

# DiscapacitA Report

Questions and Answers  
for Quick Reference



COMITÉ ESPAÑOL  
DE REPRESENTANTES  
DE PERSONAS  
CON DISCAPACIDAD



CONVENCIÓN  
INTERNACIONAL  
SOBRE LOS  
DERECHOS DE  
LAS PERSONAS  
CON DISCAPACIDAD  
(2006-2026)



GOBIERNO  
DE ESPAÑA

MINISTERIO  
DE DERECHOS SOCIALES, CONSUMO  
Y AGENDA 2030



POR SOLIDARIDAD  
OTROS FINES DE INTERÉS SOCIAL

### Presentation of this document

Artificial intelligence already influences decisions that affect the rights of persons with disabilities. It is therefore important to analyse it from the perspective of the Convention on the Rights of Persons with Disabilities.

This document presents, in clear and direct language and in a format of 40 questions and answers, the findings of the DiscapaciA Report. High-risk AI and the Rights of Persons with Disabilities. Impact assessment model based on the Convention on the Rights of Persons with Disabilities.

It does not replace the full report or the executive summary. Its purpose is to provide quick access to the main ideas, while retaining the same structure as the report: frames of reference, intersectional methodology, sector-based analysis, impact assessment, obligations, gaps, recommendations and conclusions.

It can be read in two ways: by reading it in full, following the questions in order from Q1 to Q40, or by going directly to the section of interest:

- **Introduction and methodology**, to understand what the report is, why CERMI has prepared it and what approach it uses. (Q1 to Q7).
- **Frames of reference**, to understand why the Convention on the Rights of Persons with Disabilities is the main criterion for assessing artificial intelligence. (Q8-Q17).
- **Intersectional analysis**, to understand how differentiated impacts on women, children, young people, older persons, LGBTI+ persons with disabilities and families of persons with disabilities are studied. (Q4-Q5 and Q18-Q19).
- **Sectoral areas**, to identify where artificial intelligence may affect rights: employment, education, social services, justice, health, financial services, critical infrastructure, biometrics, migration and political participation. (Q20-Q22).
- **Impact assessment and obligations**, to understand what must be checked before using an AI system and what responsibilities providers, deployers and public administrations have. (Q23-Q30).
- **Gaps, recommendations and conclusions**, to understand which structural failures the report identifies and what CERMI is calling for. (Q31-Q39).
- **Annexes**, to understand what the six annexes to the report contain and what each is for. (Q40).

The full Report with its annexes can be consulted at this link:

<https://www.cermi.es/colecciones/historico-de-publicaciones/3697>

## Glossary

Some frequently used acronyms appear throughout this document. They mean the following:

**CRPD:** Convention on the Rights of Persons with Disabilities. In this document it is generally referred to as "the Convention".

**AI Act:** European Artificial Intelligence Act.

**AESIA:** Spanish Agency for the Supervision of Artificial Intelligence.

**AEPD:** Spanish Data Protection Agency.

**GDPR:** General Data Protection Regulation of the European Union.

**SDGs:** Sustainable Development Goals of the United Nations 2030 Agenda.

## Introduction

### Q1. What is this Report and why is CERMI publishing it now?

This report explains how artificial intelligence can affect the lives and rights of persons with disabilities.

It focuses on three main aspects:

1. It assesses the European Artificial Intelligence Act (AI Act) from the perspective of the Convention on the Rights of Persons with Disabilities.
2. It identifies where the European Regulation falls short of protecting those rights.
3. It proposes what must be done to ensure that artificial intelligence is governed from a human rights perspective.

It is being published now for a specific reason. In 2026, two significant developments coincide. On the one hand, it will be twenty years since the adoption of the Convention, the first human rights treaty of the twenty-first century. On the other hand, the AI Act, one of the first major legal instruments to regulate artificial intelligence according to its level of risk, is moving towards effective application and part of its content is under review. This convergence creates an important opportunity to ensure that the way algorithms are designed, used and controlled - what is known as "algorithmic governance" - is built from the outset in accordance with the social and human rights model required by the Convention.

CERMI has prepared this Report in its capacity as the Independent Monitoring Mechanism for the UN Convention in Spain. That institutional responsibility to promote, protect and monitor compliance with the Convention in Spain also applies, and increasingly so, to automated decisions and artificial intelligence systems.

## Q2. Who is this Report intended for?

The Report aims to be useful to the following audiences:

- Persons with disabilities, their families and the general public, because artificial intelligence is already making decisions that affect the rights of any person, and it is important to be able to recognise and name this.
- Organisations of persons with disabilities and the rest of organised civil society, because they need tools to defend rights in an algorithmic field where the rules on artificial intelligence are still being defined.
- Supervisory authorities that oversee the operation of AI systems: the Spanish Agency for the Supervision of Artificial Intelligence (AESIA), the Spanish Data Protection Agency (AEPD), the competent regional bodies, and equality and rights-protection bodies.
- Those who design AI systems and put them into service (providers and deployers), on whom most of the obligations under the AI Act fall and, if the AI Act is interpreted from the perspective of the Convention, also the obligations of accessibility, reasonable accommodation and effective participation. Spanish and European public administrations that design, procure or use AI systems occupy a central place here: without a disability perspective, their deployment may violate rights without anyone noticing.
- Legal practitioners, who are already dealing with cases in which an algorithmic decision is at the centre of the dispute and who need robust interpretative frameworks grounded in the Convention.

