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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities

{COM(2023) 512 final} - {SEC(2023) 305 final} - {SWD(2023) 290 final} -
{SWD(2023) 291 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
<p>This proposal has interlinked objectives concerning several policy areas, such as services, transport, and free movement. Hence, the use of different legal bases is required to cover the various objectives of this initiative.</p> <p>Articles 53(1) and Article 62 TFEU, concerning services normally provided for remuneration in the internal market, are relevant as the proposal will grant cardholders of the European Disability Card (EDC) the right to benefit from special conditions and preferential treatment when accessing services on an equal basis with persons with a disability recognised by the visited Member State. Moreover, with respect to special conditions and preferential treatment to access services in the field of transport, such as parking facilities, Article 91(1)(d) TFEU provides the necessary legal base to lay down any other appropriate measures. In addition, this Article is also relevant since it allowed for the adoption of the Council Recommendation in 1998 which created the existing European parking card voluntary scheme, which will be replaced by the European Parking Card in the current initiative. To cover those services that do not fall into the categories covered by legal bases referred to above, Article 21(2) TFEU, as a residual legal base, provides for the possibility for the European Union to act and adopt provisions to facilitate the right to move and reside freely within the territory of the Member States.</p>
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<p>In the case of access to services, transport and free movement, the Union's competence is shared with the Member States. In particular, as regards the access to services, the legal basis for the shared competence can be found in Article 4(2)(a) TFEU, i.e. "<i>internal market</i>". As regards transport, the legal basis is Article 4(2)(g) TFEU, i.e. "<i>transport</i>". And as regards the free movement, the legal basis is Article 4(2)(j), i.e. "<i>area of freedom, security and justice</i>".</p> <p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Union has competence only to support the actions of the Member States.</i></p>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴: <ul style="list-style-type: none">- Has there been a wide consultation before proposing the act?- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

A consultation was carried out to collect factual evidence and views concerning **possible problems and necessary measures related to the free movement and mobility of persons with disabilities** in the EU and **their access to services** to support the preparation of the EDC and the European parking card initiative.

In particular, the **consultation aimed to:** (1) gather service providers' and the general public's views on the initiative; (2) collect opinions and evidence on the problem and various solutions (policy options) to address it; and (3) create a robust evidence-based analysis.

A wide range of stakeholders operating at international, EU and national levels were consulted: **(i) those having an interest in the matter** (e.g. national public authorities, service providers, NGOs); **(ii) potential beneficiaries** of the EDC and/or European parking card (e.g. persons with disabilities, personal assistants); and **(iii) experts** (e.g. researchers, consultancies and advisors, international organisations).

The stakeholder consultation included: **(a)** a public consultation (3361 replies) **(b)** strategic and **(c)** targeted interviews (10 interviews), **(d)** six targeted online surveys, **(e)** three online workshops, **(f)** six focus groups and **(g)** six case studies. Stakeholders could send comments on the Commission's **(h)** Call for evidence (272 replies). Annex II of the Impact Assessment provides the outcomes of the stakeholder consultation (Synopsis report).

The majority of the consultation activities were organised by an external contractor in the context of a study supporting the preparation of the impact assessment. The Commission also consulted Member States' authorities and civil society organisations representing persons with disabilities, which are members of the **Disability Platform**. In addition, the Commission discussed with Member States in the Social Protection Committee meeting of 3 April 2023 and further during the meeting on the EDC organised by Finland on 17 May 2023 to support the Commission's preparations. The meeting conclusions made by Finland highlight that the EDC initiative is warmly welcomed. Recommendations include careful planning of the extension of the services covered, no merger of the European parking card for persons with disabilities with the EDC into a single card, and no coverage of social security and healthcare benefits.

The European Parliament called for the EDC in three resolutions⁵. They welcome the initiative, advocating for legally binding measures and asked to expand the existing pilot project to cover all Member States, covering a range of different areas beyond culture, leisure, and sport. They also asked to ensure that the European parking card is fully observed in all Member States.

The European Economic and Social Committee adopted Opinion SOC/765-EESC⁶ that supports the initiative and similarly asked for a legal act introducing the card in all Member States.

The IA report includes in its annex 7 a table "Monitoring indicators for the preferred policy option", which contains operational objectives, a set of 15 indicators and sources of data for their measurement.

