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TWO STEPS FORWARD, ONE STEP BACK? EQUALITY AND DISABILITY RIGHTS IN THE VON DER LEYEN II COMMISSION

*Posted on 21 Gennaio 2025 by **Eva S. Krolla***

A new mandate, a new year and new challenges offer new opportunities – or set-backs. After encountering several hurdles in the formation of her new cabinet, the von der Leyen II Commission (VDL II) commenced its mandate on 1 December 2024. Six weeks into the 2024-2029 legislative term, the second mandate of Ursula von der Leyen as European Commission President seems a good moment to reflect on her bid for that second term, the new configuration of her cabinet, and its implications regarding disability rights.

Under the banner of 'Europe's Choice', von der Leyen presented her vision for the next five years for the EU, highlighting the multifaceted challenges and uncertain future that Europe faces. Compared to her previous political guidelines, 'A Union that strives for more', seemingly informed by a push for greater integration and stronger commitment to the EU founding values, including developing a 'Union of Equality', the current political guidelines seem to respond more to external challenges than to the progressive protection and consolidation of fundamental rights and equality in the EU.

This blog post first discusses the impact of the 'Union of Equality' under

the von der Leyen I Commission (VDL I – 2019-2024) from a disability rights perspective. Based on this analysis, it moves on to sketch how disability rights might feature under VDL II considering the re-allocation of portfolios and the double mandate of the Commissioner for Equality; Preparedness and Crisis Management. In doing so, it points to the potential risks involved for the advancement of equality as a founding value of the EU, and disability rights in particular.

The vision for a 'Union of Equality' that characterised VDL I manifested most clearly in the establishment of a Commissioner for Equality in 2019. It signified a decisive move to act upon the ambitions of equality and non-discrimination as enshrined in the EU Treaties. Supported by a newly created Taskforce on Equality that worked across all Directorates-General (DGs), the Commissioner for Equality was assigned portfolios that encompassed 'leading the fight against discrimination', the development of new non-discrimination legislation as well as the explicit portfolio of implementing the Convention on the Rights of Persons with Disabilities (CRPD), which forms 'an integral part' of EU Law (Joined Cases *C-335/11 and C-337/11 HK Danmark*, para 30). It further comprised the development of five strategies to protect the rights of marginalised groups – including the current Strategy for the Rights of Persons with Disabilities 2021-2030 (Strategy 2021-2030).

The mandate and portfolios were firmly anchored in the constitutional "DNA" of the EU: the Treaty on European Union (TEU) refers to equality and respect for human rights among its founding values (Article 2 TEU) and sets out that the EU 'shall combat social exclusion and discrimination' (Article 3 TEU); the Treaty on the Functioning of the European Union (TFEU) further includes a legal basis to adopt non-discrimination legislation (Article 19 TFEU) – albeit requiring unanimity in the Council of the EU under the special legislative procedure – and a mainstreaming clause (Article 10 TFEU), both of which specifically mention disability as a prohibited ground of discrimination. With the Charter for Fundamental Rights (CFR) the EU affirmed the values underpinning its entire operation and elaborated its commitment to equality and non-discrimination, including on the ground of disability, in Article 21 CFR. Notably for the

purpose of this analysis, Article 26 CFR provides for the 'integration of persons with disabilities', while not as a substantive right, as a principle (C-356/12 *Glatzel*, para 78).

Through the flagship initiatives of the Strategy 2021-2030, VDL I rather effectively delivered on some its measures to advance disability rights in the EU and to progressively comply with the CRPD. Established in 2021, the formal expert group 'Disability Platform' now brings together Member States, civil society and Commission representatives to deliberate on the EU disability *acquis* and how to advance it. The 'AccessibleEU Resource Centre', funded and hosted by DG EMPL, took up its work in 2022 as another new interface between civil society and Member States to exchange best practices in implementing EU accessibility legislation, policy and standards and supplements the Commission's monitoring of same. In keeping with Art. 26 CFR and the CRPD, both initiatives have contributed to including persons with disabilities in the EU policy-making and monitoring processes.