## Methodology

### Q3. What methodology does the Report follow?

The guiding thread of the Report is the Convention on the Rights of Persons with Disabilities. The analysis of the European Artificial Intelligence Act and of high-risk AI systems is always carried out by comparing what the system does with what the Convention requires to be guaranteed. This is the standpoint from which CERMI prepares the Report, in its capacity as the Independent Monitoring Mechanism for the Convention in Spain: monitoring compliance with it in automated decisions and artificial intelligence systems.

The Convention and the AI Act do not perform the same function. The Convention is an international human rights treaty that binds Spain and the European Union; it imposes legally enforceable obligations and is conceived from the standpoint of the dignity of the person. The AI Act is a European legal instrument with a strong technical component that regulates artificial intelligence according to the logic of system risk and the internal market: its main purpose is to regulate how AI systems are marketed and used safely. They serve different purposes.

The Convention sets the minimum level of protection that no other rule, including the AI Act, may lower. If an AI system meets all the requirements of the Regulation but its deployment excludes persons with disabilities, that system does not comply with the Convention, even if it has passed the technical controls provided for in the Regulation.

The AI Act is a necessary but insufficient piece. Read from the perspective of the Convention, the Regulation provides a basis on which to build a system of effective protection, provided that the identified gaps are filled, its procedures are developed with human rights criteria and they are linked to the instruments of the Convention.

This is the core idea running through the entire Report: if an algorithm does not take disability into account, it may exclude persons with disabilities, even if no one expressly anticipated it. Only the Convention can measure that omission, and only the Convention can correct it.

### Q4. What does the intersectional perspective contribute?

The intersectional perspective is one of the distinctive elements of the methodology used in this Report.

The Report uses a technical distinction that should be clarified. Multiple discrimination occurs when several grounds of discrimination accumulate, for example, a person may experience discrimination on grounds of disability, gender and age. Intersectional discrimination is different. It occurs when several grounds combine and produce a specific form of discrimination that does not appear if each ground is analysed separately. A woman with disabilities may experience specific forms of discrimination that are not those experienced by a woman without disabilities or by a man with disabilities, and that are detected only when the two dimensions intersect.

Each of the dimensions addressed by the Report - gender, age, sexual orientation, families - interacts with disability and produces different forms of discrimination that a general analysis overlooks.

The difference is methodologically decisive. An artificial intelligence system may separately pass a gender audit and a disability audit and still generate a specific disadvantage for women with disabilities that neither audit detects. The intersectional perspective does not add biases together: it reveals those that appear only when several dimensions intersect.

For that reason, in the Report intersectionality is a requirement of validity. An assessment that ignores the differentiated impact on intersectional subgroups is methodologically invalid under the standard of the Convention. Chapter 6 translates that requirement into an architecture of seven layers and six normative indicators that structure the Report's entire sectoral analysis.

### Q5. What are the seven layers of intersectional analysis?

The Report uses seven layers to better analyse how AI affects different groups of persons with disabilities.

It starts from the recognition that the category "persons with disabilities" is internally diverse and that forms of algorithmic discrimination vary according to how disability intersects with other axes of discrimination. The methodology organises that intersection into seven layers and checks, for each sectoral area analysed, how the AI system affects each layer and where an amplified, differentiated or specifically intersectional impact occurs.

Layer 1: persons with disabilities as a general category.

Layer 2: women with disabilities.

Layer 3: children and adolescents with disabilities.

Layer 4: young people with disabilities.

Layer 5: older persons with disabilities.

Layer 6: LGBTI+ persons with disabilities.

Layer 7: families of persons with disabilities.

How the impact on these seven layers is assessed is detailed in Q18, through six intersectional indicators.

### Q6. What sources and materials does the Report use?

The normative framework of the Report is based on twenty-six primary sources, grouped into four main blocks:

- The United Nations system: the Convention and the General Comments of the Committee that interprets it, together with relevant instruments from UNESCO, the ILO, UNICEF and other UN-system bodies, as well as the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The European framework: the AI Act, the Council of Europe Convention on Artificial Intelligence and related sectoral legislation.
- The gender block: CEDAW and General Recommendations 39 and 40 of the Committee that interprets it.
- Complementary sources: the Charter of Digital Rights and other relevant normative references.

Annex III presents the detailed analysis of these sources in factsheet format.

Alongside them, the Report uses many other sources, such as doctrine, case law, technical reports and institutional documents, which are cited throughout the text.

### Q7. How is the Report structured?

The Report is structured in five parts and six annexes. It is designed for modular reading: each part can be approached independently, depending on the information that each person coming to the document needs.