The explanatory memorandum and the impact assessment contain a section on the principle of subsidiarity. More information is available in question 2.2 below.

⁵[Texts adopted - European disability strategy post 2020 - Thursday, 18 June 2020 \(europa.eu\);](#)

[TA MEF \(europa.eu\);](#)

[Texts adopted - Towards equal rights for persons with disabilities - Tuesday, 13 December 2022 \(europa.eu\);](#)

⁶ [EUR-Lex - EESC-2023-00525-AS - EN - EUR-Lex \(europa.eu\)](#)

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Yes, the explanatory memorandum contains an adequate justification of why the proposal is in conformity with the principle of subsidiarity. The following is a relevant excerpt, reflecting the arguments presented in the IA report, Section 3.

This proposal fully respects the principle of subsidiarity. The different, interlinked objectives of this proposal cannot be sufficiently achieved by the Member States independently but can rather, by reason of the scale and effects of the action, be better achieved at EU level. Action at EU level is thus necessary.

The problems identified have a cross-border dimension that cannot be solved by the Member States on their own. The necessity of EU action is directly linked to cross-border travel and related challenges faced by persons with disabilities in the EU, thus the need to ensure a coordinated approach among the Member States in facilitating their access to special conditions or preferential treatment on an equal basis with the persons with disabilities who hold a disability card or certificate issued by the host country.

Absence to act at EU level would likely result in Member States adopting different systems, resulting in continued difficulties with the recognition of disability cards and certificates, as well as of the European parking card, across borders. Should the EU not intervene, current differences in national disability cards and certificates would likely also increase, and the different treatment of persons with disabilities across the Member States would remain or increase further, with adverse effects on the exercise of their free movement rights and their access to special conditions or preferential treatment in relation to services.

The initiative does not seek to harmonise the eligibility criteria, conditions, or assessment procedures to obtain a disability status in a Member State, for which Member States remain competent. This proposal does not affect Member States' competences to determine the conditions and procedures when assessing disability status and in recognising the right to parking conditions and facilities reserved for persons with disabilities and issuing a certificate, disability or parking card for persons with disabilities, or any other formal document, be it at local, regional or national level.

The proposal does not impede either on national competences to determine whether or not to grant special benefits or preferential conditions, such as free access, reduced tariffs, or preferential treatment for persons with disabilities and, where applicable, person(s) accompanying or assisting them. The proposal does not impose obligations to providers of services whether to grant preferential conditions. It only ensures that when such special conditions or preferential treatment are granted, these should be available on equal terms and conditions to all persons with disabilities who are holders of a EDC or European parking card.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed initiative cannot be sufficiently achieved by the Member States acting alone. They are facing problems that have a clear cross-border dimension and an impact on the EU internal market. There is therefore a need for the EU to establish the mutual recognition of disability cards for the purpose of accessing services on an equal basis with persons with a disability recognised by the visited Member State by creating the EDC and the European parking card.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The initiative focuses on problems that have a cross-border dimension that cannot be solved by the Member States on their own. Member States acting alone may be counterproductive as they may increase differences in and risks related to (the use of) the national cards. The necessity of EU action is directly linked to cross-border travel and related challenges faced by persons with disabilities travelling within the EU, facing legal uncertainty as to whether their disability status will be recognised across borders. Hence, the need to ensure an adequate coordinated approach among the Member States with a common EDC that will be recognised in all Member States. The EDC will facilitate their access to preferential conditions offered by service providers on an equal basis with the persons with disabilities who hold a disability card or certificate issued by the host country.

As concerns quantification of the problem, it is estimated that an upper bound range of 19.33m (i.e. 62.8%) persons with recognised disabilities aged 15-64 might have travelled abroad in 2019. The participation gap in tourism, between the general population and persons with disabilities is estimated at 6.3%. (IA report, section 2.1)

(b) Would national action or the absence of EU level action conflict with core objectives of the Treaty⁷ or significantly damage the interests of other Member States?