VDL I also succeeded with several legislative proposals: based, *inter alia*, on Art. 21 TFEU, the proposal for a European Disability Card, aimed at supporting the free movement of EU citizens with disabilities, resulted in Directive 2024/2841 being adopted in November 2024. This Directive was further supplemented by Directive 2024/2842 extending the Directive to third country nationals with disabilities legally residing in an EU Member State. On the basis of Art. 19 TFEU, Council Directive (EU) 2024/1499 on standards for equality bodies further substantiated the EU disability *acquis* by strengthening the role and functioning of equality bodies in bringing discrimination cases.

Though gaps in the EU disability *acquis* undeniably persist, the creation of a Commissioner for Equality marked new impetus and strengthened the Commission as driver of EU disability law. It thus came as a surprise to many, in particular European civil society organisations, that von der Leyen did *not* foresee the continuation of a sole Commissioner for Equality in her new cabinet. Instead, she proposed a double mandate for the incoming Commissioner for Preparedness and Crisis Management; and Equality.

From a disability point of view, it is difficult to see how and where disability rights feature under VDL II – disability is not mentioned in the political guidelines and the 'Union of Equality' has been reduced to about half a page now, with a primary emphasis on gender equality. The promising motto of 'equality for all and equality in all of its senses' of the previous mandate is alarmingly absent. The merging of the mandates thus appears a potential risk to the progressive development of disability rights in the EU.

This also became apparent in the hearing of Hadja Lahbib for the post: disability was barely mentioned and much of her commitments revolved around employment and labour market integration and de-institutionalisation. While remaining of greatest importance to realising equal enjoyment of all rights of EU citizens with disabilities, these statements are reminiscent of past rather than progressive, forward-looking policy. They also point to the alleged 'downgrading of the equality portfolio' as perceived by civil society – or at the very least to the stagnation of equality efforts under VDL II.

The impression is that the equality mandate, and particularly the disability portfolio, are less ambitious than its predecessor. They seem more of an afterthought than a priority. Such impression is reinforced by the shifts in DG affiliation of the Commissioner. Initially set to be with the DG for European Civil Protection and Humanitarian Aid Operations (ECHO) and the Health Emergency Preparedness and Response Authority (HERA), it clearly pronounced the preparedness and crisis management dimensions of the double mandate. Whereas the co-leadership of DG JUST has only been added to the Taskforce on Equality to support the equality mandate since VDL II commenced.

Interestingly, this move seems to come after the longstanding EMPL.D3 Unit on Disability and Inclusion has been moved from DG EMPL to DG JUST (Organisation of responsibilities of the College 2024-2029, p 12). This means that despite the emphasis on employment and labour market integration of EU citizens with disabilities in this legislative term, the Commissioner is no longer directly affiliated with DG EMPL. This risks losing expertise (in DG EMPL) and the advancement of equality in the

employment realm, and might sideline the disability portfolio in light of the demands of (co-)leading multiple services.

A hopeful notion can perhaps be detected in the recent report on 'Safer Together – Strengthening Europe's Civilian and Military Preparedness and Readiness' (Niinistö report) which considers the varying needs of persons with disabilities in its chapter on citizens' preparedness and resilience. Besides accessibility of information and communication, the report stresses an inclusive approach to preparedness and crisis management which should include the participation of people with disabilities in its design (p. 77). While the Draghi report on European Competitiveness is entirely silent on disability and the earlier Letta report on the European single market mentions disability only in the context of disadvantaging factors for EU consumers (pp. 98, 105), the Niinistö report appears to better mainstream disability in its analysis and recommendations. This might be a glimpse of hope considering the frequent reference to the Niinistö report in the mission letter(s) and the hearing of Lahbib which imply, if nothing else, disability mainstreaming across the portfolios of preparedness and crisis management.

On balance though, the merging of the mandates of preparedness and crisis management with equality appear a step back. The challenges and crises that the EU will face in the near and mid-term future are of such gravity that upholding its founding values will be a test in and of itself. And while many laudable achievements have been made to realise equality and non-discrimination in the EU, including for persons with disabilities, the very fact that a (sole) Commissioner for Equality was created in 2019 is expression of the lack and fragility of equality and non-discrimination in the EU. To the detriment of many, VDL II thus appears to be backtracking on its founding values and previous achievements under the 'Union of Equality' banner in the name of managing crises.

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