Part I (Chapters 1 to 5) brings together the frames of reference: what high-risk artificial intelligence is and why disability is a category of analysis in its own right (Chapter 1); the Convention as a binding criterion (Chapter 2); the map of convergences, tensions and gaps between AI rules and the Convention (Chapter 3); the 2030 Agenda as a complementary framework (Chapter 4); and the Spanish normative and institutional ecosystem (Chapter 5). Part II (Chapter 6) focuses on intersectional analysis: the seven intersectional layers and the method for assessing algorithmic

impact from this perspective. Part III (Chapters 7 to 16) examines the ten sectoral areas: employment, education, social services, justice, health, financial services, critical infrastructure, biometrics, migration and asylum, and political participation. Part IV (Chapters 17 and 18) addresses how rights impact is assessed and who is accountable for each decision. Finally, Part V (Chapters 19 to 21) closes with the nine structural gaps, the forty recommendations and the conclusions.

These five parts are accompanied by six annexes that operate as consultation tools.

## Chapter 1. Conceptual foundations

### Q8. Is artificial intelligence neutral?

Artificial intelligence is not neutral, either in its origin or in its effects. AI systems learn from historical data and social contexts that already contain discrimination and process them as if they were objective information. The result is not only that AI reproduces past discrimination: it systematises it, hides it under an appearance of technical objectivity and projects it into the future in automated form.

This does not mean that all AI systems always discriminate. It means that, if they are not designed and supervised with respect for human rights, including the disability perspective, AI systems turn historical discrimination into automated decisions and amplify its reach.

### Q9. What are the three invisible mechanisms of algorithmic exclusion?

Algorithmic exclusion does not occur only in the system's outcome: it occurs already in how the system is designed, how it works and the data from which it learns. The Report identifies three mechanisms that operate simultaneously and, above all, invisibly for the affected person.

The first is techno-ableism. This occurs when a system is designed on the assumption that all people use technology in the same way. It forces the person with disabilities to adapt to the machine, instead of the technology adapting to the real diversity of people. It is discrimination embedded in the technical architecture itself, not in its use.

The second is the algorithmic black box: the system's opacity prevents the affected person from understanding why a decision has been made about them, and makes it difficult or impossible to detect, challenge or remedy the decision.

The third is the data shadow: persons with disabilities are under-represented in the datasets used to train AI. There is little data about them, and that absence means that systems operate as if they did not exist. The result is worse decisions precisely about those who are already disadvantaged.

The three mechanisms reinforce one another. Ableist design produces biased data; biased data feed opaque models; and opacity prevents discrimination from being detected and corrected.

## Chapter 2. The human rights normative framework

### Q10. Why is the Convention the binding framework for assessing AI?

Because the Convention is an international human rights treaty ratified by Spain and by the European Union. This means that it is law in force and enforceable, with a rank above ordinary law in Spain and with binding value for the European Union itself as a subject bound by the treaty.

The Convention imposes specific obligations on States Parties, and those obligations apply to all areas of public action and to the regulation of private relationships. Artificial intelligence is no exception. When a Spanish administration deploys an AI system that affects persons with disabilities, or when Spain participates in negotiations on European AI legislation, the Convention binds it at the same level as any other rule in its legal order.

### Q11. What obligations does the Convention impose on States in relation to AI?

The Convention imposes on States five core obligations that appear throughout the Report.

1. The obligation to consult and involve (Article 4.3) requires the representative organisations of persons with disabilities to be involved in the design and supervision of any policy or system that affects them. It is the gateway to the entire rights architecture: without real participation, the other obligations are emptied of content.
2. The obligation not to discriminate (Article 5) prohibits a system from producing unfavourable treatment, whether direct or indirect. It also includes denial of reasonable accommodation, which the Report treats as an autonomous form of discrimination when the system is designed without providing for adaptations.
3. The obligation of accessibility (Article 9) requires any system deployed in connection with a public service or a service of general use to be accessible from the design stage, not as a later correction.
4. The obligation to guarantee equality before the law and legal capacity (Article 12) limits the use of AI in decisions affecting personal rights and requires specific safeguards when a system influences the decision-making of a person with disabilities.
5. The obligation to guarantee access to justice (Article 13) requires effective avenues for challenging algorithmic decisions, with procedural accommodations ensuring that the affected person can understand the decision, refute it and obtain redress.

## **Chapter 3. The normative and public-policy ecosystem for AI: analysis of convergences and tensions with the Convention**

### **Q12. What is the deepest tension between the Convention and current AI rules?**

The tension can be seen on two levels.

At the formal level, there is an asymmetry of legal force. The Convention imposes legally enforceable obligations on States and on the European Union. Most current instruments on artificial intelligence do not have the same binding force. Many are principles, recommendations or ethical codes. They guide action but cannot always be enforced before an authority or a court. This is known as soft law: principles, recommendations and ethical codes that lack equivalent enforceability mechanisms.