National action or the absence of EU level action would not conflict with core objectives of the Treaty or significantly damage the interests of other Member States. However, national action will not facilitate the enjoyment of persons with disabilities of their right to free movement in the Union. Hence, there would be no contribution to “the well-being of its citizens” with disabilities as concerns facilitating their free movement rights and equal access to services across the EU that the initiative intends to improve.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

The minimum requirements provided for in the intended initiative aim to improve the enjoyment by persons with disabilities of their rights and to facilitate equal access to services at Union level. More binding or other specific measures can be set by Member States, for example they may impose on service providers the provision of special conditions or preferential treatment for persons with disabilities. Member States would be able to establish bilateral agreements for the mutual recognition of disability cards, but this process would not guarantee the recognition of the same card across the Member States of the Union.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The problem and its causes are similar across national, regional and local levels of the EU countries. The magnitude of the problem, i.e. variability of the national disability or the European parking cards is higher in case the cards are issued at local level, which adds to the differences in their appearance and consequently triggers more problems with recognition. For example, holders of EU parking cards sometimes have problems with their recognition even in their own country, when they are issued locally (such is the case of the Netherlands). The problem is also evident in those Member States that do not have a disability card, in that case their citizens with disabilities are not able to easily document in other Member States their disability status.

⁷ https://europa.eu/european-union/about-eu/eu-in-brief_en

(e) Is the problem widespread across the EU or limited to a few Member States?

The problem is widespread across the EU, all Member States are facing the same challenges and their citizens with disabilities are confronted with similar obstacles when traveling to other Member States. The EU complaints' system SOLVIT (Solutions to problems with your EU rights) confirms similar problems faced by citizens of different countries. For example, citizens enquire whether their national disability cards would be accepted in another Member State, to what preferential conditions they could have access, etc. As concerns the European parking card, from 2018 to 2022, around 260 enquiries were submitted that mainly regarded uncertainties as to the rights granted by the card to persons with disabilities when travelling to other Member States (around 30% of cases), mutual recognition of national parking cards issued based on the EU model (around 25% of cases), as well as the justification for fines received even when showing the European parking card (around 12% of cases). Also in the public consultation, persons with disabilities across the Union reported similar problems related to difficulties in recognition of the disability status when travelling to or visiting other Member States.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

To tackle the problem of mutual recognition of the disability cards the EU supported the pilot project in 8 countries in the areas of culture, leisure, sport and transport. None of those Member States which in addition continue to implement the EDC have reported excessive burden. They report satisfaction with the results of the initiative and have not indicated the need to additionally engage in any national initiative to achieve the objectives. The proposed measures are proportionate, as they impose limited administrative burdens on Member States while bringing substantial social benefits. More details are provided in section 3.2.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

There is a high degree of consensus among Member States on the problem, the need for EU action and a legislative initiative as the appropriate means to tackle it. The scope of the card (i.e. which services are covered) encounters more diverse views. Persons with disabilities favour the widest possible scope as do the EP and the EESC, while Member States' opinions are more varied. Some Member States prefer to cover only those services covered by the pilot, while others show openness to extending the scope. Organisations representing persons with disabilities would prefer to extend the scope of the card to all services and to accessing social security benefits while they await disability assessment in a new host country, as does the EESC. However, this is not within the scope of the proposal, as social security coordination at EU level is already legislated in a separate acquis.

On the option of merging the European parking card with the new EDC, opinions vary. There is strong consensus among Member States and also civil society organisations representing persons with disabilities that the European parking card should not be merged with the new EDC. Most individual respondents in the public consultation supported the incorporation of the European parking card into the new EDC legal instrument.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

The objectives of the proposed action can be better achieved at the EU level because the initiative has a clear cross-border dimension. It addresses the mutual recognition of disability cards via the creation of the EDC and the European parking card based on the easily recognisable EU-model. If put in place through binding legislation, national authorities and services providers will have certainty of

the cards' validity and their administrative burden will decrease. Persons with disabilities will have certainty that their disability card is recognised. The EU value added is strong because the initiative will facilitate the free of movement for persons with disabilities in the EU and their equal treatment when accessing services. Increased participation of persons with disabilities in tourism is expected, with the increased size in the market of accessible tourism (with possible value added of up to 3.1 billion EUR).

(a) Are there clear benefits from EU level action?

