Community provisions and a discussion of the barriers to free movement" European Disability Forum, Brussels, 1999.

<sup>73</sup> *D.P.W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen* (C-287/05) ECLI:EU:C:2007:494.

<sup>74</sup> Although in *European Commission v Federal Republic of Germany* (C-206/10) ECLI:EU:C:2011:283 it was stated that freedom of movement for workers prohibits not only overt discrimination on grounds of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result. Unless it is objectively justified and proportionate to the aim pursued, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage. That is the case of a residence condition laid down in national legislation for the grant of benefits for the blind, the deaf and the disabled, which can be more easily satisfied by national workers than by those from other Member States.

<sup>75</sup> VAN DER MEI, A.P., "Freedom of movement..." cit. p. 172.

any way, shape or form address the limits to free movement for persons with disabilities that are ensuing from the lack of harmonisation of social security. It is worth noting that the EDC proposal as it stands only covers short stays, and does not cover, as strongly advocated by EDF, long-term stays.

On a final note, the EDC proposal includes provisions requiring common standardised formats of the EDC and the European Parking Card and requires both a physical format as well as a digital format.<sup>76</sup> Further, the proposal as it stands requires full publicity and accessibility of “*the conditions and rules, practices, and procedures to issue, renew or withdraw*” both cards.<sup>77</sup> It also obliges Member States to “*take appropriate measures to raise awareness among the public and inform persons with disabilities, including in accessible ways, about the existence and conditions to obtain, use, or renew*” these cards, as well as to “*take all necessary steps to avoid the risk of forgery or fraud*”.<sup>78</sup>

### 3. A Testbed for the Spanish Presidency

The Commission’s proposal is an important testbed for the Spanish Presidency. In spite of the limits of the current text, in particular with regard to the material scope, should Spain manage to drive the debate towards a consensus on the proposal, even with minor amendments, this would be an important success and showcase the Spanish commitment towards an EU “closer” to its citizens and more equal.

The proposal has been discussed by the European Parliament and the Council within the remit of the co-decision procedure. The Council agreed its negotiating stance – general approach – on 27 November 2023, while the EP rapporteur on the Proposal Lucia Ďuriš Nicholsonová presented her draft report at the end of October.<sup>79</sup> The process known as

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<sup>76</sup> Article 6 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>77</sup> Article 9(1) 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>78</sup> Articles 9(2) and (3) 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>79</sup> EUROPEAN PARLIAMENT, “Draft 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

the “trilogues” will allow Spain to harness the general support for the proposal – arguably limiting the amendments to the current text and avoiding contentious issues with a view of a speedy approval. The Spanish Presidency may try to capitalise on the warm welcome of the disability movement to the current text (which despite its shortcomings seems a step forward) in order to reach a consensus approach in the Council, possibly leaving it to Belgium, just a few months from the elections, to wrap up before a new European Parliament and a new Commission take office.

Roede-Rynninger and Greenwood suggest that the trilogues represent a “*process of aggregation and negotiation of preferences involving a broad range of actors meeting both in inter-institutional fora as well as intra-institutional fora*”.<sup>80</sup> It will be up to Spain to “mould” and manage this process and arrive close to a deal to sealed by the Belgian Presidency, as the inability of doing so would cause reputational damage.

#### IV. CONCLUDING REMARKS

The looming European elections place a rather uneasy task on the Spanish Presidency, i.e. that of advancing several dossiers before the EU agenda is reset after the elections. The Spanish Ambassador speaking to the *Oireachtas* highlighted such responsibility but also stated that: “[t]he Spanish Presidency is a nationwide project. We have all been working on it for almost two years, putting in place all the necessary supporting structures. An open discussion was recently held in both Chambers of the Parliament, with the entire political spectrum and all political parties having a say in the shaping of this consensual Spanish Presidency”.<sup>81</sup> Such long preparation might be of utmost importance to navigate political tensions, cleavages among Member States and nationalists claims in the Council. This is particularly so with regard to the social agenda which aims to respond to the pressing socio-economic downturn across the EU.

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with disabilities (COM(2023)0512 – C9-0328/2023 – 2023/0311(COD))” (Committee on Employment and Social Affairs, Rapporteur: Lucia Ďuriš Nicholsonová, 31 October 2023) available at [https://www.europarl.europa.eu/doceo/document/EMPL-PR-754831\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/EMPL-PR-754831_EN.pdf).

<sup>80</sup> ROEDERER-RYNNING, C. and GREENWOOD, J., “The Culture of Trilogues” *Journal of European Public Policy* 22(8) (2015) pp. 1148-1165.

<sup>81</sup> HOUSES OF THE OIREACHTAS, “Priorities...” cit..

It is still early to foresee what the achievements of the Spanish Presidency will be, and predicting the future is a “fool’s errand” but the EDC might just be the right dossier to deliver on the promise to further the social footprint of the EU and to contribute to the process of creating a fairer Europe.

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