At the substantive level, even instruments that are binding, foremost among them the AI Act, have been designed without a disability perspective. They regulate artificial intelligence according to the logic of the product and the internal market, not according to the human rights standard required by the Convention.

### **Q13. What are the eleven structural gaps in AI rules that leave persons with disabilities unprotected?**

Chapter 3 identifies eleven critical omissions in the artificial-intelligence normative ecosystem when it is read from the perspective of the Convention. These are aspects that the AI Act and the other instruments in force either do not address or address insufficiently, leaving persons with disabilities without effective protection.

The eleven gaps are as follows:

1. Lack of clear and enforceable obligations for certain institutions, in contrast with the binding force that the Convention does have.
2. Lack of reasonable accommodation in system design.
3. Lack of effective judicial avenues once harm has already occurred.
4. Lack of training data that adequately represent persons with disabilities.
5. Lack of effective participation in technical decisions on AI.
6. Lack of a specific General Comment by the Committee on the Convention on artificial intelligence.
7. Lack of sufficient control over national-security and military uses.
8. Lack of accessibility in remedy and complaints mechanisms.
9. Lack of mandatory compatibility with assistive technologies.
10. Lack of mandatory intersectional audit standards.
11. Lack of specific instruments for the long-term care sector.

## **Q14. How do the eleven gaps in Chapter 3 differ from the nine gaps in Chapter 19?**

They are two different things, with different functions.

The eleven gaps in Chapter 3 are what the Regulation and the other rules in force do not cover or cover insufficiently. They are a diagnosis of the normative framework.

The nine gaps in Chapter 19 are the real consequences that appear when that framework is applied to the lives of persons with disabilities. They are a diagnosis of impact.

The two lists are connected: each normative gap influences several impact gaps, and each impact gap is fed by several normative gaps. They should therefore not be added together: they are two ways of looking at the same problem. The normative gaps explain why the framework fails; the impact gaps explain how that failure becomes exclusion.

## **Chapter 4. The 2030 Agenda as a complementary public-policy framework**

### **Q15. What does the 2030 Agenda contribute to the Report's analysis?**

The 2030 Agenda helps to connect artificial intelligence with equality, sustainability and human rights. It does not have binding legal force, but it reinforces a cross-cutting reading of rights and makes it possible to articulate public policies, including technology policies, from the interdependence between sustainability, equality and human rights.

In relation to artificial intelligence, the 2030 Agenda performs a dual function. On the one hand, it makes visible the potential of AI as a tool that can help to achieve the SDGs in accessibility, communication or assisted diagnosis. On the other, it requires recognition that, without rights safeguards, the same AI operates as a multiplier of inequalities, especially in relation to SDG 5 (gender equality) and SDG 10 (reduced inequalities).

In algorithmic design, the principle of "leaving no one behind" becomes a concrete technical requirement. Persons with disabilities must participate in the critical phases of AI development. This includes the point at which human teams evaluate and correct algorithm outputs (known as reinforcement learning from human feedback, that is, processes in which people review and correct AI responses to improve the system), a process in which, according to the Report, persons with disabilities are not sufficiently present. Without that presence, models do not detect the needs of this group of citizens from their own training.

## Chapter 5. The Spanish normative and institutional ecosystem for AI and the rights of persons with disabilities

### Q16. Why does Spain occupies a singular position in the deployment of the AI Act?

Spain occupies a singular position for six reasons, three institutional and three normative, which are not usually found together in other Member States of the European Union.

At the institutional level, Spain was the first Member State to create a national authority specialised in artificial intelligence, the Spanish Agency for the Supervision of Artificial Intelligence (AESIA), which has positioned it as a technical reference point in the development of the Regulation. This is combined with a relatively advanced ecosystem of algorithmic systems already in use by public administrations, making Spain a real, not hypothetical, test bed for the risks of the Regulation. Thirdly, Spain has taken an active position in European negotiations on artificial intelligence, including on the Digital Omnibus, which gives specific weight to the positions the country defends in relation to the rights of persons with disabilities.

At the normative and case-law level, Spain has three elements that strengthen the enforceability of the rights of persons with disabilities in relation to algorithmic systems. The reform of Article 49 of the Constitution gives constitutional rank to the social model of disability, opening the door to considering public systems that produce exclusion on grounds of disability to be unconstitutional. Law 15/2022 on equal treatment and non-discrimination is pioneering in expressly prohibiting algorithmic discrimination and requiring transparency from the design stage, with a specific anchor in Article 23. Finally, Supreme Court Judgment 1119/2025, in the BOSCO case, has recognised the right of access to the source code of an application linked to the management of the electricity social tariff. The judgment opens a relevant case-law route on algorithmic transparency when administrations use automated systems that affect social rights.

This combination makes Spain a reference point for comparative analysis and, at the same time, an example of the fact that normative progress does not, by itself, guarantee effective implementation. The Report itself documents persistent critical points, such as the absence of implementing regulations for Law 15/2022, the opacity of commercial software procured by the Administration, the insufficiency of the TURING register, and the lack of structured coordination between AESIA and the Independent Mechanism under Article 33.2, which the Spanish ecosystem must close in order for its normative progress to translate into material protection.