There are clear benefits of the EU level action, i.e. creating the EU level "EDC" and "European parking card" based on mutually recognised EU-models. These cards would be easily recognisable among the countries, they will have security features to avoid fraud and forgery and thus national authorities and services providers will have certainty of their validity. EU level action would reinforce predictability for persons with a disability when travelling to other Member States, legal certainty for all parties (including the Service providers), and equality of treatment of persons with disabilities across the EU.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The objectives can be met more efficiently at EU level because the initiative has clear cross-border dimension and concerns travelling among the Member States. It deals with the mutual recognition of disability status via the EDC and the European parking card. It is expected that the functioning of the internal market as concerns services will improve, as persons with disabilities will get equal access to preferential conditions provided for persons with disabilities and service providers will not have administrative burden when checking the cards. The increased size in the market of accessible tourism is expected, with possible value added of up to 3.1 billion EUR.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

EU action adds value by introducing a mutually recognised instrument (the new EDC and improved European parking card), facilitating the free of movement for persons with disabilities in the EU and their equal treatment when accessing services compared to residents with disabilities across Member States and accessing parking facilities when visiting another Member State. These EU cards provide legal certainty to key actors namely service providers, persons with disabilities and public administrations. Persons with disabilities will see their mobility facilitated, improve their freedom to visit other Member States, and be treated equally when accessing services compared to persons with disabilities recognised by the host country.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes, significant benefits of EU-level action outweigh any potential loss of competence such as a Member State's freedom to design its own card. As described in previous sections, the costs of the action are negligible when compared to the volume of business in the sectors involved, for example transport, while benefits for the individual with disabilities travelling across the EU are significant. Member States retain their full competence in the key area of assessing and recognising the disabilities in their territory.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes, with one single legislative instrument providing for both a “EDC” and a “European parking card”. This legislative instrument – a Directive – is clear and does not replace national legislation. The European parking cards would replace existing national parking cards. The EDC would not replace the national disability cards / certificates but complement them for the purpose of travelling. The Member States will be free, however, to decide whether to also replace national disability cards with the EDC. The initiative caters for the provision of information on the card models, as well as the rights and obligations in the Directive towards persons with disabilities, and for raising awareness among the public, service providers and public administrations, thus contributing to legal clarity. These EU-model cards will decrease the administrative burden for national authorities and services providers when checking validity of currently different national disability cards and certificates.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

Regarding the principle of proportionality, the form and content of the proposal does not exceed or go beyond what is necessary and proportionate to achieve its different, interlinked objectives.

General, common rules and a common standardised format/template for both cards are set, while taking into account national differences, circumstances and practices, the assessment of disability status itself, establishing the necessary procedures to issue the cards and determining the special conditions or preferential treatment in access to services for people with disabilities remains the competence of the Member States.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action is appropriate to achieve the intended objective, which is to support the access on equal terms and conditions in all Member States by EDC and European parking card holders to special conditions or preferential treatment with respect to services (with or without remuneration) and respectively parking facilities. Therefore, this initiative establishes the framework, rules, and common conditions, including a common standardised model, for a EDC as proof of a recognised disability status and the European parking card, as proof of their recognised right to parking conditions and facilities reserved for persons with disabilities. The initiative is limited to the aspects where the EU can do better. The choice of the instrument – a Directive - is justified by the legal basis and by previous experiences to improve the effect of non-binding instruments. Its implementation will be adjusted to national situations and legal environment. The initiative creates low to moderate costs for national authorities and service providers. However, these are expected to be counteracted by benefits for all the categories (national authorities, service providers, and especially persons with disabilities). A moderate increased size in the market of accessible tourism is expected.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes, the initiative is limited to the aspects where the Union can do better as it intends to create the EDC based on the EU model and ensure its recognition among the Member States. The European parking card would be improved and become mandatory and recognised across the Member States. Member States on their own are not in a position to impose a common model of a disability card or a