### Q17. What role does AESIA play?

AESIA is the Spanish authority competent for supervising the AI Act. In the logic of the Report, its role is twofold.

On the one hand, it must ensure technical compliance with the Regulation by providers and deployers. On the other, it must connect its work with rights-protection mechanisms: the Spanish Data Protection Agency, the Ombudsman, the courts and, especially, the Independent Monitoring Mechanism for the Convention, which in Spain is CERMI.

AESIA's decisions affect rights protected by the Convention, and therefore its technical work cannot be separated from coordination with the actors that protect those rights, particularly CERMI.

The Report also maintains that AESIA must incorporate the disability perspective into its technical documents and working guidelines. Its guidelines on risk management, conformity assessment, transparency and human oversight must integrate disability bias as a mandatory risk factor, universal design as a conformity criterion, the accessibility of algorithmic explanations, and the Convention standards on legal capacity and autonomy.

## Chapter 6. Foundations and structure of the intersectional analysis

### Q18. What are the six indicators for intersectional assessment?

They are six normative criteria that assess whether an audit of an AI system has been carried out correctly from an intersectional perspective. For the assessment to be valid under the standard of the Convention, all six must be met jointly.

The six indicators are as follows:

1. Representation in the data. The data used to train the system must include intersectional subgroups - women with disabilities, children with disabilities, young people with disabilities, older persons with disabilities, LGBTI+ persons with disabilities, families of persons with disabilities - as groups in their own right and as differentiated groups, not as an artificial sum of separate categories.
2. Differentiated impact in outcomes. The system's outcomes must be analysed by the exact intersection concerned, to check whether decisions disproportionately penalise one subgroup compared with others.
3. Accessibility of the system. General accessibility is not enough: the system must be accessible specifically in the differentiated environments and contexts of each subgroup.
4. Participation in design and governance. The representative organisations of the affected subgroups must have real and verifiable participation in the design and supervision of the system. Their absence is precisely what generates ableist bias crossed with other dimensions.
5. Transparency and effective remedies. Complaints mechanisms must be accessible from the outset, and the remedy must eliminate the harm, explain it and compensate for it.
6. Real effects on equality over time. The assessment must verify, over time, whether the deployment of the technology helps to reduce or widen historical inequality gaps.

These six indicators serve as an initial check. Any impact assessment, external audit or academic study on AI and the rights of persons with disabilities must be able to answer all six indicators affirmatively in order to have methodological validity under the standard of the Convention. A system that meets five and fails one is not partially compliant: it is not compliant.

## **Q19. How do these indicators differ from those in Chapter 17?**

The Report contains two different sets of indicators.

The six indicators in Chapter 6 are intersectional indicators: they state whether an audit has been carried out correctly from an intersectional perspective.

The six indicators in Chapter 17 are compliance indicators for the fundamental rights impact assessment: they state whether a specific system meets or does not meet the requirements of the Convention. They are used to verify whether the system respects the rights recognised by the Convention.

## **Part III. Impact analysis by sectoral area. Ten areas where AI decides rights. Chapters 7 to 16. Impact analysis by sectoral area**

## **Q20. What does Part III of the Report analyse?**

Part III sets out the sectoral analysis in ten areas where artificial intelligence is already deciding, today, on the rights of persons with disabilities:

1. Employment.
2. Education and training.
3. Social services, public benefits and disability assessment.
4. Administration of justice and law enforcement.
5. Health and social-care services.
6. Financial services.
7. Critical infrastructure and essential services.
8. Biometrics: identification, categorisation and emotion recognition.
9. Migration, asylum and border control.
10. Participation in political and public life.

In each of these areas, the Report identifies which AI systems are in use, what risks they generate for persons with disabilities, which obligations under the Convention are compromised and which structural gaps manifest themselves most intensely.

## **Q21. Why were these ten areas selected and not others?**

The selection responds to three mutually reinforcing reasons.

First, the ten areas in the Report coincide with those identified as high-risk in Annex III to the AI Act.

Second, they are the areas in which artificial intelligence decides on access to full citizenship: benefits, employment, education, justice, health, essential services, borders and public participation. As the UN Special Rapporteur on the rights of persons with disabilities has noted, these are precisely the systems that mediate access by persons with disabilities to those rights. When an algorithm operates in these spaces, it is not acting in a neutral technical field: it makes decisions that affect the core of the rights recognised by the Convention.

Third, following the structure of Annex III to the AI Act has a specific operational advantage: the conclusions of the Report can be read and applied directly from the Regulation itself, without any need to translate between frameworks.

## **Q22. What patterns are repeated across the ten areas?**

Once the sectoral analysis is complete, the Report identifies nine patterns of exclusion across different areas:

1. The automation of long-standing ableist bias.
2. Under-representation of persons with disabilities in data.
3. Data that do not name disability but may function as indirect signals of disability.
4. Greater harm when disability intersects with other factors, such as gender or age.
5. Lack of clarity about how the decision is made.
6. Absence of algorithmic reasonable accommodation.
7. Difficulty or impossibility of claiming effectively.
8. Regulatory conflicts between the AI Act and sectoral legislation.
9. Exclusion of representative organisations of persons with disabilities from technical governance.

When the same pattern appears in all ten areas, the conclusion is that we are facing a single, systemic problem that manifests itself on ten different fronts.

These nine patterns emerge time and again across the sectoral analysis; Chapter 19 captures the same phenomenon, already ordered and with its normative anchor, in the Report's nine structural gaps.

## **Chapter 17. Fundamental rights impact assessment under the AI Act**

### **Q23. What is the fundamental rights impact assessment?**

It is the procedure by which the deployer of an AI system verifies, before the system is put into service, what effects it has on the fundamental rights of affected persons and what measures are

adopted to avoid or reduce that harm before it occurs. The AI Act requires this assessment in some cases, under Article 27.

## Q24. What does the Convention require when an AI system is applied?

The Convention requires four things that accompany the system throughout its life, from before it is used until after a decision is made: prevent, explain, correct and remedy.

**Preventing** means anticipating harm before the system is deployed. It involves assessing the impact on the rights of persons with disabilities, identifying risks of discrimination and adopting the necessary measures to avoid them.

**Explaining** means that affected persons must be able to understand, in an accessible format, how the system works and why it has made a decision that affects them. An important distinction is useful here: explaining how an algorithm works in technical terms is not the same as providing an explanation that the affected person can understand. The Convention requires the person to be able to understand the explanation.

**Correcting** means modifying or withdrawing the system when it is detected that it causes harm, without waiting for the harm to accumulate. Nuances are also needed here: correcting a statistical bias in the data is not the same as offering reasonable accommodation to a specific person. The first is statistics; the second is law.

**Repairing** means restoring the affected person when harm has already occurred, through an accessible avenue that allows the person responsible to be identified, an explanation to be required and effective compensation to be obtained. This dimension connects directly with Article 13 of the Convention.

The four requirements operate as a cycle: an AI system that meets some of them but not the others does not satisfy the standard of the Convention. At the operational level, those four requirements are specified in the six indicators of the fundamental rights impact assessment detailed in the following question.

## Q25. What are the six indicators of the fundamental rights impact assessment under the Convention?

They are six checks that the fundamental rights impact assessment must pass in order to comply with the Convention. They operate as minimum requirements: if a system fails a single one, it does not respect the mandate of the Convention, even if it meets all the technical requirements of the AI Act.

**INDICATOR 1. Analysis of differentiated impact on persons with disabilities.** This indicator requires checking whether the system specifically harms persons with disabilities. Many systems learn from past data and assume the profile of a person without disabilities; the check is used to detect that exclusion before the system is deployed.

**INDICATOR 2. Assessment of the accessibility of the system.** This indicator requires checking that the system is designed for all people from the outset, and that its explanations and screens are also accessible. Accessibility cannot be a later fix.

**INDICATOR 3. Assessment of accessible explainability.** This indicator requires checking that the affected person can understand why the system has made a decision about them, in the format they need. Without an understandable explanation, the person cannot defend themselves or challenge that decision.

**INDICATOR 4. Assessment of reasonable accommodation incorporated into the system.** This indicator requires checking that the system can adapt to each person's needs. Such adaptations are an obligation of result, not an option that design may leave out.

**INDICATOR 5. Assessment of the impact on the right to live independently.** This indicator requires checking the risk in systems that assess dependency or provide access to essential services. When one of them automatically denies a benefit or support, it may put the person's independent living at risk.

**INDICATOR 6. Assessment of the processing of disaggregated data.** This indicator requires checking that the data from which the system learns properly represent persons with disabilities and that its outcomes are monitored by separating them by disability and by sex. This raises a difficulty: data-protection legislation (GDPR) requires collecting as little personal data as possible, while Article 31 of the Convention requires collecting the data needed to detect discrimination. Without those data, it is not possible to know whether the system discriminates.

## Q26. What is the principle of algorithmic non-regression?

It is a principle that the Report formulates and proposes to integrate into the legal order. It establishes that the introduction of an AI system into a process affecting the rights of persons with disabilities must never produce a lower level of protection than existed before its deployment. If the automation of a procedure worsens accessibility, reduces explainability or restricts the possibility of challenge, the system cannot be deployed, even if it meets the formal requirements of the AI Act. Algorithmic non-regression is the translation into the field of AI of the general principle of non-regression of social rights and operates as a minimum protection that cannot be lowered: technological modernisation cannot become an indirect route for rolling back rights already recognised.

## Chapter 18. Obligations of providers, deployers and public authorities

### Q27. What obligations do providers of AI systems have?

Providers (those who design and market the system) have obligations relating to design, documentation, risk management, human oversight, robustness, cybersecurity and conformity. The Report maintains that, when the system affects persons with disabilities, these obligations must be interpreted from the perspective of the Convention: accessibility must be incorporated by design

and by default, documentation must make it possible to audit the system from a rights perspective, training data must adequately represent persons with disabilities and validation procedures must verify the system's behaviour in relation to the different intersectional layers identified in the Report.