<p>parking card across the EU.</p>
<p>(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?</p>
<p>Yes, the choice of the instrument is justified and is in compliance with the objectives and shaped by the corresponding legal bases. Based on the experiences with recommendations and pilot projects, a legal instrument - a Directive - is proposed to ensure the respect of the European model of cards, mutual recognition of cards and commitment to provide preferential conditions provided by services to residents with disabilities also to residents with disabilities from other Member States.</p>
<p>(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)</p>
<p>Yes, the legislative instrument that is introducing the EU model cards is a Directive so its implementation will be adjusted to the national situations and legal environment. Furthermore, the back side of the EDC is left open for conveying nationally relevant information. In addition, enforcement is done at Member State level through already existing bodies that would need to be confirmed by Member States during transposition.</p>
<p>(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?</p>
<p>Yes, the initiative creates low to moderate costs. Total implementation costs are estimated based on varied implementation of the EU Disability Card pilot. These ranged between roughly 95,000 and 530,000 EUR per Member State due to different numbers of Cards issued and methods of printing, diverse system features (e.g. varied databases of service providers and beneficiaries), as well as other factors that include: i) the one-off cost of establishing the national website (which ranged roughly between 7,500 and 23,000 EUR), and ii) awareness raising campaigns (which ranged roughly between 20,000 and 70,000 EUR). Production and delivery costs of cards ranged from 1.02 to 4.54 EUR per card by the national authority responsible for the cards. These costs relate to both the EDC and the European parking card. Digitalisation: the total EU27 one-off costs for public authorities to build an IT system for digital EDC are estimated to be EUR 1.67 million, with recurring maintenance costs are estimated at around EUR 250,000 per year when issuing cards for all persons reporting “severe” limitations (this is the group of persons with disabilities who is likely to get EDCs).</p> <p>As concerns costs and benefits for service providers, the pilot EDC showed that the majority of service providers experienced benefits (monetary and non-monetary) which, as a minimum, outweighed costs: they attracted new customers and gained visibility. Even in the most optimistic scenario, where the travel gap of persons with disabilities slightly reduces with respect to the general population, the growth in the number of persons with disabilities travelling would not be significant enough to negatively impact the client base of service providers from other Member States, and the range of persons with a disability would remain between 1 and 2%. On the contrary, it is expected that, as persons with disabilities travel with family and friends who pay their own expenditures, there will be an opportunity for increased business.</p> <p>Potentially it is in the transport sector where most costs are expected. These could range overall per year between 1.7 to 31.2 million EUR depending on the Member State (above all on its size, but also</p>

on tourism patterns, and availability of preferential conditions, as well as the assumption regarding the share of personal assistants/ accompanying persons eligible for discounts). However, for countries in which the size of the passenger transport sector can be obtained, these additional costs appear very small relative to overall sector turnover, ranging from 0.01% to 0.31%. Total annual costs are estimated to range between 116 and 161 million EUR, accounting for only 0.05% to 0.08% of (non-air) passenger transport in the whole EU-27.

All these costs are commensurate with the objective to be achieved and will be counteracted by benefits for all the categories.

- 1) Persons with disabilities will have certainty that their disability status will be recognised via the EDC or European parking card and thus find it easier to exercise their free movement right and enjoy equal access to preferential conditions provided by different services to persons with disabilities, as well as direct monetary benefits from preferential conditions and reduced fines risks (in case of the European parking cards), and ensured parking availability, etc.
- 2) National authorities will obtain somewhat increased tax revenue from increased size in the market of accessible tourism; decreased additional administrative burden thanks to decreased number of additional information requests about the validity of the disability cards and provision of preferential conditions, etc. from citizens; decreased legal uncertainty as concerns the validity of foreign disability cards. As concerns the European parking card, they will experience a reduction in enforcement costs; and reduced costs of checking the validity of European parking cards.
- 3) Service providers will experience decreased uncertainty about the validity of national cards and reduction in costs for checking cards/certificates; increased turnover from paying persons accompanying persons with disabilities (such as family and friends - on average 2.2 persons); increased size in the market of accessible tourism.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

The initiative is proposing the EDC and the European parking card and their mutual recognition in the area of access to services and parking facilities respectively. For the EDC, the main principle is that preferential conditions that are available to residents with disabilities of a Member State should be available to persons with disabilities travelling from other Member States as well. Thus, the initiative is not creating any new preferential conditions or systems. It aims to be as simple as possible. For the European parking card the main principle is that parking card conditions applicable to residents with disabilities will be also applicable to persons with disabilities travelling from other Member States. The cards will be issued nationally and the Member States will have the competence to determine eligible beneficiaries based on national rules and practices as concerns the recognition of disability status. The initiative therefore fully respects the national competencies and has the flexibility to cater for possible special circumstances in individual Member States.