## **Q28. What obligations do deployers have?**

Deployers have obligations relating to appropriate use, human oversight, logging, information to affected persons and, in the cases provided for by the AI Act, fundamental rights impact assessment. The deployer cannot hide behind compliance with the AI Act by the provider; it is directly responsible for the effects of the system on the rights protected by the Convention.

## **Q29. What is the role of organisations of persons with disabilities?**

Representative organisations have a threefold role derived from Article 4.3 of the CRPD. First, they must be effectively consulted in any process of design, deployment or assessment of AI systems that affect persons with disabilities. Consultation cannot be a formal procedure: it requires time, accessible information, resources and a reasoned response. Second, they are legitimate interlocutors in audit and supervision processes, with the capacity to contribute experiential knowledge that no technical team can replace. Third, they are right-holders with standing to seek redress when violations occur.

## **Q30. What obligations does a public administration assume when it deploys a high-risk AI system?**

When a Spanish public administration deploys a high-risk AI system, it must comply simultaneously with four sets of obligations. First, the obligations under the AI Act as deployer, including the fundamental rights impact assessment. Second, the obligations of transparency and right to explanation deriving from the Spanish legal order. Third, the obligations of universal accessibility and design for all imposed by Spanish disability legislation. Fourth, the obligations deriving directly from the Convention, which set a minimum protection that none of the other rules may lower.

## **Chapter 19. Normative gaps and implementation deficits**

## **Q31. What are the nine structural gaps and what are they?**

The nine gaps are the structural and verifiable consequences that occur when the AI Act, with its gaps, is applied to the reality of persons with disabilities. They are not deficiencies in the text of the Regulation (those are the eleven gaps in Chapter 3): they are impact effects. Each gap has an identified normative basis (the article of the CRPD that is violated, the article of the AI Act involved, the applicable general comment), a category of harm and, in many cases, documented evidence. The nine gaps are the central part of the Report's diagnosis and the direct basis for the recommendations.

The Report identifies the following:

- B1. Impact assessment without a disability perspective or intersectional approach.
- B2. Lack of technical instruments for detecting algorithmic discrimination.
- B3. Absence of accessibility in systems and in their algorithmic explanations.
- B4. Inaccessibility of appeal and redress mechanisms.
- B5. Biometric and remote-supervision discrimination not addressed by the rule.
- B6. Absence of disaggregated data in supervision.
- B7. Lack of protection against intersectional discrimination affecting women with disabilities.
- B8. Circumvention of legal-capacity safeguards (Article 12 CRPD, Law 8/2021).
- B9. Conflict of rules between the AI Act and European legislation on medical devices, a clash that directly affects assistive technologies.

### **Q32. Why is it said that an AI system may comply with the AI Act and still discriminate?**

This is the core idea that captures the meaning of the nine gaps. When a system complies with all the procedures provided for by the AI Act, but one of the gaps is active (because the data do not represent persons with disabilities, the explanations are not accessible, there is no effective avenue for challenge, the intersectional perspective has not been applied), the system infringes the Convention, even if it has a certificate of conformity. Procedural coverage is not equivalent to a material guarantee of rights. Communicating this tension clearly is one of the central objectives of the Report.

## **Chapter 20. Recommendations for public action and regulatory compliance**

### **Q33. To whom are the Report's forty recommendations addressed?**

The Report formulates forty recommendations, organised as mandates assigned to six groups of addressees:

1. Institutions of the European Union and the European legislator.
2. States Parties to the CRPD (national and regional governments).
3. Providers and deployers.
4. Supervisory, equality and rights-protection bodies.
5. International human rights bodies.
6. Organised civil society in the disability sector.

The recommendations are not mere advice: each indicates the article of the Convention or of the AI Act from which it arises, so that it is supported by obligations that are already enforceable.

### **Q34. What role does the future Digital Omnibus legislative package play in the recommendations?**

The Digital Omnibus is the package of regulatory simplification proposals that the European Commission has put on the table and that affects several elements relevant to the rights of persons with disabilities, including the AI Act. Recommendation 18 of the Report is specifically directed at the position Spain should defend in that negotiation: simplification cannot translate into a lowering of safeguards, especially as regards fundamental rights impact assessment, accessibility, transparency and consultation of persons with disabilities and their representative organisations.

### **Q35. How are the recommendations linked to Spain's institutional reality?**

The block of recommendations addressed to Spanish actors (Government, AESIA, autonomous communities, local authorities) takes into account the distribution of competences and the operational reality of AI deployment in Spain. Effective consultation with regional CERMI organisations, the role of territorial administrations in the deployment of algorithmic social services and the need for coordination between AESIA, AEPD, the Ombudsman and CERMI as the Independent Monitoring Mechanism are central elements of this block.

## **Chapter 21. Conclusions**

### **Q36. What does it mean that we are facing a historical window?**

It means that, in 2026, two far-reaching processes coincide in time and intersect in their effects, just as artificial intelligence is being deployed on a massive scale in public services, employment, social protection, education and health, among other areas. The first is the twentieth anniversary of the Convention, the first human rights treaty of the twenty-first century. The second is the phased implementation of the AI Act, whose obligations concerning high-risk systems are currently under debate. The historical window is the opportunity to link both processes and to orient that technological deployment from the perspective of rights.

### **Q37. What is the central message of the Report?**

The central message is condensed into one core idea: an artificial intelligence system may meet all the requirements of the AI Act and still discriminate against persons with disabilities.

Procedural coverage is not equivalent to a material guarantee of rights. Effective protection requires incorporating the Convention as the floor for any assessment, applying the intersectional perspective, guaranteeing real accessibility, ensuring effective consultation and articulating an accessible route to redress.

Until this is done, the algorithmic modernisation of the public and private sectors will coexist with systematic violations that the current framework does not detect and therefore does not correct.

### **Q38. What is CERMI calling for in this Report?**

It calls for five things, articulated around effective compliance with the Convention.

First, that the disability perspective and the intersectional approach be incorporated as a matter of ordinary practice, not exceptionally, into every impact assessment, audit and supervision of AI systems.

Second, that the supervisory authorities - AESIA, AEPD and regional bodies - work on a stable basis with the Independent Monitoring Mechanism for the CRPD, which in Spain is CERMI.

Third, that algorithmic systems used by public administrations operate with the highest standard of transparency, auditability and accessible explanation, in the format each person needs.

Fourth, that the principle of algorithmic non-regression be incorporated into the legal order, so that no AI system can become an indirect route for rolling back rights already recognised.

And fifth, that persons with disabilities and their representative organisations be present at every phase of the process, from design onwards and not only in accountability, as required by Article 4.3 CRPD.

### **Q39. What role does CERMI have as the Independent Monitoring Mechanism in relation to artificial-intelligence governance?**

Article 33.2 of the Convention requires each State to designate an independent body to monitor implementation of the Convention. In Spain, that function is performed by CERMI. Monitoring artificial intelligence is more difficult than monitoring a stable rule: systems are deployed quickly, change on their own through use and make decisions that are difficult to understand. CERMI therefore needs to be able to detect early the systems that affect persons with disabilities, work in coordination with the authorities that supervise AI and act before an automated decision causes harm that is difficult to repair.

To that end, the Report proposes creating a specialised observatory on algorithmic discrimination on grounds of disability: a permanent monitoring structure that maintains a map of high-risk systems in use in Spain, collects and documents complaints, and publishes reports with its own evidence. That observatory must work hand in hand with organisations of persons with disabilities, because its value lies precisely in incorporating the experience of those who live with disability into the oversight of these systems. Without stable resources and without mandatory coordination with the technical authorities, this function cannot be fulfilled.

## ANNEXES

### Q40. What do the six annexes to the Report contain and what are they for?

The annexes are quick-reference tools that support and complete the Report's analysis. They are designed so that anyone approaching the Report can access directly the material they need, without having to go through the main text.

Annex I includes a table connecting the articles of the Convention (CRPD) with the European AI Act. It also shows how these rules intersect with other key international treaties, such as those protecting the rights of women (CEDAW) and children (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, through the General Comments and Recommendations of their respective Committees.

Annex II provides the rights map by sectoral area and by intersectional layer. It presents a map identifying, for each of the ten sectoral areas analysed in Part III of the Report (Chapters 7 to 16), the articles of the CRPD activated by the deployment of high-risk artificial intelligence systems, and the intersectional layers where differentiated impact is detected.

Annex III contains the individual cross-analysis factsheets for the twenty-six primary sources underpinning the Report's normative framework, organised into four thematic blocks.

Each factsheet analyses a specific source from the perspective of the CRPD. They are organised in a clear and concise format, structured around key sections:

- Identification of the document.
- Direct connection and possible conflicts with the articles of the Convention.
- Gender and intersectional analysis.
- Protection gaps detected.
- Conclusions.
- Normative summary table.

Annex IV provides an executive factsheet for each of the ten areas analysed in Part III. Each factsheet condenses, in a uniform format, the sectoral diagnosis and the main findings. It serves as advocacy and communication material addressed to specific operators in each area.

Annex V develops a catalogue of the high-risk AI systems that have the greatest impact on the rights of persons with disabilities. It explains how they work and why they are problematic.

Annex VI develops the framework of indicators applied to monitoring compliance with the recommendations formulated in Chapter 20 and with the CRPD obligations deriving from them in the algorithmic space.

**DISCAPACIA Report. High-risk AI and the Rights of Persons with Disabilities. Impact assessment model based on the Convention on the Rights of Persons with Disabilities. QUESTIONS AND ANSWERS FOR QUICK REFERENCE © CERMI ESTATAL**

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